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The Iowa Administrative Code (IAC) Supplement is published biweekly pursuant to Iowa Code sections 2B.5A and 17A.6. The Supplement is a compilation of updated Iowa Administrative Code chapters that reflect rule changes which have been adopted by agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17, 17A.4, and 17A.5 and published in the Iowa Administrative Bulletin bearing the same publication date as the one for this Supplement. To determine the specific changes to the rules, refer to the Iowa Administrative Bulletin. To maintain a loose-leaf set of the IAC, insert the chapters according to the instructions included in the Supplement.

In addition to the rule changes adopted by agencies, the chapters may reflect objection to a rule or a portion of a rule filed by the Administrative Rules Review Committee (ARRC), the Governor, or the Attorney General pursuant to Iowa Code section 17A.4(6); an effective date delay or suspension imposed by the ARRC pursuant to section 17A.8(9) or 17A.8(10); rescission of a rule by the Governor pursuant to section 17A.4(8); nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa; other action relating to rules enacted by the General Assembly; updated chapters for the Uniform Rules on Agency Procedure; or an editorial change to a rule by the Administrative Code Editor pursuant to Iowa Code section 2B.13(2).

INSTRUCTIONS

FOR UPDATING THE

IOWA ADMINISTRATIVE CODE

Agency names and numbers in bold below correspond to the divider tabs in the IAC binders. New and replacement chapters included in this Supplement are listed below. Carefully remove and insert chapters accordingly.

Editor's telephone 515.281.3355 or 515.242.6873

Utilities Division[199]

Replace Analysis
Replace Chapter 31

Environmental Protection Commission[567]

Replace Analysis
Replace Chapter 1
Replace Chapter 3 with Reserved Chapter 3
Remove Chapters 9 to 12
Insert Reserved Chapter 9, Chapters 10 and 11, and Reserved Chapter 12
Remove Chapters 14 to 17, Reserved Chapters 18 and 19, Chapters 20 to 35, and Reserved Chapters 36 and 37
Insert Reserved Chapter 14, Chapter 15, Reserved Chapters 16 to 20, Chapters 21 to 24, Reserved Chapters 25 and 26, Chapter 27, Reserved Chapters 28 and 29, Chapters 30 and 31, Reserved Chapter 32, Chapter 33, and Reserved Chapters 34 to 37
Replace Chapter 65

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Remove Chapters 27 to 36
Insert Chapters 27 to 30, Reserved Chapter 31, Chapters 32 to 35, and Reserved Chapter 36
Replace Chapters 57 to 60 with Reserved Chapters 57 to 60
Remove Chapter 62 and Reserved Chapters 63 to 66
Insert Reserved Chapters 62 to 66

Professional Licensure Division[645]

Replace Analysis
Replace Chapters 41 to 45
Replace Chapter 141
Replace Chapters 143 and 144
Replace Chapters 180 to 183
Replace Chapters 200 to 203
Replace Chapters 206 to 209
Replace Chapters 220 to 225

Public Safety Department[661]

Replace Chapter 22

Veterinary Medicine Board[811]

Replace Analysis
Replace Chapters 1 to 14
Insert Chapter 16

UTILITIES DIVISION[199]

Former Commerce Commission[250] renamed Utilities Division[199]
under the "umbrella" of Commerce Department[181] by 1986 Iowa Acts, Senate File 2175, section 740.

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CHAPTER 31
ACCESS TO AFFILIATE RECORDS, REQUIREMENTS FOR ANNUAL FILINGS, AND SERVICE AND ASSET TRANSFER COSTING STANDARDS

199—31.1(476) Applicability and definition of terms. This chapter applies to all rate-regulated gas, electric, water, sanitary sewage, or storm water drainage service public utilities. All terms used in this chapter are defined in Iowa Code section 476.72 unless further defined in this chapter.

"Fully distributed cost" means a costing approach that fully allocates all current and embedded costs to determine the revenue contribution of regulated and nonregulated affiliate operations.

"Net book value" means the original purchase price minus depreciation.

[**ARC 8009C**, IAB 5/15/24, effective 6/19/24]

199—31.2(476) Availability of records.

31.2(1) *Separate records.* All affiliates of a public utility shall maintain records that are separate from the records of the public utility.

31.2(2) *Records to be maintained.* The records maintained by each affiliate and made available for inspection through the public utility shall include but are not limited to ledgers; balance sheets; income statements, both consolidated and consolidating; documents depicting accounts payable and vouchers; purchase orders; time sheets; journal entries; source and supporting documents for all transactions; supporting documents and models for all forecasts of affiliates used by the public utility; all contracts, including summaries of unwritten contracts or agreements; a description of methods used to allocate revenues, expenses, and investments among affiliates or jurisdictions, including supporting detail; and copies of all filings required by other state and federal agencies.

31.2(3) *Method of inspection.* The records of each affiliate are to be made available to the board. Upon receipt of a formal request in writing from the board for information, the public utility shall produce the requested information within seven days. Upon a showing of good cause, the board may approve additional time for response.

[**ARC 8009C**, IAB 5/15/24, effective 6/19/24]

199—31.3(476) Annual filing.

31.3(1) On or before June 30 of each year, all public utilities shall file with the board the following information:

a. An executive summary of each contract, arrangement, or other similar transaction between the public utility and an affiliate. The executive summary shall include the start and end date of the contract, the providing affiliate, the receiving affiliate, the total estimated dollar value, the dollar amount reported for the calendar year, and a description of the service or goods covered.

b. Verified copies of contracts, arrangements, or other similar transactions between the public utility and an affiliate are to be provided to the board upon request. This includes all contracts, arrangements, or other similar transactions as required by Iowa Code sections 476.74(1) through 476.74(4).

31.3(2) Contracts, arrangements, or other similar transactions with an affiliate where the consideration is not in excess of $250,000 or 5 percent of the capital equity of the utility, whichever is smaller, are exempt from this filing requirement. In lieu of the filing requirement, the public utility shall file on or before June 30 of each year a report of the total amount of each contract, arrangement, or other similar transactions with affiliates qualifying under this exemption. Each affiliate is to be identified separately.

31.3(3) After an initial filing under this rule, only new contracts, arrangements, or other similar transactions and modifications or amendments to existing contracts, arrangements, or other similar transactions need to be reported on an annual basis. If there have been no new contracts, arrangements, or other similar transactions, the public utility may file a statement to that effect.

31.3(4) If a new affiliate is created, if an existing affiliate is dissolved or merged, if a contractual arrangement or other similar transactional relationship between the public utility and an affiliate is created, or if a contractual arrangement or other similar transactional relationship is terminated between

the public utility and an affiliate, the public utility shall notify the board in writing within 60 days of the date of the event. This subrule does not apply if a proposal for reorganization pursuant to 199—Chapter 32 is to be filed with the board or the affiliate does not conduct business with the public utility.
[**ARC 8009C**, IAB 5/15/24, effective 6/19/24]

199—31.4(476) Verified copies. For purposes of this chapter, a copy is verified if it is accompanied by an affidavit signed by a corporate officer with personal knowledge of the veracity of the copy. Only one affidavit signed by a corporate officer with personal knowledge of the veracity of the copy needs to be included in an individual filing in order to verify all contracts, arrangements, or other similar transactions included in the filing.
[**ARC 8009C**, IAB 5/15/24, effective 6/19/24]

199—31.5(476) Comparable information. For the purpose of satisfying the filing requirements of this chapter, the public utility may request approval to file alternative but comparable information that the public utility files with other state or federal regulatory agencies. If the proposal is approved by the board, the public utility may file the information as a partial substitute for, or in lieu of, the information stipulated in rule 199—31.3(476) and the board may provide that the public utility continue to file the approved alternative information in future filings. The public utility shall file the same information, whether it is the alternative information filed with other agencies or the information stipulated in rule 199—31.3(476), for at least five consecutive years. Proposals to file alternative information may be filed by the public utility on or before December 1 of the year preceding the year for which approval is sought.
[**ARC 8009C**, IAB 5/15/24, effective 6/19/24]

199—31.6(476) Standards for costing services between regulated operations and nonregulated affiliates.

31.6(1) *Nonregulated affiliate provides service to a regulated affiliate.* The service shall be priced to the regulated affiliate's operations at the price charged to nonaffiliates. If no such price is available, the service shall be priced at the lower of fully distributed cost, the lowest price actually charged to other affiliates, or a market price of comparable services. If a market price of comparable services is not reasonably determinable, the service may be priced at the lower of fully distributed cost or the lowest price actually charged to other affiliates. Under no circumstances is the service to be priced to a regulated affiliate's operations at a higher cost than what the regulated affiliate actually paid the unregulated affiliate for the service.

31.6(2) *Service provided by the utility to a nonregulated affiliate.* Utility service shall be provided at the tariffed price. If it is not a tariffed service, the service is to be recorded at fully distributed cost.
[**ARC 8009C**, IAB 5/15/24, effective 6/19/24]

199—31.7(476) Standards for costing asset transfers between regulated operations and nonregulated affiliates valued at less than $2 million.

31.7(1) *Asset of a nonregulated affiliate transferred to a regulated affiliate.* The asset transfer shall be recorded at the lesser of net book value, the price actually charged to affiliates or nonaffiliates, or the market price of comparable assets. Under no circumstances is the asset to be recorded at a cost higher than what the regulated affiliate actually paid for the asset.

31.7(2) *Asset of a regulated affiliate transferred to a nonregulated affiliate.* The asset transfer to the nonregulated affiliate shall be recorded at the greater of net book value, a price actually charged to other affiliates or nonaffiliates, or the market price of comparable assets.
[**ARC 8009C**, IAB 5/15/24, effective 6/19/24]

These rules are intended to implement Iowa Code sections 476.73 and 476.74.

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[Filed ARC 3063C (Notice ARC 2955C, IAB 3/1/17), IAB 5/10/17, effective 6/14/17]
[Filed ARC 6761C (Notice ARC 6339C, IAB 6/1/22), IAB 12/28/22, effective 2/1/23]

[Filed ARC 8009C (Notice ARC 7581C, IAB 2/7/24), IAB 5/15/24, effective 6/19/24]

ENVIRONMENTAL PROTECTION COMMISSION[567]

Former Water, Air and Waste Management[900], renamed by 1986 Iowa Acts, chapter 1245, Environmental Protection Commission under the "umbrella" of the Department of Natural Resources.

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GENERAL

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OPERATION OF ENVIRONMENTAL PROTECTION COMMISSION

[Prior to 12/3/86, see Water, Air and Waste Management[900] Ch 2]

567—1.1(17A,455A) Scope. This chapter governs the conduct of business by the environmental protection commission. Rulemaking proceedings and contested case proceedings are governed by other departmental rules.
[**ARC 7942C**, IAB 5/15/24, effective 6/19/24]

567—1.2(17A,455A) Meeting location and notification.

1.2(1) *Time of meetings.* The commission generally meets monthly, but is required to meet at least quarterly. The director, chairperson, or a majority of commissioners may establish meetings.

1.2(2) *Notification of meetings.* The director will provide public notice of all meeting dates, locations, and agendas.

a. Notice of meetings is given by posting the agenda. The agenda lists the time, date, location, and topics to be discussed at the meeting. The agenda may include a specific time for the public to address the commission on any issue related to the duties and responsibilities of the commission, except as otherwise provided in these rules.

b. The agenda for each meeting will be posted at the department's main headquarters and on the department's website. The agenda will be provided to anyone who files a request with the department. The final agenda will be posted at least 24 hours prior to the meeting, unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible will be given. Any additions to the agenda after posting and distribution will be posted at least 24 hours prior to the meeting, unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible will be given. The commission may adopt additions to the agenda at the meeting only if good cause exists requiring expeditious discussion or action. The reasons and circumstances necessitating agenda additions, or those given less than 24 hours' notice by posting, shall be stated in the minutes of the meeting.

c. Written materials provided to the commission with the agenda may be examined by the public. Copies of the materials may be distributed at the discretion of the director. The director may require a fee to cover the reasonable cost to the department to provide the copies, in accordance with rules of the department.
[**ARC 7942C**, IAB 5/15/24, effective 6/19/24]

567—1.3(17A,455A) Attendance and participation by the public.

1.3(1) *Attendance.* All meetings are open to the public. The commission may exclude the public from portions of the meeting in accordance with Iowa Code section 21.5.

1.3(2) *Participation.*

a. Items on agenda. Presentations to the commission may be made at the discretion of the chairperson.

b. Items not on agenda. The commission will not act on a matter not on the agenda, except in accordance with paragraph 1.2(2)*"b."* Persons who wish to address the commission on a matter not on the agenda should file a request with the director to place that matter on the agenda of the subsequent meeting.

c. Meeting decorum. The chairperson may limit participation as necessary for the orderly conduct of agency business. Cameras and recording devices may be used during meetings provided they do not interfere with the orderly conduct of the meeting. The chairperson may order the use of these devices discontinued if they cause interference and may exclude those persons who fail to comply with that order.
[**ARC 7942C**, IAB 5/15/24, effective 6/19/24]

567—1.4(17A,455A) Quorum and voting requirements.

1.4(1) *Quorum.* Five or more commissioners present at a meeting constitute a quorum.

1.4(2) *Voting.*

a. Voting requirements if eight or nine commissioners are currently appointed. If eight or nine commissioners are currently appointed to the environmental protection commission by the governor, then the affirmative votes of five or more commissioners shall be required to act on any matter within the jurisdiction of the commission.

b. Voting requirements if seven or fewer commissioners are currently appointed. If seven or fewer commissioners are currently appointed to the environmental protection commission by the governor, then the affirmative votes of four or more commissioners shall be required to act on any matter within the jurisdiction of the commission.

c. Voting requirements to go into closed session. Notwithstanding paragraph 1.4(2)*"a"* or 1.4(2)*"b,"* a vote to go into closed session shall require the concurrence of six or more members of the commission or the concurrence of all members present if fewer than six members are present.
[**ARC 7942C**, IAB 5/15/24, effective 6/19/24]

567—1.5(17A,455A) Conduct of meeting.

1.5(1) *General.* Meetings will be conducted in accordance with Robert's Rules of Order unless otherwise provided in these rules. Voting will be by voice or by roll call. Voting will be by voice unless a voice vote is inconclusive, a member of the commission requests a roll call, or the vote is on a motion to close a portion of a meeting. The chairperson will announce the result of the vote.

1.5(2) *Voice votes.* All commission members present should respond when a voice vote is taken.

a. All members present will be recorded as voting aye on any motion when there are no nay votes or abstentions heard.

b. Any member who abstains will state at the time of the vote the reason for abstaining. The abstention and the reason for it will be recorded in the minutes.

1.5(3) *Provision of information.* The chairperson may recognize any agency staff member for the provision of information relative to an agenda item.
[**ARC 7942C**, IAB 5/15/24, effective 6/19/24]

567—1.6(17A,455A) Minutes, transcripts, and recordings of meetings.

1.6(1) *Audio recordings.* The director may record each meeting and shall record each closed session.

1.6(2) *Minutes.* The director will keep minutes of each meeting. Minutes will be reviewed and approved by the commission.
[**ARC 7942C**, IAB 5/15/24, effective 6/19/24]

567—1.7(17A,455A) Officers and duties.

1.7(1) *Officers.* The officers of the commission are the chairperson, the vice chairperson, and the secretary.

1.7(2) *Duties.* The chairperson will preside at meetings and will exercise the powers conferred upon the chairperson. The vice chairperson will perform the duties of the chairperson when the chairperson is absent or when directed by the chairperson. The secretary will make recommendations to the commission on approval or revision of the minutes and act as parliamentarian.

1.7(3) *Elections.* Officers will be elected annually during May.

1.7(4) *Succession.*

a. If the chairperson does not serve out the elected term, the vice chairperson will succeed the chairperson for the remainder of the term. A special election will be held to elect a new vice chairperson to serve the remainder of the term.

b. If the vice chairperson does not serve out the elected term, a special election will be held to elect a new vice chairperson to serve the remainder of the term.

c. If the secretary does not serve out the elected term, a special election will be held to elect a new secretary to serve the remainder of the term.
[**ARC 7942C**, IAB 5/15/24, effective 6/19/24]

567—1.8(17A,455A) Sales and leases of goods, real estate, and services.

1.8(1) *Sales and leases.* The general provisions for the sales and leases of goods, real estate, and services by commission members are governed by rule 351—6.11(68B).

1.8(2) *Consent by rule.* The commission concludes that sales or leases of goods, real estate, or services described in this paragraph do not, as a class, constitute the sale or lease of a good, real estate, or service that affects an official's functions. Application and department approval are not required for these sales or leases unless there are unique facts surrounding a particular sale or lease which would cause that sale or lease to affect the official's duties or functions, would give the buyer an advantage in its dealings with the department, or would otherwise present a conflict of interest.

Sales or leases for which consent is granted by rule are:

a. Nonrecurring sale or lease of goods and services if the official is not engaged for profit in the business of selling or leasing those goods or services.

b. Sale or lease of farm products at market prices to a buyer ordinarily engaged in the business of purchasing farm products or to the general public at a farmer's market, retail store, or roadside stand.

c. Sale or lease of goods to general public at an established retail or consignment shop.

d. Sale or lease of legal, mechanical, or other services at market or customary prices. However, if an official's client or customer has a matter for decision before the commission, the official shall not participate in the discussion and voting on that matter unless consent has been obtained.

e. Sale or lease of goods at wholesale prices to a buyer ordinarily engaged in the business of purchasing wholesale goods for retail sale.

f. Sale or lease of creative works of art, including but not limited to sculpture and literary products, at market, auction, or negotiated prices. However, if an official's customer has a matter for decision before the commission directly or indirectly involving that good, the official shall not participate in the discussion and voting on that matter unless consent has been obtained.

g. Sale or lease of goods to general public at market or franchiser-established prices. However, if an official's customer has a matter for decision before the commission, the official shall not participate in the discussion and voting on that matter unless consent has been obtained.

h. Sale or lease of real estate at a live auction or through an open or closed bidding process. However, if the buyer, seller, lessee, or lessor has a matter for decision before the commission within the next 12 months, the official shall not participate in the discussion and voting on that matter unless consent has been obtained.

i. The leasing of real estate; however, if the lessee or lessor has a matter for decision before the commission, the official shall not participate in the discussion and voting on that matter unless consent has been obtained.

[**ARC 7942C**, IAB 5/15/24, effective 6/19/24]

These rules are intended to implement Iowa Code sections 17A.3(1)*"a"* and 455A.6.

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CHAPTER 3
SUBMISSION OF INFORMATION AND COMPLAINTS—INVESTIGATIONS

[Prior to 2/11/87, see Water, Air and Waste Management, 900—4.5]

Rescinded **ARC 7943C**, IAB 5/15/24, effective 6/19/24

CHAPTER 9
DELEGATION OF CONSTRUCTION PERMITTING AUTHORITY

[Prior subject matter DEQ Ch 24]

[Prior to 12/3/86, Water, Air and Waste Management[900]]

Rescinded **ARC 7944C**, IAB 5/15/24, effective 6/19/24

CHAPTER 10
COMPLAINTS, AUDITS, ENFORCEMENT OPTIONS AND ADMINISTRATIVE PENALTIES

[Prior to 12/3/86, Water, Air and Waste Management[900]]

DIVISION I
COMPLAINTS AND INVESTIGATIONS

567—10.1(455B) Complaints and investigations. The process to submit a complaint and to investigate a complaint is as follows:

10.1(1) *Submission requirements and investigations.* Complaints concerning alleged violations of departmental statutes or rules should be submitted to the appropriate department office, and the nature of the complaint must be summarized in a concise manner. Complaints will be investigated by the department if it appears that an investigation is needed to ensure compliance with applicable departmental statutes or rules.

10.1(2) *Known source of complaints.* In the case of a known complainant, the appropriate department office shall notify the complainant of the investigation results or of its decision not to investigate the complaint.

10.1(3) *Anonymous complaints.* Complaints may be submitted by anonymous sources and will be handled as discretionary investigations. In these cases, the department will not be able to notify the complainants of the results of the investigations.

[**ARC 7943C**, IAB 5/15/24, effective 6/19/24]

This rule is intended to implement Iowa Code sections 455B.105(3) and 17A.3(1).

567—10.2 to **10.9** Reserved.

DIVISION II
ENVIRONMENTAL AUDITS

567—10.10(455K) Environmental audits. This part sets forth rules governing voluntary disclosure of environmental noncompliance discovered as a result of an environmental self-audit conducted by or on behalf of a facility owner or operator under the provisions of Iowa Code chapter 455K.

[**ARC 7943C**, IAB 5/15/24, effective 6/19/24]

567—10.11(455K) Notice of audit.

10.11(1) If a notice of audit is provided to the department, it must be submitted in writing and include the following information:

a. The name and location (address and city) of the facility to be audited;

b. The description of the facility or portion of the facility, activity, operation or management system to be audited, including applicable department permits or registration numbers;

c. The anticipated audit initiation date (day, month, and year);

d. The general scope of audit, with sufficient detail to determine if discovered violations would be included. If the scope of the audit changes before it is completed, an amended notice shall be submitted promptly;

e. The names of the persons conducting the audit; and

f. The anticipated audit completion date, not to exceed six calendar months.

10.11(2) The department will provide written acknowledgment of receipt for notices of audit, which will include an assigned identification number.

[**ARC 7943C**, IAB 5/15/24, effective 6/19/24]

567—10.12(455K) Request for extension. If notice of audit is given to the department, the audit must be completed within a reasonable time, not to exceed six calendar months from the date the notice of audit is received by the department unless a written request for extension has been filed with and granted by the department.

10.12(1) A request for extension must be filed in writing with the department at least 30 calendar days prior to expiration of the initial six-month period and provide sufficient information for the department to determine whether reasonable grounds exist to grant an extension.

10.12(2) The department will provide written determination either granting or denying a request for extension within 15 calendar days of receipt.

[**ARC 7943C**, IAB 5/15/24, effective 6/19/24]

567—10.13(455K) Disclosure of violation. An owner or operator wishing to take advantage of the immunity provisions of Iowa Code chapter 455K must make a prompt voluntary disclosure to the department regarding an environmental violation which is discovered through an environmental audit.

10.13(1) A disclosure of violation must be sent to the department in writing and include the following information:

a. Reference to the date of the relevant notice of audit and assigned identification number;
b. Time of initiation and completion of the audit, if applicable;
c. The names of the person or persons conducting the audit;
d. Affirmative assertion that a violation has been discovered;
e. Description of the violation and reason for believing a violation exists;
f. Date of discovery of the violation and interim measures, if applicable, to abate the violation;
g. Duration of the violation if it can be determined; and
h. The status and schedule of proposed final corrective measures, if applicable.

10.13(2) The department will provide written acknowledgement of receipt of a disclosure of violation, which will include either concurrence or rejection of the proposed final corrective measures and schedule.

[**ARC 7943C**, IAB 5/15/24, effective 6/19/24]

567—10.14(455K) Public information. A notice of audit, request for extension, and disclosure of violation documents are considered public information. Copies of the environmental audit report should not be submitted to the department.

[**ARC 7943C**, IAB 5/15/24, effective 6/19/24]

These rules are intended to implement Iowa Code chapter 455K.

567—10.15 to **10.19** Reserved.

DIVISION III
ENFORCEMENT OPTIONS

567—10.20(455B) Enforcement options. In addition to administrative and civil actions for monetary penalty, the following enforcement options are available to the department to obtain information and seek compliance.

10.20(1) *Informal meeting.* Department staff may attempt to resolve a potential violation or obtain additional information with an informal meeting. The discussion will usually focus on corrective actions to be taken, and in most instances, only department staff and the facility representative will be present.

10.20(2) *Letter of inquiry (LOI).* The purpose of an LOI is to allow the regulated entity the opportunity to provide information that would be helpful for a determination of whether a violation has occurred.

10.20(3) *Letter of noncompliance (LNC).* An LNC may be used when no environmental harm or threat to human health or safety has occurred or is imminent, the regulated entity is not a repeat offender, the corrective action is not deemed an emergency, or the violation is considered insignificant. The letter is intended to provide the regulated entity with an opportunity to correct the identified deficiencies prior to further enforcement activity. In an LNC, the department may suggest remedial measures, set a date for returning to compliance, or request a response from the regulated entity within a specific time period as to how the identified problems will be resolved.

10.20(4) *Notice of violation (NOV).* When the other compliance and enforcement activities described in this division are not appropriate for a violation, or when the regulated entity has not

returned to compliance, the department may issue an NOV. An NOV may be used when environmental harm or a threat to human health or safety has occurred or is imminent, a regulated entity is a repeat offender, a corrective action is deemed an emergency, or a violation is considered significant. An NOV identifies the nature of the violation and any required corrective action.
[**ARC 7943C**, IAB 5/15/24, effective 6/19/24]

567—10.21(455B) Options to respond. Upon receiving an LOI, LNC, or NOV, a regulated entity has the option to respond to the department, even if a response is not specifically requested. In responding to an LNC or NOV, the regulated entity should clearly outline any disagreements with the LNC or NOV, provide any pertinent additional information, describe any current or planned corrective action, and provide a schedule for returning to compliance. The department will review written information submitted in response to the compliance and enforcement procedures described in this part and will include this information in the file of record. Nothing in this chapter adds to or takes away from the appeal rights provided in Iowa Code chapter 17A.
[**ARC 7943C**, IAB 5/15/24, effective 6/19/24]

567—10.22(455B) Department discretion. At the department's sole discretion, the department may follow the compliance and enforcement procedures described in this part, commence with an LNC or NOV, or forego these options and commence with an administrative action, or the department may request referral to the attorney general.
[**ARC 7943C**, IAB 5/15/24, effective 6/19/24]

These rules are intended to implement Iowa Code sections 455B.105(3) and 17A.3(1).

567—10.23 to **10.29** Reserved.

DIVISION IV
ADMINISTRATIVE PENALTIES

567—10.30(455B) Criteria for screening and assessing administrative penalties. All formal enforcement actions are processed through the environmental protection division administrator of the department. The administrator shall screen each case to determine the most equitable and efficient means of redressing and abating a violation. In screening a violation to determine which cases may be appropriate for administrative assessment of penalties or for purposes of assessing administrative penalties, the department will consider among other relevant factors the following:

10.30(1) *Economic benefit.* Costs saved or likely to be saved by a violator's noncompliance. Where a violator realizes an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties to offset the economic benefit. Reasonable estimates of economic benefit should be made where clear data are not available.

10.30(2) *Gravity of the violation.* Factors include but are not limited to:

a. The actual or threatened harm to the environment or public health and safety.

b. Involvement of toxic or hazardous substances or potential long-term effects of the violation.

c. The degree to which ambient or source-specific standards are exceeded, where pertinent.

d. Federal program priorities, size of facility, or other pertinent factors.

e. Whether the violation is repeated or whether it violates an administrative or court order.

f. Whether the type of violation threatens the integrity of a regulatory program.

g. Expenses or efforts by the government in detecting, documenting, or responding to a violation.

10.30(3) *Culpability.* Factors include but are not limited to:

a. The degree of intent or negligence. The standard of care required by the laws of the state of Iowa will be considered.

b. Whether the case involves false reporting of required information, or tampering with monitoring devices.

c. Whether the violator has taken remedial measures or mitigated the harm caused by the violation.

10.30(4) *Deterrent.* Whether the assessment of administrative penalties appears to be the only or most appropriate way to deter future violations, either by the person involved or by others similarly situated.

10.30(5) *Other relevant factors.* The department will consider other relevant factors which arise from the circumstances of each case.

10.30(6) *Department discretion.* This screening procedure shall not limit the discretion of the department to refer any case to the attorney general for legal action, nor does this procedure require the commission or the director to pursue an administrative remedy before seeking a remedy in the courts of this state.

[**ARC 7943C**, IAB 5/15/24, effective 6/19/24]

567—10.31(455B) Assessment of administrative penalties. Except for operator discipline, administrative penalties shall be assessed through issuance of an administrative order or an administrative consent order of the director which recites the facts and the legal requirements which have been violated, and a general rationale for the prescribed penalty.

10.31(1) *Administrative order or administrative consent order.* An administrative order or administrative consent order may include cumulative penalties up to $10,000 for multiple violations and may be combined with any other order authorized by statute for mandatory or prohibitory injunctive conditions. The administrative order is subject to contested case and appellate review. Operator discipline is governed by 567—Chapter 81.

10.31(2) *Determination of amount.* The amount of penalty for each day of violation shall be determined from evaluation of the factors outlined in rule 567—10.30(455B). The actual or reasonably estimated economic benefit shall always be assessed.

[**ARC 7943C**, IAB 5/15/24, effective 6/19/24]

These rules are intended to implement Iowa Code section 455B.109.

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CHAPTER 11
TAX CERTIFICATION OF POLLUTION CONTROL OR RECYCLING PROPERTY

[Prior Rules on the subject, DEQ Chs 12 and 23]
[Prior to 12/3/86, Water, Air and Waste Management[900]]
[Prior to 10/19/88, Environmental Protection Commission 567—Ch 8]

567—11.1(427) Form. All requests for the department to certify air or water pollution control recycling property pursuant to Iowa Code section 427.1(19) shall be submitted on a form prescribed by the department. Through these forms, the department may request any information necessary to make a determination under 567—11.5(427).
[**ARC 7945C**, IAB 5/15/24, effective 6/19/24]

567—11.2(427) Time of submission. A request may be submitted at any time. Taxpayers are reminded that failure to dispatch a request sufficiently in advance of the February 1 deadline for filing with the assessing authority may cause the applicant to fail to qualify for the first possible annual exemption.
[**ARC 7945C**, IAB 5/15/24, effective 6/19/24]

567—11.3(427) Notice. The department shall notify the taxpayer of the decision within ten days of receipt of a complete request. The notice shall include either the certificate if the decision is to certify the property as requested, or a concise statement of reasons for denial if the decision is to deny the request or to certify a lesser portion of the property than requested. The determination of the department to deny or grant only a portion of the request may be appealed to the commission pursuant to 567—Chapter 7.
[**ARC 7945C**, IAB 5/15/24, effective 6/19/24]

567—11.4(427) Issuance. Upon the decision of the department or the commission on appeal to certify all or any portion of the property for which a request has been made, two copies of the certificate will be signed by the director or the director's designee and mailed to the taxpayer. The certificate shall describe the property certified and state the date on which the department certified the property.
[**ARC 7945C**, IAB 5/15/24, effective 6/19/24]

567—11.5(427) Criteria for determining eligibility.

11.5(1) *General.* Property that has been installed and is used primarily to meet an effluent standard, a water quality standard, or an emission standard or to control hydrocarbons, fugitive dust, odors or other air contaminants in a reasonably adequate manner shall be considered to be used primarily to control or abate pollution of the water or air of the state. Property that has been installed to meet a standard more stringent than an emission or water quality standard shall be considered to be used primarily to enhance the quality of the water or air of the state. Personal property or improvements to real property as defined by Iowa Code section 427A.1 or any portion of the property used primarily in the manufacturing process and resulting directly in the conversion of waste plastic, wastepaper products, waste paperboard, waste glass, or waste wood into new raw materials or products composed primarily of recycled material shall be considered recycling property. Each request will be considered in the context of its particular circumstances.

In the event that such property also serves other purposes or uses of productive benefit to the owner of the property, only such portion of the assessed valuation thereof as may reasonably be calculated to be necessary for and devoted to the control or abatement of pollution, to the enhancement of the quality of the air or water of this state, or for recycling shall be exempt from taxation.

11.5(2) *Denial.* Property may be denied certification if it is not being operated in compliance with the rules of the department so as to effectively control or abate pollution or enhance the quality of the air or water of the state, or recycle property into new raw materials or products composed primarily of recycled material. Property that was constructed or installed without permits required from the department will be denied certification unless and until such time as the property has received after-the-fact approval from the department.
[**ARC 7945C**, IAB 5/15/24, effective 6/19/24]

These rules are intended to implement Iowa Code section 427.1(19).

[Filed emergency 6/3/83—published 6/22/83, effective 7/1/83]

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CHAPTER 12
ENVIRONMENTAL SELF-AUDITS
Rescinded **ARC 7943C**, IAB 5/15/24, effective 6/19/24

CHAPTER 14
ENVIRONMENTAL COVENANTS
Rescinded **ARC 7946C**, IAB 5/15/24, effective 6/19/24

CHAPTER 15
CROSS-MEDIA ELECTRONIC REPORTING

567—15.1(455B,554D) Purpose. This rule implements 40 CFR Part 3, the federal cross-media electronic reporting rule (CROMERR), as amended through November 17, 2009.

15.1(1) *Applicability.* The provisions of 40 CFR Sections 3.1 and 3.2 are adopted by reference.

15.1(2) *Definitions.*

a. For the purpose of this chapter, the following definitions in 40 CFR Section 3.3 are adopted by reference: "Authorized program," "Copy of record," "Electronic document," "Electronic document receiving system," "Electronic signature," "Electronic signature agreement," "Electronic signature device," "Federal program," "Handwritten signature," and "Valid electronic signature."

b. The following definition applies to this chapter:

"Authorized signatory" means an individual authorized to sign documents under one or more authorized programs, in accordance with the specific requirements of each authorized program, and who signs a document submitted to one of the department's electronic document receiving systems pursuant to an electronic signature agreement.

15.1(3) *Use of electronic document receiving systems.*

a. Website announcement. When the director has announced on the department's website that electronic documents are being accepted in lieu of paper to satisfy requirements under one or more authorized programs, individuals who submit such electronic documents must use the CROMERR-compliant electronic document receiving system or systems as specified by the department.

b. Submittals requiring signature. Any electronic document submitted to the department must bear a valid electronic signature of an authorized signatory, if that signatory would be required under an authorized program to sign the paper document for which the electronic document substitutes.

c. Submittals not requiring signature. If no signature is required under an authorized program, individuals may submit electronic documents in lieu of paper to satisfy requirements of such programs through one or more of the department's CROMERR-compliant electronic document receiving systems without an electronic signature or an electronic signature agreement.

15.1(4) *Electronic signature agreement (ESA).*

a. Agreement to be executed. In order to sign and submit electronic documents in one of the departments' CROMERR-compliant electronic document receiving systems, a signatory must execute an ESA specific to that electronic document receiving system.

b. Form and content of agreement. All ESAs shall include the information and follow the format defined by the department in the specific CROMERR-compliant electronic document receiving system.

c. Verification. The identity and signature authority of each individual submitting an ESA shall be verified by the state of Iowa or by a third-party signature verification service. After verification, the department shall notify an individual electronically that electronic documents may be signed and submitted in a specific CROMERR-compliant electronic document receiving system.

d. Certification. Each document submission authorized by an electronic signature shall contain the following statement: "I certify under penalty of law that I have had the opportunity to review, in human-readable format, the content of the electronic document to which I here certify and attest, and I further certify under penalty of law that, based on the information and belief formed after reasonable inquiry, the statements and information contained in this submission are true, accurate, and complete. I understand that making any false statement, representation, or certification of this submission may result in criminal penalties."

15.1(5) *Valid electronic signature.*

a. Signatory. An authorized signatory may not allow another individual to use the electronic signature device unique to the authorized signatory's electronic signature.

b. Unique signature device. When the electronic signature device is used to create an individual's electronic signature, the code or mechanism must be unique to that individual at the time the signature is created and the individual must be uniquely entitled to use it. The signatory shall:

(1) Protect the electronic signature device from compromise; and

(2) Report to the department, within one business day of discovery, any evidence that the security of the device or the signatory's electronic signature has been compromised.

15.1(6) *Effect of electronic signature and enforcement.* The provisions of 40 CFR Section 3.4 are adopted by reference.

[**ARC 7947C**, IAB 5/15/24, effective 6/19/24]

This chapter is intended to implement Iowa Code section 455B.105 and chapter 554D.

[Filed ARC 8678B (Notice ARC 8467B, IAB 1/13/10), IAB 4/7/10, effective 5/12/10]

[Filed ARC 7947C (Notice ARC 7225C, IAB 12/27/23), IAB 5/15/24, effective 6/19/24]

CHAPTER 16
REVOCATION, SUSPENSION, AND NONRENEWAL OF LICENSE FOR FAILURE TO PAY STATE LIABILITIES

Rescinded **ARC 7948C**, IAB 5/15/24, effective 6/19/24

CHAPTER 17
COMPLIANCE AND ENFORCEMENT PROCEDURES

Rescinded **ARC 7943C**, IAB 5/15/24, effective 6/19/24

CHAPTERS 18 and 19
Reserved

TITLE II
AIR QUALITY

CHAPTER 20
SCOPE OF TITLE—DEFINITIONS

[Prior to 12/3/86, Water, Air and Waste Management[900]]

Rescinded **ARC 7949C**, IAB 5/15/24, effective 6/19/24

CHAPTER 21
COMPLIANCE, EXCESS EMISSIONS, AND MEASUREMENT OF EMISSIONS

[Prior to 7/1/83, DEQ Chs 2 and 6]
[Prior to 12/3/86, Water, Air and Waste Management[900]]

567—21.1(455B) Definitions and compliance requirements. For the purpose of these rules and the rules in 567—Chapters 20 through 35, the following terms shall, unless otherwise noted, have the meaning indicated in this chapter. Additional definitions potentially applicable to this chapter are set forth in 567—Chapters 22 and 23. The definitions set out in Iowa Code sections 455B.101, 455B.131, and 455B.411 are incorporated verbatim into these rules.

"Air pollution alert" means the action condition declared when the concentrations of air contaminants reach the level at which the first-stage control actions are to begin.

"Air pollution emergency" means the action condition declared when the air quality is continuing to degrade to a level that should never be reached, and that the most stringent control actions are necessary.

"Air pollution episode" means a combination of forecast or actual meteorological conditions and emissions of air contaminants that may or do present an imminent and substantial endangerment to the health of persons, during which the chief meteorological factors are the absence of winds that disperse air contaminants horizontally and a stable atmospheric layer that tends to inhibit vertical mixing through relatively deep layers.

"Air pollution forecast" means an air stagnation advisory issued to the department, the commission, and appropriate air pollution control agencies by an authorized Air Stagnation Advisory Office of the National Weather Service predicting that meteorological conditions conducive to an air pollution episode may be imminent. This advisory may be followed by a prediction of the duration and termination of such meteorological conditions.

"Air pollution warning" means the action condition declared when the air quality is continuing to degrade from the levels classified as an air pollution alert, and where control actions in addition to those conducted under an air pollution alert are necessary.

"Equipment" means equipment capable of emitting air contaminants to produce air pollution.

"Excess emission" means any emission that exceeds any applicable emission standard prescribed in 567—Chapter 23 or 567—22.4(455B), 567—22.5(455B), 567—31.3(455B), or 567—33.3(455B) or any emission limit specified in a permit or order.

"Existing equipment" means equipment, machines, devices, or installations that were in operation prior to September 23, 1970.

"Malfunction" means any sudden and unavoidable failure of control equipment or of a process to operate in a normal manner. Any failure that is caused entirely or in part by poor maintenance, careless operation, lack of an adequate maintenance program, or any other preventable upset condition or preventable equipment breakdown shall not be considered a malfunction.

"New equipment" means, except for any equipment or modified equipment to which 567—subrule 23.1(2) applies, any equipment or control equipment not under construction or for which components have not been purchased on or before September 23, 1970, and any equipment that is altered or modified after such date, which may cause, eliminate, reduce, or control the emission of air contaminants.

"Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

"Shutdown" means the cessation of operation of any control equipment or process equipment or process for any purpose.

"Startup" means the setting into operation of any control equipment or process equipment or process for any purpose.

21.1(1) *New equipment.* All new equipment and all new control equipment, as defined herein, installed in this state shall perform in conformance with applicable emission standards specified in 567—Chapter 23.

21.1(2) *Existing equipment.* All existing equipment, as defined herein, shall be operated in conformance with applicable emission standards specified in 567—Chapter 23 or as otherwise specified

herein, except that the performance standards specified in 567—subrule 23.1(2) shall not apply to existing equipment.

21.1(3) *Emissions inventory.* The person responsible for equipment as defined herein shall provide information on fuel use, materials processed, air contaminants emitted (including greenhouse gases as "greenhouse gas" is defined in 567—22.1(455B)), estimated rate of emissions, periods of emissions, or other air pollution information to the director upon the director's written request for use in compiling and maintaining an emissions inventory for evaluation of the air pollution situation in the state and its various parts. The information requested shall be submitted in the electronic format specified by the department, if electronic submittal is provided. All information in regard to both actual and allowable emissions shall be public records, and any publication of such data shall be limited to actual and allowable air contaminant emissions.

21.1(4) Reserved.

21.1(5) *Public availability of data.* Emission data obtained from owners or operators of stationary sources under the provisions of 21.1(3) and any correlations with applicable emission limitations or other control measures will be made available to the public on the department's website and upon request.

21.1(6) *Maintenance of record.* Each owner or operator of any stationary source, as defined herein, shall, upon notification from the director, maintain records of the nature and amounts of air contaminant emissions from such source and any other information as may be deemed necessary by the commission to determine whether such source is in compliance with the applicable emission limitations or other control measures. The information recorded shall be summarized and reported monthly to the director on forms furnished by the department. The initial reporting period shall commence 60 days from the date the director issues notification of the recordkeeping requirements. Records shall be retained by the owner or operator for two years after the date on which the pertinent report is submitted.

[**ARC 7950C**, IAB 5/15/24, effective 6/19/24]

567—21.2(455B) Variances.

21.2(1) *Application for variances.* A person may make an application for a variance from applicable rules or standards specified in this title.

a. Contents. Each application for a variance shall be submitted to the director and state the following:

(1) The name, address, email address, and telephone number of the person submitting the application or, if such person is a legal entity, the name and address of the individual authorized to accept service of process on its behalf and the name of the person in charge of the premises where the pertinent activities are conducted.

(2) The type of business or activity involved.

(3) The nature of the operation or process involved, including information on the air contaminants emitted and the estimated amount and rate of discharge of such emissions.

(4) The exact location of the operation or process involved.

(5) The reason or reasons for considering that compliance with the provisions specified in these rules will produce serious hardship without equal or greater benefits to the public, and the reasons why no other reasonable method can be used for such operations without resulting in a hazard to health or property.

(6) Each application shall contain certification of truth and accuracy by a responsible official as defined in 567—24.100(455B). This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information provided are true and accurate.

b. Variance extension. A person may make an application for a variance extension prior to expiration of an approved variance.

21.2(2) *Processing of applications.* Each application for a variance and its supporting material shall be reviewed, and an investigation of the facilities shall be made, by the department for evaluation of the following:

a. Whether or not the emissions involved will produce the following effects:

(1) Endanger or tend to endanger the health of persons residing in or otherwise occupying the area affected by said emissions.

(2) Create or tend to create safety hazards, such as (but not limited to) interference with traffic due to reduced visibility.

(3) Damage or tend to damage any property on land that is affected by said emissions and under other ownership.

b. The reason or reasons for considering that compliance with the provisions specified in these rules will produce serious hardship without equal or greater benefits to the public, and the reasons why no other reasonable method can be used for such operations without resulting in a hazard to health or property.

21.2(3) *Trial burns for alternative fuels.* An alternative fuel shall be defined as a fuel for which the emissions from combusting the fuel are not known and shall exclude natural gas, coal, liquid propane, and all petroleum distillates.

a. Variance from construction permit. The director may grant a variance for the purpose of testing an alternative fuel and quantifying the emissions from the alternative fuel, except as prohibited under 21.2(4)*"c."*

b. Baseline testing. In addition to submitting the information required in 21.2(1), the applicant may be required to submit baseline emission data for all applicable pollutants as a condition of approval.

c. Source testing. Emissions testing deemed necessary for any pollutant may be required as a condition of the variance and shall be conducted in accordance with 21.10(7)*"a."*

21.2(4) *Decision.*

a. Granting of variance. The director shall grant a variance when the director concludes that the action is appropriate. The variance may be granted subject to conditions specified by the director. The director shall specify the time intervals as are considered appropriate for submission of reports on the progress attained.

b. Denial of variance. The director shall deny a variance when the director concludes that the action is appropriate. The applicant may request a review hearing before the commission if the application is denied.

c. Ineligibility for variance. The director shall not grant a variance from any of the following requirements:

(1) Case-by-case maximum achievable control technology (MACT), 567—paragraph 22.1(1)*"b"*;

(2) Prevention of significant deterioration (PSD), 567—Chapter 33, to the extent that variances may not be granted from the preconstruction review and permitting program specified under 567—Chapter 33 (formerly 567—22.4(455B)), or from any PSD requirement contained in a PSD permit issued under 567—Chapter 33, or from any PSD requirement contained in a PSD permit issued under 40 CFR Section 51.166 or 52.21;

(3) New source performance standards, 567—subrule 23.1(2);

(4) Emission standards for hazardous air pollutants, 567—subrule 23.1(3);

(5) Emission standards for hazardous air pollutants for source categories, 567—subrule 23.1(4); or

(6) Emission guidelines, 567—subrule 23.1(5).

[**ARC 7950C**, IAB 5/15/24, effective 6/19/24]

567—21.3 Reserved.

567—21.4(455B) Circumvention of rules. No person shall build, erect, install, or use any article, machine, equipment, or other contrivance that conceals an emission that would otherwise constitute violation of these rules.

[**ARC 7950C**, IAB 5/15/24, effective 6/19/24]

567—21.5(455B) Evidence used in establishing that a violation has occurred or is occurring. Notwithstanding any other provisions of these rules, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of any provisions herein.

21.5(1) Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at a source. The following testing, monitoring, or information-gathering methods are presumptively credible testing, monitoring, or information-gathering methods:

a. A monitoring method approved for the source and incorporated in an operating permit pursuant to 567—Chapter 24;

b. Compliance test methods specified in 567—21.10(455B);

c. Testing or monitoring methods approved for the source in a construction permit issued pursuant to 567—Chapter 22;

d. Any monitoring or testing methods provided in these rules; or

e. Other testing, monitoring, or information-gathering methods that produce information comparable to that produced by any method in this subrule.

21.5(2) Reserved.

[**ARC 7950C**, IAB 5/15/24, effective 6/19/24]

567—21.6(455B) Temporary electricity generation for disaster situations. An electric utility may operate generators at an electric utility substation with a total combined capacity not to exceed two megawatts in capacity for a period of not longer than ten calendar days and only for the purpose of providing electricity generation in the event of a sudden and unforeseen disaster that has disabled standard transmission of electricity to the public. Department approval shall be required if the electric utility intends to operate generators for a period longer than ten calendar days. The electric utility shall provide an oral report to the appropriate department field office and to the department's air quality bureau and shall specify the anticipated duration within eight hours of commencing use of a generator or at the start of the first working day following the placement of a generator at each site. A written report shall be submitted to the department within 30 calendar days following the cessation of use of the generators. The written report shall state the nature of the sudden and unforeseen disaster, the location of each site, the number of generators used, the capacity of the generators used, the fuel type of the generators, and the duration of use of each generator. For purposes of this rule, the definition of "disaster" shall be as defined in Iowa Code section 29C.2(4), and a disaster may occur before, with, or without a gubernatorial or federal disaster proclamation.

[**ARC 7950C**, IAB 5/15/24, effective 6/19/24]

567—21.7(455B) Excess emission reporting.

21.7(1) *Excess emission during periods of startup, shutdown, or cleaning of control equipment.* Excess emission during a period of startup, shutdown, or cleaning of control equipment is not a violation of the emission standard if the startup, shutdown, or cleaning is accomplished expeditiously and in a manner consistent with good practice for minimizing emissions. Cleaning of control equipment that does not require the shutdown of the process equipment shall be limited to one six-minute period per one-hour period.

21.7(2) *Initial report of excess emission.*

a. An incident of excess emission (other than an incident of excess emission during a period of startup, shutdown, or cleaning) shall be reported to the appropriate regional office of the department within eight hours of the onset of the incident or at the start of the first working day following the onset of the incident. The reporting exemption for an incident of excess emission during startup, shutdown, or cleaning does not relieve the owner or operator of a source with continuous monitoring equipment of the obligation of submitting reports required in 21.10(6).

b. An initial report of excess emission is not required for a source with operational continuous monitoring equipment (as specified in 21.10(1)) if the incident of excess emission continues for less than 30 minutes and does not exceed the applicable emission standard by more than 10 percent or the applicable visible emission standard by more than 10 percent opacity.

c. The initial report shall be made by electronic mail (email), in person, or by telephone and shall include at a minimum the following:

(1) The identity of the equipment or source operation from which the excess emission originated and the associated stack or emission point.

(2) The estimated quantity of the excess emission.

(3) The time and expected duration of the excess emission.

(4) The cause of the excess emission.

(5) The steps being taken to remedy the excess emission.

(6) The steps being taken to limit the excess emission in the interim period.

21.7(3) *Written report of excess emission.* A written report of an incident of excess emission shall be submitted as a follow-up to all required initial reports to the department within seven days of the onset of the upset condition, and shall include as a minimum the following:

a. The identity of the equipment or source operation point from which the excess emission originated and the associated stack or emission point.

b. The estimated quantity of the excess emission.

c. The time and duration of the excess emission.

d. The cause of the excess emission.

e. The steps that were taken to remedy and to prevent the recurrence of the incident of excess emission.

f. The steps that were taken to limit the excess emission.

g. If the owner claims that the excess emission was due to malfunction, documentation to support this claim.

21.7(4) *Excess emissions.* An incident of excess emission (other than an incident during startup, shutdown, or cleaning of control equipment) is a violation. If the owner or operator of a source maintains that the incident of excess emission was due to a malfunction, the owner or operator must show that the conditions that caused the incident of excess emission were not preventable by reasonable maintenance and control measures. Determination of any subsequent enforcement action will be made following review of this report. If excess emissions are occurring, either the control equipment causing the excess emission shall be repaired in an expeditious manner or the process generating the emissions shall be shut down within a reasonable period of time. An expeditious manner is the time necessary to determine the cause of the excess emissions and to correct it within a reasonable period of time. A reasonable period of time is eight hours plus the period of time required to shut down the process without damaging the process equipment or control equipment. In the case of an electric utility, a reasonable period of time is eight hours plus the period of time until comparable generating capacity is available to meet consumer demand with the affected unit out of service, unless the director shall, upon investigation, reasonably determine that continued operation constitutes an unjustifiable environmental hazard, issue an order that such operation is not in the public interest, and require a process shutdown to commence immediately.

[**ARC 7950C**, IAB 5/15/24, effective 6/19/24]

567—21.8(455B) Maintenance and repair requirements.

21.8(1) *Maintenance and repair.* The owner or operator of any equipment or control equipment shall:

a. Maintain and operate the equipment or control equipment at all times in a manner consistent with good practice for minimizing emissions.

b. Remedy any cause of excess emissions in an expeditious manner.

c. Minimize the amount and duration of any excess emission to the maximum extent possible during periods of such emissions. These measures may include but not be limited to the use of clean fuels, production cutbacks, or the use of alternate process units or, in the case of utilities, purchase of electrical power until repairs are completed.

d. Implement measures contained in any contingency plan prepared in accordance with 21.8(2)*"c."*

e. Schedule, at a minimum, routine maintenance of equipment or control equipment during periods of process shutdown to the maximum extent possible.

21.8(2) *Maintenance plans.* A maintenance plan will be required for equipment or control equipment where in the judgment of the director a continued pattern of excess emissions indicative of inadequate

operation and maintenance is occurring. The maintenance plan shall include but not be limited to the following:

a. A complete preventive maintenance schedule, including identification of the persons responsible for inspecting, maintaining, and repairing control equipment, a description of the items or conditions that will be inspected, the frequency of these inspections or repairs, and an identification of the replacement parts that will be maintained in inventory for quick replacement.

b. An identification of the equipment and air pollution control equipment operating variables that will be monitored in order to detect a malfunction or failure, the normal operating range of these variables, and a description of the method of monitoring and surveillance procedures.

c. A contingency plan for minimizing the amount and duration of any excess emissions to the maximum extent possible during periods of such emissions.

[**ARC 7950C**, IAB 5/15/24, effective 6/19/24]

567—21.9(455B) Compliance with other requirements. The excess emissions provisions in 567—21.7(455B) and 567—21.8(455B) do not relieve the owner or operator of an emissions source subject to the new source performance standards (567—subrule 23.1(2)), the national emissions standards for hazardous air pollutants (567—subrule 23.1(3)), or the national emissions standards for hazardous air pollutants for source categories (567—subrule 23.1(4)) from complying with those requirements.

[**ARC 7950C**, IAB 5/15/24, effective 6/19/24]

567—21.10(455B) Testing and sampling of new and existing equipment.

21.10(1) *Continuous monitoring of opacity from coal-fired steam generating units.* The owner or operator of any coal-fired or coal-gas-fired steam generating unit with a rated capacity of greater than 250 million Btu per hour heat input shall install, calibrate, maintain, and operate continuous monitoring equipment to monitor opacity. If an exhaust services more than one steam generating unit as defined in the preceding sentence, the owner has the option of installing opacity monitoring equipment on each unit or on the common stack. Such monitoring equipment shall conform to performance specifications specified in 21.10(9). The director may require the owner or operator of any coal-fired or coal-gas-fired steam generating unit to install, calibrate, maintain, and operate continuous monitoring equipment to monitor opacity whenever the compliance status, history of operations, ambient air quality in the vicinity surrounding the generator, or the type of control equipment utilized would warrant such monitoring.

21.10(2) and **21.10(3)** Reserved.

21.10(4) *Continuous monitoring of sulfur dioxide from sulfuric acid plants.* The owner or operator of any sulfuric acid plant of greater than 300 tons per day production capacity, the production being expressed as 100 percent acid, shall install, calibrate, maintain, and operate continuous monitoring equipment to monitor sulfur dioxide emissions. The monitoring equipment shall conform to the minimum performance specifications specified in 21.10(9).

21.10(5) *Maintenance of records of continuous monitors.* The owner or operator of any facility that is required to install, calibrate, maintain, and operate continuous monitoring equipment shall maintain, for a minimum of two years, a file of all information pertinent to each monitoring system present at the facility. Such information must include but is not limited to all emissions data (raw data, adjusted data, and any or all adjusted factors used to convert emissions from units of measurement to units of the applicable standard), performance evaluations, calibrations and zero checks, and records of all malfunctions of monitoring equipment or source and repair procedures performed.

21.10(6) *Reporting of continuous monitoring information.* The owner or operator of any facility required to install a continuous monitoring system or systems shall provide quarterly reports to the director, no later than 30 calendar days following the end of the calendar quarter, on forms provided by the director. This provision shall not excuse compliance with more stringent applicable reporting requirements. All periods of recorded emissions in excess of the applicable standards, the results of all calibrations and zero checks and performance evaluations occurring during the reporting period, the number of hours that the source was operated while the monitoring equipment was not in operation, and

any periods of monitoring equipment malfunctions or source upsets and any apparent reasons for these malfunctions and upsets shall be included in the report.

21.10(7) *Tests by owner.* The owner of new or existing equipment or the owner's authorized agent shall conduct emission tests to determine compliance with applicable rules in accordance with these requirements.

a. General. The owner of new or existing equipment or the owner's authorized agent shall notify the department in writing not less than 30 days before a required test or before a performance evaluation of a continuous emission monitor to determine compliance with applicable requirements of 567—Chapter 23 or a permit condition. Such notice shall include the time, the date, the place, the name of the person who will conduct the tests, and other information as required by the department. If the owner or operator does not provide timely notice to the department, the department may not consider the test results or performance evaluation results to be a valid demonstration of compliance with applicable rules or permit conditions. Upon written request, the department may allow a notification period of less than 30 days. At the department's request, a pretest meeting shall be held not later than 15 days before the owner or operator conducts the compliance demonstration. A testing protocol shall be submitted to the department for review no later than 15 days before the owner or operator conducts the compliance demonstration. A representative of the department shall be permitted to witness the tests. Results of the tests shall be submitted in writing to the director in the form of a comprehensive report within six weeks (42 days) of the completion of the testing.

b. New equipment. Unless otherwise specified by the department, all new equipment shall be tested by the owner or the owner's authorized agent to determine compliance with applicable emission limits. Tests conducted to demonstrate compliance with the requirements of the rules or a permit shall be conducted within 60 days of achieving maximum production but no later than 180 days of startup, unless a shorter time frame is specified in the permit.

c. Existing equipment. The director may require the owner or the owner's authorized agent to conduct an emission test on any equipment if the director has reason to believe that the equipment does not comply with applicable requirements. Grounds for requiring such a demonstration of compliance include a modification of control or process equipment, age of equipment, or observation of opacities or other parameters outside the range of those indicative of properly maintained and operated equipment. Testing may be required as necessary to determine actual emissions from a source where that source is believed to have a significant impact on the public health or ambient air quality of an area. The director shall provide the owner or agent not less than 30 days to perform the compliance demonstration and shall provide written notice of the requirement.

21.10(8) *Tests by department.* Representatives of the department may conduct separate and additional air contaminant emission tests and continuous monitor performance tests of an installation on behalf of the state and at the expense of the state. Sampling holes, safe scaffolding, and pertinent allied facilities, but not instruments or sensing devices, as needed, shall be requested in writing by the director and shall be provided by and at the expense of the owner of the installation at such points as specified in the request. The owner shall provide a suitable power source to the point or points of testing so that sampling instruments can be operated as required. Analytical results shall be furnished to the owner.

21.10(9) *Methods and procedures.* Stack sampling and associated analytical methods used to evaluate compliance with emission limitations of 567—Chapter 23 or a permit condition are as follows:

a. Performance test (stack test). A stack test shall be conducted according to the U.S. Environmental Protection Agency (EPA) reference methods as specified in 40 CFR 51, Appendix M (as amended or corrected through March 29, 2023); 40 CFR 60, Appendix A (as amended or corrected through March 29, 2023); 40 CFR 61, Appendix B (as amended or corrected through October 7, 2020); and 40 CFR 63, Appendix A (as amended or corrected through March 29, 2023). Each test shall consist of at least three separate one-hour test runs. Unless otherwise specified by the department, EPA method, or regulation, compliance shall be assessed on the basis of the arithmetic mean of the emissions measured in the three test runs. The owner of the equipment or the owner's authorized agent may use an alternative methodology if the methodology is approved by the department in writing before testing.

b. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended or corrected through June 28, 2023); 40 CFR 60, Appendix F (as amended or corrected through March 29, 2023); 40 CFR 75, Appendix A (as amended or corrected through August 30, 2016); 40 CFR 75, Appendix B (as amended or corrected through August 30, 2016); and 40 CFR 75, Appendix F (as amended or corrected through August 30, 2016). The owner of the equipment or the owner's authorized agent may use an alternative methodology for continuous monitoring systems if the methodology is approved by the department in writing before the minimum performance specifications and quality assurance procedures are conducted.

c. Permit and compliance demonstration requirements. After October 24, 2012, all stack sampling and associated analytical methods used to evaluate compliance with emission limitations of 567—Chapter 23 or required in a permit issued by the department pursuant to 567—Chapter 22 or 33 shall be conducted using the methodology referenced in this rule. If stack sampling was required for a compliance demonstration pursuant to 567—Chapter 23 or for a performance test required in a permit issued by the department pursuant to 567—Chapter 22 or 33 before October 24, 2012, and the demonstration or test was not required to be completed before October 24, 2012, then the methodology referenced in this subrule applies retroactively.

21.10(10) *Exemptions from continuous monitoring requirements.*

a. The owner or operator of any source is exempt if it can be demonstrated that any of the conditions set forth in this subrule are met with the provision that periodic recertification of the existence of these conditions can be requested.

(1) An affected source is subject to a new source performance standard.

(2) Reserved.

(3) An affected steam generator that is retired from service.

b. The director may provide a temporary exemption from the monitoring and reporting requirements during any period of monitoring system malfunction, provided that the source owner or operator shows, to the satisfaction of the director, that the malfunction was unavoidable and is being repaired as expeditiously as practical.

21.10(11) *Extensions.* The owner or operator of any source may request an extension of time provided for installation of the required monitor by demonstrating to the director that good faith efforts have been made to obtain and install the monitor in the prescribed time.

[**ARC 7950C**, IAB 5/15/24, effective 6/19/24]

567—21.11(455B) Continuous emission monitoring under the acid rain program. The continuous emission monitoring requirements for affected units under the acid rain program as provided in 40 CFR Part 75, including Appendices A, B, F, and K, as amended through August 30, 2016, are adopted by reference.

[**ARC 7950C**, IAB 5/15/24, effective 6/19/24]

567—21.12(455B) Affected sources subject to Section 112(g). The owner or operator of an affected source subject to the requirements of the federal Clean Air Act, Section 112(g), shall comply with the requirements contained in permits issued by the department under 567—Chapters 22 and 33.

[**ARC 7950C**, IAB 5/15/24, effective 6/19/24]

567—21.13(455B) Methodology and qualified observer. The federal method for visual determination of opacity of emissions and requirements for qualified observers as defined in 40 CFR Part 60, Appendix A, Method 9, as amended through November 14, 1990, is adopted by reference.

To qualify as an observer, a candidate must, after meeting the requirements established in 40 CFR Part 60, Appendix A, Method 9, have on record with the department a minimum of 250 readings of black plumes and 250 readings of white plumes, taken at approved smoke reading courses.

[**ARC 7950C**, IAB 5/15/24, effective 6/19/24]

567—21.14(455B) Prevention of air pollution emergency episodes—general. The provisions for the purpose specified in 40 CFR Part 51, Appendix L, 1.0, are adopted by reference. For purposes of this chapter, adoption by reference of any portion of 40 CFR Part 51, Appendix L, is, unless otherwise noted, as amended through July 1, 1987.
[**ARC 7950C**, IAB 5/15/24, effective 6/19/24]

567—21.15(455B) Episode criteria.

21.15(1) *Evaluation.* Conditions justifying the proclamation of an air pollution alert, air pollution warning, or air pollution emergency shall be deemed to exist whenever the commission or the director determines that the meteorological conditions are such that the accumulation of air contaminants in any place is reaching, or has reached, levels that could, if sustained or exceeded, lead to a substantial threat to the health of persons.

21.15(2) *Air pollution forecast.* Initial consideration of air pollution episode activities will be activated by receipt from the National Weather Service of an air pollution forecast. Receipt of such a forecast shall be the basis for activities such as, but not limited to, increased monitoring of the air contaminants in the area involved.

21.15(3) *Declaration.* In making determinations for the declaration of an air pollution episode condition, the commission or the director will be guided by the criteria stated in the following paragraphs:

a. Air pollution alert. The provisions for an air pollution alert as specified in 40 CFR Part 51, Appendix L, 1.1(b), are adopted by reference.

b. Air pollution warning. The provisions for an air pollution warning as specified in 40 CFR Part 51, Appendix L, 1.1(c), are adopted by reference.

c. Air pollution emergency. The provisions for air pollution emergency as specified in 40 CFR Part 51, Appendix L, 1.1(d), are adopted by reference.

d. Termination. Once declared, any status reached by application of these criteria will remain in effect until the criteria for that level are no longer met. As meteorological factors and air contaminants change, an appropriate change in episode level will be declared.
[**ARC 7950C**, IAB 5/15/24, effective 6/19/24]

567—21.16(455B) Preplanned abatement strategies. The provisions for planned strategies as specified in 40 CFR Part 51, Appendix L, 1.3(a), are adopted by reference.

21.16(1) *Plan preparation.*

a. Any person responsible for the operation of a source of air contaminants as set forth in Tables I through III shall prepare standby plans for reducing the emission of air contaminants, which will be implemented upon the declaration of an air pollution episode and continued for the duration of the declared episode.

b. The provisions for plan preparation as specified in 40 CFR Part 51, Appendix L, 1.3(b), are adopted by reference.

21.16(2) *Plan content.* The provisions for plan content as specified in 40 CFR Part 51, Appendix L, 1.3(c), are adopted by reference.

21.16(3) *Review of plans.* Standby plans as required by this subrule shall be submitted to the director on or before January 1, 1973. Each standby plan shall be subject to review. If, in the opinion of the director, a standby plan does not provide for adequate reduction of emissions, the director may disapprove the plan, state the reasons for disapproval, and order the preparation of an amended standby plan within a time period specified in the order. The action of the director in securing a modification of a standby plan may be appealed to the commission.

21.16(4) *Availability.* The provisions for availability as specified in 40 CFR Part 51, Appendix L, 1.3(d), are adopted by reference.
[**ARC 7950C**, IAB 5/15/24, effective 6/19/24]

567—21.17(455B) Actions taken during episodes.

21.17(1) *Emission reduction activities.* Any person responsible for the operation of a source of air contaminants as set forth in Tables I through III, herein, that is located within the area involved shall follow the actions specified below during periods of an air pollution alert, air pollution warning, or air pollution emergency as may be declared.

a. Air pollution alert. The provisions for an air pollution alert as specified in 40 CFR Part 51, Appendix L, 1.2(a), are adopted by reference.

b. Air pollution warning. The provisions for air pollution warning as specified in 40 CFR Part 51, Appendix L, 1.2(b), are adopted by reference.

c. Air pollution emergency. The provisions for air pollution emergency as specified in 40 CFR Part 51, Appendix L, 1.2(c), are adopted by reference.

d. Special conditions. The provisions for special conditions as specified in 40 CFR Part 51, Appendix L, 1.2(d), are adopted by reference.

21.17(2) Reserved.

[**ARC 7950C**, IAB 5/15/24, effective 6/19/24]

TABLE I
ABATEMENT STRATEGIES EMISSION REDUCTION ACTIONS ALERT LEVEL

GENERAL

The provisions for planned strategies as specified in 40 CFR Part 51, Appendix L, Table I, Part A, are adopted by reference.

SOURCE CURTAILMENT

The provisions for planned strategies as specified in 40 CFR Part 51, Appendix L, Table I, Part B, are adopted by reference.

TABLE II
ABATEMENT STRATEGIES EMISSION REDUCTION ACTIONS WARNING LEVEL

GENERAL

The provisions for planned strategies as specified in 40 CFR Part 51, Appendix L, Table II, Part A, are adopted by reference.

SOURCE CURTAILMENT

The provisions for planned strategies as specified in 40 CFR Part 51, Appendix L, Table II, Part B, are adopted by reference.

TABLE III
ABATEMENT STRATEGIES EMISSION REDUCTION ACTIONS EMERGENCY LEVEL

GENERAL

The provisions for planned strategies as specified in 40 CFR Part 51, Appendix L, Table III, Part A, are adopted by reference.

SOURCE CURTAILMENT

The provisions for planned strategies as specified in 40 CFR Part 51, Appendix L, Table III, Part B, are adopted by reference.

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

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CHAPTER 22
CONTROLLING AIR POLLUTION

[Prior to 7/1/83, DEQ Ch 3]
[Prior to 12/3/86, Water, Air and Waste Management[900]]

567—22.1(455B) Definitions and permit requirements for new or existing stationary sources. For the purpose of these rules and the rules in 567—Chapters 20 through 35, the following terms shall, unless otherwise noted, have the meaning indicated in this chapter. Additional definitions potentially applicable to this chapter are set forth in 567—Chapters 21 and 23. The definitions set out in Iowa Code sections 455B.101, 455B.131, and 455B.411 are incorporated verbatim in these rules.

"12-month rolling period" means a period of 12 consecutive months determined on a rolling basis with a new 12-month period beginning on the first day of each calendar month.

"Act" means the Clean Air Act (42 U.S.C. Sections 7401, et seq.), as amended through November 15, 1990.

"Air quality standard" means an allowable level of air contaminant or atmospheric air concentration established by the commission.

"Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

"Anaerobic lagoon," for purposes of air quality rules in 567—Chapters 20 through 35, means an impoundment, the primary function of which is to store and stabilize organic wastes. The impoundment is designed to receive wastes on a regular basis and the design waste loading rates are such that the predominant biological activity in the impoundment will be anaerobic. An anaerobic lagoon does not include:

1. A runoff control basin that collects and stores only precipitation-induced runoff from an open feedlot feeding operation; or
2. A waste slurry storage basin that receives waste discharges from confinement feeding operations and that is designed for complete removal of accumulated wastes from the basin at least semiannually; or
3. Any anaerobic treatment system that includes collection and treatment facilities for all off-gases.

"Biodiesel fuel" means a renewable, biodegradable, mono alkyl ester combustible liquid fuel derived from agricultural plant oils or animal fat, such as but not limited to soybean oil. For purposes of this definition, "biodiesel fuel" must also meet the specifications of American Society for Testing and Material Specifications (ASTM) D 6751-02, "Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels," and be registered with the U.S. Environmental Protection Agency as a fuel and a fuel additive under Section 211(b) of the Act.

"Chimney" or *"stack"* means any flue, conduit or duct permitting the discharge or passage of air contaminants into the open air or constructed or arranged for this purpose.

"Combustion for indirect heating" means the combustion of fuel to produce usable heat that is to be transferred through a heat-conducting materials barrier or by a heat storage medium to a material to be heated so that the material being heated is not contacted by, and adds no substance to, the products of combustion.

"Control equipment" means any equipment that has the function to prevent the formation of or the emission to the atmosphere of air contaminants from any fuel burning, incinerator or process equipment.

"Country grain elevator" means the same as defined in 22.10(1).

"Diesel fuel" means a low sulfur fuel oil that complies with the specifications for grade 1-D or 2-D, as defined by the ASTM D 975-02, "Standard Specification for Diesel Fuel Oils," grade 1-GT or 2-GT, as defined by ASTM D 2880-00, "Standard Specification for Gas Turbine Fuel Oils," or grade 1 or 2, as defined by ASTM D 396-02, "Standard Specification for Fuel Oils."

1. For purposes of the air quality rules contained in Title II, and unless otherwise specified, diesel fuel may contain a blend of up to 2.0 percent biodiesel fuel, by volume, as "biodiesel fuel" is defined in this rule.

2. The department shall consider air pollutant emissions calculations for the biodiesel fuel blends specified in paragraph "1" to be equivalent to the air pollutant emissions calculations for unblended diesel fuel.

3. Construction permits or operating permits issued under 567—Chapter 22 that restrict equipment fuel use to diesel fuel shall be considered by the department to include the biodiesel fuel blends specified in paragraph "1," unless otherwise specified or in a permit issued under this chapter.

"Electric furnace" means a furnace in which the melting and refining of metals are accomplished by means of electrical energy.

"Electronic format," "electronic submittal," or *"electronic submittal format,"* for purposes of 567—Chapters 20 through 35, means a software, Internet-based, or other electronic means specified by the department for submitting air quality information or fees to the department related to but not limited to applications, certifications, determination requests, emissions inventories, forms, notifications, payments, permit applications and registrations. References to these information submittal methods in 567—Chapters 20 through 35 may, as specified by the department, include electronic submittal as stated in the applicable rules.

"Emergency generator" means any generator of which the sole function is to provide emergency backup power during an interruption of electrical power from the electric utility. An emergency is an unforeseeable condition that is beyond the control of the owner or operator. An emergency generator does not include:

1. Peaking units at electric utilities.

2. Generators at industrial facilities that typically operate at low rates but are not confined to emergency purposes.

3. Any standby generators that are used during time periods when power is available from the electric utility.

"Emission limitation" or *"emission standard"* means a requirement established by a state, local government, or the administrator that limits the quantity, rate or concentration of emissions of air pollutants on a continuous basis, including any requirements that limit the level of opacity, prescribe equipment, set fuel specifications or prescribe operation or maintenance procedures for a source to ensure continuous emission reduction.

"EPA conditional method" means any method of sampling and analyzing for air pollutants that has been validated by the administrator but that has not been published as an EPA reference method.

"EPA reference method" means the following methods used for performance tests and continuous monitoring systems:

1. Performance test (stack test). A stack test shall be conducted according to EPA reference methods specified in 40 CFR 51, Appendix M (as amended or corrected through March 29, 2023); 40 CFR 60, Appendix A (as amended or corrected through March 29, 2023); 40 CFR 61, Appendix B (as amended or corrected through October 7, 2020); and 40 CFR 63, Appendix A (as amended or corrected through March 29, 2023).

2. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended or corrected through June 28, 2023); 40 CFR 60, Appendix F (as amended or corrected through March 29, 2023); 40 CFR 75, Appendix A (as amended or corrected through August 30, 2016); 40 CFR 75, Appendix B (as amended or corrected through August 30, 2016); and 40 CFR 75, Appendix F (as amended or corrected through August 30, 2016).

"Equipment" means the same as defined in 567—21.1(455B).

"Excess air" means that amount of air supplied in addition to the theoretical quantity necessary for complete combustion of all fuel or combustible waste material present.

"Existing equipment" means the same as defined in 567—21.1(455B).

"Foundry cupola" means a stack-type furnace used for melting of metals consisting of but not limited to the furnace proper, tuyeres, fans or blowers, tapping spout, charging equipment, gas cleaning devices and other auxiliaries.

"Fugitive dust" means any airborne solid particulate matter emitted from any source other than a flue or stack.

"Grain processing" means the equipment, or the combination of different types of equipment, used in the processing of grain to produce a product primarily for wholesale or retail sale for human or animal consumption, including the processing of grain for production of biofuels, except for "feed mill equipment" as defined in 567—22.10(455B).

"Grain storage elevator" means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and that is located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant that has a permanent grain storage capacity (grain storage capacity that is inside a building, bin, or silo) of more than 35,200 m^3 (ca. 1 million U.S. bushels).

"Greenhouse gas" means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

"Heating value" means the heat released by combustion of one pound of waste or fuel measured in Btu on an as-received basis. For solid fuels, the heating value shall be determined by use of ASTM Standard D 2015-66.

"Incinerator" means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid or gaseous combustible refuse is ignited and burned efficiently and from which the solid residues contain little or no combustible material.

"Initiation of construction, installation or alteration" means significant permanent modification of a site to install equipment, control equipment or permanent structures. Not included are activities incident to preliminary engineering, environmental studies, or acquisition of a site for a facility.

"New equipment" means the same as defined in 567—21.1(455B).

"Number 1 fuel oil" and *"number 2 fuel oil,"* also known as "distillate oil," mean fuel oil that complies with the specifications for fuel oil number 1 or fuel oil number 2, as defined by the ASTM D 396-02, "Standard Specification for Fuel Oils."

1. For purposes of the air quality rules contained in Title II, and unless otherwise specified, number 1 fuel oil or number 2 fuel oil may contain a blend of up to 2.0 percent biodiesel fuel, by volume, as "biodiesel fuel" is defined in this rule.

2. The department shall consider air pollutant emissions calculations for the biodiesel fuel blends specified in paragraph "1" to be equivalent to the air pollutant emissions calculations for unblended number 1 fuel oil or unblended number 2 fuel oil.

3. Construction permits or operating permits issued under this chapter that restrict equipment fuel use to number 1 fuel oil or number 2 fuel oil shall be considered by the department to include the biodiesel fuel blends specified in paragraph "1," unless otherwise specified or in a permit issued under this chapter.

"One-hour period" means any 60-minute period commencing on the hour.

"Particulate matter" (except for the purposes of new source performance standards as defined in 40 CFR 60) means any material, except uncombined water, that exists in a finely divided form as a liquid or solid at standard conditions and includes gaseous emissions that condense to liquid or solid form as measured by EPA-approved reference methods.

"Plan documents" means the reports, proposals, preliminary plans, survey and basis of design data, general and detail construction plans, profiles, specifications and all other information pertaining to equipment.

"PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by an EPA-approved reference method.

"$PM_{2.5}$" means particulate matter as defined in this rule with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by an EPA-approved reference method.

"Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the administrator. This term does not alter or affect the

use of this term for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations relating to acid rain.

For the purpose of determining potential to emit for country grain elevators, the provisions set forth in 22.10(2) shall apply.

For purposes of calculating potential to emit for emergency generators, "maximum capacity" means one of the following:

1. 500 hours of operation annually, if the generator has actually been operated less than 500 hours per year for the past five years.
2. 8,760 hours of operation annually, if the generator has actually been operated more than 500 hours in one of the past five years.
3. The number of hours specified in a state or federally enforceable limit.

If the source is subject to new source construction permit review, then potential to emit is defined as stated above or as established in a federally enforceable permit.

"Privileged communication" means information other than air pollutant emissions data, the release of which would tend to affect adversely the competitive position of the owner or operator of the equipment.

"Process" means any action, operation or treatment, and all methods and forms of manufacturing or processing, that may emit smoke, particulate matter, gaseous matter or other air contaminant.

"Process weight" means the total weight of all materials introduced into any source operation. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not.

"Process weight rate" means continuous or long-run steady-state source operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof; or for a cyclical or batch source operation, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the number of hours of actual process operation during such a period. Where the nature of any process or operation, or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

"Six-minute period" means any one of the ten equal parts of a one-hour period.

"Smoke" means gas-borne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon, and other combustible material, or ash, that form a visible plume in the air.

"Source operation" means the last operation preceding the emission of an air contaminant and that results in the separation of the air contaminant from the process materials or in the conversion of the process materials into air contaminants but is not an air pollution control operation.

"Standard conditions" means a temperature of 68°F and a pressure of 29.92 inches of mercury absolute.

"Standard cubic foot" or *"SCF"* means the volume of one cubic foot of gas at standard conditions.

"Standard metropolitan statistical area" or *"SMSA"* means an area that has at least one city with a population of at least 50,000 and such surrounding areas as geographically defined by the U.S. Office of Management and Budget (Department of Commerce).

"Stationary source" means any building, structure, facility or installation that emits or may emit any air pollutant.

"Total suspended particulate" means particulate matter as defined in this rule.

"Untreated" as it refers to wood or wood products includes only wood or wood products that have not been treated with compounds such as, but not limited to, paint, pigment-stain, adhesive, varnish, lacquer, or resin or that have not been pressure treated with compounds such as, but not limited to, chromate copper acetate, pentachlorophenol or creosote. "Untreated" as it refers to seeds, pellets or other vegetative matter includes only seeds, pellets or other vegetative matter that has not been treated with pesticides or fungicides.

"Urban area" means any Iowa city of 100,000 or more population in the current census and all Iowa cities contiguous to such city.

"Variance" means a temporary waiver from rules or standards governing the quality, nature, duration or extent of emissions granted by the commission for a specified period of time.

"Volatile organic compounds" or *"VOC"* means any compound included in the definition of "volatile organic compounds" found at 40 CFR Section 51.100(s) as amended through February 8, 2023.

22.1(1) *Permit required.* No person shall construct, install, reconstruct or alter any equipment, control equipment or anaerobic lagoon unless a permit is first obtained pursuant to this chapter, 567—31.3(455B), or 567—33.3(455B), or the equipment qualifies for an exemption under 22.1(2). An air quality construction permit shall be obtained prior to the initiation of construction, installation or alteration of any portion of the stationary source or anaerobic lagoon, unless the parameters in 22.1(1)*"c"* are met.

a. Existing equipment is not subject to this subrule, unless it has been modified, reconstructed, or altered on or after September 23, 1970.

b. No person shall construct or reconstruct a major source of hazardous air pollutants, as defined in 40 CFR Section 63.2 and 40 CFR Section 63.41 as adopted by reference in 567—subrule 23.1(4), unless a construction permit has been obtained from the department, which requires maximum achievable control technology for new sources to be applied. The permit shall be obtained prior to the initiation of construction or reconstruction of the major source.

c. Construction prior to issuance of an air quality construction permit issued by the department may begin if the eligibility requirements stated in 22.1(1)*"c"*(1) are met. The applicant must assume any liability for construction conducted on a source before the permit is issued. In no case will the applicant be allowed to hook up the equipment to the exhaust stack or operate the equipment in any way that may emit any pollutant prior to receiving a construction permit.

(1) Eligibility.

1. The applicant has submitted a construction permit application to the department, as specified in 22.1(3);

2. The applicant has notified the department of the applicant's intentions in writing five working days prior to initiating construction; and

3. The equipment or process is not subject to:

- Prevention of significant deterioration (PSD), as set forth in 567—Chapter 33;
- New source performance standards (NSPS), as set forth in 567—subrule 23.1(2);
- National emission standards for hazardous air pollutants (NESHAP), as set forth in 567—subrules 23.1(3) and 23.1(4);
- Emission guidelines, as set forth in 567—subrule 23.1(5);
- Nonattainment new source review, as set forth in 567—Chapter 31; or
- The equipment or process is a major source of hazardous air pollutants, as defined in 40 CFR Sections 63.2 and 63.41, and as adopted by reference in 567—subrule 23.1(4).

The equipment and processes are subject to PSD until the owner or operator of a proposed project legally obtains permitted limits that limit the project below the PSD thresholds (i.e., PSD synthetic minor status).

(2) The applicant must cease construction if the department's evaluation demonstrates that the construction, reconstruction or modification of the stationary source will interfere with the attainment or maintenance of the national ambient air quality standards or will result in a violation of a control strategy required by 40 CFR Part 51, Subpart G, as amended through February 19, 2015.

(3) The applicant will be required to make any modification to the stationary source that may be imposed in the issued construction permit.

(4) The applicant must notify the department in writing of the actual start date of construction or reconstruction. All notifications shall be submitted to the department in writing no later than 30 days after construction or reconstruction started. All notifications shall include all of the information listed in 22.3(3)*"b."*

d. The owner or operator of a country grain elevator, country grain terminal elevator, grain terminal elevator or feed mill equipment, as "country grain elevator," "country grain terminal elevator," "grain terminal elevator," and "feed mill equipment," as these terms are defined in 22.10(1), may elect

to comply with the requirements specified in 567—22.10(455B) as an alternative to the construction permitting requirements set forth in 22.1(1).

22.1(2) *Exemptions.* An owner or operator may opt to use one of the permitting exemptions in this subrule in lieu of obtaining an air quality construction permit if the equipment, control equipment, or process meets the conditions in the specific exemption and is not:

- Permitted under the provisions of the permit by rule for spray booths, as set forth in 567—22.8(455B);
- Subject to nonattainment new source review, as set forth in 567—Chapter 31; or
- Subject to PSD, as set forth in 567—Chapter 33;

A permitting exemption may be used only if a permit is not necessary to establish federally enforceable limits that restrict potential to emit.

An owner or operator shall keep records at the facility and will make the records available to the department upon request if any of the exemptions under the following paragraphs are claimed:

- 22.1(2)*"a"* (for equipment > 1 million Btu per hour input),
- 22.1(2)*"b,"*
- 22.1(2)*"e,"*
- 22.1(2)*"r,"* or
- 22.1(2)*"s."*

Records kept on site shall contain the following information:

- The specific exemption claimed; and
- A description of the associated equipment.

The permitting exemptions in this subrule do not relieve the owner or operator of any source from any obligation to comply with any other applicable requirements.

a. Fuel-burning equipment for indirect heating and reheating furnaces or cooling units using natural gas or liquefied petroleum gas with a capacity of less than 10 million Btu per hour input per combustion unit.

b. Fuel-burning equipment for indirect heating or indirect cooling with a capacity of less than 1 million Btu per hour input per combustion unit when burning untreated wood, untreated seeds or pellets, other untreated vegetative materials, or fuel oil, provided that the equipment and the fuel meet the conditions specified in this paragraph. Used oils meeting the specification from 40 CFR Section 279.11 as amended through July 14, 2006, are acceptable fuels for this exemption. When combusting used oils, the equipment must have a maximum rated capacity of 50,000 Btu or less per hour of heat input or a maximum throughput of 3,600 gallons or less of used oils per year. When combusting untreated wood, untreated seeds or pellets, or other untreated vegetative materials, the equipment must have a maximum rated capacity of 265,600 Btu or less per hour or a maximum throughput of 378,000 pounds or less per year of each fuel or any combination of fuels. Records shall be maintained on site by the owner or operator for at least two calendar years to demonstrate that fuel usage is less than the exemption thresholds. Owners or operators initiating construction, installation, reconstruction, or alteration of equipment (as defined in 567—22.1(455B)) on or before October 23, 2013, burning coal, used oils, untreated wood, untreated seeds or pellets, or other untreated vegetative materials that qualified for this exemption may continue to claim this exemption after October 23, 2013, without being restricted to the maximum heat input or throughput specified in this paragraph.

c. Mobile internal combustion and jet engines, marine vessels and locomotives.

d. Equipment used for cultivating land, harvesting crops, or raising livestock other than anaerobic lagoons. This exemption is not applicable if the equipment is used to remove substances from grain that were applied to the grain by another person. This exemption is also not applicable to equipment used by a person to manufacture commercial feed, as defined in Iowa Code section 198.3, that is normally not fed to livestock, owned by the person or another person, in a feedlot, as defined in Iowa Code section 172D.1(6), or a confinement building owned or operated by that person and located in this state.

e. Incinerators and pyrolysis cleaning furnaces with a rated refuse burning capacity of less than 25 pounds per hour for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013. Pyrolysis cleaning furnace exemption

is limited to those units that use only natural gas or propane. Salt bath units are not included in this exemption. Incinerators or pyrolysis cleaning furnaces for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—21.1(455B)) occurred after October 23, 2013, shall not qualify for this exemption. After October 23, 2013, only paint clean-off ovens with a maximum rated capacity of less than 25 pounds per hour that do not combust lead-containing materials shall qualify for this exemption.

f. Fugitive dust controls, unless a control efficiency can be assigned to the equipment or control equipment.

g. Equipment or control equipment that reduces or eliminates all emission to the atmosphere. An owner or operator electing to use this exemption shall provide to the department the following information:

(1) Name and location of the facility;

(2) Detailed description of each change being made;

(3) Date of the beginning of actual construction and date that operation will begin after the changes are made;

(4) Detailed emissions estimates showing:

1. The actual and potential emissions, specifically noting increases or decreases, for the project for all regulated pollutants (as defined in 567—24.100(455B)); and

2. The accumulated emissions increases associated with each change when totaled with other net emissions increases at the facility contemporaneous with the proposed change (occurring within five years before construction of the particular change commences).

(5) Documentation of the basis for all emissions estimates;

(6) Height of the emission point or stack and height of the highest building within 50 feet;

(7) Statement that the provisions of 567—Chapters 31 and 33 do not apply; and

(8) Written statement containing certification by a responsible official as defined in 567—24.100(455B) of truth, accuracy, and completeness that:

1. Accumulated emissions with other contemporaneous net increases have not exceeded significant levels, as defined in 40 CFR 52.21(b)(23), and adopted in 567—33.3(455B);

2. The changes will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—22.11(455B);

3. Based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

The conditions listed below also apply to this exemption:

- If an owner or operator opts to use this exemption for equipment or a process not yet constructed or modified, the information shall be provided to the department at least 30 days in advance of the beginning of construction on the project.
- If an owner or operator opts to use this exemption for equipment or a process that has already been constructed or modified and that does not have a construction permit for that construction or modification, the owner or operator shall not operate until the information listed above is provided to the department.
- If a construction permit has been previously issued for the equipment or control equipment, all other conditions of the construction permit remain in effect.
- If an owner or operator wishes to obtain credit for emission reductions, an air quality construction permit must be obtained for the reduction prior to the time the reduction is made.

h. Equipment (other than anaerobic lagoons) or control equipment that emits odors, unless such equipment or control equipment also emits particulate matter or any other regulated air contaminant (as defined in 567—24.100(455B)).

i. Reserved.

j. Residential heaters, cookstoves, or fireplaces that burn untreated wood, untreated seeds or pellets, or other untreated vegetative materials.

k. Asbestos demolition and renovation projects subject to 40 CFR Section 61.145 as adopted by reference in 567—subrule 23.1(3).

l. The equipment in laboratories used exclusively for nonproduction chemical and physical analyses. Nonproduction analyses means analyses incidental to the production of a good or service and includes analyses conducted for quality assurance or quality control activities or for the assessment of environmental impact.

m. Storage tanks with a capacity of less than 19,812 gallons and an annual throughput of less than 200,000 gallons.

n. Stack or vents to prevent escape of sewer gases through plumbing traps. Systems that include any industrial waste are not exempt.

o. A nonproduction surface coating process that uses only handheld aerosol spray cans.

p. Brazing, soldering or welding equipment or portable cutting torches used only for nonproduction activities.

q. Cooling and ventilating equipment: comfort air conditioning not designed or used to remove air contaminants generated by, or released from, specific units of equipment.

r. An internal combustion engine with a brake horsepower rating of less than 400 measured at the shaft, provided that the owner or operator meets all of the conditions in this paragraph. For the purposes of this exemption, the manufacturer's nameplate rated capacity at full load shall be defined as the brake horsepower output at the shaft. The owner or operator of an engine that was manufactured, ordered, modified or reconstructed after March 18, 2009, may use this exemption only if the owner or operator, prior to installing, modifying or reconstructing the engine, submits to the department a completed registration on forms provided by the department (unless the engine is exempted from registration, as specified in this paragraph or on the registration form) certifying that the engine is in compliance with the following federal regulations:

(1) NSPS for stationary compression ignition internal combustion engines (40 CFR Part 60, Subpart IIII); or

(2) NSPS for stationary spark ignition internal combustion engines (40 CFR Part 60, Subpart JJJJ); and

(3) NESHAP for reciprocating internal combustion engines (40 CFR Part 63, Subpart ZZZZ).

Use of this exemption does not relieve an owner or operator from any obligation to comply with NSPS or NESHAP requirements. An engine that meets the definition of a nonroad engine as specified in 40 CFR Section 1068.30, as amended through January 24, 2023, is exempt from the registration requirements of this paragraph.

s. Equipment that is not related to the production of goods or services and used exclusively for academic purposes, located at educational institutions (as defined in Iowa Code section 455B.161). The equipment covered under this exemption is limited to lab hoods, art class equipment, wood shop equipment in classrooms, wood fired pottery kilns, and fuel-burning units with a capacity of less than 1 million Btu per hour fuel capacity. This exemption does not apply to incinerators.

t. Any container, storage tank, or vessel that contains a fluid having a maximum true vapor pressure of less than 0.75 psia. "Maximum true vapor pressure" means the equilibrium partial pressure of the material considering:

(1) For material stored at ambient temperature, the maximum monthly average temperature as reported by the National Weather Service, or

(2) For material stored above or below the ambient temperature, the temperature equal to the highest calendar-month average of the material storage temperature.

u. Equipment for carving, cutting, routing, turning, drilling, machining, sawing, surface grinding, sanding, planing, buffing, sandblast cleaning, shot blasting, shot peening, or polishing ceramic artwork, leather, metals (other than beryllium), plastics, concrete, rubber, paper stock, and wood or wood products, where such equipment is either used for nonproduction activities or exhausted inside a building.

v. Manually operated equipment, as defined in 567—24.100(455B), used for buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, scarfing, surface grinding, or turning.

w. Small unit exemption.

(1) "Small unit" means any emission unit and associated control (if applicable) that emits less than the following:

1. 2 pounds per year of lead and lead compounds expressed as lead (40 pounds per year of lead or lead compounds for equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013);

2. 5 tons per year of sulfur dioxide;

3. 5 tons per year of nitrogen oxides;

4. 5 tons per year of volatile organic compounds;

5. 5 tons per year of carbon monoxide;

6. 5 tons per year of particulate matter (particulate matter as defined in 40 CFR 51.100(pp), as amended through November 7, 1986);

7. 2.5 tons per year of PM_{10};

8. 0.52 tons per year of $PM_{2.5}$ (does not apply to equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013); and

9. 5 tons per year of hazardous air pollutants (as defined in 567—24.100(455B)).

For the purposes of this exemption, "emission unit" means any part or activity of a stationary source that emits or has the potential to emit any pollutant subject to regulation under the Act. This exemption applies to existing and new or modified "small units."

An emission unit that emits hazardous air pollutants (as defined in 567—24.100(455B)) is not eligible for this exemption if the emission unit is required to be reviewed for compliance with 567—subrule 23.1(3), emission standards for hazardous air pollutants (40 CFR Part 61, NESHAP), or 567—subrule 23.1(4), emission standards for hazardous air pollutants for source categories (40 CFR Part 63, NESHAP).

An emission unit that emits air pollutants that are not regulated air pollutants as defined in 567—24.100(455B) shall not be eligible to use this exemption.

(2) Permit requested. If a construction permit is requested in writing by the owner or operator of a small unit, the director may issue a construction permit for the emission point associated with that emission unit.

(3) An owner or operator that utilizes the small unit exemption must maintain on site an "exemption justification document." The exemption justification document must document conformance and compliance with the emission rate limits contained in the definition of "small unit" for the particular emission unit or group of similar emission units obtaining the exemption. Controls that may be part of the exemption justification document include, but are not limited to, the following: emission control devices, such as cyclones, filters, or baghouses; restricted hours of operation or fuel; and raw material or solvent substitution. The exemption justification document for an emission unit or group of similar emission units must be made available for review during normal business hours and for state or EPA on-site inspections and shall be provided to the director or the director's representative upon request. If an exemption justification document does not exist, the applicability of the small unit exemption is voided for that particular emission unit or group of similar emission units. The controls described in the exemption justification document establish a limit on the potential emissions. An exemption justification document shall include the following for each applicable emission unit or group of similar emission units:

1. A narrative description of how the emissions from the emission unit or group of similar emission units were determined and maintained at or below the annual small unit exemption levels.

2. If air pollution control equipment is used, a description of the air pollution control equipment used on the emission unit or group of similar emission units and a statement that the emission unit or group of similar emission units will not be operated without the pollution control equipment operating.

3. If air pollution control equipment is used, the applicant shall maintain a copy of any report of manufacturer's testing results of any emissions test, if available. The department may require a test if it believes that a test is necessary for the exemption claim.

4. A description of all production limits required for the emission unit or group of similar emission units to comply with the exemption levels.

5. Detailed calculations of emissions reflecting the use of any air pollution control devices or production or throughput limitations, or both, for applicable emission unit or group of similar emission units.

6. Records of actual operation that demonstrate that the annual emissions from the emission unit or group of similar emission units were maintained below the exemption levels.

7. Facilities designated as major sources with respect to 567—22.4(455B) and 567—24.101(455B), or subject to any applicable federal requirements, shall retain all records demonstrating compliance with the exemption justification document for five years. The record retention requirements supersede any retention conditions of an individual exemption.

8. A certification from the responsible official that the emission unit or group of similar emission units have complied with the exemption levels specified in 22.1(2)*"w"*(1).

(4) Requirement to apply for a construction permit. An owner or operator of a small unit will be required to obtain a construction permit or take the unit out of service if the emission unit exceeds the small unit emission levels.

1. If, during an inspection or other investigation of a facility, the department believes that the emission unit exceeds the emission levels that define a "small unit," then the department will submit calculations and detailed information in a letter to the owner or operator. The owner or operator shall have 60 days to respond with detailed calculations and information to substantiate a claim that the small unit does not exceed the emission levels that define a small unit.

2. If the owner or operator is unable to substantiate a claim to the satisfaction of the department, then the owner or operator that has been using the small unit exemption must cease operation of that small unit or apply for a construction permit for that unit within 90 days after receiving a letter of notice from the department. The emission unit and control equipment may continue operation during this period and the associated initial application review period.

3. If the notification of nonqualification as a small unit is made by the department following the process described above, the owner or operator will be deemed to have constructed an emission unit without the required permit and may be subject to applicable penalties.

(5) Required notice for construction or modification of a substantial small unit. The owner or operator shall notify the department in writing at least ten days prior to commencing construction of any new or modified "substantial small unit" as defined in 22.1(2)*"w"*(6). The owner or operator shall notify the department within 30 days after determining an existing small unit meets the criteria of the "substantial small unit" as defined in 22.1(2)*"w"*(6). Notification shall include the name of the business, the location where the unit will be installed, and information describing the unit and quantifying its emissions. The owner or operator shall notify the department within 90 days of the end of the calendar year for which the aggregate emissions from substantial small units at the facility have reached any of the cumulative notice thresholds listed below.

(6) For the purposes of this paragraph, "substantial small unit" means a small unit that emits more than the following amounts, as documented in the exemption justification document:

1. 2 pounds per year of lead and lead compounds expressed as lead (30 pounds per year of lead or lead compounds for equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013);

2. 3.75 tons per year of sulfur dioxide;

3. 3.75 tons per year of nitrogen oxides;

4. 3.75 tons per year of volatile organic compounds;

5. 3.75 tons per year of carbon monoxide;

6. 3.75 tons per year of particulate matter (particulate matter as defined in 40 CFR 51.100(pp), as amended through November 7, 1986);

7. 1.875 tons per year of PM_{10};

8. 0.4 tons per year of $PM_{2.5}$ (does not apply to equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013); or

9. 3.75 tons per year of any hazardous air pollutant or 3.75 tons per year of any combination of hazardous air pollutants.

An emission unit is a "substantial small unit" only for those substances for which annual emissions exceed the above-indicated amounts.

(7) Required notice that a cumulative notice threshold has been reached. Once a "cumulative notice threshold," as defined in 22.1(2)*"w"*(8), has been reached for any of the listed pollutants, the owner or operator at the facility must apply for air construction permits for all substantial small units for which the cumulative notice threshold for the pollutant(s) in question has been reached. The owner or operator shall have 90 days from the date it determines that the cumulative notice threshold has been reached in which to apply for construction permit(s). The owner or operator shall submit a letter to the department, within five working days of making this determination, establishing the date the owner or operator determined that the cumulative notice threshold had been reached.

(8) "Cumulative notice threshold" means the total combined emissions from all substantial small units using the small unit exemption that emit at the facility the following amounts, as documented in the exemption justification document:

1. 0.6 tons per year of lead and lead compounds expressed as lead;
2. 40 tons per year of sulfur dioxide;
3. 40 tons per year of nitrogen oxides;
4. 40 tons per year of volatile organic compounds;
5. 100 tons per year of carbon monoxide;
6. 25 tons per year of particulate matter (particulate matter as defined in 40 CFR 51.100(pp), as amended through November 7, 1986);
7. 15 tons per year of PM_{10};
8. 10 tons per year of $PM_{2.5}$ (does not apply to equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013); or
9. 10 tons per year of any hazardous air pollutant or 25 tons per year of any combination of hazardous air pollutants.

x. The following equipment, processes, and activities:

(1) Cafeterias, kitchens, and other facilities used for preparing food or beverages primarily for consumption at the source.

(2) Consumer use of office equipment and products, not including printers or businesses primarily involved in photographic reproduction.

(3) Janitorial services and consumer use of janitorial products.

(4) Internal combustion engines used for lawn care, landscaping, and groundskeeping purposes.

(5) Laundry activities located at a stationary source that uses washers and dryers to clean, with water solutions of bleach or detergents, or to dry clothing, bedding, and other fabric items used on site. This exemption does not include laundry activities that use dry cleaning equipment or steam boilers.

(6) Bathroom vent emissions, including toilet vent emissions.

(7) Blacksmith forges.

(8) Plant maintenance and upkeep activities and repair or maintenance shop activities (e.g., groundskeeping, general repairs, cleaning, painting, welding, plumbing, retarring roofs, installing insulation, and paving parking lots), provided that these activities are not conducted as part of manufacturing process, are not related to the source's primary business activity, and do not otherwise trigger a permit modification. Cleaning and painting activities qualify if they are not subject to control requirements for volatile organic compounds or hazardous air pollutants as defined in 567—24.100(455B).

(9) Air compressors and vacuum pumps, including hand tools.

(10) Batteries and battery charging stations, except at battery manufacturing plants.

(11) Equipment used to store, mix, pump, handle or package soaps, detergents, surfactants, waxes, glycerin, vegetable oils, greases, animal fats, sweetener, corn syrup, and aqueous salt or caustic solutions,

provided that appropriate lids and covers are utilized and that no organic solvent has been mixed with such materials.

(12) Equipment used exclusively to slaughter animals, but not including other equipment at slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment.

(13) Vents from continuous emissions monitors and other analyzers.

(14) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities.

(15) Equipment used by surface coating operations that apply the coating by brush, roller, or dipping, except equipment that emits volatile organic compounds or hazardous air pollutants as defined in 567—24.100(455B).

(16) Hydraulic and hydrostatic testing equipment.

(17) Environmental chambers not using gases that are hazardous air pollutants as defined in 567—24.100(455B).

(18) Shock chambers, humidity chambers, and solar simulators.

(19) Fugitive dust emissions related to movement of passenger vehicles on unpaved road surfaces, provided that the emissions are not counted for applicability purposes and that any fugitive dust control plan or its equivalent is submitted as required by the department.

(20) Process water filtration systems and demineralizers, demineralized water tanks, and demineralizer vents.

(21) Boiler water treatment operations, not including cooling towers or lime silos.

(22) Oxygen scavenging (deaeration) of water.

(23) Fire suppression systems.

(24) Emergency road flares.

(25) Steam vents, safety relief valves, and steam leaks.

(26) Steam sterilizers.

(27) Application of hot melt adhesives from closed-pot systems using polyolefin compounds, polyamides, acrylics, ethylene vinyl acetate and urethane material when stored and applied at the manufacturer's recommended temperatures. Equipment used to apply hot melt adhesives shall have a safety device that automatically shuts down the equipment if the hot melt temperature exceeds the manufacturer's recommended application temperature.

y. Direct-fired equipment burning natural gas, propane, or liquefied propane with a capacity of less than 10 million Btu per hour input, and direct-fired equipment burning fuel oil with a capacity of less than 1 million Btu per hour input, with emissions that are attributable only to the products of combustion. Emissions other than those attributable to the products of combustion shall be accounted for in an enforceable permit condition or shall otherwise be exempt under this subrule.

z. Closed refrigeration systems, including storage tanks used in refrigeration systems but excluding any combustion equipment associated with such systems.

aa. Pretreatment application processes that use aqueous-based chemistries designed to clean a substrate, provided that the chemical concentrate contains no more than 5 percent organic solvents by weight. This exemption includes pretreatment processes that use aqueous-based cleaners, cleaner-phosphatizers, and phosphate conversion coating chemistries.

bb. Indoor-vented powder coating operations with filters or powder recovery systems.

cc. Electric curing ovens or curing ovens that run on natural gas or propane with a maximum heat input of less than 10 million Btu per hour and that are used for powder coating operations, provided that the total cured powder usage is less than 75 tons of powder per year at the stationary source. Records shall be maintained on site by the owner or operator for a period of at least two calendar years to demonstrate that cured powder usage is less than the exemption threshold.

dd. Each production painting, adhesive or coating unit using an application method other than a spray system and associated cleaning operations that use 1,000 gallons or less of coating and solvents annually, unless the production painting, adhesive or coating unit and associated cleaning operations are subject to work practice, process limits, emissions limits, stack testing, recordkeeping or reporting requirements under 567—subrule 23.1(2), 23.1(3) or 23.1(4). Records shall be maintained on site by

the owner or operator for a period of at least two calendar years to demonstrate that paint, adhesive, or solvent usage is at or below the exemption threshold.

ee. Any production surface coating activity that uses only nonrefillable handheld aerosol cans, where the total volatile organic compound emissions from all these activities at a stationary source do not exceed 5.0 tons per year.

ff. Production welding.

(1) Consumable electrode.

1. Welding operations for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013, using a consumable electrode, provided that the consumable electrode used falls within American Welding Society specification A5.18/A5.18M for Gas Metal Arc Welding (GMAW), A5.1 or A5.5 for Shielded Metal Arc Welding (SMAW), and A5.20 for Flux Core Arc Welding (FCAW), and provided that the quantity of all electrodes used at the stationary source of the acceptable specifications is below 200,000 pounds per year for GMAW and 28,000 pounds per year for SMAW or FCAW. Records that identify the type and annual amount of welding electrode used shall be maintained on site by the owner or operator for a period of at least two calendar years. For stationary sources where electrode usage exceeds these levels, the welding activity at the stationary source may be exempted if the amount of electrode used (Y) is less than:

Y = the greater of 1380x - 19,200 or 200,000 for GMAW, or

Y = the greater of 187x - 2,600 or 28,000 for SMAW or FCAW

Where "x" is the minimum distance to the property line in feet and "Y" is the annual electrode usage in pounds per year.

If the stationary source has welding processes that fit into both of the specified exemptions, the most stringent limits must be applied.

2. Welding operations for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred after October 23, 2013, using a consumable electrode, provided that the consumable electrode used falls within American Welding Society specification A5.18/A5.18M for Gas Metal Arc Welding (GMAW), A5.1 or A5.5 for Shielded Metal Arc Welding (SMAW), and A5.20 for Flux Core Arc Welding (FCAW), and provided that the quantity of all electrodes used at the stationary source of the acceptable specifications is below 12,500 pounds per year for GMAW and 1,600 pounds per year for SMAW or FCAW. Records that identify the type and annual amount of welding electrode used shall be maintained on site by the owner or operator for a period of at least two calendar years. For stationary sources where electrode usage exceeds these levels, the welding activity at the stationary source may be exempted if the amount of electrode used (Y) is less than:

Y = the greater of 84x - 1,200 or 12,500 for GMAW, or

Y = the greater of 11x - 160 or 1,600 for SMAW or FCAW

Where "x" is the minimum distance to the property line in feet and "Y" is the annual electrode usage in pounds per year.

If the stationary source has welding processes that fit into both of the specified exemptions, the most stringent limits must be applied.

(2) Resistance welding, submerged arc welding, or arc welding that does not use a consumable electrode, provided that the base metals do not include stainless steel, alloys of lead, alloys of arsenic, or alloys of beryllium and provided that the base metals are uncoated, excluding manufacturing process lubricants.

gg. Electric hand soldering, wave soldering, and electric solder paste reflow ovens for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013. Electric hand soldering, wave soldering, and electric solder paste reflow ovens for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—2.1(455B)) occurred after October 23, 2013, shall be limited to 37,000 pounds or less per year of lead-containing solder. Records shall be maintained on site by the owner or operator for at

least two calendar years to demonstrate that use of lead-containing solder is less than the exemption thresholds.

hh. Pressurized piping and storage systems for natural gas, propane, liquefied petroleum gas (LPG), and refrigerants, where emissions could only result from an upset condition.

ii. Emissions from the storage and mixing of paints and solvents associated with the painting operations, provided that the emissions from the storage and mixing are accounted for in an enforceable permit condition or are otherwise exempt.

jj. Product labeling using laser and ink-jet printers with target distances less than or equal to six inches and an annual material throughput of less than 1,000 gallons per year as calculated on a stationary sourcewide basis.

kk. Equipment related to research and development activities at a stationary source, provided that:

(1) Actual emissions from all research and development activities at the stationary source based on a 12-month rolling total are less than the following levels:

1. 2 pounds per year of lead and lead compounds expressed as lead (40 pounds per year for research and development activities that commenced on or before October 23, 2013);
2. 5 tons per year of sulfur dioxide;
3. 5 tons per year of nitrogen oxides;
4. 5 tons per year of volatile organic compounds;
5. 5 tons per year of carbon monoxide;
6. 5 tons per year of particulate matter (particulate matter as defined in 40 CFR 51.100(pp) as amended through November 7, 1986);
7. 2.5 tons per year of PM_{10};
8. 0.52 tons per year of $PM_{2.5}$ (does not apply to research and development activities that commenced on or before October 23, 2013); and
9. 5 tons per year of hazardous pollutants (as defined in 567—24.100(455B)); and

(2) The owner or operator maintains records of actual operations demonstrating that the annual emissions from all research and development activities conducted under this exemption are below the levels listed in 22.1(2)*"kk"*(1). These records shall:

1. Include a list of equipment that is included under the exemption;
2. Include records of actual operation and detailed calculations of actual annual emissions, reflecting the use of any control equipment and demonstrating that the emissions are below the levels specified in the exemption;
3. Include, if air pollution equipment is used in the calculation of emissions, a copy of any report of manufacturer's testing, if available. The department may require a test if it believes that a test is necessary for the exemption claim; and
4. Be maintained on site for a minimum of two years, be made available for review during normal business hours and for state and EPA on-site inspections, and be provided to the director or the director's designee upon request. Facilities designated as major sources pursuant to 567—22.4(455B) and 567—24.101(455B), or subject to any applicable federal requirements, shall retain all records demonstrating compliance with this exemption for five years.

(3) An owner or operator using this exemption obtains a construction permit or ceases operation of equipment if operation of the equipment would cause the emission levels listed in this exemption to be exceeded.

For the purposes of this exemption, "research and development activities" shall be defined as activities:

1. That are operated under the close supervision of technically trained personnel;
2. That are conducted for the primary purpose of theoretical research or research and development into new or improved processes and products;
3. That do not manufacture more than de minimus amounts of commercial products; and
4. That do not contribute to the manufacture of commercial products by collocated sources in more than a de minimus manner.

ll. A regional collection center (RCC), as defined in 567—Chapter 211, involved in the processing of permitted hazardous materials from households and conditionally exempt small quantity generators (CESQG), not to exceed 1,200,000 pounds of VOC-containing material in a 12-month rolling period. Latex paint drying may not exceed 120,000 pounds per year on a 12-month rolling total. Other nonprocessing emission units (e.g., standby generators and waste oil heaters) shall not be eligible to use this exemption.

mm. Cold solvent cleaning machines that are not in-line cleaning machines, where the maximum vapor pressure of the solvents used shall not exceed 0.7 kPa (5 mmHg or 0.1 psi) at 20°C (68°F). The machine must be equipped with a tightly fitted cover or lid that shall be closed at all times except during parts entry and removal. This exemption cannot be used for cold solvent cleaning machines that use solvent containing methylene chloride (CAS # 75-09-2), perchloroethylene (CAS # 127-18-4), trichloroethylene (CAS # 79-01-6), 1,1,1-trichloroethane (CAS # 71-55-6), carbon tetrachloride (CAS # 56-23-5) or chloroform (CAS # 67-66-3), or any combination of these halogenated HAP solvents in a total concentration greater than 5 percent by weight.

nn. Emissions from mobile over-the-road trucks, and mobile agricultural and construction internal combustion engines that are operated only for repair or maintenance purposes at equipment repair shops or equipment dealerships, and only when the repair shops or equipment dealerships are not major sources as defined in 567—24.100(455B).

oo. A nonroad diesel fueled engine, as "nonroad engine" is defined in 40 CFR Section 1068.30 as amended through January 24, 2023, with a brake horsepower rating of less than 1,100 at full load measured at the shaft, used to conduct periodic testing and maintenance on natural gas pipelines. For the purposes of this exemption, the manufacturer's nameplate rating shall be defined as the brake horsepower output at the shaft at full load.

(1) To qualify for the exemption, the engine must:

1. Be used for periodic testing and maintenance on natural gas pipelines outside the compressor station, which shall not exceed 330 hours in any 12-month consecutive period at a single location; or

2. Be used for periodic testing and maintenance on natural gas pipelines within the compressor station, which shall not exceed 330 hours in any 12-month consecutive period.

(2) The owner or operator shall maintain a monthly record of the number of hours the engine operated and a record of the rolling 12-month total of the number of hours the engine operated for each location outside the compressor station and within the compressor station. These records shall be maintained for two years. Records shall be made available to the department upon request.

(3) This exemption shall not apply to the replacement or substitution of engines for backup power generation at a pipeline compressor station.

22.1(3) *Construction permits.* The owner or operator of a new or modified stationary source shall apply for a construction permit. Construction permit applications, including the information referenced above and in 567—22.1(455B) through 567—22.10(455B), shall be submitted in the electronic format specified by the department, if electronic submittal is provided.

The owner or operator of any new or modified industrial anaerobic lagoon shall apply for a construction permit as specified in this subrule and as provided in 567—Chapter 22. The owner or operator of a new or modified anaerobic lagoon for an animal feeding operation shall apply for a construction permit as provided in 567—Chapter 65.

a. Regulatory applicability determinations. If requested in writing, the director will review the design concepts of equipment and associated control equipment prior to application for a construction permit. The purpose of the review would be to determine the acceptability of the location of the equipment. If the review is requested, the requester shall supply the following information and submit a fee as required in 567—Chapter 30:

(1) Preliminary plans and specifications of equipment and related control equipment.

(2) The exact site location and a plot plan of the immediate area, including the distance to and height of nearby buildings and the estimated location and elevation of the emission points.

(3) The estimated emission rates of any air contaminants that are to be considered.

(4) The estimated exhaust gas temperature, velocity at the point of discharge, and stack diameter at the point of discharge.

(5) An estimate of when construction would begin and when construction would be completed.

b. Construction permit applications. Each application for a construction permit shall be submitted to the department. Final plans and specifications for the proposed equipment or related control equipment shall be submitted with the application for a permit and shall be prepared by or under the direct supervision of a professional engineer licensed in the state of Iowa in conformance with Iowa Code section 542B.1, or consistent with the provisions of Iowa Code section 542B.26 for any full-time employee of any corporation while the employee is doing work for that corporation. The application for a permit to construct shall include the following information:

(1) A description of the equipment or control equipment covered by the application;

(2) A scaled plot plan, including the distance and height of nearby buildings, and the location and elevation of existing and proposed emission points;

(3) The composition of the effluent stream, both before and after any control equipment with estimates of emission rates, concentration, volume and temperature;

(4) The physical and chemical characteristics of the air contaminants;

(5) The proposed dates and description of any tests to be made by the owner or operator of the completed installation to verify compliance with applicable emission limits or standards of performance;

(6) Information pertaining to sampling port locations, scaffolding, power sources for operation of appropriate sampling instruments, and pertinent allied facilities for making tests to ascertain compliance;

(7) Any additional information deemed necessary by the department to determine compliance with or applicability of 567—22.4(455B), 567—22.5(455B), 567—31.3(455B) and 567—33.3(455B);

(8) Reserved.

(9) A signed statement that ensures the applicant's legal entitlement to install and operate equipment covered by the permit application on the property identified in the permit application. A signed statement shall not be required for rock crushers, portable concrete or asphalt equipment used in conjunction with specific identified construction projects that are intended to be located at a site only for the duration of the specific, identified construction project; and

(10) Application fee.

1. The owner or operator shall submit a fee as required in 567—Chapter 30 to obtain a permit under 22.1(1), 567—22.4(455B), 567—22.5(455B), 567—22.8(455B), 567—22.10(455B), 567—Chapter 31 or 567—Chapter 33;

2. For application submittals from a minor source as defined in 567—Chapter 30, the department shall not initiate review and processing of a permit application submittal until all required application fees have been paid to the department; and

(11) Quantity of greenhouse gas emissions for all applications for projects that will or do have greenhouse gas emissions. For all applications for projects that will not or do not have greenhouse gas emissions, the applicant shall indicate in the application that no greenhouse gases will be emitted and the applicant will not be required to file an inventory of greenhouse gases with that application, unless requested by the department.

c. Application requirements for anaerobic lagoons. The application for a permit to construct an anaerobic lagoon shall include the following information:

(1) The source of the water being discharged to the lagoon;

(2) A plot plan, including distances to nearby residences or occupied buildings, local land use zoning maps of the vicinity, and a general description of the topography in the vicinity of the lagoon;

(3) In the case of an animal feeding operation, the information required in 567—Chapter 65;

(4) In the case of an industrial source, a chemical description of the waste being discharged to the lagoon;

(5) A report of sulfate analyses conducted on the water to be used for any purpose in a livestock operation proposing to use an anaerobic lagoon. The report shall be prepared by using standard methods as defined in 567—60.2(455B);

(6) A description of available water supplies to prove that adequate water is available for dilution;

(7) In the case of an animal feeding operation, a waste management plan describing the method of waste collection and disposal and the land to be used for disposal. Evidence that the waste disposal equipment is of sufficient size to dispose of the wastes within a 20-day period per year shall also be provided;

(8) Any additional information needed by the department to determine compliance with these rules.

[**ARC 7951C**, IAB 5/15/24, effective 6/19/24]

567—22.2(455B) Processing permit applications.

22.2(1) *Incomplete applications.* The department will notify the applicant whether the application is complete or incomplete. If the application is found by the department to be incomplete upon receipt, the applicant will be notified within 30 days of that fact and of the specific deficiencies. Sixty days following such notification, the application may be denied for lack of information. When this schedule would cause undue hardship to an applicant, or the applicant has a compelling need to proceed promptly with the proposed installation, modification or location, a request for priority consideration and the justification therefor shall be submitted to the department.

22.2(2) *Public notice and participation.* A notice of intent to issue a construction permit to a major stationary source shall be published by the department in a newspaper having general circulation in the area affected by the emissions of the proposed source. The notice and supporting documentation shall be made available for public inspection upon request from the department's central office. Publication of the notice shall be made at least 30 days prior to issuing a permit and shall include the department's evaluation of ambient air impacts. The public may submit written comments or request a public hearing. If the response indicates significant interest, a public hearing may be held after due notice.

22.2(3) *Final notice.* The department shall notify the applicant in writing of the issuance or denial of a construction permit as soon as practicable and at least within 120 days of receipt of the completed application. This shall not apply to applicants for electric generating facilities subject to Iowa Code chapter 476A.

[**ARC 7951C**, IAB 5/15/24, effective 6/19/24]

567—22.3(455B) Issuing permits.

22.3(1) *Stationary sources other than anaerobic lagoons.* In no case shall a construction permit that results in an increase in emissions be issued to any facility that is in violation of any condition found in a permit involving PSD, NSPS, NESHAP or a provision of the Iowa state implementation plan (SIP). If the facility is in compliance with a schedule for correcting the violation and that schedule is contained in an order or permit condition, the department may consider issuance of a construction permit. A construction permit shall be issued when the director concludes that the preceding requirement has been met and:

a. That the required plans and specifications represent equipment that reasonably can be expected to comply with all applicable emission standards, and

b. That the expected emissions from the proposed source or modification in conjunction with all other emissions will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—22.11(455B), and

c. That the applicant has not relied on emission limits based on stack height that exceeds good engineering practice or any other dispersion techniques as defined in 567—subrule 23.1(6), and

d. That the applicant has met all other applicable requirements.

22.3(2) *Anaerobic lagoons.* A construction permit for an industrial anaerobic lagoon shall be issued when the director concludes that the application for permit represents an approach to odor control that can reasonably be expected to comply with the criteria in 567—subrule 23.5(2). A construction permit for an animal feeding operation using an anaerobic lagoon shall be issued when the director concludes that the application has met the requirements of 567—Chapter 65.

22.3(3) *Conditions of approval.* A permit may be issued subject to conditions that shall be specified in writing. Such conditions may include but are not limited to emission limits, operating conditions, fuel specifications, compliance testing, continuous monitoring, and excess emission reporting.

a. Each permit shall specify the date on which it becomes void if work on the installation for which it was issued has not been initiated.

b. Each permit shall list the requirements for notifying the department of the dates of intended startup, start of construction and actual equipment startup. All notifications shall be in writing and include the following information:

(1) The date or dates required by 22.3(3)*"b"* for which the notice is being submitted.
(2) Facility name.
(3) Facility address.
(4) DNR-assigned facility number.
(5) DNR air construction permit number.
(6) The name or the number of the emission unit or units in the notification.
(7) The emission point number or numbers in the notification.
(8) The name and signature of a company official.
(9) The date the notification was signed.

c. Each permit shall specify that no review has been undertaken on the various engineering aspects of the equipment other than the potential of the equipment for reducing air contaminant emissions.

d. Reserved.

e. If changes in the final plans and specifications are proposed by the permittee after a construction permit has been issued, a supplemental permit shall be obtained.

f. A permit is not transferable from one location to another or from one piece of equipment to another unless the equipment is portable. When portable equipment for which a permit has been issued is to be transferred from one location to another, the department shall be notified in writing at least seven days prior to the transfer of the portable equipment to the new location. Written notification shall be submitted to the department through one of the following methods: electronic mail (email), mail delivery service (including U.S. Mail), hand delivery, facsimile (fax), or by electronic format specified by the department (at such time as an Internet-based submittal system or other, similar electronic submittal system becomes available). However, if the owner or operator is relocating the portable equipment to an area currently classified as nonattainment for ambient air quality standards or to an area under a maintenance plan for ambient air quality standards, the owner or operator shall notify the department at least 14 days prior to transferring the portable equipment to the new location. A list of nonattainment and maintenance areas may be obtained from the department, upon request, or on the department's Internet website. The owner or operator will be notified by the department at least ten days prior to the scheduled relocation if said relocation will prevent the attainment or maintenance of ambient air quality standards and thus require a more stringent emission standard and the installation of additional control equipment. In such a case, the owner or operator shall obtain a supplemental permit prior to the initiation of construction, installation, or alteration of such additional control equipment.

g. The issuance of a permit (approval to construct) shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the SIP and any other requirement under local, state or federal law.

22.3(4) *Denial of a permit.*

a. When an application for a construction permit is denied, the applicant shall be notified in writing of the reasons therefor. A denial shall be without prejudice to the right of the applicant to file a further application after revisions are made to meet the objections specified as reasons for the denial.

b. The department may deny an application based upon the applicant's failure to provide a signed statement of the applicant's legal entitlement to install and operate equipment covered by the permit application on the property identified in the permit application.

22.3(5) *Modification of a permit.* The director may, after public notice of such decision, modify a condition of approval of an existing permit for a major stationary source or an emission limit contained in an existing permit for a major stationary source if necessary to attain or maintain an ambient air quality standard, or to mitigate excessive deposition of mercury.

22.3(6) *Limits on hazardous air pollutants.* The department may limit a source's hazardous air pollutant potential to emit, as defined in 567—24.100(455B), in the source's construction permit for the purpose of establishing federally enforceable limits on the source's hazardous air pollutant potential to emit.

22.3(7) *Revocation of a permit.* The department may revoke a permit upon obtaining knowledge that a permit holder has lost legal entitlement to use the property identified in the permit to install and operate equipment covered by the permit, upon notice that the property owner does not wish to have continued the operation of the permitted equipment, or upon notice that the owner of the permitted equipment no longer wishes to retain the permit for future operation.

22.3(8) *Ownership change of permitted equipment.* The new owner shall notify the department in writing no later than 30 days after the change in ownership of equipment covered by a construction permit pursuant to 567—22.1(455B). The notification to the department shall be mailed to the Air Quality Bureau, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319, and shall include the following information:

a. The date of ownership change;

b. The name, address and telephone number of the responsible official, the contact person and the owner of the equipment both before and after ownership change; and

c. The construction permit number of the equipment changing ownership.

[**ARC 7951C**, IAB 5/15/24, effective 6/19/24]

567—22.4(455B) Major stationary sources located in areas designated attainment or unclassified (PSD). As applicable, the owner or operator of a stationary source shall comply with the rules for new source review (NSR) for the PSD program as set forth in 567—Chapter 33. An owner or operator required to apply for a construction permit under this rule shall submit all required fees as required in 567—Chapter 30.

[**ARC 7951C**, IAB 5/15/24, effective 6/19/24]

567—22.5(455B) Major stationary sources located in areas designated nonattainment. As applicable, the owner or operator of a stationary source shall comply with the requirements for the nonattainment major NSR program as set forth in 567—31.20(455B). An owner or operator required to apply for a construction permit under this rule shall submit all required fees as required in 567—Chapter 30.

[**ARC 7951C**, IAB 5/15/24, effective 6/19/24]

567—22.6 Reserved.

567—22.7(455B) Alternative emission control program (bubble concept).

22.7(1) *Applicability.* The owner or operator of any source located in an area with attainment or unclassified status (as published at 40 CFR Section 81.316) or located in an area with an approved SIP demonstrating attainment by the statutory deadline may apply for an alternative set of emission limits if:

a. The applicant is presently in compliance with EPA-approved SIP requirements, or

b. The applicant is subject to a consent order to meet an EPA-approved compliance schedule and the final compliance date will not be delayed by the use of alternative emission limits.

Emission limits for individual emission points included in 567—23.3(455B) (except 23.3(2)*"d,"*23.3(2)*"b"*(3), and 23.3(3)*"a"*(3)) and 567—23.4(455B) (except 23.4(12)*"b"* and 23.4(6)) may be replaced by alternative emission limits. Under this rule, less stringent control limits where costs of emission control are high may be allowed in exchange for more stringent control limits where costs of control are less expensive.

22.7(2) *Demonstration requirements.* The applicant for the alternative emission control program shall have the burden of demonstrating that:

a. The alternative emission control program will not interfere with the attainment and maintenance of ambient air quality standards, including the reasonable further progress or prevention of significant deterioration requirements of the Act;

b. The alternative emission limits are equivalent to existing emission limits in pollution reduction, enforceability, and environmental impact (in the case of a particulate nonattainment area, the difference between the allowable emission rate and the actual emission rate, as of January 1, 1978, cannot be credited in the emissions tradeoff);

c. The pollutants being exchanged are comparable and within the same pollutant category;

d. Hazardous air pollutants designated in 40 CFR Part 61, as adopted by reference in 23.1(3), will not be exchanged for nonhazardous air pollutants;

e. The alternative program will not result in any delay in compliance by any source. Specific situations may require additional demonstration as specified in 44 FR 71780-71788, December 11, 1979, or as requested by the director;

f. The owner or operator of any facility applying for an alternative emission control program that involves the trade-off of sulfur dioxide emissions shall install, calibrate, maintain and operate continuous sulfur dioxide monitoring equipment consistent with EPA reference methods (40 CFR Part 60, Appendix B). The equipment shall be operational within three months of EPA approval of an alternative emission control program.

22.7(3) *Approval process.*

a. The director shall review all alternative emission control program proposals and shall make recommendations on all completed demonstrations to the commission.

b. After receiving recommendations from the director and public comments made available through the hearing process, the commission may approve or disapprove the alternative emission control program proposal.

c. If approved by the commission, the program will be forwarded to the EPA regional administrator as a revision to the SIP. The alternative emission control program must receive the approval of the EPA regional administrator prior to becoming effective.

[**ARC 7951C**, IAB 5/15/24, effective 6/19/24]

567—22.8(455B) Permit by rule.

22.8(1) Permit by rule for spray booths. Spray booths that comply with the requirements contained in this rule will be deemed to be in compliance with the requirements to obtain an air construction permit and an air operating permit. Spray booths that comply with this rule will be considered to have federally enforceable limits so that their potential emissions are less than the major source limits for regulated air pollutants and hazardous air pollutants as defined in 567—24.100(455B). An owner or operator required to apply for a permit by rule under this subrule shall submit fees as required in 567—Chapter 30.

a. Definition. "Sprayed material" is material applied by spray equipment when used in a surface coating process in a spray booth, including but not limited to paint, solvents, and mixtures of paint and solvents. Powder coatings applied in an indoor-vented spray booth equipped with filters or overspray powder recovery systems are not considered sprayed material for purposes of this rule.

b. Facilities that facility-wide spray one gallon per day or less of sprayed material are exempt from all other requirements in 567—Chapter 22, except that they must submit the certification in 22.8(1)*"e"* to the department and keep records of daily sprayed material use. Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred after October 23, 2013, shall use sprayed material with a maximum lead content of 0.35 pounds or less per gallon if the booth or associated equipment is subject to the following NESHAP: 40 CFR Part 63, Subpart HHHHHH or Subpart XXXXXX. Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred after October 23, 2013, that is not subject to the NESHAP or is otherwise exempt from the NESHAP shall use sprayed material with a maximum lead content of 0.02 pounds or less per gallon. The owner or operator must keep the records of daily sprayed material use for 18 months from the date to which the records apply and shall keep safety data sheets (SDS) or equivalent records for at least two calendar years to demonstrate that the sprayed materials contain lead at less than the exemption thresholds. The owner or operator must also certify that the facility is in compliance with or otherwise exempt from the federal regulations specified in 22.8(1)*"e."*

c. Facilities that facility-wide spray more than one gallon per day but never more than three gallons per day are exempt from all other requirements in 567—Chapter 22, except that they must submit the certification in 22.8(1)*"e"* to the department, keep records of daily sprayed material use, and vent emissions from a spray booth(s) through a stack(s) that is at least 22 feet tall, measured from ground level.

Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred after October 23, 2013, shall use sprayed material with a maximum lead content of 0.35 pounds or less per gallon if the booth or associated equipment is subject to the following NESHAP: 40 CFR Part 63, Subpart HHHHHH or Subpart XXXXXX. Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred after October 23, 2013, that is not subject to the NESHAP or is otherwise exempt from the NESHAP shall use sprayed material with a maximum lead content of 0.02 pounds or less per gallon. The owner or operator must keep the records of daily sprayed material use for 18 months from the date to which the records apply and shall keep SDS or equivalent records for at least two calendar years to demonstrate that the sprayed materials contain lead at less than the exemption thresholds. The owner or operator must also certify that the facility is in compliance with or otherwise exempt from the federal regulations specified in 22.8(1)*"e."*

d. Facilities that facility-wide spray more than three gallons per day are not eligible to use the permit by rule for spray booths and must apply for a construction permit as required by 22.1(1) and 22.1(3), unless otherwise exempt.

e. Certification. Facilities that claim to be permitted by provisions of this rule must submit to the department a written notification as directed by the department, certifying that the facility meets the following conditions:

(1) All spray booths and associated equipment are in compliance with the provisions of 22.8(1);

(2) All spray booths and associated equipment are in compliance with all applicable requirements including, but not limited to, the allowable particulate emission rate for painting and surface coating operations of 0.01 gr/scf of exhaust gas as specified in 567—subrule 23.4(13); and

(3) All spray booths and associated equipment currently are or will be in compliance with or otherwise exempt from the NESHAP for paint stripping and miscellaneous surface coating at area sources (40 CFR Part 63, Subpart HHHHHH) and the NESHAP for metal fabricating and finishing at area sources (40 CFR Part 63, Subpart XXXXXX) by the applicable NESHAP compliance dates.

22.8(2) Reserved.

[**ARC 7951C**, IAB 5/15/24, effective 6/19/24]

567—22.9(455B) Special requirements for visibility protection.

22.9(1) to **22.9(3)** Reserved.

22.9(4) *Notification.* For the purpose of the regional haze program under 40 CFR Section 51.308, as amended through January 10, 2017, the department shall notify in writing the owner, operator or designated representative of a source of the department's determination that the source may cause or contribute to visibility impairment in any mandatory Class I area listed in 40 CFR Part 81, Subpart D, as amended through October 5, 1989.

22.9(5) *Analysis.* The owner, operator, or designated representative of a source notified pursuant to 22.9(4) shall prepare and submit an analysis to the department after receipt of written notification by the department that an analysis is required.

22.9(6) *Control technology implementation.* Following the department's review of the analysis submitted pursuant to 22.9(5), an owner or operator of a source notified pursuant to 22.9(4) shall:

a. Submit all necessary permit applications to achieve the emissions requirements established following the completion of analysis performed in accordance with 22.9(5).

b. Install, operate, and maintain the control technology as required by permits issued by the department.

[**ARC 7951C**, IAB 5/15/24, effective 6/19/24]

567—22.10(455B) Permitting requirements for country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment. The requirements of this rule apply only to country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment, as these terms are defined in 22.10(1). This rule does not apply to equipment located at grain processing plants or grain storage elevators, as "grain processing" and "grain storage elevator" are defined in 567—22.1(455B). Compliance with the requirements of this rule does not alleviate any

affected person's duty to comply with any applicable state or federal regulations. In particular, the emission standards set forth in 567—Chapter 23, including the regulations for grain elevators contained in 40 CFR Part 60, Subpart DD (as adopted by reference in 567—paragraph 23.1(2)*"ooo"*), may apply. An owner or operator subject to this rule shall submit fees as required in 567—Chapter 30.

22.10(1) *Definitions.* For purposes of 567—22.10(455B), the following terms shall have the meanings indicated in this subrule.

"Country grain elevator" means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and that meets the following criteria:

1. Receives more than 50 percent of its grain, as "grain" is defined in this subrule, from farmers in the immediate vicinity during harvest season;
2. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

"Country grain terminal elevator" means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and that meets the following criteria:

1. Receives 50 percent or less of its grain, as "grain" is defined in this subrule, from farmers in the immediate vicinity during harvest season;
2. Has a permanent storage capacity of less than or equal to 2.5 million U.S. bushels, as "permanent storage capacity" is defined in this subrule;
3. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

"Feed mill equipment," for purposes of 567—22.10(455B), means grain processing equipment that is used to make animal feed including, but not limited to, grinders, crackers, hammermills, and pellet coolers, and that is located at a country grain elevator, country grain terminal elevator or grain terminal elevator.

"Grain," as set forth in Iowa Code section 203.1(9), means any grain for which the United States Department of Agriculture has established standards including, but not limited to, corn, wheat, oats, soybeans, rye, barley, grain sorghum, flaxseeds, sunflower seed, spelt (emmer), and field peas.

"Grain processing" means the same as defined in 567—22.1(455B).

"Grain storage elevator" means the same as defined in 567—22.1(455B).

"Grain terminal elevator," for purposes of 567—22.10(455B), means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and that meets the following criteria:

1. Receives 50 percent or less of its grain, as "grain" is defined in this subrule, from farmers in the immediate vicinity during harvest season;
2. Has a permanent storage capacity of more than 88,100 m^3 (2.5 million U.S. bushels), as "permanent storage capacity" is defined in this subrule;
3. Is not located at an animal food manufacturer, pet food manufacturer, cereal manufacturer, brewery, or livestock feedlot;
4. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

"Permanent storage capacity" means grain storage capacity that is inside a building, bin, or silo.

22.10(2) *Methods for determining potential to emit (PTE).* The owner or operator of a country grain elevator, country grain terminal elevator, grain terminal elevator or feed mill equipment shall use the following methods for calculating the PTE for particulate matter (PM) and for particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM_{10}):

a. Country grain elevators. The owner or operator of a country grain elevator shall calculate the PTE for PM and PM_{10} as specified in the definition of "potential to emit" in 567—22.1(455B), except that "maximum capacity" means the greatest amount of grain received at the country grain elevator during one calendar, 12-month period of the previous five calendar, 12-month periods, multiplied by an adjustment factor of 1.2. The owner or operator may make additional adjustments to the calculations for air pollution control of PM and PM_{10} if the owner or operator submits the calculations to the department using the PTE calculation tool provided by the department, and only if the owner or operator fully implements the applicable air pollution control measures no later than March 31, 2009, or upon startup of the equipment,

whichever event first occurs. Credit for the application of some best management practices, as specified in 22.10(3) or in a permit issued by the department, may also be used to make additional adjustments in the PTE for PM and PM_{10} if the owner or operator submits the calculations to the department using the PTE calculation tool provided by the department, and only if the owner or operator fully implements the applicable best management practices no later than March 31, 2009, or upon startup of the equipment, whichever event first occurs.

b. Country grain terminal elevators. The owner or operator of a country grain terminal elevator shall calculate the PTE for PM and PM_{10} as specified in the definition of "potential to emit" in 567—22.1(455B).

c. Grain terminal elevators. For purposes of the permitting and other requirements specified in 22.10(3), the owner or operator of a grain terminal elevator shall calculate the PTE for PM and PM_{10} as specified in the definition of "potential to emit" in 567—22.1(455B). For purposes of determining whether the stationary source is subject to the PSD requirements set forth in 567—Chapter 33, or for determining whether the source is subject to the operating permit requirements set forth in 567—24.100(455B) through 567—24.300(455B), the owner or operator of a grain terminal elevator shall include fugitive emissions, as "fugitive emissions" is defined in 567—subrule 33.3(1) and in 567—24.100(455B), in the PTE calculation.

d. Feed mill equipment. The owner or operator of feed mill equipment, as "feed mill equipment" is defined in 22.10(1), shall calculate the PTE for PM and PM_{10} for the feed mill equipment as specified in the definition of "potential to emit" in 567—22.1(455B). For purposes of determining whether the stationary source is subject to the PSD requirements set forth in 567—Chapter 33, or for determining whether the stationary source is subject to the operating permit requirements set forth in 567—24.100(455B) through 567—24.300(455B), the owner or operator of feed mill equipment shall sum the PTE of the feed mill equipment with the PTE of the country grain elevator, country grain terminal elevator or grain terminal elevator.

22.10(3) *Classification and requirements for permits, emissions controls, recordkeeping and reporting for Group 1, Group 2, Group 3 and Group 4 grain elevators.* The requirements for construction permits, operating permits, emissions controls, recordkeeping and reporting for a stationary source that is a country grain elevator, country grain terminal elevator or grain terminal elevator are set forth in this subrule.

a. Group 1 facilities. A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 1 facility if the PTE at the stationary source is less than 15 tons of PM_{10} per year, as PTE is specified in 22.10(2). For purposes of this paragraph, an "existing" Group 1 facility is one that commenced construction or reconstruction before February 6, 2008. A "new" Group 1 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Group 1 registration. The owner or operator of a Group 1 facility shall submit to the department a Group 1 registration, including PTE calculations, on forms provided by the department, certifying that the facility's PTE is less than 15 tons of PM_{10} per year. The owner or operator of an existing facility shall provide the Group 1 registration to the department on or before March 31, 2008. The owner or operator of a new facility shall provide the Group 1 registration to the department prior to initiating construction or reconstruction of a facility. The registration becomes effective upon the department's receipt of the signed registration form and the PTE calculations.

1. If the owner or operator registers with the department as specified in 22.10(3)*"a"*(1), the owner or operator is exempt from the requirement to obtain a construction permit as specified under 22.1(1).

2. Upon department receipt of a Group 1 registration and PTE calculations, the owner or operator is allowed to add, remove and modify the emissions units or change throughput or operations at the facility without modifying the Group 1 registration, provided that the owner or operator calculates the PTE for PM_{10} on forms provided by the department prior to making any additions to, removals of or modifications to equipment, and only if the facility continues to meet the emissions limits and operating limits (including restrictions on material throughput and hours of operation, if applicable, as specified in the PTE for PM_{10} calculations) specified in the Group 1 registration.

3. If equipment at a Group 1 facility currently has an air construction permit issued by the department, that permit shall remain in full force and effect, and the permit shall not be invalidated by the subsequent submittal of a registration made pursuant to 22.10(3)*"a"*(1).

(2) Best management practices (BMP). The owner or operator of a Group 1 facility shall implement BMP for controlling air pollution at the facility and for limiting fugitive dust at the facility from crossing the property line. The owner or operator shall implement BMP according to the department manual, Best Management Practices (BMP) for Grain Elevators (December 2007; revised July 15, 2014), as adopted by the commission on January 15, 2008, and July 15, 2014, and adopted by reference herein (available from the department, upon request, and on the department's Internet website). No later than March 31, 2009, the owner or operator of an existing Group 1 facility shall fully implement applicable BMP, except that BMPs for grain vacuuming operations shall be fully implemented no later than September 10, 2014. Upon startup of equipment at the facility, the owner or operator of a new Group 1 facility shall fully implement applicable BMP.

(3) Recordkeeping. The owner or operator of a Group 1 facility shall retain a record of the previous five calendar years of total annual grain handled and shall calculate the facility's potential PM_{10} emissions annually by January 31 for the previous calendar year. These records shall be kept on site for a period of five years and shall be made available to the department upon request.

(4) Emissions increases. The owner or operator of a Group 1 facility shall calculate any emissions increases prior to making any additions to, removals of or modifications to equipment. If the owner or operator determines that PM_{10} emissions at a Group 1 facility will increase to 15 tons per year or more, the owner or operator shall comply with the requirements set forth for Group 2, Group 3 or Group 4 facilities, as applicable, prior to making any additions to, removals of or modifications to equipment.

(5) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 1 facility plans to change the facility's operations or increase the facility's permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM_{10} will occur. If the proposed change will alter the facility's classification or will increase the facility's PTE for PM_{10} such that the facility PTE increases to 15 tons per year or more, the owner or operator shall comply with the requirements set forth for Group 2, Group 3 or Group 4 facilities, as applicable, prior to making the change.

b. Group 2 facilities. A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 2 facility if the PTE at the stationary source is greater than or equal to 15 tons of PM10 per year and is less than or equal to 50 tons of PM10 per year, as PTE is specified in 22.10(2). For purposes of this paragraph, an "existing" Group 2 facility is one that commenced construction, modification or reconstruction before February 6, 2008. A "new" Group 2 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Group 2 permit for grain elevators. The owner or operator of a Group 2 facility may, in lieu of obtaining air construction permits for each piece of emissions equipment at the facility, submit to the department a completed Group 2 permit application for grain elevators, including PTE calculations, on forms provided by the department. Alternatively, the owner or operator may obtain an air construction permit as specified under 22.1(1). The owner or operator of an existing facility shall provide the appropriate completed Group 2 permit application for grain elevators or the appropriate construction permit applications to the department on or before March 31, 2008. The owner or operator of a new facility shall provide the appropriate, completed Group 2 permit application for grain elevators or the appropriate construction permit applications to the department prior to initiating construction or reconstruction of a facility.

1. Upon department issuance of a Group 2 permit to a facility, the owner or operator is allowed to add, remove and modify the emissions units at the facility, or change throughput or operations, without modifying the Group 2 permit, provided that the owner or operator calculates the PTE for PM_{10} prior to making any additions to, removals of or modifications to equipment, and only if the facility continues to meet the emissions limits and operating limits (including restrictions on material throughput and hours of operation, if applicable, as specified in the PTE for PM_{10} calculations) specified in the Group 2 permit.

2. If a Group 2 facility currently has an air construction permit issued by the department, that permit shall remain in full force and effect, and the permit shall not be invalidated by the subsequent submittal of a Group 2 permit application for grain elevators made pursuant to this rule. However, the owner or operator of a Group 2 facility may request that the department incorporate any equipment with a previously issued construction permit into the Group 2 permit for grain elevators. The department will grant such requests on a case-by-case basis. If the department grants the request to incorporate previously permitted equipment into the Group 2 permit for grain elevators, the owner or operator of the Group 2 facility is responsible for requesting that the department rescind any previously issued construction permits.

(2) BMP. The owner or operator shall implement BMP, as specified in the Group 2 permit, for controlling air pollution at the source and for limiting fugitive dust at the source from crossing the property line. If the department revises the BMP requirements for Group 2 facilities after a facility is issued a Group 2 permit, the owner or operator of the Group 2 facility may request that the department modify the facility's Group 2 permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis. No later than March 31, 2009, the owner or operator of an existing Group 2 facility shall fully implement BMP, as specified in the Group 2 permit. Upon startup of equipment at the facility, the owner or operator of a new Group 2 facility shall fully implement BMP, as specified in the Group 2 permit.

(3) Recordkeeping. The owner or operator of a Group 2 facility shall retain all records as specified in the Group 2 permit.

(4) Emissions inventory. The owner or operator of a Group 2 facility shall submit an emissions inventory for the facility for all regulated air pollutants as specified under 567—subrule 21.1(3).

(5) Emissions increases. The owner or operator of a Group 2 facility shall calculate any emissions increases prior to making any additions to, removals of or modifications to equipment. If the owner or operator determines that potential PM_{10} emissions at a Group 2 facility will increase to more than 50 tons per year, the owner or operator shall comply with the requirements set forth for Group 3 or Group 4 facilities, as applicable, prior to making any additions to, removals of or modifications to equipment.

(6) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 2 facility plans to change the facility's operations or increase the facility's permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM_{10} will occur. If the proposed change will increase the facility's PTE for PM_{10} such that the facility PTE increases to more than 50 tons per year, the owner or operator shall comply with the requirements set forth for Group 3 or Group 4 facilities, as applicable, prior to making the change.

c. Group 3 facilities. A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 3 facility if the PTE for PM_{10} at the stationary source is greater than 50 tons per year, but is less than 100 tons of PM_{10} per year, as PTE is specified in 22.10(2). For purposes of this paragraph, an "existing" Group 3 facility is one that commenced construction, modification or reconstruction before February 6, 2008. A "new" Group 3 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Air construction permit. The owner or operator of a Group 3 facility shall obtain the required construction permits as specified under 22.1(1). The owner or operator of an existing facility shall provide the construction permit applications, as specified in 22.1(3), to the department on or before March 31, 2008. The owner or operator of a new facility shall obtain the required permits, as specified in 22.1(1), from the department prior to initiating construction or reconstruction of a facility.

(2) Permit conditions. Construction permit conditions for a Group 3 facility shall include, but are not limited to, the following:

1. The owner or operator shall implement BMP, as specified in the permit, for controlling air pollution at the source and for limiting fugitive dust at the source from crossing the property line. If the department revises the BMP requirements for Group 3 facilities after a facility is issued a permit, the owner or operator of the Group 3 facility may request that the department modify the facility's

permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis.

2. The owner or operator shall retain all records as specified in the permit.

(3) Emissions inventory. The owner or operator shall submit an emissions inventory for the facility for all regulated air pollutants as specified under 567—subrule 21.1(3).

(4) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 3 facility plans to change its operations or increase the facility's permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM_{10} will occur. If the proposed change will alter the facility's classification or will increase the facility's PTE for PM_{10} such that the facility PTE increases to greater than or equal to 100 tons per year, the owner or operator shall comply with the requirements set forth for Group 4 facilities, as applicable, prior to making the change.

(5) PSD applicability. If the PTE for PM or PM_{10} at the Group 3 facility is greater than or equal to 250 tons per year, the owner or operator shall comply with requirements specified in 567—Chapter 33, as applicable. The owner or operator of a Group 3 facility that is a grain terminal elevator shall include fugitive emissions, as "fugitive emissions" is defined in 567—subrule 33.3(1), in the PTE calculation for determining PSD applicability.

(6) Recordkeeping. The owner or operator shall keep the records of annual grain handled at the facility and annual PTE for PM and PM_{10} emissions on site for a period of five years, and the records shall be made available to the department upon request.

d. Group 4 facilities. A facility qualifies as a Group 4 facility if the facility is a stationary source with a PTE equal to or greater than 100 tons of PM_{10} per year, as PTE is specified in 22.10(2). For purposes of this paragraph, an "existing" Group 4 facility is one that commenced construction, modification or reconstruction before February 6, 2008. A "new" Group 4 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Air construction permit. The owner or operator of a Group 4 facility shall obtain the required construction permits as specified under 22.1(1). The owner or operator of an existing facility shall provide the construction permit applications, as specified by 22.1(3), to the department on or before March 31, 2008. The owner or operator of a new facility shall obtain the required permits, as specified by 22.1(1), from the department prior to initiating construction or reconstruction of a facility.

(2) Permit conditions. Construction permit conditions for a Group 4 facility shall include, but are not limited to, the following:

1. The owner or operator shall implement BMP, as specified in the permit, for controlling air pollution at the facility and for limiting fugitive dust at the facility from crossing the property line. If the department revises the BMP requirements for Group 4 facilities after a facility is issued a permit, the owner or operator of the Group 4 facility may request that the department modify the facility's permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis.

2. The owner or operator shall retain all records as specified in the permit.

(3) PSD applicability. If the PTE for PM or PM_{10} at the facility is equal to or greater than 250 tons per year, the owner or operator shall comply with requirements specified in 567—Chapter 33, as applicable. The owner or operator of a Group 4 facility that is a grain terminal elevator shall include fugitive emissions, as "fugitive emissions" is defined in 567—subrule 33.3(1), in the PTE calculation for determining PSD applicability.

(4) Recordkeeping. The owner or operator shall keep the records of annual grain handled at the facility and annual PTE for PM and PM_{10} emissions on site for a period of five years, and the records shall be made available to the department upon request.

(5) Operating permits. The owner or operator of a Group 4 facility shall apply for an operating permit for the facility if the facility's annual PTE for PM_{10} is equal to or greater than 100 tons per year as specified in 567—24.100(455B) through 567—24.300(455B). The owner or operator of a Group 4 facility that is a grain terminal elevator shall include fugitive emissions in the calculations to determine

if the PTE for PM_{10} is greater than or equal to 100 tons per year. The owner or operator also shall submit annual emissions inventories and fees, as specified in 567—22.106(455B).

22.10(4) *Feed mill equipment.* This subrule sets forth the requirements for construction permits, operating permits, and emissions inventories for an owner or operator of feed mill equipment as "feed mill equipment" is defined in 22.10(1). For purposes of this subrule, the owner or operator of "existing" feed mill equipment shall have commenced construction or reconstruction of the feed mill equipment before February 6, 2008. The owner or operator of "new" feed mill equipment shall have commenced construction or reconstruction of the feed mill equipment on or after February 6, 2008.

a. Air construction permit. The owner or operator of feed mill equipment shall obtain an air construction permit as specified under 22.1(1) for each piece of feed mill equipment that emits a regulated air pollutant. The owner or operator of "existing" feed mill equipment shall provide the appropriate permit applications to the department on or before March 31, 2008. The owner or operator of "new" feed mill equipment shall provide the appropriate permit applications to the department prior to initiating construction or reconstruction of feed mill equipment.

b. Emissions inventory. The owner or operator shall submit an emissions inventory for the feed mill equipment for all regulated air pollutants as specified under 567—subrule 21.1(3).

c. Operating permits. The owner or operator shall sum the PTE of the feed mill equipment with the PTE of the equipment at the country grain elevator, country grain terminal elevator or grain terminal elevator, as PTE is specified in 22.10(2), to determine if operating permit requirements specified in 567—24.100(455B) through 567—24.300(455B) apply to the stationary source. If the operating permit requirements apply, then the owner or operator shall apply for an operating permit as specified in 567—24.100(455B) through 567—24.300(455B). The owner or operator also shall begin submitting annual emissions inventories and fees, as specified under 567—22.106(455B).

d. PSD applicability. For purposes of determining whether the stationary source is subject to the PSD requirements set forth in 567—Chapter 33, the owner or operator shall sum the PTE of the feed mill equipment with the PTE of the equipment at the country grain elevator, country grain terminal elevator or grain terminal elevator. If the PTE for PM or PM_{10} for the stationary source is equal to or greater than 250 tons per year, the owner or operator shall comply with requirements for PSD specified in 567—Chapter 33, as applicable.

[**ARC 7951C**, IAB 5/15/24, effective 6/19/24]

567—22.11(455B) Ambient air quality standards. The state of Iowa ambient air quality standards shall be the National Primary and Secondary Ambient Air Quality Standards as published in 40 CFR Part 50 (1972) and as amended at 38 Federal Register (FR) 22384 (September 14, 1973), 43 FR 46258 (October 5, 1978), 44 FR 8202, 8220 (February 9, 1979), 52 FR 24634-24669 (July 1, 1987), 62 FR 38651-38760, 38855-38896 (July 18, 1997), 71 FR 61144-61233 (October 17, 2006), 73 FR 16436-16514 (March 27, 2008), 73 FR 66964-67062 (November 12, 2008), 75 FR 6474-6537 (February 9, 2010), 75 FR 35520-35603 (June 22, 2010), 78 FR 3086-3287 (January 15, 2013), and 80 FR 65291-65468 (October 26, 2015). The department shall implement these rules in a time frame and schedule consistent with implementation schedules in federal laws and regulations.

[**ARC 7951C**, IAB 5/15/24, effective 6/19/24]

These rules are intended to implement Iowa Code sections 455B.133 and 455B.134.

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1 Effective date of 22.1(455B) [DEQ, 3.1] delayed by the Administrative Rules Review Committee 70 days from June 21, 1978. The Administrative Rules Review Committee at the August 15, 1978 meeting delayed 22.1 [DEQ, 3.1] under provisions of 67GA, SF244, §19. (See HJR 6, 1/22/79).

2 Effective date of 22.100(455B), definition of "12-month rolling period"; 22.200(455B); 22.201(1)*"a," "b,"*; 22.201(2)*"a"*; 22.206(2)*"c,"* delayed 70 days by the Administrative Rules Review Committee at its meeting held October 10, 1995; delay lifted by this Committee December 13, 1995, effective December 14, 1995.

3 Effective date of 22.300 delayed 70 days by the Administrative Rules Review Committee at its meeting held June 11, 1996; delay lifted by this Committee at its meeting held June 12, 1996, effective June 12, 1996.

4 Effective date of 22.1(2), unnumbered introductory paragraphs and paragraphs *"g"* and *"i,"* delayed 70 days by the Administrative Rules Review Committee at its meeting held March 9, 2001.

CHAPTER 23
AIR EMISSION STANDARDS

[Prior to 7/1/83, DEQ Ch 4]
[Prior to 12/3/86, Water, Air and Waste Management[900]]

567—23.1(455B) Emission standards.

23.1(1) *In general.* The federal standards of performance for new stationary sources (new source performance standards) shall be applicable as specified in 23.1(2). The federal standards for hazardous air pollutants (national emission standards for hazardous air pollutants) shall be applicable as specified in 23.1(3). The federal standards for hazardous air pollutants for source categories (national emission standards for hazardous air pollutants for source categories) shall be applicable as specified in 23.1(4). The federal emission guidelines (emission guidelines) shall be applicable as specified in 23.1(5). Compliance with emission standards specified elsewhere in this chapter shall be in accordance with 567—Chapter 21.

23.1(2) *New source performance standards.* The federal standards of performance for new stationary sources, as defined in 40 Code of Federal Regulations Part 60 as amended or corrected through June 28, 2023, are adopted by reference, except §60.530 through §60.539b (Part 60, Subpart AAA), and shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is provided in the table below. A different date for adoption by reference may be included with the subpart designation in the table. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.

Federal New Source Performance Standards (NSPS)
Adopted by Reference in 23.1(2)

23.1(2) paragraph	Affected source category	40 CFR Part 60 Subpart	Date of adoption (if different than 23.1(2) introductory paragraph) or note if federal standard is not adopted
a	Fossil fuel-fired steam generators	D	1/20/2011
b	Incinerators	E	N/A
c	Portland cement plants	F	N/A
d	Nitric acid plants	G	N/A
e	Sulfuric acid plants	H	N/A
f	Hot mix asphalt plants	I	N/A
g	Petroleum refineries	J - Ja	Not adopted. No facilities in Iowa. Paragraph reserved.
h	Secondary lead smelters	L	Not adopted. No facilities in Iowa. Paragraph reserved.
i	Secondary brass and bronze ingot production plants	M	N/A
j	Iron and steel plants	N	N/A
k	Sewage treatment plants	O and Subpart E of 40 CFR 503	N/A
l	Steel plants	AA	N/A
m	Primary copper smelters	P	Not adopted. No facilities in Iowa. Paragraph reserved.

n	Primary zinc smelters	Q	Not adopted. No facilities in Iowa. Paragraph reserved.
o	Primary lead smelters	R	Not adopted. No facilities in Iowa. Paragraph reserved.
p	Primary aluminum reduction plants	S	Not adopted. No facilities in Iowa. Paragraph reserved.
q	Wet process phosphoric acid plants in the phosphate fertilizer industry	T	N/A
r	Superphosphoric acid plants in the phosphate fertilizer industry	U	N/A
s	Diammonium phosphate plants in the phosphate fertilizer industry	V	N/A
t	Triple super phosphate plants in the phosphate fertilizer industry	W	N/A
u	Granular triple superphosphate storage facilities in the phosphate fertilizer industry	X	N/A
v	Coal preparation plants	Y	N/A
w	Ferroalloy production	Z	N/A
x	Kraft pulp mills	BB	February 27, 2014
y	Lime manufacturing plants	HH	N/A
z	Electric utility steam generating units	Da	January 20, 2011
aa	Stationary gas turbines	GG	N/A
bb	Petroleum storage vessels	K	N/A
cc	Petroleum storage vessels	Ka	N/A
dd	Glass manufacturing plants	CC	N/A
ee	Automobile and light-duty truck surface coating operations at assembly plants	MM	N/A
ff	Ammonium sulfate manufacture	PP	N/A
gg	Surface coating of metal furniture	EE	N/A
hh	Lead-acid battery manufacturing plants	KK	February 27, 2014
ii	Phosphate rock plants	NN	N/A
jj	Graphic arts industry	QQ	N/A
kk	Industrial surface coating	SS	N/A
ll	Metal coil surface coating	TT	N/A
mm	Asphalt processing and asphalt roofing manufacturing	UU	N/A
nn	Equipment leaks of volatile organic compounds (VOC) in the synthetic organic chemicals manufacturing industry	VV and VVa	N/A
oo	Beverage can surface coating	WW	N/A
pp	Bulk gasoline terminals	XX	N/A

qq	Pressure sensitive tape and label surface coating operations	RR	N/A
rr	Metallic mineral processing plants	LL	N/A
ss	Synthetic fiber production facilities	HHH	N/A
tt	Equipment leaks of VOC in petroleum refineries	GGG	N/A
uu	Flexible vinyl and urethane coating and printing	FFF	N/A
vv	Petroleum dry cleaners	JJJ	N/A
ww	Electric arc furnaces and argon-oxygen decarburization vessels constructed after August 17, 1983	AAa	N/A
xx	Wool fiberglass insulation manufacturing plants	PPP	N/A
yy	Iron and steel plants	Na	N/A
zz	Equipment leaks of VOC from on-shore natural gas processing plants	KKK	N/A
aaa	On-shore natural gas processing: SO2 emissions	LLL	N/A
bbb	Nonmetallic mineral processing plants	OOO	N/A
ccc	Industrial-commercial-institutional steam generating units	Db	January 20, 2011
ddd	Volatile organic liquid storage vessels	Kb	N/A
eee	Rubber tire manufacturing plants	BBB	N/A
fff	Industrial surface coating: surface coating of plastic parts for business machines	TTT and TTTa	N/A
ggg	VOC emissions from petroleum refinery wastewater systems	QQQ	N/A
hhh	Magnetic tape coating facilities	SSS	N/A
iii	Polymeric coating of supporting substrates	VVV	N/A
jjj	VOC emissions from synthetic organic chemical manufacturing industry air oxidation unit processes	III	N/A
kkk	VOC emissions from synthetic organic chemical manufacturing industry distillation operations	NNN	N/A
lll	Small industrial-commercial-institutional steam generating units	Dc	January 20, 2011
mmm	VOC emissions from the polymer manufacturing industry	DDD	N/A
nnn	Municipal waste combustors	Ea	N/A

ooo	Grain elevators	DD	N/A
ppp	Mineral processing plants	UUU	N/A
qqq	VOC emissions from synthetic organic chemical manufacturing industry reactor processes	RRR	N/A
rrr	Municipal solid waste landfills, as defined by 40 CFR 60.751	WWW	April 10, 2000
sss	Municipal waste combustors	Eb	N/A
ttt	Hospital/medical/infectious waste incinerators (HMIWI)	Ec (partial adoption)*	N/A
uuu	New small municipal waste combustion units	AAAA	N/A
vvv	Commercial and industrial solid waste incineration	CCCC	December 1, 2000
www	Other solid waste incineration (OSWI) units	EEEE	N/A
xxx	Reserved	N/A	N/A
yyy	Stationary compression ignition internal combustion engines	IIII	N/A
zzz	Stationary spark ignition internal combustion engines	JJJJ	N/A
aaaa	Stationary combustion turbines	KKKK	N/A
bbbb	Nitric acid plants	Ga	N/A
cccc	Sewage sludge incineration units	LLLL	N/A

*The provisions in 60.50c(a) through (h) (exceptions to Subpart Ec requirements) and 60.51(c) (Subpart Ec definitions) are adopted by reference. No other provisions of Subpart Ec are adopted.

23.1(3) *Emission standards for hazardous air pollutants.* The federal standards for emissions of hazardous air pollutants, 40 Code of Federal Regulations Part 61 as amended or corrected through October 7, 2020, and 40 CFR Part 503 as adopted on August 4, 1999, are adopted by reference, except 40 CFR §61.20 to §61.26, §61.90 to §61.97, §61.100 to §61.108, §61.120 to §61.127, §61.190 to §61.193, §61.200 to §61.205, §61.220 to §61.225, and §61.250 to §61.256, and shall apply to the following affected pollutants and facilities and activities listed below. The corresponding 40 CFR Part 61 subpart designation is provided in the table below. A different date for adoption by reference may be included with the subpart designation in the table. Reference test methods (Appendix B), compliance status information requirements (Appendix A), quality assurance procedures (Appendix C) and the general provisions (Subpart A) of Part 61 also apply to the affected activities or facilities.

Federal Emission Standards for Hazardous Air Pollutants (NESHAP)
Adopted by Reference in 23.1(3)

23.1(3) paragraph	Affected source category	40 CFR Part 61 Subpart Adopted	Date of adoption (if different than 23.1(3) introductory paragraph) or note if standard is not adopted
a	Asbestos	M	N/A
b	Beryllium	C	Not adopted. No facilities in Iowa. Paragraph reserved.
c	Beryllium rocket motor firing	D	Not adopted. No facilities in Iowa. Paragraph reserved.
d	Mercury	E	N/A
e	Vinyl chloride	F	N/A
f	Equipment leaks of benzene (fugitive emission sources)	J	N/A
g	Equipment leaks of volatile hazardous air pollutants (fugitive emission sources)	V	N/A
h	Inorganic arsenic emissions from arsenic trioxide and metallic arsenic production facilities	P	Not adopted. No facilities in Iowa. Paragraph reserved.
i	Inorganic arsenic emissions from glass manufacturing plants	N	N/A
j	Inorganic arsenic emissions from primary copper smelters	O	Not adopted. No facilities in Iowa. Paragraph reserved.
k	Benzene emissions from coke by-product recovery plants	L	N/A
l	Benzene emissions from benzene storage vessels	Y	N/A
m	Benzene emissions from benzene transfer operations	BB	N/A
n	Benzene waste operations	FF	N/A

23.1(4) *Emission standards for hazardous air pollutants for source categories.* The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended or corrected through March 29, 2023, are adopted by reference, except those provisions that cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is provided in the table below. A different date for adoption by reference may be included with the subpart designation in the table. 40 CFR Part 63, Subpart B, incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded (Fbio) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities.

For the purpose of this subrule and the rules in 567—Chapters 20 through 35, the following terms shall, unless otherwise noted, have the meaning indicated in this subrule.

"Hazardous air pollutant" or *"HAP"* means the same as "hazardous air pollutant" set forth in 567—24.100(455B).

"Major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case

of radionuclides, where different criteria are employed. "Area source" means any stationary source of hazardous air pollutants that is not a "major source."

"Maximum achievable control technology (MACT) emission limitation for existing sources," as this definition is set forth in 40 CFR Subpart B, section 63.51, is adopted by reference.

"Maximum achievable control technology (MACT) emission limitation for new sources," as this definition is set forth in 40 CFR Subpart B, section 63.51, is adopted by reference.

"Maximum achievable control technology (MACT) floor," as this definition is set forth in 40 CFR Subpart B, section 63.51, is adopted by reference.

23.1(4)*"a,"* general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference in the table below.

Federal Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories Adopted by Reference in 23.1(4)

23.1(4) paragraph	Affected source category	40 CFR Part 63 Subpart Adopted	Date of adoption (if different than 23.1(4) introductory paragraph) or note if standard is not adopted
a	General provisions	A	N/A
b	Requirements for control technology determinations for major sources in accordance with Clean Air Act Sections 112(g) and 112(j)	B	N/A
c	Reserved	N/A	N/A
d	Compliance extensions for early reductions of hazardous air pollutants	D	N/A
e	Reserved	N/A	N/A
f	Emission standards for organic hazardous air pollutants from the synthetic chemical manufacturing industry	F	N/A
g	Emission standards for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry for process vents, storage vessels, transfer operations, and wastewater	G	N/A
h	Emission standards for organic hazardous air pollutants for equipment leaks	H	N/A
i	Emission standards for organic hazardous air pollutants for certain processes subject to negotiated regulation for equipment leaks	I	N/A
j	Emission standards for hazardous air pollutants for polyvinyl chloride and copolymers production	Subparts J and HHHHHHH	Not adopted. No facilities in Iowa. Paragraph reserved.
k	Reserved	N/A	N/A

l	Emission standards for coke oven batteries	L	N/A
m	Perchloroethylene air emission standards for dry cleaning facilities	M	N/A
n	Emission standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks	N	N/A
o	Emission standards for hazardous air pollutants for ethylene oxide commercial sterilization and fumigation operations	O	N/A
p	Reserved	N/A	N/A
q	Emission standards for hazardous air pollutants for industrial process cooling towers	Q	N/A
r	Emission standards for hazardous air pollutants for gasoline distribution: (Stage 1)	R	N/A
s	Emission standards for hazardous air pollutants for pulp and paper (noncombustion)	S	N/A
t	Emission standards for hazardous air pollutants: halogenated solvent cleaning	T	N/A
u	Emission standards for hazardous air pollutants: Group I polymers and resins	U	N/A
v	Reserved	N/A	N/A
w	Emission standards for hazardous air pollutants for epoxy resins production and nonnylon polyamides production	W	N/A
x	National emission standards for hazardous air pollutants from secondary lead smelting	X	Not adopted. No facilities in Iowa. Paragraph reserved.
y	Emission standards for marine tank vessel loading operations	Y	N/A
z	Reserved	N/A	N/A
aa	Emission standards for hazardous air pollutants for phosphoric acid manufacturing	AA	N/A
ab	Emission standards for hazardous air pollutants for phosphate fertilizers production	BB	N/A
ac	National emission standards for hazardous air pollutants: petroleum refineries	CC	Not adopted. No facilities in Iowa. Paragraph reserved.

ad	Emission standards for hazardous air pollutants for off-site waste and recovery operations	DD	N/A
ae	Emission standards for magnetic tape manufacturing operations	EE	N/A
af	Reserved	N/A	N/A
ag	National emission standards for hazardous air pollutants for source categories: aerospace manufacturing and rework facilities	GG	N/A
ah	Emission standards for hazardous air pollutants for oil and natural gas production	HH	N/A
ai	Emission standards for hazardous air pollutants for shipbuilding and ship repair (surface coating) operations	II	Not adopted. No facilities in Iowa. Paragraph reserved.
aj	Emission standards for hazardous air pollutants for HAP emissions from wood furniture manufacturing operations	JJ	N/A
ak	Emission standards for hazardous air pollutants for the printing and publishing industry	KK	N/A
al	Emission standards for hazardous air pollutants for primary aluminum reduction plants	LL	Not adopted. No facilities in Iowa. Paragraph reserved.
am	Emission standards for hazardous air pollutants for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills	MM	October 11, 2017
an	Reserved	N/A	N/A
ao	Emission standards for tanks—level 1	OO	N/A
ap	Emission standards for containers	PP	N/A
aq	Emission standards for surface impoundments	QQ	N/A
ar	Emission standards for individual drain systems	RR	N/A
as	Emission standards for closed vent systems, control devices, recovery devices and routing to a fuel gas system or a process	SS	N/A
at	Emission standards for equipment leaks—control level 1	TT	N/A
au	Emission standards for equipment leaks—control level 2 standards	UU	N/A

av	Emission standards for oil-water separators and organic-water separators	VV	N/A
aw	Emission standards for storage vessels (tanks)—control level 2	WW	N/A
ax	Emission standards for ethylene manufacturing process units: heat exchange systems and waste operations	XX	N/A
ay	Emission standards for hazardous air pollutants: generic maximum achievable control technology (generic MACT)	YY	October 8, 2014
az to bb	Reserved	N/A	N/A
bc	Emission standards for hazardous air pollutants for steel pickling—HCL process facilities and hydrochloric acid regeneration plants	CCC	Not adopted. No facilities in Iowa. Paragraph reserved.
bd	Emission standards for hazardous air pollutants for mineral wool production	DDD	N/A
be	Emission standards for hazardous air pollutants from hazardous waste combustors	EEE	N/A
bf	Reserved	N/A	N/A
bg	Emission standards for hazardous air pollutants for pharmaceutical manufacturing	GGG	N/A
bh	Emission standards for hazardous air pollutants for natural gas transmission and storage	HHH	N/A
bi	Emission standards for hazardous air pollutants for flexible polyurethane foam production	III	N/A
bj	Emission standards for hazardous air pollutants: Group IV polymers and resins	JJJ	N/A
bk	Reserved	N/A	N/A
bl	Emission standards for hazardous air pollutants for Portland cement manufacturing operations	LLL	N/A
bm	Emission standards for hazardous air pollutants for pesticide active ingredient production	MMM	N/A
bn	Emission standards for hazardous air pollutants for wool fiberglass manufacturing	NNN	N/A

bo	Emission standards for hazardous air pollutants for amino/phenolic resins production	OOO	N/A
bp	Emission standards for hazardous air pollutants for polyether polyols production	PPP	N/A
bq	Emission standards for hazardous air pollutants for primary copper smelting	QQQ	Not adopted. No facilities in Iowa. Paragraph reserved.
br	Emission standards for hazardous air pollutants for secondary aluminum production	RRR	N/A
bs	Reserved	N/A	N/A
bt	Emission standards for hazardous air pollutants for primary lead smelting	TTT	Not adopted. No facilities in Iowa. Paragraph reserved.
bu	Emission standards for hazardous air pollutants for petroleum refineries: catalytic cracking units, catalytic reforming units, and sulfur recovery units	UUU	Not adopted. No facilities in Iowa. Paragraph reserved.
bv	Emission standards for hazardous air pollutants: publicly owned treatment works (POTW)	VVV	N/A
bw	Reserved	N/A	N/A
bx	Emission standards for hazardous air pollutants for ferroalloys production: ferromanganese and silicomanganese	XXX	Not adopted. No facilities in Iowa. Paragraph reserved.
by and bz	Reserved	N/A	N/A
ca	Emission standards for hazardous air pollutants: municipal solid waste landfills	AAAA	April 20, 2006
cb	Reserved	N/A	N/A
cc	Emission standards for hazardous air pollutants for the manufacturing of nutritional yeast	CCCC	N/A
cd	Emission standards for hazardous air pollutants for plywood and composite wood products (formerly plywood and particle board manufacturing)	DDDD	October 29, 2007
ce	Emission standards for hazardous air pollutants for organic liquids distribution (non-gasoline)	EEEE	July 17, 2008
cf	Emission standards for hazardous air pollutants for miscellaneous organic chemical (MON) manufacturing	FFFF	July 14, 2006

cg	Emission standards for hazardous air pollutants for solvent extraction for vegetable oil production	GGGG	N/A
ch	Emission standards for hazardous air pollutants for wet-formed fiberglass mat production	HHHH	N/A
ci	Emission standards for hazardous air pollutants for surface coating of automobiles and light-duty trucks	IIII	N/A
cj	Emission standards for hazardous air pollutants: paper and other web coating	JJJJ	N/A
ck	Emission standards for hazardous air pollutants for surface coating of metal cans	KKKK	N/A
cl	Reserved	N/A	N/A
cm	Emission standards for hazardous air pollutants for surface coating of miscellaneous metal parts and products	MMMM	N/A
cn	Emission standards for hazardous air pollutants: surface coating of large appliances	NNNN	N/A
co	Emission standards for hazardous air pollutants for printing, coating, and dyeing of fabrics and other textiles	OOOO	N/A
cp	Emission standards for surface coating of plastic parts and products	PPPP	N/A
cq	Emission standards for hazardous air pollutants for surface coating of wood building products	QQQQ	N/A
cr	Emission standards for hazardous air pollutants: surface coating of metal furniture	RRRR	N/A
cs	Emission standards for hazardous air pollutants: surface coating of metal coil	SSSS	N/A
ct	Emission standards for hazardous air pollutants for leather finishing operations	TTTT	N/A
cu	Emission standards for hazardous air pollutants for cellulose products manufacturing	UUUU	N/A
cv	Emission standards for hazardous air pollutants for boat manufacturing	VVVV	N/A
cw	Emission standards for hazardous air pollutants: reinforced plastic composites production	WWWW	N/A

cx	Emission standards for hazardous air pollutants: rubber tire manufacturing	XXXX	N/A
cy	Emission standards for hazardous air pollutants for stationary combustion turbines	YYYY	November 19, 2020
cz	Emission standards for stationary reciprocating internal combustion engines	ZZZZ	N/A
da	Emission standards for hazardous air pollutants for lime manufacturing plants	AAAAA	April 20, 2006
db	Emission standards for hazardous air pollutants: semiconductor manufacturing	BBBBB	N/A
dc	Emission standards for hazardous air pollutants for coke ovens: pushing, quenching, and battery stacks	CCCCC	N/A
dd	Emission standards for industrial, commercial and institutional boilers and process heaters	DDDDD	Not adopted. Paragraph reserved.
de	Emission standards for hazardous air pollutants for iron and steel foundries	EEEEE	N/A
df	Emission standards for hazardous air pollutants for integrated iron and steel manufacturing	FFFFF	July 13, 2006
dg	Emission standards for hazardous air pollutants: site remediation	GGGGG	November 29, 2006
dh	Emission standards for hazardous air pollutants for miscellaneous coating manufacturing	HHHHH	N/A
di	Emission standards for mercury emissions from mercury cell chlor-alkali plants	IIIII	N/A
dj	Emission standards for hazardous air pollutants for brick and structural clay products manufacturing	JJJJJ	Not adopted. No facilities in Iowa. Paragraph reserved.
dk	Emission standards for hazardous air pollutants for clay ceramics manufacturing	KKKKK	Not adopted. No facilities in Iowa. Paragraph reserved.
dl	Emission standards for hazardous air pollutants: asphalt processing and asphalt roofing manufacturing	LLLLL	N/A
dm	Emission standards for hazardous air pollutants: flexible polyurethane foam fabrication operations	MMMMM	N/A

dn	Emission standards for hazardous air pollutants: hydrochloric acid production	NNNNN	N/A
do	Reserved	N/A	N/A
dp	Emission standards for hazardous air pollutants: engine test cells/stands	PPPPP	N/A
dq	Emission standards for hazardous air pollutants for friction materials manufacturing facilities	QQQQQ	N/A
dr	Emission standards for hazardous air pollutants: taconite iron ore processing	RRRRR	Not adopted. No facilities in Iowa. Paragraph reserved.
ds	Emission standards for hazardous air pollutants for refractory products manufacturing	SSSSS	N/A
dt	Emission standards for hazardous air pollutants: primary magnesium refining	TTTTT	Not adopted. No facilities in Iowa. Paragraph reserved.
du and dv	Reserved	N/A	N/A
dw	Emission standards for hazardous air pollutants for hospital ethylene oxide sterilizer area sources	WWWWW	N/A
dx	Reserved	N/A	N/A
dy	Emission standards for hazardous air pollutants for electric arc furnace steelmaking area sources	YYYYY	N/A
dz	Emission standards for hazardous air pollutants for iron and steel foundry area sources	ZZZZZ	N/A
ea	Reserved	N/A	N/A
eb	Emission standards for hazardous air pollutants for gasoline distribution area sources: bulk terminals, bulk plants and pipeline facilities	BBBBBB	N/A
ec	Emission standards for hazardous air pollutants for area sources: gasoline dispensing facilities	CCCCCC	N/A
ed to eg	Reserved	N/A	N/A
eh	Emission standards for hazardous air pollutants for area sources: paint stripping and miscellaneous surface coating operations	HHHHHH	N/A
ei	Reserved	N/A	N/A
ej	Emission standards for hazardous air pollutants for area sources: industrial, commercial, and institutional boilers	JJJJJJ	N/A
ek	Reserved	N/A	N/A

el	Emission standards for hazardous air pollutants for acrylic and modacrylic fibers production area sources	LLLLLL	N/A
em	Emission standards for hazardous air pollutants for carbon black production area sources	MMMMMM	N/A
en	Emission standards for hazardous air pollutants for chemical manufacturing of chromium compounds area sources	NNNNNN	N/A
eo	Emission standards for hazardous air pollutants for flexible polyurethane foam production and fabrication area sources	OOOOOO	N/A
ep	Emission standards for hazardous air pollutants for lead acid battery manufacturing area sources	PPPPPP	November 19, 2020
eq	Emission standards for hazardous air pollutants for wood preserving area sources	QQQQQQ	N/A
er	Emission standards for hazardous air pollutants for clay ceramics manufacturing area sources	RRRRRR	N/A
es	Emission standards for hazardous air pollutants for glass manufacturing area sources	SSSSSS	N/A
et	Emissions standards for hazardous air pollutants for secondary nonferrous metals processing area sources	TTTTTT	N/A
eu	Reserved	N/A	N/A
ev	Emission standards for hazardous air pollutants for area sources	VVVVVV	N/A
ew	Emission standards for hazardous air pollutants for area sources: plating and polishing	WWWWWW	N/A
ex	Emission standards for hazardous air pollutants for area sources: metal fabrication and finishing	XXXXXX	N/A

ey	Reserved	N/A	N/A
ez	Emission standards for hazardous air pollutants for area sources: aluminum, copper, and other nonferrous foundries	ZZZZZZ	N/A
fa	Reserved	N/A	N/A
fb	National emission standards for hazardous air pollutants for area sources: chemical preparations industry	BBBBBBB	N/A
fc	Emission standards for hazardous air pollutants for area sources: paint and allied products manufacturing	CCCCCCC	N/A
fd	Emission standards for hazardous air pollutants for area sources: prepared feeds manufacturing	DDDDDDD	N/A

23.1(5) *Emission guidelines.* The emission guidelines and compliance times for existing sources, as defined in 40 Code of Federal Regulations Part 60 as amended through March 21, 2011, shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. A different CFR reference and date for adoption by reference may be included with the subpart designation indicated in the paragraphs of this subrule. The control of the designated pollutants will be in accordance with federal standards established in Sections 111 and 129 of the Act and 40 CFR Part 60, Subpart B (Adoption and Submittal of State Plans for Designated Facilities), and the applicable subpart(s) for the existing source. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60, as adopted by reference in 23.1(2), also apply to the affected facilities.

a. Emission guidelines for municipal solid waste landfills (Subpart Cc). Emission guidelines and compliance times for the control of certain designated pollutants from designated municipal solid waste landfills shall be in accordance with federal standards established in Subparts Cc (Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills) and WWW (Standards of Performance for Municipal Solid Waste Landfills) of 40 CFR Part 60 as amended through April 10, 2000.

(1) Definitions. For the purpose of 23.1(5)*"a,"* the definitions have the same meaning given to them in the Act and 40 CFR Part 60, Subparts A (General Provisions), B, and WWW, if not defined in this subparagraph.

"Municipal solid waste landfill" or *"MSW landfill"* means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA Subtitle D wastes such as commercial solid waste, nonhazardous sludge, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill or a lateral expansion.

(2) Designated facilities.

1. The designated facility to which the emission guidelines apply is each existing MSW landfill for which construction, reconstruction or modification was commenced before May 30, 1991.

2. Physical or operational changes made to an existing MSW landfill solely to comply with an emission guideline are not considered a modification or reconstruction and would not subject an existing MSW landfill to the requirements of 40 CFR Part 60, Subpart WWW (40 CFR 60.750).

3. For MSW landfills subject to 567—24.101(455B) only because of applicability to 23.1(5)*"a"*(2), the following apply for obtaining and maintaining a Title V operating permit under 567—24.104(455B):

- The owner or operator of an MSW landfill with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not required to obtain an operating permit for the landfill.
- The owner or operator of an MSW landfill with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters on or before June 22, 1998, becomes subject to the requirements of 567—subrule 24.105(1) on September 20, 1998. This requires the landfill to submit a Title V permit application to the air quality bureau, department of natural resources, no later than September 20, 1999.
- The owner or operator of a closed MSW landfill does not have to maintain an operating permit for the landfill if either of the following conditions are met: the landfill was never subject to the requirement for a control system under 23.1(5)*"a"*(3), or the owner or operator meets the conditions for control system removal specified in 40 CFR §60.752(b)(2)(v).

(3) Emission guidelines for municipal solid waste landfill emissions.

1. MSW landfill emissions at each MSW landfill meeting the conditions below shall be controlled. A design capacity report must be submitted to the director by November 18, 1997.

The landfill has accepted waste at any time since November 8, 1987, or has additional design capacity available for future waste deposition.

The landfill has a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values. Any density conversions shall be documented and submitted with the report. All calculations used to determine the maximum design capacity must be included in the design capacity report.

The landfill has a nonmethane organic compound (NMOC) emission rate of 50 megagrams per year or more. If the MSW landfill's design capacity exceeds the established thresholds in 23.1(5)*"a"*(3)"1," the NMOC emission rate calculations must be provided with the design capacity report.

2. The planning and installation of a collection and control system shall meet the conditions provided in 40 CFR 60.752(b)(2) at each MSW landfill meeting the conditions in 23.1(5)*"a"*(3)"1."

3. MSW landfill emissions collected through the use of control devices must meet the following requirements, except as provided in 40 CFR 60.24 after approval by the director and U.S. Environmental Protection Agency:

An open flare designed and operated in accordance with the parameters established in 40 CFR 60.18; a control system designed and operated to reduce NMOC by 98 weight percent; or an enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 parts per million as hexane by volume, dry basis at 3 percent oxygen, or less.

(4) Test methods and procedures. The following must be used:

1. The calculation of the landfill NMOC emission rate listed in 40 CFR 60.754, as applicable, to determine whether the landfill meets the condition in 23.1(5)*"a"*(3)"3";
2. The operational standards in 40 CFR 60.753;
3. The compliance provisions in 40 CFR 60.755; and
4. The monitoring provisions in 40 CFR 60.756.

(5) Reporting and recordkeeping requirements. The recordkeeping and reporting provisions listed in 40 CFR 60.757 and 60.758, as applicable, except as provided under 40 CFR 60.24 after approval by the director and U.S. Environmental Protection Agency, shall be used.

(6) Compliance times.

1. Except as provided for under 23.1(5)*"a"*(6)"2," planning, awarding of contracts, and installation of MSW landfill air emission collection and control equipment capable of meeting the emission guidelines established under 23.1(5)*"a"*(3) shall be accomplished within 30 months after the date the initial NMOC emission rate report shows NMOC emissions greater than or equal to 50 megagrams per year.

2. For each existing MSW landfill meeting the conditions in 23.1(5)*"a"*(3)"1" whose NMOC emission rate is less than 50 megagrams per year on August 20, 1997, installation of collection and control systems capable of meeting emission guidelines in 23.1(5)*"a"*(3) shall be accomplished within

30 months of the date when the condition in 23.1(5)*"a"*(3)"1" is met (i.e., the date of the first annual nonmethane organic compounds emission rate which equals or exceeds 50 megagrams per year).

b. Emission guidelines for hospital/medical/infectious waste incinerators (40 CFR Part 62, Subpart HHH). The provisions in 62.14400(b) (exceptions to Subpart HHH requirements) and 62.14490 (Subpart HHH definitions) as amended through May 13, 2013, are adopted by reference. No other provisions of Subpart HHH are adopted.

c. Emission guidelines and compliance schedules for existing commercial and industrial solid waste incineration units that commenced construction on or before November 30, 1999. Emission guidelines and compliance schedules for the control of designated pollutants from affected commercial and industrial solid waste incinerators that commenced construction on or before November 30, 1999, shall be in accordance with requirements established in Subpart III of 40 CFR Part 62 and 40 CFR §62.3916 as adopted through August 24, 2004.

d. Reserved.

e. Emission guidelines and compliance times for existing sewage sludge incineration units (40 CFR Part 62, Subpart LLL). Emission guidelines and compliance times for control of designated pollutants from affected sewage sludge incineration (SSI) units that commenced construction or reconstruction on or before October 14, 2010, shall be in accordance with federal standards established in Subpart LLL of 40 CFR Part 62 as amended through April 29, 2016.

23.1(6) *Calculation of emission limitations based upon stack height.* This rule sets limits for the maximum stack height credit to be used in ambient air quality modeling for the purpose of setting an emission limitation and calculating the air quality impact of a source. The rule does not limit the actual physical stack height for any source.

For the purpose of this subrule, definitions of "stack," "a stack in existence," "dispersion technique," "good engineering practice (GEP) stack height," "nearby" and "excessive concentration" as set forth in 40 CFR §51.100(ff) through (kk) as amended through June 14, 1996, are adopted by reference.

[**ARC 7952C**, IAB 5/15/24, effective 6/19/24]

567—23.2(455B) Open burning. For the purpose of these rules and the rules in 567—Chapters 20 through 35, the following terms shall, unless otherwise noted, have the meaning indicated in this rule. The definitions set out in Iowa Code sections 455B.101, 455B.131, and 455B.411 are incorporated verbatim in these rules.

"Backyard burning" means the disposal of residential waste by open burning on the premises of the property where such waste is generated.

"Garbage" means all solid and semisolid putrescible and nonputrescible animal and vegetable wastes resulting from the handling, preparing, cooking, storing and serving of food or of material intended for use as food but excluding recognized industrial by-products.

"Landscape waste" means any vegetable or plant wastes except garbage. The term includes trees, tree trimmings, branches, stumps, brush, weeds, leaves, grass, shrubbery and yard trimmings.

"Open burning" means any burning of combustible materials where the products of combustion are emitted into the open air without passing through a chimney or stack.

"Refuse" means garbage, rubbish and all other putrescible and nonputrescible wastes, except sewage and water-carried trade wastes.

"Residential waste" means any refuse generated on the premises as a result of residential activities. The term includes landscape waste grown on the premises or deposited thereon by the elements, but excludes garbage, tires, trade wastes, and any locally recyclable goods or plastics.

"Rubbish" means all waste materials of nonputrescible nature.

"Trade waste" means any refuse resulting from the prosecution of any trade, business, industry, commercial venture (including farming and ranching), or utility or service activity, and any governmental or institutional activity, whether or not for profit.

23.2(1) *Prohibition.* No person shall allow, cause or permit open burning of combustible materials, except as provided in 23.2(2) and 23.2(3).

23.2(2) *Variances from rules.* Any person wishing to conduct open burning of materials not exempted in 23.2(3) may make application for a variance as specified in 567—subrule 21.2(1). In addition to requiring the information specified under 567—subrule 21.2(1), the director may require any person applying for a variance from the open burning rules to submit adequate documentation to allow the director to assess whether granting the variance will hinder attainment or maintenance of a National Ambient Air Quality Standard (NAAQS).

23.2(3) *Exemptions.* The open burning exemptions specified in this subrule do not provide exemptions from any other applicable environmental regulations. In particular, the exemptions contained in this subrule do not absolve any person from compliance with the rules for solid waste disposal, including ash disposal, and solid waste permitting contained in 567—Chapters 100 through 130 or the rules for storm water runoff and storm water permitting contained in 567—Chapters 60 and 64. The following exemptions apply unless prohibited by local ordinances or regulations, except that the exemptions for open burning of trees and tree trimming (23.2(3)*"b"*), landscape waste (23.2(3)*"d"*), residential waste (23.2(3)*"f"*), agricultural structures (23.2(3)*"i"*), and demolished buildings (23.2(3)*"j"*) are unavailable within the cities of Cedar Rapids, Marion, Hiawatha, Council Bluffs, Carter Lake, Des Moines, West Des Moines, Clive, Windsor Heights, Urbandale, and Pleasant Hill.

a. Disaster rubbish. The open burning of rubbish, including landscape waste, for the duration of the community disaster period in cases where an officially declared emergency condition exists. Burning of any structures or demolished structures shall be conducted in accordance with 40 CFR Section 61.145 as amended through January 16, 1991, which is the "Standard for Demolition and Renovation" of the asbestos National Emission Standard for Hazardous Air Pollutants.

b. Trees and tree trimmings. The open burning of trees and tree trimmings not originated on the premises provided that the burning site is operated by a local governmental entity, the burning site is fenced and access is controlled, burning is conducted on a regularly scheduled basis and is supervised at all times, burning is conducted only when weather conditions are favorable with respect to surrounding property, and the burning site is limited to areas at least one-quarter mile from any inhabited building unless a written waiver in the form of an affidavit is submitted by the owner of the building to the department and to the local governmental entity prior to the first instance of open burning at the site which occurs after November 13, 1996. The written waiver shall become effective only upon recording in the office of the recorder of deeds of the county in which the inhabited building is located. However, when the open burning of trees and tree trimmings causes air pollution as defined in Iowa Code section 455B.131(3), the department may take appropriate action to secure relocation of the burning operation. Rubber tires shall not be used to ignite trees and tree trimmings.

This exemption shall not apply within the area classified as the PM10 (inhalable) particulate Group II area of Mason City. This Group II area is described as follows: the area in Cerro Gordo County, Iowa, in Lincoln Township including Sections 13, 24 and 25; in Lime Creek Township including Sections 18, 19, 20, 21, 27, 28, 29, 30, 31, 32, 33, 34 and 35; in Mason Township the W ½ of Section 1, Sections 2, 3, 4, 5, 8, 9, the N ½ of Section 11, the NW ¼ of Section 12, the N ½ of Section 16, the N ½ of Section 17 and the portions of Sections 10 and 15 north and west of the line from U.S. Highway 18 south on Kentucky Avenue to 9th Street SE; thence west on 9th Street SE to the Minneapolis and St. Louis railroad tracks; thence south on Minneapolis and St. Louis railroad tracks to 19th Street SE; thence west on 19th Street SE to the section line between Sections 15 and 16.

c. Flare stacks. The open burning or flaring of waste gases, providing such open burning or flaring is conducted in compliance with 23.3(2)*"d"* and 23.3(3)*"e."*

d. Landscape waste. The disposal by open burning of landscape waste originating on the premises. However, the burning of landscape waste produced in clearing, grubbing and construction operations shall be limited to areas located at least one-fourth mile from any building inhabited by other than the landowner or tenant conducting the open burning. Rubber tires shall not be used to ignite landscape waste.

e. Recreational fires. Open fires for cooking, heating, recreation and ceremonies, provided they comply with 23.3(2)*"d."* Burning rubber tires is prohibited from this activity.

f. Residential waste. Backyard burning of residential waste at dwellings of four-family units or less. The adoption of more restrictive ordinances or regulations of a governing body of the political subdivision, relating to control of backyard burning, shall not be precluded by these rules.

g. Training fires. For purposes of 23.2(3), a "training fire" is a fire set for the purposes of conducting bona fide training of public or industrial employees in firefighting methods. For purposes of this paragraph, "bona fide training" means training that is conducted according to the National Fire Protection Association 1403 Standard on Live Fire Training Evolutions (2002 Edition) or a comparable training fire standard. A training fire may be conducted, provided that all of the following conditions are met:

(1) A training fire on a building is conducted with the building structurally intact.

(2) The training fire does not include the controlled burn of a demolished building.

(3) If the training fire is to be conducted on a building, written notification is provided to the department on DNR Form 542-8010, Notification of an Iowa Training Fire-Demolition or a Controlled Burn of a Demolished Building, and is postmarked or delivered to the director at least ten working days before such action commences.

(4) Notification shall be made in accordance with 40 CFR Section 61.145, "Standard for Demolition and Renovation" of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP) as amended through January 16, 1991.

(5) All asbestos-containing materials shall be removed prior to the training fire.

(6) Asphalt roofing may be burned in the training fire only if notification to the director contains testing results indicating that none of the layers of asphalt roofing contain asbestos. During each calendar year, each fire department may conduct no more than two training fires on buildings where asphalt roofing has not been removed, provided that for each of those training fires the asphalt roofing material present has been tested to ensure that it does not contain asbestos. Each fire department's limit on the burning of asphalt roofing shall include both training fires and the controlled burning of a demolished building, as specified in 23.2(3)*"j."*

(7) Rubber tires shall not be burned during a training fire.

h. Paper or plastic pesticide containers and seed corn bags. The disposal by open burning of paper or plastic pesticide containers (except those formerly containing organic forms of beryllium, selenium, mercury, lead, cadmium or arsenic) and seed corn bags resulting from farming activities occurring on the premises. Such open burning shall be limited to areas located at least one-fourth mile from any building inhabited by other than the landowner or tenant conducting the open burning, livestock area, wildlife area, or water source. The amount of paper or plastic pesticide containers and seed corn bags that can be disposed of by open burning shall not exceed one day's accumulation or 50 pounds, whichever is less. However, when the burning of paper or plastic pesticide containers or seed corn bags causes a nuisance, the director may take action to secure relocation of the burning operation. Since the concentration levels of pesticide combustion products near the fire may be hazardous, the person conducting the open burning should take precautions to avoid inhalation of the pesticide combustion products.

i. Agricultural structures. The open burning of agricultural structures, provided that the open burning occurs on the premises and, for agricultural structures located within a city or town, at least one-fourth mile from any building inhabited by a person other than the landowner, a tenant, or an employee of the landowner or tenant conducting the open burning unless a written waiver in the form of an affidavit is submitted by the owner of the building to the department prior to the open burning; all chemicals and asphalt roofing are removed; burning is conducted only when weather conditions are favorable with respect to surrounding property; and permission from the local fire chief is secured in advance of the burning. Rubber tires shall not be used to ignite agricultural structures. The asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP) as amended through January 16, 1991, requires the burning of agricultural structures to be conducted in accordance with 40 CFR Section 61.145, "Standard for Demolition and Renovation."

For the purposes of this subrule, "agricultural structures" means barns, machine sheds, storage cribs, animal confinement buildings, and homes located on the premises and used in conjunction with crop production, livestock or poultry raising and feeding operations. "Agricultural structures," for asbestos

NESHAP purposes, includes all of the above, with the exception of a single residential structure on the premises having four or fewer dwelling units, which has been used only for residential purposes.

j. Controlled burning of a demolished building. A city, as "city" is defined in Iowa Code section 362.2(4), with approval of its council, as "council" is defined in Iowa Code section 362.2(8), may conduct a controlled burn of a demolished building. A city is the only party that may conduct such a burn and is responsible for ensuring that all of the following conditions are met:

(1) Prohibition. The controlled burning of a demolished building is prohibited within the city limits of Cedar Rapids, Marion, Hiawatha, Council Bluffs, Carter Lake, Des Moines, West Des Moines, Clive, Windsor Heights, Urbandale, Pleasant Hill, Buffalo, Davenport, Mason City or any other area where area-specific state implementation plans require the control of particulate matter.

(2) Notification requirements. For each building proposed to be burned, the city fire department or a city official, on behalf of the city, shall submit to the department a completed notification postmarked at least 10 working days prior to commencing demolition and at least 30 days before the proposed controlled burn commences. Documentation of city council approval shall be submitted with the notification. Information required to be provided shall include the exact location of the burn site; the approximate distance to the nearest neighboring residence or business; the method used by the city to notify nearby residents of the proposed burn; an explanation of why alternative methods of demolition debris management are not being used; and information required by 40 CFR Section 61.145, "Standard for Demolition and Renovation" of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP), as amended through January 16, 1991. Notification shall be provided on DNR Form 542-8010, Notification of an Iowa Training Fire-Demolition or a Controlled Burn of a Demolished Building. For burns conducted outside the city limits, the city shall send to the chairperson of the applicable county board a copy of the completed DNR notification Form 542-8010 and documentation of city council approval. Notification to the county board shall be postmarked, faxed or sent by email at least 30 days before the proposed controlled burn commences.

(3) Asbestos removal requirements. All asbestos-containing materials shall be removed before the building to be burned is demolished. The department may require proof that any applicable inspection, notification, removal and demolition occurred, or will occur, in accordance with 40 CFR Section 61.145, "Standard for Demolition and Renovation" of the asbestos NESHAP, as amended through January 16, 1991.

(4) Requirements for asphalt roofing. During each calendar year, each city shall conduct no more than two controlled burns of a demolished building in which asphalt roofing has not been removed, provided that for each controlled burn of a demolished building the asphalt roofing material present has been tested to ensure that it does not contain asbestos. Each city's limit on the burning of asphalt roofing shall include both the controlled burning of a demolished building and training fires, as specified in 23.2(3)*"g."*

(5) Building size limit. For each proposed controlled burn located within the city limits, more than one demolished building may be included in the burn, provided that the sum total of all building material to be burned at a designated site does not exceed 1,700 square feet in size. For a controlled burn site located outside the city limits, the sum total of all building material to be burned, per day, may not exceed 1,700 square feet in size. For purposes of this subparagraph, "square feet" includes both finished and unfinished basements and excludes unfinished attics, carports, attached garages, and porches that are not protected from weather.

(6) Time of day requirements. The controlled burning of a demolished building may be conducted only between the hours of 6 a.m. and 6 p.m. and only when weather conditions are favorable with respect to surrounding property. The city shall adequately schedule and sufficiently control the burn to ensure that burning is completed by 6 p.m.

(7) Prohibited materials. Rubber tires, chemicals, furniture, carpeting, household appliances, vinyl products (such as flooring or siding), trade waste, garbage, rubbish, landscape waste, residential waste, and other nonstructural materials shall not be burned.

(8) Limits on the number and location of burns. For burns conducted within the city limits, each city may undertake no more than one controlled burn of demolished building material in every

0.6-mile-radius circle during each calendar year. For burn sites established outside the city limits, each city shall undertake no more than one controlled burn of demolished building material per day. A burn site outside the city limits must be located at least 0.6 of a mile from any building inhabited by a person, as "person" is defined in Iowa Code section 362.2(17).

(9) Requirements for burn access and supervision. The city shall control access to all demolished building burn sites. Representatives of the city who are city employees or who are hired by the city shall supervise the burning of demolished building material at all times.

(10) Recordkeeping requirements. The city shall retain at least one copy of all notifications and supplementary information required to be sent to the department under 23.2(3)*"j"*(2). Additionally, the city shall maintain a map of the exact location of each burn site and supporting documentation showing the date of each demolished building burn and the square feet of building material burned on each date. All maps, notifications and associated records shall be maintained by the city clerk, as "clerk" is defined in Iowa Code section 362.2(7), for a period of at least three years and shall be made available for inspection by the department upon request.

(11) Variance from this paragraph. In accordance with 567—subrules 21.2(1) and 23.2(2), a city may apply for a variance from the specific conditions for controlled burning of a demolished building and may request that the director conduct a review of the ambient air impacts of the request. The director shall approve or deny the request in accordance with 567—subrule 21.2(4).

(12) Compliance with other applicable environmental regulations. Compliance with the exemption requirements in this paragraph shall not absolve a city of the responsibility to comply with any other applicable environmental regulations. In particular, a city conducting a controlled burn of a demolished building shall comply with all applicable solid waste disposal, including ash disposal, and solid waste permitting rules contained in 567—Chapters 100 through 130, as well as all applicable storm water discharge and storm water permitting rules contained in 567—Chapters 60 and 64.

[**ARC 7952C**, IAB 5/15/24, effective 6/19/24]

567—23.3(455B) Specific contaminants.

23.3(1) *General.* The emission standards contained in this rule shall apply to each source operation unless performance standard for the process is specified in 23.1(2) through 23.1(5), in which case the performance standard shall apply.

23.3(2) *Particulate matter.* No person shall cause or allow the emission of particulate matter from any source in excess of the emission standards specified in this chapter, except as provided in 567—Chapter 21.

a. General emission rate.

(1) For sources constructed, modified or reconstructed on or after July 21, 1999, the emission of particulate matter from any process shall not exceed an emission standard of 0.1 grain per dry standard cubic foot (dscf) of exhaust gas.

(2) For sources constructed, modified or reconstructed prior to July 21, 1999, the emission of particulate matter from any process shall not exceed the amount determined from the equations below, or amount specified in a permit if based on an emission standard of 0.1 grain per standard cubic foot of exhaust gas.

The process weight rates up to 60,000 lb/hr shall be accomplished by the use of the equation:

$$E=4.10 \times P^{0.67},$$

and interpolation and extrapolation of the data for process weight rates in excess of 60,000 lb/hr shall be accomplished by use of the equation:

$$E=55.0 \times P^{0.11}—40,$$

where E = rate of emission in lb/hr, and

P = process weight in tons/hr

b. Combustion for indirect heating. Emissions of particulate matter from the combustion of fuel for indirect heating or for power generation shall be limited by the ASME Standard APS-1, Second Edition, November 1968, "Recommended Guide for the Control of Dust Emission—Combustion for Indirect Heat Exchangers." For the purpose of this paragraph, the allowable emissions shall be calculated

from equation (15) in that standard, with Comax2=50 micrograms per cubic meter. The maximum ground level dust concentrations designated are above the background level. For plants with 4,000 million Btu/hour input or more, the "a" factor shall be 1.0. In plants with less than 4,000 million Btu/hour input, appropriate "a" factors, less than 1.0, shall be applied. Pertinent correction factors, as specified in the standard, shall be applied for installations with multiple stacks. However, for fuel-burning units in operation on January 13, 1976, the maximum allowable emissions calculated under APS-1 for the facility's equipment configuration on January 13, 1976, shall not be increased even if the changes in the equipment or stack configuration would otherwise allow a recalculation and a higher maximum allowable emission under APS-1.

(1) Outside any standard metropolitan statistical area, the maximum allowable emissions from each stack, irrespective of stack height, shall be 0.8 pounds of particulates per million Btu input.

(2) Inside any standard metropolitan statistical area, the maximum allowable emission from each stack, irrespective of stack height, shall be 0.6 pounds of particulates per million Btu input.

(3) For a new fossil fuel-fired steam generating unit of more than 250 million Btu per hour heat input, 23.1(2)*"a"* shall apply. For a new unit of between 150 million and 250 million (inclusive) Btu per hour heat input, the maximum allowable emissions from such new unit shall be 0.2 pounds of particulates per million Btu of heat input. For a new unit of less than 150 million Btu per hour heat input, the maximum allowable emissions from such new unit shall be 0.6 pounds of particulates per million Btu of heat input.

(4) Measurements of emissions from a particulate source will be made in accordance with the provisions of 567—Chapter 25.

(5) For fuel-burning sources in operation prior to July 29, 1977, which are not subject to 23.1(2) and which significantly impact a primary or secondary particulate standard nonattainment area, the emission limitations specified in this subparagraph apply. A significant impact shall be equal to or exceeding 5 micrograms of particulate matter per cubic meter of air (24-hour average) or 1 microgram of particulate matter per cubic meter of air (annual average) determined by an EPA-approved single source dispersion model using allowable emission rates and five-year worst-case meteorological conditions. In the case where two or more boilers discharge into a common stack, the applicable stack emission limitation shall be based upon the heat input of the largest operating boiler. The plantwide allowable emission limitation shall be the weighted average of the allowable emission limitations for each stack or the applicable APS-1 plantwide standard as determined under 23.3(2)*"b,"* whichever is more stringent.

The maximum allowable emission rate for a single stack with a total heat input capacity less than 250 million Btu per hour shall be 0.60 pound of particulate matter per million Btu heat input, the maximum allowable emission rate for a single stack with a total heat input capacity greater than or equal to 250 million Btu per hour and less than 500 million Btu per hour shall be 0.40 pound of particulate matter per million Btu heat input, and the maximum allowable emission rate for a single stack with a total heat input capacity greater than or equal to 500 million Btu per hour shall be 0.30 pound of particulate matter per million Btu heat input. All sources regulated under this subparagraph shall demonstrate compliance by October 1, 1981; however, a source is considered to be in compliance with this subparagraph if by October 1, 1981, it is on a compliance schedule to be completed as expeditiously as possible, but no later than December 31, 1982.

c. Fugitive dust.

(1) Attainment and unclassified areas. A person shall take reasonable precautions to prevent particulate matter from becoming airborne in quantities sufficient to cause a nuisance as defined in Iowa Code section 657.1 when the person allows, causes or permits any materials to be handled, transported or stored or a building, its appurtenances or a construction haul road to be used, constructed, altered, repaired or demolished, with the exception of farming operations or dust generated by ordinary travel on unpaved roads. Ordinary travel includes routine traffic and road maintenance activities such as scarifying, compacting, transporting road maintenance surfacing material, and scraping of the unpaved public road surface. All persons, with the above exceptions, shall take reasonable precautions to prevent the discharge of visible emissions of fugitive dusts beyond the lot line of the property on which the emissions originate. The public highway authority shall be responsible for taking corrective action in

those cases where said authority has received complaints of or has actual knowledge of dust conditions that require abatement pursuant to this subrule. Reasonable precautions may include but not be limited to the following procedures:

1. Use, where practical, of water or chemicals for control of dusts in the demolition of existing buildings or structures, construction operations, the grading of roads or the clearing of land.

2. Application of suitable materials, such as but not limited to asphalt, oil, water or chemicals on unpaved roads, material stockpiles, race tracks and other surfaces which can give rise to airborne dusts.

3. Installation and use of containment or control equipment, to enclose or otherwise limit the emissions resulting from the handling and transfer of dusty materials, such as but not limited to grain, fertilizer or limestone.

4. Covering, at all times when in motion, open-bodied vehicles transporting materials likely to give rise to airborne dusts.

5. Prompt removal of earth or other material from paved streets or to which earth or other material has been transported by trucking or earth-moving equipment, erosion by water or other means.

6. Reducing the speed of vehicles traveling over on-property surfaces as necessary to minimize the generation of airborne dusts.

(2) Nonattainment areas. 23.3(2)*"c"*(1) notwithstanding, no person shall allow, cause or permit any visible emission of fugitive dust in a nonattainment area for particulate matter to go beyond the lot line of the property on which a traditional source is located without taking reasonable precautions to prevent emission. "Traditional source" means a source category for which a particulate emission standard has been established in 23.1(2), 23.3(2)*"a,"*23.3(2)*"b"* or 567—23.4(455B) and includes a quarry operation, haul road or parking lot associated with a traditional source. This paragraph does not modify the emission standard stated in 23.1(2), 23.3(2)*"a,"*23.3(2)*"b"* or 567—23.4(455B) but rather establishes a separate requirement for fugitive dust from such sources. For guidance on the types of controls which may constitute reasonable precautions, see "Identification of Techniques for the Control of Industrial Fugitive Dust Emissions," as adopted by the commission on May 19, 1981, which is available from the department upon request.

(3) Redesignated areas. Reasonable precautions implemented pursuant to the nonattainment area provisions of 23.3(2)*"c"*(2) shall remain in effect if the nonattainment area is redesignated to either attainment or unclassified after March 6, 1980.

d. Visible emissions. No person shall allow, cause or permit the emission of visible air contaminants into the atmosphere from any equipment, internal combustion engine, premise fire, open fire or stack, equal to or in excess of 40 percent opacity or that level specified in a construction permit, except as provided below and in 567—Chapter 21.

(1) Residential heating equipment. Residential heating equipment serving dwellings of four family units or less is exempt.

(2) Gasoline-powered vehicles. No person shall allow, cause or permit the emission of visible air contaminants from gasoline-powered motor vehicles for longer than five consecutive seconds.

(3) Diesel-powered vehicles. No person shall allow, cause or permit the emission of visible air contaminants from diesel-powered motor vehicles in excess of 40 percent opacity for longer than five consecutive seconds.

(4) Diesel-powered locomotives. No person shall allow, cause or permit the emission of visible air contaminants from diesel-powered locomotives in excess of 40 percent opacity, except for a maximum period of 40 consecutive seconds during acceleration under load, or for a period of four consecutive minutes when a locomotive is loaded after a period of idling.

(5) Startup and testing. Initial start and warmup of a cold engine; the testing of an engine for trouble, diagnosis or repair; or engine research and development activities, is exempt.

(6) Uncombined water. The provisions of this paragraph shall apply to any emission that would be in violation of these provisions except for the presence of uncombined water, such as condensed water vapor.

23.3(3) *Sulfur compounds.* The provisions of this subrule shall apply to any installation from which sulfur compounds are emitted into the atmosphere.

a. Sulfur dioxide from use of solid fuels.

(1) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere from an existing solid fuel-burning unit, in an amount greater than 6 pounds, replicated maximum three-hour average, per million Btu of heat input if such unit is located within the following counties: Black Hawk, Clinton, Des Moines, Dubuque, Jackson, Lee, Linn, Louisa, Muscatine and Scott.

(2) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere from an existing solid fuel-burning unit, in an amount greater than 5 pounds, replicated maximum three-hour average, per million Btu of heat input if such unit is located within the remaining 89 counties of the state not listed in 23.3(3)*"a"*(1).

(3) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere from any new solid fuel-burning unit that has a capacity of 250 million Btu or less per hour heat input, in an amount greater than 6 pounds, replicated maximum three-hour average, per million Btu of heat input.

b. Sulfur dioxide from use of liquid fuels.

(1) No person shall allow, cause, or permit the combustion of number 1 or number 2 fuel oil exceeding a sulfur content of 0.5 percent by weight.

(2) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere in an amount greater than 2.5 pounds of sulfur dioxide, replicated maximum three-hour average, per million Btu of heat input from a liquid fuel-burning unit.

c. Sulfur dioxide from sulfuric acid manufacture. After January 1, 1975, no person shall allow, cause or permit the emission of sulfur dioxide from an existing sulfuric acid manufacturing plant in excess of 30 pounds of sulfur dioxide, maximum three-hour average, per ton of product calculated as 100 percent sulfuric acid.

d. Acid mist from sulfuric acid manufacture. After January 1, 1974, no person shall allow, cause or permit the emission of acid mist calculated as sulfuric acid from an existing sulfuric acid manufacturing plant in excess of 0.5 pounds, maximum three-hour average, per ton of product calculated as 100 percent sulfuric acid.

e. Other processes capable of emitting sulfur dioxide. After January 1, 1974, no person shall allow, cause or permit the emission of sulfur dioxide from any process, other than sulfuric acid manufacture, in excess of 500 parts per million, based on volume. This paragraph shall not apply to devices which have been installed for air pollution abatement purposes where it is demonstrated by the owner of the source that the ambient air quality standards are not being exceeded.

[**ARC 7952C**, IAB 5/15/24, effective 6/19/24]

567—23.4(455B) Specific processes.

23.4(1) *General.* The provisions of this rule shall not apply to those facilities for which performance standards are specified in 23.1(2). The emission standards specified in this rule shall apply and those specified in 23.3(2)*"a"* and 23.3(2)*"b"* shall not apply to each process of the types listed in the following subrules, except as provided below.

EXCEPTION: Whenever the director determines that a process complying with the emission standard prescribed in this rule is causing or will cause air pollution in a specific area of the state, the specific emission standard may be suspended and compliance with the provisions of 567—23.3(455B) may be required in such instance.

23.4(2) *Asphalt batching plants.* No person shall cause, allow or permit the operation of an asphalt batching plant in a manner such that the particulate matter discharged to the atmosphere exceeds 0.15 grain per standard cubic foot of exhaust gas.

23.4(3) *Cement kilns.* Cement kilns shall be equipped with air pollution control devices to reduce the particulate matter in the gas discharged to the atmosphere to no more than 0.3 percent of the particulate matter entering the air pollution control device. Regardless of the degree of efficiency of the air pollution control device, particulate matter discharged from such kilns shall not exceed 0.1 grain per standard cubic foot of exhaust gas.

23.4(4) *Cupolas for metallurgical melting.* The emissions of particulate matter from all new foundry cupolas, and from all existing foundry cupolas with a process weight rate in excess of 20,000 pounds per hour, shall not exceed the amount specified in 23.3(2)*"a,"* except as provided in 567—Chapter 21.

The emissions of particulate matter from all existing foundry cupolas with a process weight rate less than or equal to 20,000 pounds per hour shall not exceed the amount determined from the table below, except as provided in 567—Chapter 21.

ALLOWABLE EMISSIONS FROM
EXISTING SMALL FOUNDRY CUPOLAS

Process weight rate (lb/hr)	Allowable emission (lb/hr)
1,000	3.05
2,000	4.70
3,000	6.35
4,000	8.00
5,000	9.58
6,000	11.30
7,000	12.90
8,000	14.30
9,000	15.50
10,000	16.65
12,000	18.70
16,000	21.60
18,000	23.40
20,000	25.10

23.4(5) *Electric furnaces for metallurgical melting.* The emissions of particulate matter to the atmosphere from electric furnaces used for metallurgical melting shall not exceed 0.1 grain per standard cubic foot of exhaust gas.

23.4(6) *Sand handling and surface finishing operations in metal processing.* This subrule shall apply to any new foundry or metal processing operation not properly termed a combustion, melting, baking or pouring operation. For purposes of this subrule, a new process is any process that has not started operation, or the construction of which has not been commenced, or the components of which have not been ordered or contracts for the construction of which have not been let on August 1, 1977. No person shall allow, cause or permit the operation of any equipment designed for sand shakeout, mulling, molding, cleaning, preparation, reclamation or rejuvenation or any equipment for abrasive cleaning, shot blasting, grinding, cutting, sawing or buffing in such a manner that particulate matter discharged from any stack exceeds 0.05 grains per dry standard cubic foot of exhaust gas, regardless of the types and number of operations that discharge from the stack.

23.4(7) *Grain handling and processing plants.* The owner or operator of equipment at a permanent installation for the handling or processing of grain, grain products and grain by-products shall not cause, allow or permit the particulate matter discharged to the atmosphere to exceed 0.1 grain per dry standard cubic foot of exhaust gas, except as follows:

a. The particulate matter discharged to the atmosphere from a grain bin vent at a country grain elevator, as "country grain elevator" is defined in 567—subrule 22.10(1), shall not exceed 1.0 grain per dry standard cubic foot of exhaust gas.

b. The particulate matter discharged to the atmosphere from a grain bin vent that was constructed, modified or reconstructed before March 31, 2008, at a country grain terminal elevator, as "country grain terminal elevator" is defined in 567—subrule 22.10(1), or at a grain terminal elevator, as "grain terminal

elevator" is defined in 567—subrule 22.10(1), shall not exceed 1.0 grain per dry standard cubic foot of exhaust gas.

c. The particulate matter discharged to the atmosphere from a grain bin vent that is constructed or reconstructed on or after March 31, 2008, at a country grain terminal elevator, as "country grain terminal elevator" is defined in 567—subrule 22.10(1), or at a grain terminal elevator, as "grain terminal elevator" is defined in 567—subrule 22.10(1), shall not exceed 0.1 grain per dry standard cubic foot of exhaust gas.

23.4(8) *Lime kilns.* No person shall cause, allow or permit the operation of a kiln for the processing of limestone such that the particulate matter in the gas discharged to the atmosphere exceeds 0.1 grain per standard cubic foot of exhaust gas.

23.4(9) *Meat smokehouses.* No person shall cause, allow or permit the operation of a meat smokehouse or a group of meat smokehouses that consume more than 10 pounds of wood, sawdust or other material per hour such that the particulate matter discharged to the atmosphere exceeds 0.2 grain per standard cubic foot of exhaust gas.

23.4(10) *Phosphate processing plants.*

a. and *b.* Reserved.

c. Nitrophosphate manufacture. No person shall allow, cause or permit the operation of equipment for the manufacture of nitrophosphate in a manner that produces more than 0.06 pound of fluoride per ton of phosphorus pentoxide or equivalent input.

d. No person shall allow, cause or permit the operation of equipment for the processing of phosphate ore, rock or other phosphatic material (other than equipment used for the manufacture of phosphoric acid, diammonium phosphate or nitrophosphate) in a manner that the unit emissions of fluoride exceed 0.4 pound of fluoride per ton of phosphorous pentoxide or its equivalent input.

e. Notwithstanding 23.4(10)*"c"* and *"d,"* no person shall allow, cause or permit the operation of equipment for the processing of phosphorous ore, rock or other phosphatic material, including but not limited to phosphoric acid, in a manner that emissions of fluorides exceed 100 pounds per day.

f. "Fluoride" means elemental fluorine and all fluoride compounds as measured by reference methods specified in Appendix A to 40 CFR Part 60 as amended through March 12, 1996.

g. Calculation. The allowable total emission of fluoride shall be calculated by multiplying the unit emission specified above by the expressed design production capacity of the process equipment.

23.4(11) *Portland cement concrete batching plants.* No person shall cause, allow or permit the operation of a Portland cement concrete batching plant such that the particulate matter discharged to the atmosphere exceeds 0.1 grain per standard cubic foot of exhaust gas.

23.4(12) *Incinerators.* A person shall not cause, allow or permit the operation of an incinerator unless provided with appropriate control of emissions of particulate matter and visible air contaminants.

a. Particulate matter. A person shall not cause, allow or permit the operation of an incinerator with a rated refuse burning capacity of 1,000 or more pounds per hour in a manner such that the particulate matter discharged to the atmosphere exceeds 0.2 grain per standard cubic foot of exhaust gas adjusted to 12 percent carbon dioxide.

A person shall not cause, allow or permit the operation of an incinerator with a rated refuse burning capacity of less than 1,000 pounds per hour in a manner such that the particulate matter discharged to the atmosphere exceeds 0.35 grain per standard cubic foot of exhaust gas adjusted to 12 percent carbon dioxide.

b. Visible emissions. A person shall not allow, cause or permit the operation of an incinerator in a manner such that it produces visible air contaminants in excess of 40 percent opacity; except that visible air contaminants in excess of 40 percent opacity but less than or equal to 60 percent opacity may be emitted for periods aggregating not more than 3 minutes in any 60-minute period during an operation breakdown or during the cleaning of air pollution control equipment.

23.4(13) *Painting and surface-coating operations.* No person shall allow, cause or permit painting and surface-coating operations in a manner such that particulate matter in the gas discharge exceeds 0.01 grain per standard cubic foot of exhaust gas.

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567—23.5(455B) Anaerobic lagoons.

23.5(1) Applications for construction permits for animal feeding operations using anaerobic lagoons shall meet the requirements of 567—Chapter 65.

23.5(2) Criteria for approval of industrial anaerobic lagoons constructed or expanded on or after July 1, 1982.

a. Lagoons designed to treat 100,000 gallons per day (gpd) or less shall be located at least 1,250 feet from a residence not owned by the owner of the lagoon or from a public use area other than a public road.

b. Lagoons designed to treat more than 100,000 gpd shall be located at least 1,875 feet from a residence not owned by the owner of the lagoon or from a public use area other than a public road.

c. The criteria in 23.5(2) shall apply except in situations in which Iowa Code section 455B.134(3)*"e"*(2) is successfully invoked.

d. Compliance with the requirements of 23.5(2) shall not constitute an exemption from compliance with any other applicable environmental regulations. In particular, compliance with these requirements shall not absolve any person from compliance with the requirements set forth in 567—Chapter 64 that are applicable to industrial anaerobic lagoons.

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◊ Two or more ARCs

1 Objection, see filed rule [DEQ, 4.2(4)] published IAC Supp. 1/22/77, 3/9/77.

2 Effective date of 23.2(4) delayed 70 days by the Administrative Rules Review Committee on 9/14/83.

3 11/24/10 effective date of 23.1(4), introductory paragraph, and 23.1(4)*"ev"* and *"fa"* to *"fd"* delayed 70 days by the Administrative Rules Review Committee at its meeting held November 9, 2010.

4 Amendment to 23.1(4), introductory paragraph, (ARC 9154B, Item 4) rescinded by Executive Order Number 72 on 4/4/11. Amendment removed and prior language restored IAC Supplement 4/20/11.

CHAPTER 24
OPERATING PERMITS

[Prior to IAB 5/15/24, subject appeared in Ch 22]
[Prior to 7/1/83, DEQ Ch 3]
[Prior to 12/3/86, Water, Air and Waste Management[900]]

567—24.1 to **24.99** Reserved.

567—24.100(455B) Title V operating permits—definitions. For purposes of this chapter and unless otherwise stated, the following terms shall have the meaning indicated in this rule:

"12-month rolling period" means the same as defined in 567—22.1(455B).

"40 CFR Part 70" means Part 70 or any specific section within Part 70 that is cited in this chapter, as amended through May 6, 2020, unless otherwise noted.

"40 CFR Part 72" means Part 72 or any specific section within Part 72 that is cited in this chapter, as amended through March 28, 2011, unless otherwise noted.

"Act" means the U.S. Clean Air Act (42 U.S.C. §7401, et seq.), as amended through November 15, 1990.

"Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with the following:

1. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period that immediately precedes that date and that is representative of normal source operations. The director may allow the use of a different time period upon a demonstration that it is more representative of normal source operations. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored or combusted during the selected time period. Actual emissions for acid rain-affected sources are calculated using a one-year period.
2. Lacking specific information to the contrary, the director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.
3. For any emissions unit that has not begun normal operations on a particular date, actual emissions shall equal the potential to emit of the unit on that date.
4. For purposes of calculating early reductions of hazardous air pollutants, actual emissions shall not include excess emissions resulting from a malfunction or from startups and shutdowns associated with a malfunction.

Actual emissions for purposes of determining fees shall be the actual emissions calculated over a period of one year.

"Administrator" means the administrator for the United States Environmental Protection Agency (EPA) or designee.

"Affected source," as this definition is set forth in 40 CFR §70.2, is adopted by reference.

"Affected state," as this definition is set forth in 40 CFR §70.2, is adopted by reference.

"Affected unit," as this definition is set forth in 40 CFR §70.2, is adopted by reference.

"Allowable emissions" means the emission rate of a stationary source calculated using both the maximum rated capacity of the source, unless the source is subject to federally enforceable limits that restrict the operating rate or hours of operation, and the most stringent of the following:

1. The applicable new source performance standards or national emissions standards for hazardous air pollutants, contained in 567—subrules 23.1(2), 23.1(3), and 23.1(4);
2. The applicable existing source emission standard contained in 567—Chapter 23; or
3. The emissions rate specified in the air construction permit for the source.

"Allowance," as this definition is set forth in 40 CFR §72.2, is adopted by reference.

"Applicable requirement," as this definition is set forth in 40 CFR §70.2, is adopted by reference.

"Area source" means any stationary source of hazardous air pollutants that is not a major source as defined in 567—24.100(455B).

"CFR" means the Code of Federal Regulations, with standard references in this chapter by Title and Part, so that "40 CFR 51" means "Title 40 of the Code of Federal Regulations, Part 51."

"Country grain elevator" means the same as defined in 567—subrule 22.10(1).

"Designated representative" means a responsible natural person authorized by the owner(s) or operator(s) of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with Subpart B of 40 CFR Part 72, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term "responsible official" is used in Chapter 24, it shall be deemed to refer to the designated representative with regard to all matters under the acid rain program.

"Draft Title V permit," as this definition is set forth in 40 CFR §70.2, is adopted by reference.

"Electronic format," "electronic submittal," and *"electronic submittal format"* mean the same as defined in 567—22.1(455B).

"Emergency generator" means the same as defined in 567—22.1(455B).

"Emissions allowable under the permit," as this definition is set forth in 40 CFR §70.2, is adopted by reference.

"Emissions unit," as this definition is set forth in 40 CFR §70.2, is adopted by reference.

"EPA conditional method" means the same as defined in 567—22.1(455B).

"EPA reference method" means the same as defined in 567—22.1(455B).

"Existing hazardous air pollutant source" means any source as defined in 40 CFR 61 as adopted by reference in 567—subrule 23.1(3) and 40 CFR §63.72 as adopted by reference in 567—subrule 23.1(4) with respect to Section 112(i)(5) of the Act, the construction or reconstruction of which commenced prior to proposal of an applicable Section 112(d) standard.

"Facility" means, with reference to a stationary source, any apparatus that emits or may emit any air pollutant or contaminant.

"Federal implementation plan" means a plan promulgated by the Administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a state implementation plan, and that includes enforceable emission limitations or other control measures, means, or techniques and provides for attainment of the relevant national ambient air quality standard.

"Federally enforceable" means all limitations and conditions that are enforceable by the Administrator, including but not limited to the requirements of the new source performance standards and national emission standards for hazardous air pollutants contained in 567—subrules 23.1(2), 23.1(3), and 23.1(4); the requirements of such other state rules or orders approved by the Administrator for inclusion in the SIP; and any construction, Title V or other federally approved operating permit conditions.

"Final Title V permit" means the version of a Title V permit issued by the department that has completed all required review procedures.

"Fugitive emissions" are those emissions that could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

"Hazardous air pollutant" means any of the air pollutants listed in Section 112 of the Act and 40 CFR §63.2 as adopted by reference in 567—subrule 23.1(4).

"High-risk pollutant" means one of the hazardous air pollutants listed in Table 1 in 40 CFR §63.74 as adopted by reference in 567—subrule 23.1(4).

"Major source" means any stationary source (or any group of stationary sources located on one or more contiguous or adjacent properties and under common control of the same person or of persons under common control) belonging to a single major industrial grouping that is any of the following:

1. A major stationary source of air pollutants, as defined in Section 302 of the Act, that directly emits or has the potential to emit 100 tons per year (tpy) or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Act, unless the source belongs to one of the stationary source categories listed in this chapter.

2. A major source of hazardous air pollutants according to Section 112 of the Act as follows:

- For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in

the aggregate, 10 tpy or more of any hazardous air pollutant that has been listed pursuant to Section 112(b) of the Act and these rules or 25 tpy or more of any combination of such hazardous air pollutants. Notwithstanding the previous sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emission from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

- For Title V purposes, all fugitive emissions of hazardous air pollutants are to be considered in determining whether a stationary source is a major source.
- For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

3. A major stationary source as defined in Part D of Title I of the Act, including:

- For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified or treated as classified as "marginal" or "moderate," 50 tpy or more in areas classified or treated as classified as "serious," 25 tpy or more in areas classified or treated as classified as "severe" and 10 tpy or more in areas classified or treated as classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under Section 182(f)(1) or (2) of the Act, that requirements under Section 182(f) of the Act do not apply;
- For ozone transport regions established pursuant to Section 184 of the Act, sources with potential to emit 50 tpy or more of volatile organic compounds;
- For carbon monoxide nonattainment areas (1) that are classified or treated as classified as "serious" and (2) in which stationary sources contribute significantly to carbon monoxide levels, and sources with the potential to emit 50 tpy or more of carbon monoxide;
- For particulate matter (PM_{10}), nonattainment areas classified or treated as classified as "serious," sources with the potential to emit 70 tpy or more of PM_{10};
- For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

"Manually operated equipment" means a machine or tool that is handheld, such as a handheld circular saw or compressed air chisel; a machine or tool for which the work piece is held or manipulated by hand, such as a bench grinder; a machine or tool for which the tool or bit is manipulated by hand, such as a lathe or drill press; and any dust collection system that is part of such machine or tool; but not including any machine or tool for which the extent of manual operation is to control power to the machine or tool and not including any central dust collection system serving more than one machine or tool.

"Maximum achievable control technology (MACT) emission limitation for existing sources" means the definition adopted by reference in 567—subrule 23.1(4).

"Maximum achievable control technology (MACT) emission limitation for new sources" means the definition adopted by reference in 567—subrule 23.1(4).

"Maximum achievable control technology (MACT) floor" means the definition adopted by reference in 567—subrule 23.1(4).

"New Title IV affected source or unit" means a unit that commences commercial operation on or after November 15, 1990, including any such unit that serves a generator with a nameplate capacity of 25 MWe or less or that is a simple combustion turbine.

"Nonattainment area" means an area so designated by the Administrator, acting pursuant to Section 107 of the Act.

"Permit modification" means a revision to a Title V operating permit that cannot be accomplished under the provisions for administrative permit amendments found in 567—24.111(455B). A permit modification for purposes of the acid rain portion of the permit shall be governed by the regulations pertaining to acid rain found in 567—24.120(455B) through 567—24.146(455B). This definition of

"permit modification" shall be used solely for purposes of this chapter governing Title V operating permits.

"Permit revision" means any permit modification or administrative permit amendment.

"Permitting authority" means the Iowa department of natural resources or the director thereof.

"Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations relating to acid rain.

For the purpose of determining potential to emit for country grain elevators, the provisions set forth in 567—subrule 22.10(2) shall apply.

For purposes of calculating potential to emit for emergency generators, "maximum capacity" means one of the following:

1. 500 hours of operation annually, if the generator has actually been operated less than 500 hours per year for the past five years;
2. 8,760 hours of operation annually, if the generator has actually been operated more than 500 hours in one of the past five years; or
3. The number of hours specified in a state or federally enforceable limit.

"Proposed Title V permit," as this definition is set forth in 40 CFR §70.2, is adopted by reference.

"Regulated air contaminant" means the same as "regulated air pollutant."

"Regulated air pollutant" means the following:

1. Nitrogen oxides or any volatile organic compounds;
2. Any pollutant for which a national ambient air quality standard has been promulgated;
3. Any pollutant that is subject to any standard promulgated under Section 111 of the Act;
4. Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act; or
5. Any pollutant subject to a standard promulgated under Section 112 or other requirements established under Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including the following:

- Any pollutant subject to requirements under Section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the Act; and
- Any pollutant for which the requirements of Section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to the Section 112(g)(2) requirement.

6. With respect to Title V, particulate matter, except for PM_{10}, is not considered a regulated air pollutant for the purpose of determining whether a source is considered to be a major source.

"Regulated air pollutant or contaminant (for fee calculation)," which is used only for purposes of 567—Chapter 30, means any regulated air pollutant or contaminant except the following:

1. Carbon monoxide;
2. Particulate matter, excluding PM_{10};
3. Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated under or established by Title VI of the Act;
4. Any pollutant that is a regulated pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Act;
5. Greenhouse gas, as defined in 567—22.1(455B).

"Renewal" means the process by which a permit is reissued at the end of its term.

"Responsible official" means one of the following:

1. For a corporation: a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making

functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

- The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or
- The delegation of authority to such representative is approved in advance by the permitting authority;

2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

3. For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this chapter, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional Administrator of EPA); or

4. For Title IV affected sources:

- The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and
- The designated representative for any other purposes under this chapter or the Act.

"Section 502(b)(10) changes," as this definition is set forth in 40 CFR §70.2, is adopted by reference.

"State implementation plan" or *"SIP"* means the plan adopted by the state of Iowa and approved by the Administrator that provides for implementation, maintenance, and enforcement of such primary and secondary ambient air quality standards as are adopted by the Administrator, pursuant to the Act.

"Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Act.

"Stationary source categories" means any of the following classes of sources:

1. Coal cleaning plants with thermal dryers;
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants using the furnace process;
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in North American Industry Classification System (NAICS) code 325193 or 312140;
21. Fossil-fuel boilers, or combinations thereof, totaling more than 250 million Btu per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil fuel-fired steam electric plants of more than 250 million Btu per hour heat input;

27. Any other stationary source category, that as of August 7, 1980, is regulated under Section 111 or 112 of the Act.

"Subject to regulation," as this definition is set forth in 40 CFR §70.2, is adopted by reference.

"Title V permit" means an operating permit under Title V of the Act.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.101(455B) Applicability of Title V operating permit requirements.

24.101(1) Except as provided in 567—24.102(455B), any person who owns or operates any of the following sources shall obtain a Title V operating permit and shall submit fees as required in 567—Chapter 30:

a. Any affected source subject to the provisions of Title IV of the Act;

b. Any major source;

c. Any source, including any nonmajor source, subject to a standard, limitation, or other requirement under Section 111 of the Act (567—subrule 23.1(2), new source performance standards; 567—subrule 23.1(5), emission guidelines);

d. Any source, including any area source, subject to a standard or other requirement under Section 112 of the Act (567—subrules 23.1(3) and 23.1(4), emission standards for hazardous air pollutants), except that a source is not required to obtain a Title V permit solely because it is subject to regulations or requirements under Section 112(r) of the Act;

e. Any solid waste incinerator unit required to obtain a Title V permit under Section 129(e) of the Act;

f. Any source category designated by the Administrator pursuant to 40 CFR §70.3 as amended through December 19, 2005.

24.101(2) Any nonmajor source required to obtain a Title V operating permit pursuant to 24.101(1) is required to obtain a Title V permit only for the emissions units and related equipment causing the source to be subject to the Title V program.

24.101(3) Reserved.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.102(455B) Source category exemptions.

24.102(1) All sources listed in 24.101(1) that are not major sources, affected sources subject to the provisions of Title IV of the Act, or solid waste incineration units required to obtain a permit pursuant to Section 129(e) of the Act are exempt from the obligation to obtain a Title V permit until such time as the Administrator completes a rulemaking to determine how the program should be structured for nonmajor sources and the appropriateness of any permanent exemptions in addition to those provided for in 24.102(3).

24.102(2) In the case of nonmajor sources subject to a standard or other requirement under either Section 111 or Section 112 of the Act, the Administrator will determine at the time the new or amended standard is promulgated whether to exempt any or all such applicable sources from the requirement to obtain a Title V permit.

24.102(3) The following source categories are exempt from the obligation to obtain a Title V permit:

a. All sources and source categories that would be required to obtain a Title V permit solely because they are subject to 40 CFR 60, Subpart AAA, Standards of Performance for New Residential Wood Heaters;

b. All sources and source categories that would be required to obtain a Title V permit solely because they are subject to 40 CFR 61, Subpart M, National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145, Standard for Demolition and Renovation, as adopted by reference in 567—subrule 23.1(3);

c. All sources and source categories that would be required to obtain a Title V permit solely because they are subject to any of the following subparts from 40 CFR 63:

(1) Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, as adopted by reference in 567—subrule 23.1(4).

(2) Subpart N, National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, as adopted by reference in 567—subrule 23.1(4).

(3) Subpart O, Ethylene Oxide Emissions Standards for Sterilization Facilities, as adopted by reference in 567—subrule 23.1(4).

(4) Subpart T, National Emission Standards for Halogenated Solvent Cleaning, as adopted by reference in 567—subrule 23.1(4).

(5) Subpart RRR, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production, as adopted by reference in 567—subrule 23.1(4).

(6) Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works, as adopted by reference in 567—subrule 23.1(4).

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.103(455B) Insignificant activities. The following are insignificant activities for purposes of the Title V application if not needed to determine the applicability of or to impose any applicable requirement. Title V permit emissions fees are not required from insignificant activities pursuant to 567—paragraph 30.4(2)*"f."*

24.103(1) *Insignificant activities excluded from Title V operating permit application.* In accordance with 40 CFR §70.5, these activities need not be included in the Title V permit application:

a. Mobile internal combustion and jet engines, marine vessels, and locomotives.

b. Equipment, other than anaerobic lagoons, used for cultivating land, harvesting crops, or raising livestock. This exemption is not applicable if the equipment is used to remove substances from grain that were applied to the grain by another person. This exemption also is not applicable to equipment used by a person to manufacture commercial feed, as defined in Iowa Code section 198.3, when that feed is normally not fed to livestock:

(1) Owned by that person or another person, and

(2) Located in a feedlot, as defined in Iowa Code section 172D.1(6), or in a confinement building owned or operated by that person, and

(3) Located in this state.

c. Equipment or control equipment that eliminates all emissions to the atmosphere.

d. Equipment (other than anaerobic lagoons) or control equipment that emits odors unless such equipment or control equipment also emits particulate matter or any other air pollutant or contaminant.

e. Air conditioning or ventilating equipment not designed to remove air contaminants generated by or released from associated equipment.

f. Residential wood heaters, cookstoves, or fireplaces.

g. The equipment in laboratories used exclusively for nonproduction chemical and physical analyses. Nonproduction analyses means analyses incidental to the production of a good or service and includes analyses conducted for quality assurance or quality control activities, or for the assessment of environmental impact.

h. Recreational fireplaces.

i. Barbecue pits and cookers except at a meat packing plant or a prepared meat manufacturing facility.

j. Stacks or vents to prevent escape of sewer gases through plumbing traps for systems handling domestic sewage only. Systems that include any industrial waste are not exempt.

k. Retail gasoline- and diesel fuel-handling facilities.

l. Photographic process equipment by which an image is reproduced upon material sensitized to radiant energy.

m. Equipment used for hydraulic or hydrostatic testing.

n. General vehicle maintenance and servicing activities at the source, other than gasoline fuel handling.

o. Cafeterias, kitchens, and other facilities used for preparing food or beverages primarily for consumption at the source.

p. Equipment using water, water and soap or detergent, or a suspension of abrasives in water for purposes of cleaning or finishing provided no organic solvent has been added to the water, the boiling point of the additive is not less than 100°C (212°F), and the water is not heated above 65.5°C (150°F).

q. Administrative activities, including but not limited to paper shredding, copying, photographic activities, and blueprinting machines. This does not include incinerators.

r. Laundry dryers, extractors, and tumblers processing clothing, bedding, and other fabric items used at the source that have been cleaned with water solutions of bleach or detergents provided that any organic solvent present in such items before processing that is retained from cleanup operations shall be addressed as part of the volatile organic compound emissions from use of cleaning materials.

s. Housekeeping activities for cleaning purposes, including collecting spilled and accumulated materials at the source, but not including use of cleaning materials that contain organic solvent.

t. Refrigeration systems, including storage tanks used in refrigeration systems, but excluding any combustion equipment associated with such systems.

u. Activities associated with the construction, on-site repair, maintenance or dismantlement of buildings, utility lines, pipelines, wells, excavations, earthworks and other structures that do not constitute emission units.

v. Storage tanks of organic liquids with a capacity of less than 500 gallons, provided the tank is not used for storage of any material listed as a hazardous air pollutant pursuant to Section 112(b) of the Act.

w. Piping and storage systems for natural gas, propane, and liquified petroleum gas, excluding pipeline compressor stations and associated storage facilities.

x. Water treatment or storage systems, as follows:

(1) Systems for potable water or boiler feedwater.

(2) Systems, including cooling towers, for process water provided that such water has not been in direct or indirect contact with process steams that contain volatile organic material or materials listed as hazardous air pollutants pursuant to Section 112(b) of the Act.

y. Lawn care, landscape maintenance, and groundskeeping activities.

z. Containers, reservoirs, or tanks used exclusively in dipping operations to coat objects with oils, waxes, or greases, provided no organic solvent has been mixed with such materials.

aa. Cold cleaning degreasers that are not in-line cleaning machines, where the vapor pressure of the solvents used never exceeds 2 kPa (15 mmHg or 0.3 psi) measured at 38°C (100°F) or 0.7 kPa (5 mmHg or 0.1 psi) at 20°C (68°F). (Note: Cold cleaners subject to 40 CFR Part 63 Subpart T are not considered insignificant activities.)

bb. Manually operated equipment used for buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, scarfing, surface grinding or turning.

cc. Use of consumer products, including hazardous substances as that term is defined in the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.), when the product is used at a source in the same manner as normal consumer use.

dd. Activities directly used in the diagnosis and treatment of disease, injury or other medical condition.

ee. Firefighting activities and training in preparation for fighting fires conducted at the source. (Note: Written notification pursuant to 567—paragraph 23.2(3)*"g"* is required at least ten working days before such action commences.)

ff. Activities associated with the construction, repair, or maintenance of roads or other paved or open areas, including operation of street sweepers, vacuum trucks, spray trucks, and other vehicles related to the control of fugitive emissions of such roads or other areas.

gg. Storage and handling of drums or other transportable containers when the containers are sealed during storage and handling.

hh. Individual points of emission or activities as follows:

(1) Individual flanges, valves, pump seals, pressure relief valves, and other individual components that have the potential for leaks.

(2) Individual sampling points, analyzers, and process instrumentation, whose operation may result in emissions.

(3) Individual features of an emission unit such as each burner and sootblower in a boiler or each use of cleaning materials on a coating or printing line.

ii. Construction activities at a source solely associated with the modification or building of a facility, an emission unit, or other equipment at the source. (Note: Notwithstanding the status of this activity as insignificant, a particular activity that entails modification or construction of an emission unit or construction of air pollution control equipment may require a construction permit pursuant to 567—22.1(455B) and may subsequently require a revised Title V operating permit. A revised Title V operating permit may also be necessary for operation of an emission unit after completion of a particular activity if the existing Title V operating permit does not accommodate the new state of the emission unit.)

jj. Activities at a source associated with the maintenance, repair, or dismantlement of an emission unit or other equipment installed at the source, including preparation for maintenance, repair, or dismantlement, and preparation for subsequent startup, including preparation of a shutdown vessel for entry, replacement of insulation, welding and cutting, and steam purging of a vessel prior to startup.

24.103(2) *Insignificant activities that must be included in Title V operating permit applications.*

a. The following are insignificant activities based on potential emissions:

An emission unit that has the potential to emit less than:

5 tons per year of any regulated air pollutant, except:

2.5 tons per year of PM_{10},

0.52 tons per year of $PM_{2.5}$ (does not apply to emission units for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—22.1(455B)) occurred on or before October 23, 2013),

2 lbs per year of lead or lead compounds (40 lbs per year for emission units for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013),

2,500 lbs per year of any combination of hazardous air pollutants except high-risk pollutants,

1,000 lbs per year of any individual hazardous air pollutant except high-risk pollutants,

250 lbs per year of any combination of high-risk pollutants, or

100 lbs per year of any individual high-risk pollutant.

The definition of "high-risk pollutant" is found in 567—24.100(455B).

b. The following are insignificant activities:

(1) Fuel-burning equipment for indirect heating and reheating furnaces or indirect cooling units using natural or liquefied petroleum gas with a capacity of less than 10 million Btu per hour input per combustion unit.

(2) Fuel-burning equipment for indirect heating or indirect cooling for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013, with a capacity of less than 1 million Btu per hour input per combustion unit when burning coal, untreated wood, or fuel oil.

Fuel-burning equipment for indirect heating or indirect cooling for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred after October 23, 2013, with a capacity of less than 1 million Btu per hour input per combustion unit when burning untreated wood, untreated seeds or pellets, other untreated vegetative materials, or fuel oil provided that the equipment and the fuel meet the condition specified in 24.103(2)*"b"*(2). Used oils meeting the specification from 40 CFR §279.11 as amended through July 14, 2006, are acceptable fuels. When combusting used oils, the equipment must have a maximum rated capacity of 50,000 Btu or less per hour of heat input or a maximum throughput of 3,600 gallons or less of used oils per year. When combusting untreated wood, untreated seeds or pellets, or other untreated vegetative materials, the equipment must have a maximum rated capacity of 265,600 Btu or less per hour or a maximum throughput of 378,000 pounds or less per year of each fuel or any combination of fuels.

(3) Incinerators with a rated refuse burning capacity of less than 25 pounds per hour for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013. Incinerators for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred after October 23, 2013, shall not qualify as an insignificant activity. After October 23, 2013, only paint clean-off ovens with a maximum rated capacity of less than 25 pounds per hour that do not combust lead-containing materials shall qualify as an insignificant activity.

(4) Gasoline, diesel fuel, or oil storage tanks with a capacity of 1,000 gallons or less and an annual throughput of less than 40,000 gallons.

(5) A storage tank that contains no volatile organic compounds above a vapor pressure of 0.75 pounds per square inch at the normal operating temperature of the tank when other emissions from the tank do not exceed the levels in 24.103(2)*"a."*

(6) Internal combustion engines that are used for emergency response purposes with a brake horsepower rating of less than 400 measured at the shaft. The manufacturer's nameplate rating at full load shall be defined as the brake horsepower output at the shaft. Emergency engines that are subject to any of the following federal regulations are not considered to be insignificant activities for purposes of 567—24.103(455B):

1. New source performance standards (NSPS) for stationary compression ignition internal combustion engines (40 CFR Part 60, Subpart IIII);
2. New source performance standards (NSPS) for stationary spark ignition internal combustion engines (40 CFR Part 60, Subpart JJJJ); or
3. National emission standards for hazardous air pollutants (NESHAP) for reciprocating internal combustion engines (40 CFR Part 63, Subpart ZZZZ).

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.104(455B) Requirement to have a Title V permit. No source may operate after the time that it is required to submit a timely and complete application, except in compliance with a properly issued Title V operating permit. However, if a source submits a timely and complete application for permit issuance (including renewal), the source's failure to have a permit is not a violation of this chapter until the director takes final action on the permit application, except as noted in this rule. In that case, all terms and conditions of the permit shall remain in effect until the renewal permit has been issued or denied.

24.104(1) This protection shall cease to apply if, subsequent to the completeness determination, the applicant fails to submit, by the deadline specified in writing by the director, any additional information identified as being needed to process the application.

24.104(2) Sources making permit revisions pursuant to 567—24.110(455B) shall not be in violation of this rule.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.105(455B) Title V permit applications.

24.105(1) *Duty to apply.* For each source required to obtain a Title V operating permit, the owner or operator or designated representative, where applicable, shall submit a complete and timely application in the electronic format specified by the department, if electronic submittal is provided. An owner or operator of a source required to obtain a Title V permit pursuant to 24.101(1) shall submit all required fees as required in 567—Chapter 30.

a. Timely application. Each owner or operator applying for a Title V permit shall submit an application as follows:

(1) Reserved.

(2) Initial application for a new source. The owner or operator of a stationary source that commenced construction or reconstruction after April 20, 1994, or that otherwise became subject to the requirement to obtain a Title V permit after April 20, 1994, shall submit an application to the department within 12 months of becoming subject to the Title V permit requirements.

(3) Application related to 112(g), PSD, or nonattainment. The owner or operator of a stationary source that is subject to Section 112(g) of the Act, that is subject to 567—24.4(455B) or

567—33.3(455B) (prevention of significant deterioration (PSD)), or that is subject to 567—24.5(455B) or 567—31.3(455B) (nonattainment area permitting) shall submit an application to the department within 12 months of commencing operation. In cases in which an existing Title V permit would prohibit such construction or change in operation, the owner or operator must obtain a Title V permit revision before commencing operation.

(4) Renewal application. The owner or operator of a stationary source with a Title V permit shall submit an application to the department for a permit renewal at least 6 months prior to, but not more than 18 months prior to, the date of permit expiration.

(5) Changes allowed without a permit revision (off-permit revision). The owner or operator of a stationary source with a Title V permit who is proposing a change that is allowed without a Title V permit revision (an off-permit revision) as specified in 567—24.110(455B) shall submit to the department a written notification as specified in 567—24.110(455B) at least 30 days prior to the proposed change.

(6) Application for an administrative permit amendment. Prior to implementing a change that satisfies the requirements for an administrative permit amendment as set forth in 567—24.111(455B), the owner or operator shall submit to the department an application for an administrative amendment as specified in 567—24.111(455B).

(7) Application for a minor permit modification. Prior to implementing a change that satisfies the requirements for a minor permit modification as set forth in 567—24.112(455B), the owner or operator shall submit to the department an application for a minor permit modification as specified in 567—24.112(455B).

(8) Application for a significant permit modification. The owner or operator of a source that satisfies the requirements for a significant permit modification as set forth in 567—24.113(455B) shall submit to the department an application for a significant permit modification as specified in 567—24.113(455B) within three months after the commencing operation of the changed source. However, if the existing Title V permit would prohibit such construction or change in operation, the owner or operator shall not commence operation of the changed source until the department issues a revised Title V permit that allows the change.

b. Complete application. To be deemed complete, an application must provide all information required pursuant to 24.105(2), except that applications for permit revision need supply such information only if it is related to the proposed change.

24.105(2) *Standard application form and required information.* To apply for a Title V permit, the standard application form shall be submitted in the electronic format specified by the department, if electronic submittal is provided.

The information submitted must be sufficient to evaluate the source and its application and to determine all applicable requirements and to evaluate the fee amount required by 567—30.4(455B). If a source is not a major source and is applying for a Title V operating permit solely because of a requirement imposed by 24.101(1)*"c"* and 24.101(1)*"d,"* then the information provided in the operating permit application may cover only the emissions units that trigger Title V applicability. The applicant shall submit the information called for by the application form for each emissions unit to be permitted, except for activities that are insignificant according to the provisions of 567—24.103(455B). The applicant shall provide a list of all insignificant activities and specify the basis for the determination of insignificance for each activity.

Unless otherwise specified in 24.128(4), nationally standardized forms shall be used for the acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act. The standard application form and any attachments shall require that the following information be provided:

a. Identifying information, including company name and address (or plant or source name if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.

b. A description of the source's processes and products (by two-digit Standard Industrial Classification Code), including any associated with each alternate scenario identified by the applicant.

c. The following emissions-related information shall be submitted to the department:

(1) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(2) Identification and description of air pollution control equipment.

(3) Identification and description of compliance monitoring devices or activities.

(4) Limitations on source operations affecting emissions or any work practice standards, where applicable, for all regulated pollutants.

(5) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to Section 123 of the Act).

(6) Calculations on which the information in 24.105(2)*"c"*(1) to (5) above is based.

(7) Fugitive emissions from a source shall be included in the permit application in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

d. The following air pollution control requirements:

(1) Citation and description of all applicable requirements, and

(2) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

e. Other specific information that may be necessary to implement and enforce other applicable requirements of the Act or of these rules or to determine the applicability of such requirements.

f. An explanation of any proposed exemptions from otherwise applicable requirements.

g. Additional information as determined to be necessary by the director to define alternative operating scenarios identified by the source pursuant to 24.108(12) or to define permit terms and conditions relating to operational flexibility and emissions trading pursuant to 24.108(11) and 567—24.112(455B).

h. A compliance plan that contains the following:

(1) A description of the compliance status of the source with respect to all applicable requirements.

(2) The following statements regarding compliance status: For applicable requirements with which the stationary source is in compliance, a statement that the stationary source will continue to comply with such requirements. For applicable requirements that will become effective during the permit term, a statement that the stationary source will meet such requirements on a timely basis. For requirements for which the stationary source is not in compliance at the time of permit issuance, a narrative description of how the stationary source will achieve compliance with such requirements.

(3) A compliance schedule that contains the following:

1. For applicable requirements with which the stationary source is in compliance, a statement that the stationary source will continue to comply with such requirements. For applicable requirements that will become effective during the permit term, a statement that the stationary source will meet such requirements on a timely basis. A statement that the stationary source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

2. A compliance schedule for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the stationary source will be in noncompliance at the time of permit issuance.

3. This compliance schedule shall resemble and be at least as stringent as any compliance schedule contained in any judicial consent decree or administrative order to which the source is subject. Any compliance schedule shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(4) A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a compliance schedule in the permit.

i. Requirements for compliance certification, including the following:

(1) A certification of compliance for the prior year with all applicable requirements certified by a responsible official consistent with 24.107(4) and Section 114(a)(3) of the Act.

(2) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods.

(3) A schedule for submission of compliance certifications for each compliance period (one year unless required for a shorter time period by an applicable requirement) during the permit term, which shall be submitted annually, or more frequently if required by an underlying applicable requirement or by the director.

(4) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(5) Notwithstanding any other provisions of these rules, for the purposes of submission of compliance certifications, an owner or operator is not prohibited from using monitoring as required by 24.108(3), 24.108(4), or 24.108(5) and incorporated into a Title V operating permit in addition to any specified compliance methods.

j. The compliance plan content requirements specified in these rules shall apply and be included in the acid rain portion of a compliance plan for a Title IV affected source, except as specifically superseded by regulations promulgated under Title IV of the Act, with regard to the schedule and method(s) the source shall use to achieve compliance with the acid rain emissions limitations.

24.105(3) *Hazardous air pollutant early reduction application.* Anyone requesting a compliance extension from a standard issued under Section 112(d) of the Act must submit with the Title V permit application information that complies with the requirements established in 567—paragraph 23.1(4)*"d."*

24.105(4) *Acid rain application content.* The acid rain application content shall be as prescribed in the acid rain rules found in 567—24.128(455B) and 567—24.129(455B).

24.105(5) *More than one Title V operating permit for a stationary source.* Following application made pursuant to 24.105(1), the department may, at its discretion, issue more than one Title V operating permit for a stationary source, provided that the owner or operator does not have, and does not propose to have, a sourcewide emission limit or a sourcewide alternative operating scenario.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.106(455B) Annual Title V emissions inventory.

24.106(1) *Emissions fee.* Fees shall be paid as set forth in 567—Chapter 30.

24.106(2) *Emissions inventory and documentation due dates.* The emissions inventory shall be submitted through the electronic format specified by the department. An owner or operator shall, by March 31, submit documentation of actual emissions for the previous calendar year. The department shall calculate the total statewide Title V emissions for the prior calendar year and make this information available to the public no later than April 30 of each year.

24.106(3) *Correction of errors.* If an owner or operator, or the department, finds an error in a Title V emissions inventory, the owner or operator shall submit to the department revised forms making the necessary corrections to the Title V emissions inventory. Corrected forms shall be submitted as soon as possible after the errors are discovered or upon notification by the department.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.107(455B) Title V permit processing procedures.

24.107(1) *Action on application.*

a. Conditions for action on application. A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(1) The permitting authority has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under 567—24.109(455B);

(2) Except for modifications qualifying for minor permit modification procedures under 567—24.112(455B), the permitting authority has complied with the requirements for public participation under 24.107(6);

(3) The permitting authority has complied with the requirements for notifying and responding to affected states under 24.107(7);

(4) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this chapter;

(5) The Administrator has received a copy of the proposed permit and any notices required under 24.107(7), and has not objected to issuance of the permit under 24.107(7) within the time period specified therein;

(6) If the Administrator has properly objected to the permit pursuant to the provisions of 40 CFR §70.8(d) as amended to July 21, 1992, or 24.107(7), then the permitting authority may issue a permit only after the Administrator's objection has been resolved; and

(7) No permit for a solid waste incineration unit combusting municipal waste subject to the provisions of Section 129(e) of the Act may be issued by an agency, instrumentality, or person that is also responsible, in whole or part, for the design and construction or operation of the unit.

b. Time for action on application. The permitting authority shall take final action on each complete permit application (including a request for permit modification or renewal) within 18 months of receiving a complete application, except in the following instances:

(1) When otherwise provided under Title V or Title IV of the Act for the permitting of affected sources under the acid rain program.

(2) In the case of initial permit applications, the permitting authority may take up to three years from the effective date of the program to take final action on an application.

(3) Any complete permit applications containing an early reduction demonstration under Section 112(i)(5) of the Act shall be acted upon within nine months of receipt of the complete application.

c. Prioritization of applications. The director shall give priority to action on Title V applications involving construction or modification for which a construction permit pursuant to 567—subrule 22.1(1) or Title I of the Act, Parts C and D, is also required. The director also shall give priority to action on Title V applications involving early reduction of hazardous air pollutants pursuant to 567—paragraph 23.1(4)*"d."*

d. Completeness of applications. The department shall promptly provide notice to the applicant of whether the application is complete. Unless the permitting authority requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. If, while processing an application that has been determined to be complete, the permitting authority determines that additional information is necessary to evaluate or take final action on that application, the permitting authority may request in writing such information and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in 567—24.104(455B), shall be in effect from the date the application is determined to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the permitting authority. For modifications processed through minor permit modification procedures, a completeness determination shall not be required.

e. Decision to deny a permit application. The director shall decide to issue or deny the permit. The director shall notify the applicant as soon as practicable that the application has been denied. Upon denial of the permit, the provisions of 24.107(1)*"d"* shall no longer be applicable. The new application shall be regarded as an entirely separate application containing all the required information and shall not depend on references to any documents contained in the previous denied application.

f. Fact sheet. A draft permit and fact sheet shall be prepared by the permitting authority. The fact sheet shall include the rationale for issuance or denial of the permit; a brief description of the type of facility; a summary of the type and quantity of air pollutants being emitted; a brief summary of the legal and factual basis for the draft permit conditions, including references to applicable statutes and rules; a description of the procedures for reaching final decision on the draft permit, including the comment period, the address where comments will be received, and procedures for requesting a hearing and the nature of the hearing; and the name and telephone number for a person to contact for additional information. The permitting authority shall provide the fact sheet to the EPA and to any other person who requests it.

g. Relation to construction permits. The submittal of a complete application shall not affect the requirement that any source have a construction permit under Title I of the Act and 567—subrule 22.1(1).

24.107(2) *Confidential information.* If a source has submitted information with an application under a claim of confidentiality to the department, the source shall also submit a copy of such information directly to the Administrator. Requests for confidentiality must comply with 561—Chapter 2.

24.107(3) *Duty to supplement or correct application.* Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date the source filed a complete application but prior to release of a draft permit. Applicants who have filed a complete application shall have 60 days following notification by the department to file any amendments. Any MACT determinations in permit applications will be evaluated based on the standards, limitations, or levels of technology existing on the date the initial application is deemed complete.

24.107(4) *Certification of truth, accuracy, and completeness.* Any application form, report, or compliance certification submitted pursuant to these rules shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under these rules shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

24.107(5) *Early reduction application evaluation.* Hazardous air pollutant early reduction application evaluation review shall follow the procedures established in 567—paragraph 23.1(4)*"d."*

24.107(6) *Public notice and public participation.*

a. The permitting authority shall provide public notice and an opportunity for public comments, including an opportunity for a hearing, before taking any of the following actions: issuance, denial, or renewal of a permit; or significant modification, revocation, or reissuance of a permit.

b. Notice shall be given by posting of the notice, including the draft permit, for the duration of the public comment period on a public website identified by the permitting authority and designed to give general public notice. Notice also shall be given to persons on a mailing list developed by the permitting authority, including those who request in writing to be on the list. The department may use other means if necessary to ensure adequate notice to the affected public.

c. The public notice shall include the following:

(1) Identification of the Title V source.

(2) Name and address of the permittee.

(3) Name and address of the permitting authority processing the permit.

(4) The activity or activities involved in the permit action.

(5) The emissions change involved in any permit modification.

(6) The air pollutants or contaminants to be emitted.

(7) The time and place of any possible public hearing.

(8) A statement that any person may submit written and signed comments, or may request a public hearing, or both, on the proposed permit. A statement of procedures to request a public hearing shall be included.

(9) The name, address, and telephone number of a person from whom additional information may be obtained. Information entitled to confidential treatment pursuant to Section 114(c) of the Act or state law shall not be released pursuant to this provision. However, the contents of a Title V permit shall not be entitled to protection under Section 114(c) of the Act.

(10) Locations where copies of the permit application and the proposed permit may be reviewed and the times at which they shall be available for public inspection.

d. At least 30 days shall be provided for public comment. Notice of any public hearing shall be given at least 30 days in advance of the hearing.

e. Any person may request a public hearing. A request for a public hearing shall be in writing and shall state the person's interest in the subject matter and the nature of the issues proposed to be raised at the hearing. The director shall hold a public hearing upon finding, on the basis of requests, a significant

degree of relevant public interest in a draft permit. A public hearing also may be held at the director's discretion.

f. The director shall keep a record of the commenters and of the issues raised during the public participation process and shall prepare written responses to all comments received. At the time a final decision is made, the record and copies of the director's responses shall be made available to the public.

g. The permitting authority shall provide notice and opportunity for participation by affected states as provided by 24.107(7).

24.107(7) *Permit review by the EPA and affected states.*

a. Transmission of information to the Administrator. Except as provided in 24.107(2) or waived by the Administrator, the director shall make available to the Administrator each permit application or modification application, including any attachments and compliance plans; each proposed permit; and each final permit. For purposes of this subrule, the application information may be provided in a computer-readable format compatible with the Administrator's national database management system.

b. Review by affected states. The director shall provide notice of each draft permit to any affected state on or before the time that public notice is provided to the public pursuant to 24.107(6), except to the extent that 24.112(3) requires the timing of the notice to be different. If the director refuses to accept a recommendation of any affected state, submitted during the public or affected state review period, then the director shall notify the Administrator and the affected state in writing. The notification shall include the director's reasons for not accepting the recommendation(s). The director shall not be required to accept recommendations that are not based on applicable requirements.

c. EPA objection. No permit for which an application must be transmitted to the Administrator shall be issued if the Administrator objects in writing to its issuance as not in compliance with the applicable requirements within 45 days after receiving a copy of the proposed permit and necessary supporting information under 24.107(7)*"a."* Within 90 days after the date of an EPA objection made pursuant to this rule, the director shall submit a response to the objection, if the objection has not been resolved.

24.107(8) *Public petitions to the Administrator regarding Title V permits.*

a. If the Administrator does not object to a proposed permit, any person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make an objection pursuant to 40 CFR §70.8(d).

b. Any person who petitions the Administrator pursuant to the provisions of 40 CFR §70.8(d) shall notify the department by certified mail of such petition immediately, and in no case more than ten days following the date the petition is submitted to the EPA. Such notice shall include a copy of the petition submitted to the EPA and a separate written statement detailing the grounds for the objection(s) and whether the objection(s) was raised during the public comment period. A petition for review shall not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day EPA review period and prior to the Administrator's objection.

c. If the Administrator objects to the permit as a result of a petition filed pursuant to 40 CFR §70.8(d), then the director shall not issue a permit until the Administrator's objection has been resolved. However, if the director has issued a permit prior to receipt of the Administrator's objection, and the Administrator modifies, terminates, or revokes such permit, consistent with the procedures in 40 CFR §70.7, then the director may thereafter issue only a revised permit that satisfies the Administrator's objection. In any case, the source shall not be in violation of the requirement to have submitted a timely and complete application.

24.107(9) *Application denial.* A Title V permit application may be denied if:

a. The director finds that a source is not in compliance with any applicable requirement; or

b. An applicant knowingly submits false information in a permit application.

24.107(10) *Retention of permit records.* The director shall keep all records associated with each permit for a minimum of five years.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.108(455B) Permit content. Each Title V permit shall include the following elements:

24.108(1) Enforceable emission limitations and standards. Each permit issued pursuant to this chapter shall include emissions limitations and standards, including those operational requirements and limitations that ensure compliance with all applicable requirements at the time of permit issuance.

a. The permit shall specify and reference the origin of and authority for each term or condition and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

b. The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by the Administrator.

c. If an applicable implementation plan allows a determination of an alternative emission limit at a Title V source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the state elects to use such process, then any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

d. If an early reduction demonstration is approved as part of the Title V permit application, the permit shall include enforceable alternative emissions limitations for the source reflecting the reduction that qualified the source for the compliance extension.

e. Fugitive emissions from a source shall be included in the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

f. For all major sources, all applicable requirements for all relevant emissions units in the major source shall be included in the permit.

24.108(2) Permit duration. The permit shall specify a fixed term not to exceed five years except:

a. Permits issued to Title IV affected sources shall have a fixed term of five years.

b. Permits issued to solid waste incineration units combusting municipal waste subject to standards under Section 129(e) of the Act shall have a term not to exceed 12 years. Such permits shall be reviewed every five years.

24.108(3) Monitoring. Each permit shall contain the following requirements with respect to monitoring:

a. All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to Section 114(a)(3) or 504(b) of the Act;

b. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to 24.108(5). Such monitoring shall be determined by application of the "Periodic Monitoring Guidance" (as amended through October 24, 2012) available from the department;

c. As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods; and

d. As required, Compliance Assurance Monitoring (CAM) consistent with 40 CFR Part 64 (as amended through October 22, 1997).

24.108(4) Recordkeeping. With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

a. Records of required monitoring information that include the following:

(1) The date, place as defined in the permit, and time of sampling or measurements;

(2) The date(s) the analyses were performed;

(3) The company or entity that performed the analyses;

(4) The analytical techniques or methods used;

(5) The results of such analyses; and

(6) The operating conditions as existing at the time of sampling or measurement; and

b. Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart and other recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

24.108(5) Reporting. With respect to reporting, the permit shall incorporate all applicable reporting requirements and shall require the following:

a. Submittal of reports of any required monitoring at least every six months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with 24.107(4).

b. Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The director shall define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements.

24.108(6) Risk management plan. Pursuant to Section 112(r)(7)(E) of the Act, if the source is required to develop and register a risk management plan pursuant to Section 112(r) of the Act, the permit shall state the requirement for submission of the plan to the air quality bureau of the department. The permit shall also require filing the plan with appropriate authorities and an annual certification to the department that the plan is being properly implemented.

24.108(7) A permit condition prohibiting emissions exceeding any allowances that the affected source lawfully holds under Title IV of the Act or the regulations promulgated thereunder.

a. No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

b. No limit shall be placed on the number of allowances held by the Title IV affected source. The Title IV-affected source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

c. Any such allowances shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.

d. Any permit issued pursuant to the requirements of these rules and Title V of the Act to a unit subject to the provisions of Title IV of the Act shall include conditions prohibiting all of the following:

(1) Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide held by the owners or operators of the unit or the designated representative of the owners or operators.

(2) Exceedances of applicable emission rates.

(3) The use of any allowance prior to the year for which it was allocated.

(4) Contravention of any other provision of the permit.

24.108(8) Severability clause. The permit shall contain a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

24.108(9) Other provisions. The Title V permit shall contain provisions stating the following:

a. The permittee must comply with all conditions of the Title V permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for a permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

b. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

c. The permit may be modified; revoked, reopened, and reissued; or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

d. The permit does not convey any property rights of any sort, or any exclusive privilege.

e. The permittee shall furnish to the director, within a reasonable time, any information that the director may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee also shall furnish to the director copies of records required to be kept by the permit or, for information claimed

to be confidential, the permittee shall furnish such records directly to the Administrator of the EPA along with a claim of confidentiality.

24.108(10) Fees. The permit shall include a provision to ensure that the Title V permittee pays fees to the director pursuant to 567—30.4(455B).

24.108(11) Emissions trading. A provision of the permit shall state that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

24.108(12) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application and as approved by the director. Such terms and conditions:

a. Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating; and

b. Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of the department's rules.

24.108(13) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

a. Shall include all terms required under 24.108(1) to 24.108(13) and 24.108(15) to determine compliance;

b. Must meet all applicable requirements of the Act and regulations promulgated thereunder and all requirements of this chapter; and

c. May extend the permit shield described in 24.108(18) to all terms and conditions that allow such increases and decreases in emissions.

24.108(14) Federally enforceable requirements.

a. All terms and conditions in a Title V permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Act.

b. Notwithstanding paragraph 24.108(14)*"a,"* the director shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements. Terms and conditions so designated are not subject to the requirements of 40 CFR §70.7 or §70.8.

24.108(15) Compliance requirements. All Title V permits shall contain the following elements with respect to compliance:

a. Consistent with the provisions of 24.108(3) to 24.108(5), compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to ensure compliance with the terms and conditions of the permit. Any documents, including reports, required by a permit shall contain a certification by a responsible official that meets the requirements of 24.107(4).

b. Inspection and entry provisions that require that, upon presentation of proper credentials, the permittee shall allow the director or the director's authorized representative to:

(1) Enter upon the permittee's premises where a Title V source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(3) Inspect, at reasonable times, any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(4) Sample or monitor, at reasonable times, substances or parameters for the purpose of ensuring compliance with the permit or other applicable requirements.

c. A schedule of compliance consistent with 24.105(2)*"h,"*24.105(2)*"j,"* and 24.105(3).

d. Progress reports, consistent with an applicable schedule of compliance and with the provisions of 24.105(2)*"h"* and 24.105(2)*"j,"* to be submitted at least every six months, or more frequently if specified in the applicable requirement or by the department in the permit. Such progress reports shall contain the following:

(1) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones, or compliance were achieved; and

(2) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

e. Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

(1) The frequency of submissions of compliance certifications, which shall not be less than annually.

(2) The means to monitor the compliance of the source with its emissions limitations, standards, and work practices, in accordance with the provisions of all applicable department rules.

(3) A requirement that the compliance certification include: the identification of each term or condition of the permit that is the basis of the certification; the compliance status; whether compliance was continuous or intermittent; the method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with all applicable department rules; and other facts as the director may require to determine the compliance status of the source.

(4) A requirement that all compliance certifications be submitted to the Administrator and the director.

f. Such additional provisions as the director may require.

g. Such additional provisions as may be specified pursuant to Sections 114(a)(3) and 504(b) of the Act.

h. If there is a federal implementation plan applicable to the source, a provision that compliance with the federal implementation plan is required.

24.108(16) Emergency provisions.

a. For the purposes of a Title V permit, an "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

b. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of 24.108(16)*"c"* are met.

c. Requirements for affirmative defense. The affirmative defense of emergency shall be demonstrated by the source through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An emergency occurred and that the permittee can identify the cause(s) of the emergency;

(2) The permitted facility was at the time being properly operated;

(3) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emissions standards or other requirements of the permit; and

(4) The permittee submitted notice of the emergency to the director by certified mail within two working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of 24.108(5)*"b."* This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

d. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

e. This provision is in addition to any emergency or upset provision contained in any applicable requirement.

24.108(17) Permit reopenings.

a. A Title V permit issued to a major source shall require that revisions be made to incorporate applicable standards and regulations adopted by the Administrator pursuant to the Act, provided that:

(1) The reopening and revision on this ground is not required if the permit has a remaining term of less than three years;

(2) The reopening and revision on this ground is not required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions have been extended pursuant to 40 CFR §70.4(b)(10)(i) or (ii) as amended through October 6, 2009; or

(3) The additional applicable requirements are implemented in a general permit that is applicable to the source and the source receives approval for coverage under that general permit.

b. The revisions shall be made as expeditiously as practicable, but not later than 18 months after the promulgation of such standards and regulations. Any permit revision required pursuant to this subrule shall be treated as a permit renewal.

24.108(18) Permit shield. The provisions for a permit shield as set forth in 40 CFR §70.6(f) are adopted by reference.

24.108(19) Emission trades. For emission trades at facilities solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of otherwise applicable requirements, permit applications under this provision are required to include proposed replicable procedures and proposed permit terms that ensure the emission trades are quantifiable and enforceable.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.109(455B) General permits. The provisions for general permits as set forth in 40 CFR §70.6(d) are adopted by reference.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.110(455B) Changes allowed without a Title V permit revision (off-permit revisions).

24.110(1) A source with a Title V permit may make Section 502(b)(10) changes to the permitted installation/facility without a Title V permit revision if:

a. The changes are not major modifications under any provision of any program required by Section 110 through Section 112 of the Act, or major modifications of this chapter;

b. The changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions);

c. The changes are not modifications under any provision of Title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions);

d. The changes are not subject to any requirement under Title IV of the Act (revisions affecting Title IV permitting are addressed in 567—24.140(455B) through 567—24.144(455B));

e. The changes comply with all applicable requirements; and

f. For each such change, the permitted source provides to the department and the Administrator by certified mail, at least 30 days in advance of the proposed change, a written notification, including the following, which shall be attached to the permit by the source, the department, and the Administrator:

(1) A brief description of the change within the permitted facility,

(2) The date on which the change will occur,

(3) Any change in emission as a result of the change,

(4) The pollutants emitted subject to the emissions trade,

(5) If the emissions trading provisions of the state implementation plan are invoked, then the Title V permit requirements with which the source shall comply; a description of how the emission increases and decreases will comply with the terms and conditions of the Title V permit,

(6) A description of the trading of emissions increases and decreases for the purpose of complying with a federally enforceable emissions cap as specified in and in compliance with the Title V permit, and

(7) Any permit term or condition no longer applicable as a result of the change.

24.110(2) Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

24.110(3) Notwithstanding any other part of this rule, the director may, upon review of a notice, require a stationary source to apply for a Title V permit if the change does not meet the requirements of 24.110(1).

24.110(4) The permit shield provided in 24.108(18) shall not apply to any change made pursuant to this rule. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the state implementation plan authorizing the emissions trade.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.111(455B) Administrative amendments to Title V permits.

24.111(1) An administrative permit amendment is a permit revision that does any of the following:

a. Corrects typographical errors;

b. Identifies a change in the name, address, or telephone number of any person identified in the permit, or provides a similar minor administrative change at the source;

c. Requires more frequent monitoring or reporting by the permittee; or

d. Allows for a change in ownership or operational control of a source where the director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the director.

24.111(2) Administrative permit amendments to portions of permits containing provisions pursuant to Title IV of the Act shall be governed by regulations promulgated by the Administrator under Title IV of the Act.

24.111(3) The director shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected states provided that the director designates any such permit revisions as having been made pursuant to this rule.

24.111(4) The director shall submit to the Administrator a copy of each Title V permit revised under this rule.

24.111(5) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.112(455B) Minor Title V permit modifications.

24.112(1) Minor Title V permit modification procedures may be used only for those permit modifications that satisfy all of the following:

a. Do not violate any applicable requirement;

b. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the Title V permit;

c. Do not require or change a case-by-case determination of an emission limitation or other standard, or an increment analysis;

d. Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed in order to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include any federally enforceable emissions caps that the source would assume to avoid classification as a modification under any provision of Title I of the Act; and an alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Act;

e. Are not modifications under any provision of Title I of the Act; and

f. Are not required to be processed as a significant modification under 567—24.113(455B).

24.112(2) An application for minor permit revision shall be on the minor Title V modification application form and shall include at least the following:

a. A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

b. The source's suggested draft permit;

c. Certification by a responsible official, pursuant to 24.107(4), that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

d. Completed forms to enable the department to notify the Administrator and affected states as required by 24.107(7).

24.112(3) The department shall notify the Administrator and affected states within five working days of receipt of a complete permit modification application. Notification shall be in accordance with the provisions of 24.107(7). The department shall promptly send to the Administrator any notification required by 24.107(7).

24.112(4) The director shall not issue a final Title V permit modification until after the Administrator's 45-day review period or until the Administrator has notified the director that the Administrator will not object to issuance of the Title V permit modification, whichever is first. Within 90 days of the director's receipt of an application under the minor permit modification procedures, or 15 days after the end of the Administrator's 45-day review period provided for in 24.107(7), whichever is later, the director shall:

a. Issue the permit modification as proposed;

b. Deny the permit modification application;

c. Determine that the requested permit modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

d. Revise the draft permit modification and transmit to the Administrator the proposed permit modification, as required by 24.107(7).

24.112(5) Source's ability to make change. The source may make the change proposed in its minor permit modification application immediately after it files the application. After the source makes the change allowed by the preceding sentence, and until the director takes any of the actions specified in 24.112(4)*"a"* to 24.112(4)*"c,"* the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

24.112(6) Permit shield. The permit shield under 24.108(18) shall not extend to minor Title V permit revisions.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.113(455B) Significant Title V permit modifications.

24.113(1) Significant Title V modification procedures shall be used for applications requesting Title V permit modifications that do not qualify as minor or administrative amendments. These include, but are not limited to, all significant changes in monitoring permit terms, every relaxation of reporting or recordkeeping permit terms, and any change in the method of measuring compliance with existing requirements.

24.113(2) Significant Title V permit modifications shall meet all requirements of this chapter, including those for applications, public participation, review by affected states, and review by the Administrator, as those requirements that apply to Title V permit issuance and renewal.

24.113(3) Unless the director determines otherwise, review of significant Title V permit modification applications shall be completed within nine months of receipt of a complete application.

24.113(4) For a change that is subject to the requirements for a significant permit modification (pursuant to 567—24.113(455B)), the permittee shall submit to the department an application for a significant permit modification not later than three months after commencing operation of the changed source unless the existing Title V permit would prohibit such construction or change in operation, in which event the operation of the changed source may not commence until the department revises the permit.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.114(455B) Title V permit reopenings. The provisions for Title V permit reopenings set forth in 40 CFR §70.7(f) are adopted by reference.
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.115(455B) Suspension, termination, and revocation of Title V permits.

24.115(1) Permits may be terminated, modified, revoked, or reissued for cause. The following examples shall be considered cause for the suspension, modification, revocation, or reissuance of a Title V permit:

a. The director has reasonable cause to believe that the permit was obtained by fraud or misrepresentation.

b. The person applying for the permit failed to disclose a material fact required by the permit application form or the rules applicable to the permit, of which the applicant had or should have had knowledge at the time the application was submitted.

c. The terms and conditions of the permit have been or are being violated.

d. The permittee has failed to pay the Title V permit fees.

e. The permittee has failed to pay an administrative, civil, or criminal penalty imposed for violations of the permit.

24.115(2) If the director suspends, terminates, or revokes a Title V permit under this rule, the notice of such action shall be served on the applicant or permittee by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the action sought, and the proceeding shall in all other respects comply with the requirements of 561—7.16(17A,455A).
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.116(455B) Title V permit renewals.

24.116(1) An application for Title V permit renewal shall be subject to the same procedural requirements that apply to initial permit issuance, including those for public participation and review by the Administrator and affected states.

24.116(2) Except as provided in 567—24.104(455B), permit expiration terminates a source's right to operate unless a timely and complete application for renewal has been submitted in accordance with 567—24.105(455B).
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.117 to **24.119** Reserved.

567—24.120(455B) Acid rain program—definitions. The terms used in 567—24.120(455B) through 567—24.146(455B) shall have the meanings set forth in Title IV of the Act, 42 U.S.C. §7401, et seq., as amended through November 15, 1990, and in this rule. The definitions set forth in 40 CFR Part 72 as amended through March 28, 2011, and 40 CFR Part 76 as amended through October 15, 1999, are adopted by reference.

"Department" means the department of natural resources and is the state acid rain permitting authority.

"Electronic format," "electronic submittal," and *"electronic submittal format"* mean the same as defined in 567— 22.1(455B).

"Title V operating permit" means a permit issued under 567—24.100(455B) through 567—24.116(455B) implementing Title V of the Act.
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.121 Reserved.

567—24.122(455B) Applicability. The applicability of the acid rain program as set forth in 40 CFR §72.6 is adopted by reference. A certifying official of any unit may petition the Administrator for a determination of applicability under 40 CFR §72.6(c).
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.123(455B) Acid rain exemptions.

24.123(1) *New unit exemption.* The new unit exemption, as specified in 40 CFR §72.7, except for 40 CFR §72.7(c)(1)(i), is adopted by reference. This exemption applies to new utility units.

24.123(2) *Retired unit exemption.* The retired unit exemption, as specified in 40 CFR §72.8, is adopted by reference. This exemption applies to any affected unit that is permanently retired.

24.123(3) *Industrial utility-unit exemption.* The industrial utility-unit exemption, as specified in 40 CFR §72.14, is adopted by reference. This exemption applies to any noncogeneration utility unit.
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.124 Reserved.

567—24.125(455B) Standard requirements.

24.125(1) *Permit requirements.* Permit requirements as set forth in 40 CFR §72.9(a) are adopted by reference.

24.125(2) *Monitoring requirements.* Monitoring requirements as set forth in 40 CFR §72.9(b) are adopted by reference.

24.125(3) *Sulfur dioxide requirements.* Sulfur dioxide requirements as set forth in 40 CFR §72.9(c) are adopted by reference.

24.125(4) *Nitrogen oxides requirements.* Nitrogen oxides requirements as set forth in 40 CFR §72.9(d) are adopted by reference.

24.125(5) *Excess emissions requirements.* Excess emissions requirements as set forth in 40 CFR §72.9(e) are adopted by reference.

24.125(6) *Recordkeeping and reporting requirements.* Recordkeeping and reporting requirements as set forth in 40 CFR §72.9(f) are adopted by reference.

24.125(7) *Liability.* Liability provisions as set forth in 40 CFR §72.9(g) are adopted by reference.

24.125(8) *Effect on other authorities.* The provisions for the effect on other authorities as set forth in 40 CFR §72.9(h) is adopted by reference.
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.126(455B) Designated representative—submissions. The provisions for submission by designated representatives as set forth in 40 CFR 72, Subpart B, are adopted by reference.
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.127(455B) Designated representative—objections. The provisions for disputes regarding a designated representative as set forth in 40 CFR §72.25 are adopted by reference.
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.128(455B) Acid rain applications—requirement to apply. The requirement to apply for an acid rain permit as set forth in 40 CFR §72.30 is adopted by reference.

24.128(1) *Duty to reapply.* The duty to reapply, as set forth in 40 CFR §72.30(c), is adopted by reference.

24.128(2) *Submission of copies.* The designated representative shall submit the application in the electronic format specified by the department, if electronic submittal is provided.
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.129(455B) Information requirements for acid rain permit applications. A complete acid rain permit application shall be submitted on a form approved by the department and include the following elements:

24.129(1) Identification of the affected source for which the permit application is submitted;

24.129(2) Identification of each affected unit at the source for which the permit application is submitted;

24.129(3) A complete compliance plan for each unit, in accordance with 567—24.131(455B);

24.129(4) The standard requirements under 567—24.125(455B); and

24.129(5) If the unit is a new unit, the date that the unit has commenced or will commence operation and the deadline for monitor certification.
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.130(455B) Acid rain permit application shield and binding effect of permit application. The provisions for an acid rain permit application shield and the binding effect of a permit application as set forth in 40 CFR §72.32 are adopted by reference.
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.131(455B) Acid rain compliance plan and compliance options—general. The general provisions for an acid rain compliance plan and compliance options as set forth in 40 CFR §72.40 are adopted by reference.
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.132 Reserved.

567—24.133(455B) Acid rain permit contents—general. The general provisions for acid rain permit contents as set forth in 40 CFR §72.50 are adopted by reference.
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.134(455B) Acid rain permit shield. The general provisions for an acid rain permit shield as set forth in 40 CFR §72.51 are adopted by reference.
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.135(455B) Acid rain permit issuance procedures—general. The department will issue or deny all acid rain permits in accordance with 567—24.100(455B) through 567—24.116(455B), including the completeness determination, draft permit, administrative record, statement of basis, public notice and comment period, public hearing, proposed permit, permit issuance, permit revision, and appeal procedures as amended by 567—24.135(455B) through 567—24.145(455B).
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.136(455B) Acid rain permit issuance procedures—completeness. The department will submit a written notice of application completeness to the Administrator within ten working days following a determination by the department that the acid rain permit application is complete.
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.137(455B) Acid rain permit issuance procedures—statement of basis.

24.137(1) The statement of basis will briefly set forth significant factual, legal, and policy considerations on which the department relied in issuing or denying the draft acid rain permit.

24.137(2) The statement of basis will include the reasons, and supporting authority, for approval or disapproval of any compliance options requested in the permit application, including references to applicable statutory or regulatory provisions and to the administrative record.

24.137(3) The department will submit to the Administrator a copy of the draft acid rain permit and the statement of basis and all other relevant portions of the Title V operating permit that may affect the draft acid rain permit.
[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.138(455B) Issuance of acid rain permits.

24.138(1) Proposed permit. After the close of the public comment and EPA 45-day review period (pursuant to 24.107(6) and 24.107(7)), the department will address any objections by the Administrator, incorporate all necessary changes and issue or deny the acid rain permit.

24.138(2) The department will submit the proposed acid rain permit or denial of a proposed acid rain permit to the Administrator in accordance with 567—24.100(455B) through 567—24.116(455B), the provisions of which shall be treated as applying to the issuance or denial of a proposed acid rain permit.

24.138(3) Following the Administrator's review of the proposed acid rain permit or denial of a proposed acid rain permit, the department, or under 40 CFR §70.8(c), the Administrator, will incorporate any required changes and issue or deny the acid rain permit in accordance with 567—24.133(455B) and 567—24.134(455B).

24.138(4) No acid rain permit including a draft or proposed permit shall be issued unless the Administrator has received a certificate of representation for the designated representative of the source in accordance with Subpart B of 40 CFR Part 72.

24.138(5) Permit issuance deadline and effective date.

a. and *b.* Reserved.

c. Each acid rain permit issued in accordance with 24.138(5)*"a"* shall take effect by the later of January 1, 2000, or, where the permit governs a unit under 24.122(1)*"c,"* the deadline for monitor certification under 567—25.2(455B).

d. Each acid rain permit shall have a term of five years commencing on its effective date.

e. An acid rain permit shall be binding on any new owner or operator or designated representative of any source or unit governed by the permit.

24.138(6) Each acid rain permit shall contain all applicable acid rain requirements, shall be a portion of the Title V operating permit that is complete and segregable from all other air quality requirements, and shall not incorporate information contained in any other documents, other than documents that are readily available.

24.138(7) Invalidation of the acid rain portion of a Title V operating permit shall not affect the continuing validity of the rest of the Title V operating permit, nor shall invalidation of any other portion of the Title V operating permit affect the continuing validity of the acid rain portion of the permit.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.139(455B) Acid rain permit appeal procedures.

24.139(1) Appeals of the acid rain portion of a Title V operating permit issued by the department that do not challenge or involve decisions or actions of the Administrator under 40 CFR Parts 72, 73, 75, 76, 77, and 78 and Sections 407 and 410 of the Act and regulations implementing Sections 407 and 410 shall be conducted according to the procedures in Iowa Code chapter 17A and 561—Chapter 7, as adopted by reference in 567—Chapter 7. Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the Administrator shall follow the procedures under 40 CFR Part 78, as amended through March 20, 2017, and Section 307 of the Act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.

24.139(2) No administrative appeal or judicial appeal of the acid rain portion of a Title V operating permit shall be allowed more than 30 days following respective issuance of the acid rain portion of the permit that is subject to administrative appeal or issuance of the final agency action subject to judicial appeal.

24.139(3) The Administrator may intervene as a matter of right in any state administrative appeal of an acid rain permit or denial of an acid rain permit.

24.139(4) No administrative appeal concerning an acid rain requirement shall result in a stay of the following requirements:

a. The allowance allocations for any year during which the appeal proceeding is pending or is being conducted;

b. Any standard requirement under 567—24.125(455B);

c. The emissions monitoring and reporting requirements applicable to the affected units at an affected source under 567—25.2(455B);

d. Uncontested provisions of the decision on appeal; and

e. The terms of a certificate of representation submitted by a designated representative under Subpart B of 40 CFR Part 72.

24.139(5) The department will serve written notice on the Administrator of any state administrative or judicial appeal concerning an acid rain provision of any Title V operating permit or denial of an acid rain portion of any Title V operating permit within 30 days of the filing of the appeal.

24.139(6) The department will serve written notice on the Administrator of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an acid rain permit. Following any such determination or order, the Administrator will have an opportunity to review and veto the acid rain permit or revoke the permit for cause in accordance with 24.107(7) and 24.107(8).

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.140(455B) Permit revisions—general.

24.140(1) 567—24.140(455B) through 567—24.145(455B) shall govern revisions to any acid rain permit issued by the department.

24.140(2) A permit revision may be submitted for approval at any time. No permit revision shall affect the term of the acid rain permit to be revised. No permit revision shall excuse any violation of an acid rain program requirement that occurred prior to the effective date of the revision.

24.140(3) The terms of the acid rain permit shall apply while the permit revision is pending.

24.140(4) Any determination or interpretation by the state (including the department or a state court) modifying or voiding any acid rain permit provision shall be subject to review by the Administrator in accordance with 40 CFR §70.8(c), as applied to permit modifications, unless the determination or interpretation is an administrative amendment approved in accordance with 567—24.143(455B).

24.140(5) The standard requirements of 567—24.125(455B) shall not be modified or voided by a permit revision.

24.140(6) Any permit revision involving incorporation of a compliance option that was not submitted for approval and comment during the permit issuance process, or involving a change in a compliance option that was previously submitted, shall meet the requirements for applying for such compliance option under 567—24.131(455B) and Section 407 of the Act and regulations implementing Section 407 of the Act.

24.140(7) For permit revisions not described in 567—24.141(455B) and 567—24.142(455B), the department may, in its discretion, determine which of these rules is applicable.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.141(455B) Permit modifications.

24.141(1) Permit modifications shall follow the permit issuance requirements of 567—24.135(455B) through 567—24.139(455B) and 24.113(2) and 24.113(3).

24.141(2) For purposes of applying 24.141(1), a permit modification shall be treated as an acid rain permit application, to the extent consistent with 567—24.140(455B) through 567—24.145(455B).

24.141(3) The following permit revisions are permit modifications:

a. Relaxation of an excess emission offset requirement after approval of the offset plan by the Administrator;

b. Incorporation of a final nitrogen oxides alternative emissions limitation following a demonstration period; and

c. Reserved.

d. At the option of the designated representative submitting the permit revision, the permit revisions listed in 24.142(2).

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.142(455B) Fast-track modifications. The requirements for fast-track modifications as set forth in 40 CFR §72.82 are adopted by reference.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.143(455B) Administrative permit amendment.

24.143(1) Administrative amendments shall follow the procedures set forth in 567—24.111(455B). The department will submit the revised portion of the permit to the Administrator within ten working days after the date of final action on the request for an administrative amendment.

24.143(2) The following permit revisions are administrative amendments:

a. Activation of a compliance option conditionally approved by the department, provided that all requirements for activation under 24.131(3) are met;

b. Changes in the designated representative or alternative designated representative, provided that a new certificate of representation is submitted to the Administrator in accordance with Subpart B of 40 CFR Part 72;

c. Correction of typographical errors;

d. Changes in names, addresses, or telephone numbers;

e. Changes in the owners or operators, provided that a new certificate of representation is submitted within 30 days to the Administrator and the department in accordance with Subpart B of 40 CFR Part 72;

f. Termination of a compliance option in the permit, provided that all requirements for termination under 24.131(4) shall be met and this procedure shall not be used to terminate a repowering plan after December 31, 1999;

g. Changes in the date, specified in a new unit's acid rain permit, of commencement of operation or the deadline for monitor certification; provided that they are in accordance with 567—24.125(455B);

h. The addition of or change in a nitrogen oxides alternative emissions limitation demonstration period, provided that the requirements of regulations implementing Section 407 of the Act are met; and

i. Incorporation of changes that the Administrator has determined to be similar to those in 24.143(2)*"a"* through 24.143(2)*"h."*

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.144(455B) Automatic permit amendment. The provisions for automatic permit amendments as set forth in 40 CFR §72.84 are adopted by reference.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.145(455B) Permit reopenings. The provisions for permit reopenings as set forth in 40 CFR §72.85 are adopted by reference.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.146(455B) Compliance certification—annual report.

24.146(1) Applicability and deadline. For each calendar year in which a unit is subject to the acid rain emissions limitations, the designated representative of the source at which the unit is located shall submit to the Administrator and the department, within 60 days after the end of the calendar year, an annual compliance certification report for the unit in compliance with 40 CFR §72.90.

24.146(2) The submission of complete compliance certifications in accordance with 24.146(1) and 567—25.2(455B) shall be deemed to satisfy the requirement to submit compliance certifications under 24.108(15)*"e"* with regard to the acid rain portion of the source's Title V operating permit.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.147 Reserved.

567—24.148(455B) Sulfur dioxide opt-ins. The provisions for sulfur dioxide opt-ins as set forth in 40 CFR Part 74 as amended through April 28, 2006, are adopted by reference.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

567—24.149 to **24.299** Reserved.

567—24.300(455B) Operating permit by rule for small sources. Except as provided in 24.300(11), any source that otherwise would be required to obtain a Title V operating permit may instead register for an operation permit by rule for small sources. Sources that comply with the requirements contained

in this rule will be deemed to have an operating permit by rule for small sources. Sources that comply with this rule will be considered to have federally enforceable limits so that their potential emissions are less than the major source thresholds for regulated air pollutants and hazardous air pollutants as defined in 567—24.100(455B).

24.300(1) *Definitions for operating permit by rule for small sources.* For the purposes of 567—24.300(455B), the definitions shall be the same as the definitions found in 567—24.100(455B).

24.300(2) *Registration for operating permit by rule for small sources.*

a. Except as provided in 24.300(3) and 24.300(11), any person who owns or operates a stationary source and meets the following criteria may register for an operating permit by rule for small sources:

(1) The potential to emit air contaminants is equal to or in excess of the threshold for a major stationary source of regulated air pollutants or hazardous air pollutants, and

(2) For every 12-month rolling period, the actual emissions of the stationary source are less than or equal to the emission limitations specified in 24.300(6).

b. Eligibility for an operating permit by rule for small sources does not eliminate the source's responsibility to meet any and all applicable federal requirements including, but not limited to, a MACT standard.

c. Nothing in this rule shall prevent any stationary source that has had a Title V operating permit from qualifying to comply with this rule in the future in lieu of maintaining an application for a Title V operating permit or upon rescission of a Title V operating permit if the owner or operator demonstrates that the stationary source is in compliance with the emissions limitations in 24.300(6).

d. The department reserves the right to require proof that the expected emissions from the stationary source, in conjunction with all other emissions, will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 22.

24.300(3) *Exceptions to eligibility.*

a. Any affected source subject to the provisions of Title IV of the Act or any solid waste incinerator unit required to obtain a Title V operating permit under Section 129(e) of the Act is not eligible for an operating permit by rule for small sources.

b. Sources that meet the registration criteria established in 24.300(2)*"a"* and meet all applicable requirements of 567—24.300(455B), and are subject to a standard or other requirement under 567—subrule 23.1(2) (standards of performance for new stationary sources) or Section 111 of the Act are eligible for an operating permit by rule for small sources. These sources shall be required to obtain a Title V operating permit when the exemptions specified in 24.102(1) or 24.102(2) no longer apply.

c. Sources that meet the registration criteria established in 24.300(2)*"a"* and meet all applicable requirements of 567—24.300(455B), and are subject to a standard or other requirement under 567—subrule 23.1(3) (emissions standards for hazardous air pollutants), 567—subrule 23.1(4) (emissions standards for hazardous air pollutants for source categories), or Section 112 of the Act are eligible for an operating permit by rule for small sources. These sources shall be required to obtain a Title V operating permit when the exemptions specified in 24.102(1) or 24.102(2) no longer apply.

24.300(4) *Stationary source with de minimus emissions.* Stationary sources with de minimus emissions must submit the standard registration form and must meet and fulfill all registration and reporting requirements as found in 24.300(8). Only the recordkeeping and reporting provisions listed in 24.300(4)*"b"* shall apply to a stationary source with de minimus emissions or operations as specified in 24.300(4)*"a"*:

a. De minimus emission and usage limits. For the purpose of this rule, a stationary source with de minimus emissions means:

(1) In every 12-month rolling period, the stationary source emits less than or equal to the following quantities of emissions:

1. 5 tons per year of a regulated air pollutant (excluding hazardous air pollutants (HAPs)), and
2. 2 tons per year of a single HAP, and
3. 5 tons per year of any combination of HAPs.

(2) In every 12-month rolling period, at least 90 percent of the stationary source's emissions are associated with an operation for which the throughput is less than or equal to one of the quantities specified in numbered paragraphs "1" to "9" below:

1. 1,400 gallons of any combination of solvent-containing materials but no more than 550 gallons of any one solvent-containing material, provided that the materials do not contain the following: methyl chloroform (1,1,1-trichloroethane), methylene chloride (dichloromethane), tetrachloroethylene (perchloroethylene), or trichloroethylene;

2. 750 gallons of any combination of solvent-containing materials where the materials contain the following: methyl chloroform (1,1,1-trichloroethane), methylene chloride (dichloromethane), tetrachloroethylene (perchloroethylene), or trichloroethylene, but not more than 300 gallons of any one solvent-containing material;

3. 365 gallons of solvent-containing material used at a paint spray unit(s);

4. 4,400,000 gallons of gasoline dispensed from equipment with Phase I and II vapor recovery systems;

5. 470,000 gallons of gasoline dispensed from equipment without Phase I and II vapor recovery systems;

6. 1,400 gallons of gasoline combusted;

7. 16,600 gallons of diesel fuel combusted;

8. 500,000 gallons of distillate oil combusted; or

9. 71,400,000 cubic feet of natural gas combusted.

b. Recordkeeping for de minimus sources. Upon registration with the department, the owner or operator of a stationary source eligible to register for an operating permit by rule for small sources shall comply with all applicable recordkeeping requirements of this rule. The recordkeeping requirements of this rule shall not replace any recordkeeping requirement contained in a construction permit or in a local, state, or federal rule or regulation.

(1) De minimus sources shall always maintain an annual log of each raw material used and its amount. The annual log and all related material safety data sheets (MSDS) for all materials shall be maintained for a period of not less than the most current five years. The annual log will begin on the date the small source operating permit application is submitted, then on an annual basis, based on a calendar year.

(2) Within 30 days of a written request by the state or EPA, the owner or operator of a stationary source not maintaining records pursuant to 24.300(7) shall demonstrate that the stationary source's emissions or throughput is not in excess of the applicable quantities set forth in 24.300(4)*"a."*

24.300(5) *Provision for air pollution control equipment.* The owner or operator of a stationary source may take into account the operation of air pollution control equipment on the capacity of the source to emit an air contaminant if the equipment is required by federal, state, or local air pollution control agency rules and regulations or permit terms and conditions that are federally enforceable. The owner or operator of the stationary source shall maintain and operate such air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.

24.300(6) *Emission limitations.*

a. No stationary source subject to this rule shall emit in every 12-month rolling period more than the following quantities of emissions:

(1) 50 percent of the major source thresholds for regulated air pollutants (excluding hazardous air pollutants), and

(2) 5 tons per year of a single hazardous air pollutant, and

(3) 12.5 tons per year of any combination of hazardous air pollutants.

b. The owner or operator of a stationary source subject to this rule shall obtain any necessary permits prior to commencing any physical or operational change or activity that will result in actual emissions that exceed the limits specified in 24.300(6)*"a."*

24.300(7) *Recordkeeping requirements for non-de minimus sources.* Upon registration with the department the owner or operator of a stationary source eligible to register for an operating permit by rule for small stationary sources shall comply with all applicable recordkeeping requirements in this

rule. The recordkeeping requirements of this rule shall not replace any recordkeeping requirement contained in any operating permit, a construction permit, or in a local, state, or federal rule or regulation.

a. A stationary source previously covered by the provisions in 24.300(4) shall comply with the applicable provisions of 24.300(7) (recordkeeping requirements) and 24.300(8) (reporting requirements) if the stationary source exceeds the quantities specified in 24.300(4)*"a."*

b. The owner or operator of a stationary source subject to this rule shall keep and maintain records, as specified in 24.300(7)*"c"* below, for each permitted emission unit and each piece of emission control equipment sufficient to determine actual emissions. Such information shall be maintained on site for five years and be made available to local, state, or EPA staff upon request.

c. Recordkeeping requirements for emission units and emission control equipment. Recordkeeping requirements for emission units are specified in 24.300(7)*"c"*(1) through 24.300(7)*"c"*(4). Recordkeeping requirements for emission control equipment are specified in 24.300(7)*"c"*(5).

(1) Coating/solvent emission unit. The owner or operator of a stationary source subject to this rule that contains a coating/solvent emission unit not permitted under 567—subrule 22.8(1) (permit by rule for spray booths) or uses a coating, solvent, ink or adhesive shall keep and maintain the following records:

1. A current list of all coatings, solvents, inks and adhesives in use. This list shall include MSDS, manufacturer's product specifications, and material VOC content reports for each solvent (including solvents used in cleanup and surface preparation), coating, ink, and adhesive used and show at least the product manufacturer, product name and code, VOC, and hazardous air pollutant content;
2. A description of any equipment used during and after coating/solvent application, including type, make, and model; maximum design process rate or throughput; and control device(s) type and description (if any);
3. A monthly log of the consumption of each solvent (including solvents used in cleanup and surface preparation), coating, ink, and adhesive used; and
4. All purchase orders, invoices, and other documents to support information in the monthly log.

(2) Organic liquid storage unit. The owner or operator of a stationary source subject to this rule that contains an organic liquid storage unit shall keep and maintain the following records:

1. A monthly log identifying the liquid stored and monthly throughput; and
2. Information on the tank design and specifications including control equipment.

(3) Combustion emission unit. The owner or operator of a stationary source subject to this rule that contains a combustion emission unit shall keep and maintain the following records:

1. Information on equipment type, make and model, maximum design process rate or maximum power input/output, minimum operating temperature (for thermal oxidizers) and capacity and all source test information; and
2. A monthly log of fuel type, fuel usage, fuel heating value (for nonfossil fuels; in terms of Btu/lb or Btu/gal), and percent sulfur for fuel oil and coal.

(4) General emission unit. The owner or operator of a stationary source subject to this rule that contains an emission unit not included in 24.300(7)*"c"*(1), (2), or (3) shall keep and maintain the following records:

1. Information on the process and equipment including the following: equipment type, description, make, and model and maximum design process rate or throughput;
2. A monthly log of operating hours and each raw material used and its amount; and
3. Purchase orders, invoices, or other documents to support information in the monthly log.

(5) Emission control equipment. The owner or operator of a stationary source subject to this rule that contains emission control equipment shall keep and maintain the following records:

1. Information on equipment type and description, make and model, and emission units served by the control equipment;
2. Information on equipment design including, where applicable: pollutant(s) controlled; control effectiveness; maximum design or rated capacity; other design data as appropriate including any available source test information and manufacturer's design/repair/maintenance manual; and

3. A monthly log of hours of operation including notation of any control equipment breakdowns, upsets, repairs, or maintenance and any other deviations from design parameters.

24.300(8) *Registration and reporting requirements.*

a. Duty to apply. Any person who owns or operates a source otherwise required to obtain a Title V operating permit and that would be eligible for an operating permit by rule for small sources must either register for an operating permit by rule for small sources or apply for a Title V operating permit. Any source determined not to be eligible for an operating permit by rule for small sources, and operating without a valid Title V operating permit, shall be subject to enforcement action for operation without a Title V operating permit, except as provided for in the application shield provisions contained in 567—24.104(455B). For each source registering for an operating permit by rule for small sources, the owner or operator or designated representative, where applicable, shall present or mail to the Air Quality Bureau, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319, one original and one copy of a timely and complete registration form in accordance with this rule.

(1) Timely registration. Each source registering for an operating permit by rule for small sources shall submit a registration form:

1. By August 1, 1996, if the source became subject to 567—24.101(455B) on or before August 1, 1995, unless otherwise required to obtain a Title V permit under 567—24.101(455B).

2. Within 12 months of becoming subject to 567—24.101(455B) (the requirement to obtain a Title V operating permit) for a new source or a source that would otherwise become subject to the Title V permit requirement after August 1, 1995.

(2) Complete registration form. To be deemed complete, the registration form must provide all information required pursuant to 24.300(8)*"b."*

(3) Duty to supplement or correct registration. Any registrant who fails to submit any relevant facts or who has submitted incorrect information in an operating permit by rule for small sources registration shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, the registrant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete registration.

(4) Certification of truth, accuracy, and completeness. Any registration form, report, or supplemental information submitted pursuant to these rules shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under these rules shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

b. At the time of registration for an operating permit by rule for small sources each owner or operator of a stationary source shall submit to the department a standard registration form and required attachments. To register for an operating permit by rule for small sources, applicants shall complete the registration form and supply all information required by the filing instructions. The information submitted must be sufficient to evaluate the source, its registration, and predicted actual emissions from the source and to determine whether the source is subject to the exceptions listed in 24.300(3). The standard registration form and attachments shall require that the following information be provided:

(1) Identifying information, including company name and address (or plant or source name if different from the company name), owner's name and responsible official, and telephone number and names of plant site manager or contact;

(2) A description of source processes and products;

(3) The following emissions-related information shall be submitted to the department on the standard registration form:

1. The total actual emissions of each regulated air pollutant. Actual emissions shall be reported for one contiguous 12-month period within the 18 months preceding submission of the registration to the department;

2. Identification and description of each emission unit with the potential to emit a regulated air pollutant;

3. Identification and description of air pollution control equipment;

4. Limitations on source operations affecting emissions or any work practice standards, where applicable, for all regulated pollutants;

5. Fugitive emissions sources shall be included in the registration form in the same manner as stack emissions if the source is one of the source categories defined as a stationary source category in rule 567—24.100(455B);

(4) Requirements for certification. Facilities that claim to meet the requirements set forth in this rule to qualify for an operating permit by rule for small sources must submit to the department, with a complete registration form, a written statement as follows:

"I certify that all equipment at the facility with a potential to emit any regulated pollutant is included in the registration form, and submitted to the department as required in 24.300(8)*"b."* I understand that the facility will be deemed to have been granted an operating permit by rule for small sources under the terms of 567—24.300(455B) only if all applicable requirements of 567—24.300(455B) are met and if the registration is not denied by the director under 567—24.300(11). This certification is based on information and belief formed after reasonable inquiry; the statements and information in the document are true, accurate, and complete." The certification must be signed by one of the following individuals:

For corporations, a principal executive officer of at least the level of vice president, or a responsible official as defined in 567—24.100(455B).

For partnerships, a general partner.

For sole proprietorships, the proprietor.

For municipal, state, county, or other public facilities, the principal executive officer or the ranking elected official.

24.300(9) *Construction permits issued after registration for an operating permit by rule for small sources.* This rule shall not relieve any stationary source from complying with requirements pertaining to any otherwise applicable construction permit, or to replace a condition or term of any construction permit, or any provision of a construction permitting program. This does not preclude issuance of any construction permit with conditions or terms necessary to ensure compliance with this rule.

a. If the issuance of a construction permit acts to make the source no longer eligible for an operating permit by rule for small sources, the source shall, within 12 months of issuance of the construction permit, submit an application for a Title V operating permit.

b. If the issuance of a construction permit does not prevent the source from continuing to be eligible to operate under an operating permit by rule for small sources, the source shall, within 30 days of issuance of a construction permit, provide to the department the information as listed in 24.300(8)*"b"* for the new or modified source.

24.300(10) *Violations.*

a. Failure to comply with any of the applicable provisions of this rule shall constitute a violation of this rule.

b. A stationary source subject to this rule shall be subject to applicable federal requirements for a major source, including 567—24.101(455B) through 567—24.116(455B) when the conditions specified in either subparagraph (1) or (2) below, occur:

(1) Commencing on the first day following every 12-month rolling period in which the stationary source exceeds a limit specified in 24.300(6), or

(2) Commencing on the first day following every 12-month rolling period in which the owner or operator cannot demonstrate that the stationary source is in compliance with the limits in 24.300(6).

24.300(11) *Suspension, termination, and revocation of an operating permit by rule for small sources.*

a. Registrations may be terminated, modified, revoked, or reissued for cause. The following examples shall be considered cause for the suspension, modification, revocation, or reissuance of an operating permit by rule for small sources:

(1) The director has reasonable cause to believe that the operating permit by rule for small sources was obtained by fraud or misrepresentation.

(2) The person registering for the operating permit by rule for small sources failed to disclose a material fact required by the registration form or the rules applicable to the operating permit by rule for

small sources, of which the applicant had or should have had knowledge at the time the registration form was submitted.

(3) The terms and conditions of the operating permit by rule for small sources have been or are being violated.

(4) The owner or operator of the source has failed to pay an administrative, civil or criminal penalty for violations of the operating permit by rule for small sources.

b. If the director suspends, terminates, or revokes an operating permit by rule for small sources under this rule, the notice of such action shall be served on the applicant by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the action sought, and the proceeding shall in all other respects comply with the requirements of 561—7.16(17A,455A).

24.300(12) *Change of ownership.* The new owner shall notify the department in writing no later than 30 days after the change of ownership of equipment covered by an operating permit by rule for small sources. The notification to the department shall be mailed to Air Quality Bureau, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319, and shall include the following information:

a. The date of ownership change; and

b. The name, address, and telephone number of the responsible official, the contact person, and the owner of the equipment both before and after the change of ownership.

[**ARC 7953C**, IAB 5/15/24, effective 6/19/24]

These rules are intended to implement Iowa Code sections 455B.133 and 455B.134.

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CHAPTER 25
MEASUREMENT OF EMISSIONS

[Prior to 7/1/83, DEQ Ch 7]
[Prior to 12/3/86, Water, Air and Waste Management[900]]

Rescinded **ARC 7954C**, IAB 5/15/24, effective 6/19/24

CHAPTER 26
PREVENTION OF AIR POLLUTION EMERGENCY EPISODES

[Prior to 7/1/83, DEQ Ch 8]
[Prior to 12/3/86, Water, Air and Waste Management[900]]

Rescinded **ARC 7955C**, IAB 5/15/24, effective 6/19/24

CHAPTER 27
CERTIFICATE OF ACCEPTANCE

[Prior to 7/1/83, DEQ Ch 9]
[Prior to 12/3/86, Water, Air and Waste Management[900]]

567—27.1(455B) General. Political subdivisions shall meet the conditions specified in this chapter if the political subdivisions pursue acceptance of the local air pollution control program and obtain a certificate of acceptance from the director, as provided in Iowa Code section 455B.145.
[**ARC 7956C**, IAB 5/15/24, effective 6/19/24]

567—27.2(455B) Certificate of acceptance. The governing body of a political subdivision may make application for a certificate of acceptance.

27.2(1) *Forms.* Each application for a certificate of acceptance shall be submitted to the director on forms available from the department.

27.2(2) *Processing of applications.* The director shall make an investigation of the program or portion of a program covered by an application for a certificate of acceptance to evaluate conformance with applicable provisions of Iowa Code section 455B.145.

a. Granting of certificate. A certificate of acceptance may be granted by the director if the program is consistent with Iowa Code chapter 455B, division II, and the rules established in this chapter.

b. Review of program. The director shall provide for a review of the program activities at intervals as the director prescribes for evaluation of the continuation of the certificate. Following the review, the director may continue the certificate in effect or suspend the certificate, in conformance with Iowa Code sections 455B.134(12) and 455B.145.
[**ARC 7956C**, IAB 5/15/24, effective 6/19/24]

567—27.3(455B) Ordinance or regulations.

27.3(1) *Legal aspects.* Each local control program considered for a certificate of acceptance must be conducted under an appropriate ordinance or set of regulations, as specified in Iowa Code section 455B.145 and this rule.

27.3(2) *Legal authority.* The ordinance or regulations shall provide authority to the local control agency as follows:

a. Scope of control. Authority and responsibility for air pollution control within the entire area included in the jurisdiction involved.

b. Degree of control. Authority to prevent, abate and control air pollution from all sources within its area of jurisdiction, in accordance with requirements consistent with the provisions specified in these rules.

c. Enforcement. Legal authority to enforce its requirements and standards.

d. Inspection and tests. Legal authority to make inspections, perform emission tests and obtain data, reports or other information relating to sources of air pollution that may be necessary to prepare air contaminant emission inventories, and to evaluate control measures needed to meet specified goals.

27.3(3) *Control of air pollution.* The ordinance or regulations shall contain provisions applicable to the control or prohibition of emissions of air contaminants as listed below.

a. Emission control. Requirements specifying maximum concentrations, density or rates of discharge of emissions of air contaminants from specified sources.

(1) These requirements may be included in the ordinance or regulations, or in standards adopted by the local control agency under the authority granted by such ordinance or regulations.

(2) These requirements shall not establish an emission standard for any specific source that is in excess of the emission standard specified in 567—Chapter 23 for that source.

b. Prohibition of emissions. Provisions prohibiting the installation of equipment having a potential for air pollution without adequate control equipment. Such restriction may be included in the building code applicable to the jurisdiction covered by the local control agency.

c. Open burning. Provisions prohibiting open burning, including backyard burning, in urban areas within the jurisdiction of the local control agency.

(1) Provisions relating to backyard burning may consist of a program requiring the prohibition of such burning within a reasonable period of time.

(2) Provisions applicable to open burning may include a variance procedure, so long as no variance that would prevent the attainment or maintenance of ambient air quality standards for suspended particulates and carbon monoxide is issued.

d. Requirements for permits. Provisions requiring installation and operating permits for all new or altered equipment capable of emitting air contaminants into the atmosphere installed within the jurisdiction of the local control agency.

27.3(4) *Enforcement.* The ordinance or regulations of the local control agency shall include an effective mechanism for enforcing the provisions specified thereunder, as listed below.

a. Procedures. The local control ordinance or regulations shall specify that any violation of its provisions is subject to civil and criminal penalties.

b. Penalties. The penalties specified in such ordinance or regulations shall include fines, injunctive relief and sealing of equipment found to be not in compliance with applicable provisions of the ordinance or regulations.

c. Procedures for granting variances or extensions of time to attain compliance status. The local control agency shall maintain on file a record of the names, addresses, sources of emissions, types of emissions, rates of emissions, reason for granting, conditions and length of time specified, relating to all variances or extension of time granted and shall make such records available to the commission or the department upon request.

[**ARC 7956C**, IAB 5/15/24, effective 6/19/24]

567—27.4(455B) Administrative organization.

27.4(1) *Administrative facilities.* Each local control program considered for a certificate of acceptance must have the administrative facilities necessary for effective operation of such program including but not limited to those listed below.

a. Agency. Designation of a legally constituted body within the organizational structure of the applicable political subdivision or combination of political subdivisions, as the administrative authority for the local control program.

b. Procedures. Adoption of definite administrative procedures for developing, promulgating and enforcing requirements and standards for air pollution control within the jurisdiction of the local control agency.

c. Staff. Employment of a technical and clerical staff deemed adequate to conduct the air pollution control activities in the local control program.

(1) Key technical staff personnel shall have received training or experience in air quality management program procedures.

(2) At least one member of the technical staff shall be assigned full-time duty in the operation of the local control program.

27.4(2) *Financial support.* Each local control program considered for a certificate of acceptance shall have adequate financial support for the operation of effective program activities.

27.4(3) *Physical facilities.* Each local control program considered for a certificate of acceptance must have the physical facilities necessary for the operation of effective program activities, including those listed below.

a. Office space. Sufficient office space and equipment to accommodate the members of the technical and clerical staff.

b. Laboratory facilities. The laboratory space and equipment shall be adequate for the effective exercise of the specific functions required in the operation of the local control program.

c. Transportation facilities. These facilities shall include provisions for transportation of personnel to service air monitoring equipment, visits to sources of emissions for investigative purposes and other appropriate program activities.

[**ARC 7956C**, IAB 5/15/24, effective 6/19/24]

567—27.5(455B) Program activities. Each local control program considered for a certificate of acceptance must conduct air pollution control activities adequate to provide adequate control of air pollution within the jurisdiction of the local control program, including but not limited to those listed below. In conducting these program activities, the local control agency shall make every effort to meet the specified ambient air quality objectives applicable to the state of Iowa.

27.5(1) *Evaluation of problems.* Conduct activities to determine the actual and potential air pollution problems within the jurisdiction of the local control agency, and compare the present air quality in that jurisdiction with the air quality standards and objectives promulgated for this state. The air quality within the jurisdiction shall be determined by an air monitoring program, using sampling techniques and laboratory determinations compatible with those used in the air pollution control program of this state. The air monitoring program of the local control agency shall give attention to the air contaminants considered to be indices of pollution in this state.

27.5(2) *Control activities.* Conduct activities to abate or control emissions of air contaminants from existing equipment or from new or altered equipment located within the jurisdiction of the local control agency.

a. A program of plant inspections shall be conducted with respect to control of emissions from existing equipment. These activities should include the collection of data related to the types of emissions and the rate of discharge of emissions from each source involved, along with stack sampling when deemed appropriate.

b. Procedures for plan review and the issuing of permits relating to the installation or alteration such that the emission of air contaminants is significantly altered shall be conducted with respect to control of emissions from new or altered sources. These procedures may include provisions for permits relating to the use of the equipment involved.

[**ARC 7956C**, IAB 5/15/24, effective 6/19/24]

These rules are intended to implement Iowa Code sections 455B.133, 455B.143, and 455B.145.

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[Filed ARC 7956C (Notice ARC 7226C, IAB 12/27/23), IAB 5/15/24, effective 6/19/24]

CHAPTER 28
AMBIENT AIR QUALITY STANDARDS

[Prior to 7/1/83, DEQ Ch 10]
[Prior to 12/3/86, Water, Air and Waste Management[900]]

Rescinded **ARC 7957C**, IAB 5/15/24, effective 6/19/24

CHAPTER 29
QUALIFICATION IN VISUAL DETERMINATION OF THE OPACITY OF EMISSIONS

[Prior to 7/1/83, DEQ Ch 11]
[Prior to 12/3/86, Water, Air and Waste Management[900]]

Rescinded **ARC 7958C**, IAB 5/15/24, effective 6/19/24

CHAPTER 30
FEES

567—30.1(455B) Purpose. This chapter sets forth requirements to pay fees for specified activities. The department shall not initiate review and processing of an application submittal from a minor source until all required fees have been paid to the department. Fees are nonrefundable, except as provided in 30.1(4).

30.1(1) *Definition.* For purposes of this chapter, the following definition shall apply:

"Application submittal" means one or more applications required under 567—22.1(455B) and submitted at the same time or required to be submitted under 567—22.4(455B), 567—22.5(455B), 567—Chapter 31 or 567—Chapter 33.

30.1(2) *Duty to correct errors.* If an owner, an operator, or the department finds an error in a fee assessed or collected under this chapter, the owner or operator shall submit to the department revised forms making the necessary corrections to the fee and shall submit the correct fee. Corrected forms shall be submitted as soon as possible after the error is discovered or upon notification by the department. If the error correction results in a determination by the department that a fee was overpaid or that a duplicate fee was submitted, the department will return the overpaid balance of the fee to the applicant.

30.1(3) *Exemption to fee requirements for administrative amendments.* A fee shall not be required for any of the following:

a. Corrections of typographical errors;

b. Corrections of word processing errors;

c. Changes in the name, address, or telephone number of any person identified in a permit, or similar minor administrative changes at the source; and

d. Changes in ownership or operational control of a source where the department determines that no other change in the permit is necessary, provided that a written agreement that contains a specific date for transfer of permit responsibility and coverage, and liability between the current permittee and the new permittee has been submitted to the department.

30.1(4) *Refund of application fee minus administrative cost for permit applications at minor sources.* The department may refund the application fee minus administrative costs if the owner or operator requests to withdraw the application prior to commencement of the technical review of the application.

[**ARC 7959C**, IAB 5/15/24, effective 6/19/24]

567—30.2(455B) Fees associated with new source review applications. Each owner or operator required to provide an application submittal, including air quality modeling as applicable; registration; permit by rule; and template under 567—subrule 22.1(1), 567—22.4(455B), 567—22.5(455B), 567—22.8(455B), 567—22.10(455B), 567—Chapter 31 or 567—Chapter 33, shall pay fees as specified in the fee schedule approved by the commission and posted on the department's website. Fees shall be submitted with forms supplied by the department.

30.2(1) *Payment of regulatory applicability determination fee.* Each owner or operator requesting a regulatory applicability determination, as specified in 567—paragraph 22.1(3)*"a,"* shall pay fees as specified in the fee schedule approved by the commission and posted on the department's website. Fees shall be submitted with forms provided by the department.

30.2(2) Reserved.

[**ARC 7959C**, IAB 5/15/24, effective 6/19/24]

567—30.3(455B) Fees associated with asbestos demolition or renovation notification.

30.3(1) *Payment of fees established.* The owner or operator of a site subject to the national emission standard for hazardous air pollutants (NESHAP) for asbestos notifications, adopted by reference in 567—paragraph 23.1(3)*"a,"* shall submit a fee with each required original or each annual notification for each demolition or renovation, including abatement. Fees shall be paid as specified in the fee schedule approved by the commission and posted on the department's website. Fees shall be submitted with the notification forms provided by the department.

30.3(2) *Fee not required.* A fee shall not be required for the following:

a. Notifications when the total amount of asbestos to be removed or disturbed is less than 260 linear feet, less than 160 square feet, and less than 35 cubic feet of facility components and is below the reporting thresholds as defined in 40 CFR 61.145 as amended on January 16, 1991;

b. Notifications of training fires as required in 567—paragraph 23.2(3)*"g"*;

c. Controlled burning of demolished buildings as required in 567—paragraph 23.2(3)*"j"*;

d. Revised, canceled, and courtesy notifications. A revision to a previously submitted courtesy notification due to applicability of the notification requirements in 567—paragraph 23.1(3)*"a"* is considered an original notification and is subject to the fee requirements of 30.3(1).

[**ARC 7959C**, IAB 5/15/24, effective 6/19/24]

567—30.4(455B) Fees associated with Title V operating permits.

30.4(1) *Payment of Title V application fee.* Each owner or operator required to apply for a Title V permit, or a renewal of a Title V permit, shall pay fees as specified in the fee schedule approved by the commission and posted on the department's website. Fees shall be submitted with forms supplied by the department.

30.4(2) *Payment of Title V annual emissions fee.*

a. Fee required. Any person required to obtain a Title V permit shall pay an annual fee based on the first 4,000 tons of each regulated air pollutant and shall be paid on or before July 1 of each year. The Title V emissions fee shall be based on actual emissions required to be included in the Title V operating permit application and the annual emissions statement for the previous calendar year. The commission shall not set the fee higher than $70 per ton without adopting the change pursuant to formal rulemaking.

b. Fee and documentation due dates. The fee shall be submitted annually by July 1 with forms specified by the department.

c. Operation in Iowa. The fee for a portable emissions unit or stationary source that operates both in Iowa and out of state shall be calculated only for emissions from the source while it is operating in Iowa.

d. Title V exempted stationary sources. No fee shall be required for emissions until the year in which sources exempted under 567—subrules 24.102(1) and 24.102(2) are required to apply for a Title V permit. Fees shall be paid for the emission year preceding the year in which the application is due and thereafter.

e. Insignificant activities. No fee shall be required for insignificant activities as defined in 567—24.103(455B).

[**ARC 7959C**, IAB 5/15/24, effective 6/19/24]

567—30.5(455B) Fee stakeholder meetings. Prior to each March commission meeting, the director shall convene fee stakeholder meetings as specified in Iowa Code sections 455B.133B and 455B.133C for the purposes of reviewing a draft budget and providing recommendations to the department regarding establishing or adjusting fees. Any stakeholder may attend the fee stakeholder meetings. The meetings will be open to the public. The date of each meeting shall be posted on the department's website 14 days prior to the meeting.

[**ARC 7959C**, IAB 5/15/24, effective 6/19/24]

567—30.6(455B) Process to establish or adjust fees and notification of fee rates.

30.6(1) *Setting the fees.* The department shall submit the proposed budget and fees for major and minor source construction permit programs, the Title V operating permit program, and the asbestos NESHAP program for the following fiscal year to the commission no later than the March commission meeting of each year, at which time the proposal will be available for public comment until such time as the commission acts on the proposal or until the May commission meeting, whichever occurs first. The department's calculated estimate for each fee shall not produce total revenues in excess of limits specified in Iowa Code sections 455B.133B and 455B.133C during any fiscal year. If an established fee amount must be adjusted, the commission shall set the fees no later than the May commission meeting of each year.

Adjusted or established fees shall become effective on July 1. A fee not adjusted by the commission shall remain in effect as previously established until the fee is adjusted by the commission.

30.6(2) *Fee types and dollar caps on fee types.* The commission may set fees for the fee types and activities specified in this subrule and shall not set a fee in the fee schedule higher than the levels specified in this subrule without adopting the change pursuant to formal rulemaking:

a. New source review applications from major sources, which may include:

(1) Review of each application for a construction permit: $115 per hour;

(2) Review of each application for a prevention of significant deterioration permit: $115 per hour;

(3) Review of each plantwide applicability limit request, renewal, or reopening: $115 per hour;

(4) Review of each regulatory applicability determination: $115 per hour; and

(5) Air quality modeling review: $90 per hour.

b. New source review applications from minor sources, which may include:

(1) Each application for a construction permit: $385;

(2) Each application for a registration permit: $100;

(3) Each application for a permit by rule: $100; and

(4) Each application for a permit template: $100.

c. Asbestos notifications: $100.

d. Review of each initial or renewal Title V operating permit application: $100 per hour.

e. Title V annual emissions: $70 per ton.

30.6(3) *Notification of fee schedule.* Following the initial setting of any fee by the commission, the department shall make available to the public a fee schedule at least 30 days prior to its effective date. If any established fee amount is adjusted, the department shall make available to the public a revised fee schedule at least 30 days prior to its effective date. The fee schedule shall be posted on the department's website.

[**ARC 7959C**, IAB 5/15/24, effective 6/19/24]

These rules are intended to implement Iowa Code sections 455B.133, 455B.133B, and 455B.133C.

[Filed Emergency After Notice ARC 2352C (Notice ARC 2222C, IAB 10/28/15), IAB 1/6/16, effective 12/16/15]

[Filed ARC 3679C (Notice ARC 3520C, IAB 12/20/17), IAB 3/14/18, effective 4/18/18]

[Filed ARC 5051C (Notice ARC 4961C, IAB 3/11/20), IAB 6/17/20, effective 7/22/20]

[Filed ARC 7959C (Notice ARC 7219C, IAB 12/27/23), IAB 5/15/24, effective 6/19/24]

CHAPTER 31
NONATTAINMENT NEW SOURCE REVIEW

567—31.1(455B) Permit requirements relating to nonattainment areas.

31.1(1) This chapter implements the nonattainment new source review (NNSR) program contained in Part D of Title I of the federal Clean Air Act and as promulgated under 40 CFR §51.165 as amended through March 30, 2011, and 40 CFR Part 51, Appendix S, as amended through July 1, 2011.

31.1(2) The NNSR program is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under Part D of Title I of the federal Clean Air Act as amended through November 15, 1990. The NNSR program applies only in areas that do not meet the national ambient air quality standards (NAAQS).

31.1(3) Section 107(d) of the federal Clean Air Act, 42 U.S.C. §7457(d), requires each state to submit to the Administrator of the federal Environmental Protection Agency a list of areas that exceed the NAAQS, that are lower than those standards, or that cannot be classified on the basis of current data.

31.1(4) A list of Iowa's nonattainment area designations is found at 40 CFR §81.316. An owner or operator required to apply for a construction permit under this chapter or requesting a plantwide applicability limit (PAL) shall submit fees as required in 567—Chapter 30.

[**ARC 7960C**, IAB 5/15/24, effective 6/19/24]

567—31.2 Reserved.

567—31.3(455B) Nonattainment new source review (NNSR) requirements for areas designated nonattainment.

31.3(1) *Definitions.* For the purpose of NNSR, the following definitions shall apply:

"Act" means the Clean Air Act, 42 U.S.C. §7401, et seq., as amended through November 15, 1990.

"Actual emissions" means:

1. The actual rate of emissions of a regulated new source review (NSR) pollutant from an emissions unit, as determined in accordance with paragraphs "2" through "4," except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 567—31.9(455B). Instead, the definitions of projected actual emissions and baseline actual emissions shall apply for those purposes.

2. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period that precedes the particular date and that is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

3. The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

4. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Administrator" means the administrator for the U.S. Environmental Protection Agency (EPA) or designee.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits that restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

1. The applicable standards as set forth in 567—subrules 23.1(2) through 23.1(5) (new source performance standards, emissions standards for hazardous air pollutants, and federal emissions guidelines) or an applicable federal standard not adopted by the state, as set forth in 40 CFR Parts 60, 61 and 63;

2. The state implementation plan (SIP) emissions limitation, including those with a future compliance date; or

3. The emissions rate specified as an enforceable permit condition, including those with a future compliance date.

"Baseline actual emissions," for the purposes of this rule, means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with paragraphs "1" through "4."

1. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five-year period immediately preceding when the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emissions limitation that was legally enforceable during the consecutive 24-month period.

(c) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph "1"(b) of this definition.

2. For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the ten-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date on which a complete permit application is received by the department for a permit required either under this rule or under a plan approved by the Administrator, whichever is earlier, except that the ten-year period shall not include any period earlier than November 15, 1990.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 31.3(3)*"b"*(7).

(d) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraphs "2"(b) and "2"(c) of this definition.

3. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero, and thereafter, for all other purposes, shall equal the unit's potential to emit.

4. For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph

"1," for other existing emissions units in accordance with the procedures contained in paragraph "2," and for a new emissions unit in accordance with the procedures contained in paragraph "3."

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating, this term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

"Best available control technology" or *"BACT"* means an emissions limitation, including a visible emissions standard, based on the maximum degree of reduction for each regulated NSR pollutant that would be emitted from any proposed major stationary source or major modification that the department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant that would exceed the emissions allowed by any applicable standard under 567—subrules 23.1(2) through 23.1(5) (standards for new stationary sources, federal standards for hazardous air pollutants, and federal emissions guidelines), or federal regulations as set forth in 40 CFR Parts 60, 61, and 63 but not yet adopted by the state. If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, or operational standard or combination thereof may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation and shall provide for compliance by means that achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., that have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

"CFR" means the Code of Federal Regulations, with standard references in this chapter by title and part, so that "40 CFR 51" or "40 CFR Part 51" means "Title 40 Code of Federal Regulations, Part 51."

"Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam that was not in widespread use as of November 15, 1990.

"Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy—Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the EPA. The federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

"Commence," as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

1. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

2. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Construction" means any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit, that would result in a change in emissions.

"Continuous emissions monitoring system" or *"CEMS"* means all of the equipment that may be required to meet the data acquisition and availability requirements of this rule, to sample, to condition (if applicable), to analyze, and to provide a record of emissions on a continuous basis.

"Continuous emissions rate monitoring system" or *"CERMS"* means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

"Continuous parameter monitoring system" or *"CPMS"* means all of the equipment necessary to meet the data acquisition and availability requirements of this rule, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and to record average operational parameter value(s) on a continuous basis.

"Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric steam generating unit. For purposes of this rule, there are two types of emissions units as described in paragraphs "1" and "2."

1. A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated.

2. An existing emissions unit is any emissions unit that does not meet the requirements in paragraph "1" of this definition. A replacement unit is an existing emissions unit.

"Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

"Federally enforceable" means all limitations and conditions that are enforceable by the Administrator and the department, including those federal requirements not yet adopted by the state, developed pursuant to 40 CFR Parts 60, 61, and 63; requirements within 567—subrules 23.1(2) through 23.1(5); requirements within the SIP; any permit requirements established pursuant to 40 CFR §52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, as amended through October 20, 2010, including operating permits issued under an EPA-approved program that is incorporated into the SIP and expressly requires adherence to any permit issued under such program.

"Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

"Lowest achievable emissions rate" or *"LAER"* means, for any source, the more stringent rate of emissions based on the following:

1. The most stringent emissions limitation that is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

2. The most stringent emissions limitation that is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

"Major modification" means any physical change in, or change in the method of, operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source.

1. Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

2. A physical change or change in the method of operation shall not include:

(a) Routine maintenance, repair, and replacement;

(b) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(c) Use of an alternative fuel by reason of an order or rule Section 125 of the Act;

(d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) Use of an alternative fuel or raw material by a stationary source that the source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition that was established after December 12, 1976, pursuant to 40 CFR §52.21 or under regulations approved pursuant to 40 CFR Subpart I or §51.166; or the source is approved to use under any permit issued under regulations approved pursuant to this rule;

(f) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition that was established after December 21, 1976, pursuant to 40 CFR §52.21 or regulations approved pursuant to 40 CFR Part 51, Subpart I, or 40 CFR §51.166;

(g) Any change in ownership at a stationary source;

(h) Reserved.

(i) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the SIP, and other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated.

3. This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 567—31.9(455B) for a PAL for that pollutant. Instead, the definition in 567—31.9(455B) shall apply.

4. For the purpose of applying the requirements of 31.3(8) to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject to Subpart 2, Part D, Title I of the Act, any significant net emissions increase of nitrogen oxides is considered significant for ozone.

5. Any physical change in, or change in the method of operation of, a major stationary source of volatile organic compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is subject to Subpart 2, Part D, Title I of the Act.

"Major stationary source" means:

1. Any stationary source of air pollutants that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant, except that lower emissions thresholds shall apply in areas subject to Subpart 2, Subpart 3, or Subpart 4 of Part D, Title I of the Act, according to definitions in 31.3(1).

(a) 50 tons per year of volatile organic compounds in any serious ozone nonattainment area.

(b) 50 tons per year of volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area.

(c) 25 tons per year of volatile organic compounds in any severe ozone nonattainment area.

(d) 10 tons per year of volatile organic compounds in any extreme ozone nonattainment area.

(e) 50 tons per year of carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by the Administrator).

(f) 70 tons per year of PM_{10} in any serious nonattainment area for PM_{10}.

2. For the purposes of applying the requirements of 31.3(8) to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source that emits, or has the potential to emit, 100 tons per year or more of nitrogen oxides emissions, except that the following emission thresholds apply in areas subject to Subpart 2 of Part D, Title I of the Act:

(a) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate.

(b) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region.

(c) 100 tons per year or more of nitrogen oxides in any area designated under Section 107(d) of the Act as attainment or unclassifiable for ozone that is located in an ozone transport region.

(d) 50 tons per year or more of nitrogen oxides in any serious nonattainment area for ozone.

(e) 25 tons per year or more of nitrogen oxides in any severe nonattainment area for ozone.

(f) 10 tons per year or more of nitrogen oxides in any extreme nonattainment area for ozone.

3. Any physical change that would occur at a stationary source not qualifying under 31.3(1) as a major stationary source, if the change would constitute a major stationary source by itself.

4. A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

5. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this rule whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources: coal cleaning plants (with thermal dryers); kraft pulp mills; Portland cement plants; primary zinc smelters; iron and steel mills; primary aluminum ore reduction plants; primary copper smelters; municipal incinerators capable of charging more than 250 tons of refuse per day; hydrofluoric, sulfuric, or nitric acid plants; petroleum refineries; lime plants; phosphate rock processing plants; coke oven batteries; sulfur recovery plants; carbon black plants (furnace process); primary lead smelters; fuel conversion plants; sintering plants; secondary metal production plants; chemical process plants (the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in North American Industry Classification System (NAICS) codes 325193 or 312140); fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input; petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels; taconite ore processing plants; glass fiber processing plants; charcoal production plants; fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and any other stationary source category that, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act.

"Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations that are part of the SIP.

"Net emissions increase" means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero: the increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated according to the applicability requirements of 31.3(2)*"b,"* and any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases shall be determined as provided in the definition of "baseline actual emissions," except that paragraphs "1"(c) and "2"(d) shall not apply.

1. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if the increase or decrease in actual emissions occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.

2. An increase or decrease in actual emissions is creditable only if:

(a) The increase or decrease in actual emissions occurs within the contemporaneous time period, as noted in paragraph "1" of this definition; and

(b) The department has not relied on the increase or decrease in actual emissions in issuing a permit for the source under this rule, which permit is in effect when the increase in actual emissions from the particular change occurs.

(c) Reserved.

3. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

4. A decrease in actual emissions is creditable only to the extent that:

(a) The old level of actual emission or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(c) The department has not relied on a decrease in actual emissions in issuing any permit under regulations approved pursuant to 40 CFR Part 51, Subpart I, or has not relied on a decrease in actual emissions in demonstrating attainment or reasonable further progress; and

(d) The decrease in actual emissions has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

5. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

6. Actual emissions shall not apply for determining creditable increases and decreases or after a change.

"Nonattainment new source review program" or *"NNSR program"* means a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of this rule, or a program that implements 40 CFR Part 51, Appendix S, Sections I through VI, as amended through October 25, 2012. Any permit issued under such a program is a major NSR permit.

"Pollution prevention" means any activity that, through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal. "Pollution prevention" does not mean recycling (other than certain in-process recycling practices), energy recovery, treatment, or disposal.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Predictive emissions monitoring system" or *"PEMS"* means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

"Prevention of significant deterioration permit" or *"PSD permit"* means any permit that is issued under a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of 40 CFR §51.166, or under the program in 40 CFR §52.21.

"Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

"Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the ten

years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source. In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

1. Shall consider all relevant information including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

2. Shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

3. Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

4. In lieu of using the method set out in paragraphs "1" through "3," may elect to use the emissions unit's potential to emit, in tons per year.

"Reasonable period" means an increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if the increase or decrease in actual emissions occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.

"Regulated NSR pollutant" means the following:

1. Nitrogen oxides or any volatile organic compounds;

2. Any pollutant for which a national ambient air quality standard has been promulgated;

3. Any pollutant that is identified as a constituent or precursor of a general pollutant listed under paragraph "1" or "2," provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

(a) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

(b) Sulfur dioxide is a precursor to $PM_{2.5}$ in all $PM_{2.5}$ nonattainment areas.

(c) Nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all $PM_{2.5}$ nonattainment areas, unless the department demonstrates to the EPA's satisfaction or the EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to the area's ambient $PM_{2.5}$ concentrations.

(d) Volatile organic compounds and ammonia are presumed not to be precursors to $PM_{2.5}$ in any $PM_{2.5}$ nonattainment area, unless the department demonstrates to the EPA's satisfaction or the EPA demonstrates that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations; or

4. $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity that condense to form particulate matter at ambient temperatures.

"Replacement unit" means an emissions unit for which all the criteria listed in paragraphs "1" through "4" of this definition are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

1. The emissions unit is a reconstructed unit within the meaning of 40 CFR §60.15(b)(1) as amended through December 16, 1975, or the emissions unit completely takes the place of an existing emissions unit.

2. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

3. The replacement does not alter the basic design parameters of the process unit.

4. The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable

as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

"Reviewing authority" means the department of natural resources.

"Secondary emissions" means emissions that would occur as a result of the construction or operation of a major stationary source or major modification but do not come from the major stationary source or major modification itself. For the purpose of this rule, "secondary emissions" must be specific, be well defined, be quantifiable, and impact the same general area as the stationary source or modification that causes the secondary emissions. "Secondary emissions" includes emissions from any offsite support facility that would not be constructed or increase its emissions except as a result of the construction of operation of the major stationary source of major modification. "Secondary emissions" does not include any emissions that come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means:

1. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant Emission Rate

(a) Carbon monoxide: 100 tons per year (tpy)

(b) Nitrogen oxides: 40 tpy

(c) Sulfur dioxide: 40 tpy

(d) Ozone: 40 tpy of volatile organic compounds or nitrogen oxides

(e) Lead: 0.6 tpy

(f) PM_{10}: 15 tpy

(g) $PM_{2.5}$: 10 tpy of direct $PM_{2.5}$ emissions, 40 tpy of sulfur dioxide emissions, or 40 tpy of nitrogen oxide emissions unless the department demonstrates to the EPA's satisfaction that the emissions of nitrogen oxides from sources in a specific area are not a significant contributor to the area's ambient $PM_{2.5}$ concentrations.

2. Notwithstanding the significant emissions rate for ozone, "significant" means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area that is subject to Subpart 2, Part D, Title I of the Act, if such emissions increase of volatile organic compounds exceeds 25 tons per year.

3. For the purposes of applying the requirements of 31.3(8) to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in paragraphs "1," "2," and "5" shall apply to nitrogen oxides emissions.

4. Notwithstanding the significant emissions rate for carbon monoxide, "significant" means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide if such increase equals or exceeds 50 tons per year, provided the department has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

5. Notwithstanding the significant emissions rates for ozone under paragraphs "1" and "2," any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area that is subject to Subpart 2, Part D, Title I of the Act shall be considered a significant net emissions increase.

"Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

"Stationary source" means any building, structure, facility, or installation that emits or may emit a regulated NSR pollutant.

"Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five years or less and that complies with the SIP

and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Volatile organic compounds" or *"VOC"* means any compound included in the definition of "volatile organic compounds" found at 40 CFR §51.100(s) as amended through February 8, 2023.

31.3(2) *Applicability procedures.*

a. This subrule adopts a preconstruction review program to satisfy the requirements of Sections 172(c)(5) and 173 of the Act for any area designated nonattainment for any national ambient air quality standard under Subpart C of 40 CFR Part 81 as amended through August 5, 2013, and shall apply to any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment under Section 107(d)(1)(A)(i) of the Act, if the stationary source or modification would locate anywhere in the designated nonattainment area.

b. Each plan shall use the specific provisions of subparagraphs (1) through (6) of this paragraph. Deviations from these provisions will be approved only if the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in subparagraphs (1) through (6) of this paragraph.

(1) Except as otherwise provided in 31.3(2)*"c,"* and consistent with the definition of major modification, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to subparagraphs (3) through (6) of this paragraph. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, for each existing emissions unit, equals or exceeds the significant amount for that pollutant.

(4) Actual-to-potential test for projects that only involve construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

(5) Reserved.

(6) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subparagraphs (3) and (4) of this paragraph as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

c. The plan shall require that for any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under 567—31.9(455B).

31.3(3) *Creditable offsets.*

a. For sources and modifications subject to any preconstruction review program, the baseline for determining credit for emissions reductions is the emissions limit in effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

(1) The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area for which the preconstruction review program was adopted; or

(2) The SIP does not contain an emissions limitation for that source or source category.

b. Providing that:

(1) Where the emissions limit under the SIP allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential;

(2) For an existing fuel combustion source, credit shall be based on the allowable emissions under the SIP for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure that would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The department should ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches;

(3) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours may be generally credited for offsets if such reductions are surplus, permanent, quantifiable, and federally enforceable; and the shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this subparagraph, the department may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emissions units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.

Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements above may be generally credited only if the shutdown or curtailment occurred on or after the date the construction permit application is filed; or the applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of this subparagraph;

(4) No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of the EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977);

(5) All emission reductions claimed as offset credit shall be federally enforceable;

(6) Procedures relating to the permissible location of offsetting emissions shall be followed that are at least as stringent as those set out in 40 CFR Part 51, Appendix S, Section IV.D, as amended on October 25, 2012;

(7) Credit for an emissions reduction can be claimed to the extent that the department has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51, Subpart I, or the state has not relied on it in demonstration attainment or reasonable further progress;

(8) and (9) Reserved.

(10) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with Section 173 of the Act shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

31.3(4) *Fugitive emissions.* The department may provide that the provisions of this subrule do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories: coal cleaning plants (with thermal dryers); kraft pulp mills; Portland cement plants; primary zinc smelters; iron and steel mills; primary aluminum ore reduction plants; primary copper smelters; municipal incinerators capable of charging more than 250 tons of refuse per day; hydrofluoric, sulfuric, or nitric acid plants; petroleum refineries; lime plants; phosphate rock processing plants; coke oven

batteries; sulfur recovery plants; carbon black plants (furnace process); primary lead smelters; fuel conversion plants; sintering plants; secondary metal production plants; chemical process plants (the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140); fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input; petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels; taconite ore processing plants; glass fiber processing plants; charcoal production plants; fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and any other stationary source category that, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act.

31.3(5) *Enforceable procedures.*

a. Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provision of the plan and any other requirements under local, state, or federal law.

b. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation that was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this rule shall apply to the source or modification as though construction had not yet commenced on the source or modification.

31.3(6) *Reasonable possibility.* Except as otherwise provided in 31.3(6)*"f,"* the following specific provisions apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of 31.3(6)*"f,"* that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in paragraphs "1" through "3" of the definition of "projected actual emissions" for calculating projected actual emissions. Deviations from these provisions will be approved only if the state specifically demonstrates that the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in 31.3(6)*"a"* through *"f."*

a. Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(1) A description of the project;

(2) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(3) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph "3" of the definition of "projected actual emissions" and an explanation for why such amount was excluded, and any netting calculations, if applicable.

b. If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in 31.3(6)*"a"* to the department. Nothing in 31.3(6)*"b"* shall be construed to require the owner or operator of such a unit to obtain any determination from the reviewing authority before beginning actual construction.

c. The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in 31.3(6)*"a"*(2); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of ten years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

d. If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under 31.3(6)*"c"* setting out the unit's annual emissions during the year that preceded submission of the report.

e. If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the

project identified in 31.3(6)*"a,"* exceed the baseline actual emissions (as documented and maintained under 31.3(6)*"a"*(3)), by a significant amount for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained under 31.3(6)*"a"*(3). Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

(1) The name, address, and telephone number of the major stationary source;

(2) The annual emissions as calculated pursuant to 31.3(6)*"c"*; and

(3) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

f. A reasonable possibility under this subrule occurs when the owner or operator calculates the project to result in either:

(1) A projected actual emissions increase of at least 50 percent of the amount that is a significant emissions increase (without reference to the amount that is a significant net emissions increase) for the regulated NSR pollutant; or

(2) A projected actual emissions increase that, added to the amount of emissions excluded under paragraph "3" of the definition of "projected actual emissions," sums to at least 50 percent of the amount that is a significant emissions increase (without reference to the amount that is a significant net emissions increase) for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of this subparagraph, and not also within the meaning of 31.3(6)*"f"*(1), then 31.3(6)*"b"* through *"e"* do not apply to the project.

31.3(7) *Availability of records.* The owner or operator of the source shall make the information required to be documented and maintained pursuant to this subrule available for review upon a request for inspection by the department or the general public pursuant to the requirements contained in 40 CFR §70.4(b)(3)(viii) as amended through October 6, 2009.

31.3(8) *Applicability to nitrogen oxides emissions.* The requirements of this subrule applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in ozone nonattainment areas or in portions of an ozone transport region where the Administrator has granted a NOX waiver applying the standards set forth under Section 182(f) of the Act and the waiver continues to apply.

31.3(9) *Offset ratios.*

a. In meeting the emissions offset requirements of 31.3(3), the ratio of total actual emissions reductions to the emissions increase shall be at least 1:1 unless an alternative ratio is provided for the applicable nonattainment area in 31.3(9)*"b"* through *"d."*

b. The plan shall require that in meeting the emissions offset requirements of 31.3(3) for ozone nonattainment areas that are subject to Subpart 2, Part D, Title I of the Act, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be as follows:

(1) In any marginal nonattainment area for ozone—at least 1.1:1;

(2) In any moderate nonattainment area for ozone—at least 1.15:1;

(3) In any serious nonattainment area for ozone—at least 1.2:1;

(4) In any severe nonattainment area for ozone—at least 1.3:1 (except that the ratio may be at least 1.2:1 if the approved plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC); and

(5) In any extreme nonattainment area for ozone—at least 1.5:1 (except that the ratio may be at least 1.2:1 if the approved plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC).

c. Notwithstanding the requirements of 31.3(9) for meeting the requirements of 31.3(3), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1.15:1 for all areas within an ozone transport region that is subject to Subpart 2, Part D, Title I of the Act, except for serious, severe, and extreme ozone nonattainment areas that are subject to Subpart 2, Part D, Title I of the Act.

d. In meeting the emissions offset requirements of 31.3(3) for ozone nonattainment areas that are subject to Subpart 1, Part D, Title I of the Act (but are not subject to Subpart 2, Part D, Title I of the Act, including eight-hour ozone nonattainment areas subject to 40 CFR §51.902(b)), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1:1.

31.3(10) *Applicability to PM_{10} precursors.* The requirements of this rule applicable to major stationary sources and major modifications of PM_{10} shall also apply to major stationary sources and major modifications of PM_{10} precursors.

31.3(11) *Specifications for emissions offsets.* In meeting the emissions offset requirements of 31.3(3), the emissions offsets obtained shall be for the same regulated NSR pollutant unless interprecursor offsetting is permitted for a particular pollutant as specified in this subrule. The offset requirements in 31.3(3) for direct $PM_{2.5}$ emissions or emissions of precursors of $PM_{2.5}$ may be satisfied by offsetting reductions in direct $PM_{2.5}$ emissions or emissions of any $PM_{2.5}$ precursor if such offsets comply with the interprecursor trading hierarchy and ratio established in the approved plan for a particular nonattainment area.

[**ARC 7960C**, IAB 5/15/24, effective 6/19/24]

567—31.4(455B) Preconstruction review permit program.

31.4(1) Sources shall comply with the requirements of Section 110(a)(2)(D)(i) of the Act for any new major stationary source or major modification as defined in 31.3(1). The definitions in 31.3(1) for "major stationary source" and "major modification" planning to locate in any area designated as attainment or unclassifiable for any national ambient air quality standard pursuant to Section 107 of the Act, apply when that source or modification would cause or contribute to a violation of any national ambient air quality standard.

31.4(2) A major source or major modification will be considered to cause or contribute to a violation of a national ambient air quality standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable national standard:

Pollutant	Annual	Averaging time (hours)			
		24	8	3	1
SO_2	1.0 μg/m^3	5 μg/m^3		25 μg/m^3	
PM_{10}	1.0 μg/m^3	5 μg/m^3			
$PM_{2.5}$	0.3 μg/m^3	1.2 μg/m^3			
NO_2	1.0 μg/m^3				
CO			0.5 mg/m^3		2 mg/m^3

31.4(3) A proposed major source or major modification subject to this rule may reduce the impact of its emissions upon air quality by obtaining sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the major source or major modification would otherwise cause or contribute to a violation of any national ambient air quality standard. In the absence of such emission reductions, the proposed construction permit application shall be denied.

31.4(4) The requirements of this rule shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment pursuant to Section 107 of the Act.

[**ARC 7960C**, IAB 5/15/24, effective 6/19/24]

567—31.5 to **31.8** Reserved.

567—31.9(455B) Actuals PALs. Except as provided in 31.9(1), the provisions for actuals PALs as specified in 40 CFR §51.165(f) as amended through March 30, 2011, are adopted by reference.

31.9(1) The following portions of actuals PALs in 40 CFR §51.165(f) are modified to read as follows:

a. 40 CFR §51.165(f)(2): Definitions. The definitions in paragraphs (f)(2)(i) through (xi) of this section shall be applicable to actuals PALs for purposes of paragraphs (f)(1) through (15) of this section. Any terms not defined in paragraphs (f)(2)(i) through (xi) shall have the meaning prescribed by 567—31.3(455B) or the meaning prescribed by the Act.

b. 40 CFR §51.165(f)(8)(ii)(B): The reviewing authority shall have discretion to reopen the PAL permit for the following:

c. 40 CFR §51.165(f)(10)(ii): Application deadline. A major stationary source owner or operator shall submit a timely application to the reviewing authority to request renewal of a PAL. In order to be considered timely, the application shall be submitted at least 6 months prior to, but not earlier than 18 months prior to, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

d. 40 CFR §51.165(f)(15)(i): Each PAL shall comply with the requirements contained in paragraphs (f)(1) through (15) of this section.

e. 40 CFR §51.165(f)(15)(ii): Any PAL issued prior to January 15, 2014, may be superseded with a PAL that complies with the requirements of paragraphs (f)(1) through (15) of this section.

31.9(2) Reserved.

[**ARC 7960C**, IAB 5/15/24, effective 6/19/24]

567—31.10(455B) Validity of rules. If any provision of 567—31.3(455B) through 567—31.9(455B), or the application of such provision to any person or circumstance, is held invalid, the remainder of these rules, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

[**ARC 7960C**, IAB 5/15/24, effective 6/19/24]

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

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CHAPTER 32
ANIMAL FEEDING OPERATIONS FIELD STUDY
Rescinded **ARC 7961C**, IAB 5/15/24, effective 6/19/24

CHAPTER 33
CONSTRUCTION PERMIT REQUIREMENTS FOR MAJOR STATIONARY SOURCES—PREVENTION OF SIGNIFICANT DETERIORATION (PSD)

567—33.1(455B) Purpose. This chapter implements the major new source review (NSR) program contained in Part C of Title I of the federal Clean Air Act as amended on November 15, 1990, and as promulgated under 40 CFR 51.166 and 52.21. This is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under Part C of the Clean Air Act as amended on November 15, 1990. In areas that do not meet the national ambient air quality standards (NAAQS), the nonattainment new source review (NNSR) program applies. The rules for the NNSR program are set forth in 567—Chapter 31. In areas that meet the NAAQS, the prevention of significant deterioration (PSD) program applies. Collectively, the NNSR and PSD programs are referred to as the major NSR program. An owner or operator required to apply for a construction permit under 567—Chapter 33 shall submit fees as specified in 567—Chapter 30.

Rule 567—33.2(455B) is reserved.

Rule 567—33.3(455B) sets forth the definitions, standards and permitting requirements that are specific to the PSD program.

Rules 567—33.4(455B) through 567—33.8(455B) are reserved.

Rule 567—33.9(455B) includes the conditions under which a source subject to PSD may obtain a plantwide applicability limitation (PAL) on emissions. An owner or operator requesting a PAL under 567—33.9(455B) shall submit fees as required in 567—Chapter 30.

In addition to the requirements in this chapter, stationary sources may also be subject to the permitting requirements in 567—Chapter 22 and the rules for Title V operating permits in 567—Chapter 24.
[**ARC 7962C**, IAB 5/15/24, effective 6/19/24]

567—33.2 Reserved.

567—33.3(455B) PSD construction permit requirements for major stationary sources.

33.3(1) *Definitions.* Definitions included in this subrule apply to the provisions set forth in this rule (PSD program requirements). For purposes of this rule and unless otherwise noted, the definitions herein apply. Definitions that are adopted by reference from 40 CFR 51.166 or 52.21 are as amended through July 19, 2021, unless otherwise noted. The following phrases contained in 40 CFR 51.166 are not adopted by reference: "it shall also provide that," "mechanism whereby," "the plan may provide that," "the plan provides that," "the plan shall provide," and "the plan shall provide that." Additionally, the term "the plan" shall mean "State Implementation Plan" or "SIP."

For purposes of this rule, the following terms have the meanings indicated in this subrule:

"Act" means the Clean Air Act, 42 U.S.C. Sections 7401, et seq., as amended through November 15, 1990.

"Actual emissions" means:

1. The actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs "2" through "4," except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 567—33.9(455B). Instead, the requirements specified under the definitions for "projected actual emissions" and "baseline actual emissions" shall apply for those purposes.

2. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period that precedes the particular date and that is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

3. The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

4. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Administrator" means the administrator for the United States Environmental Protection Agency (EPA) or designee.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits or enforceable permit conditions that restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

1. The applicable standards as set forth in 567—subrules 23.1(2) through 23.1(5) (new source performance standards, emissions standards for hazardous air pollutants, and federal emissions guidelines) or an applicable federal standard not adopted by the state, as set forth in 40 CFR Parts 60, 61 and 63;

2. The applicable SIP emissions limitation, including those with a future compliance date; or

3. The emissions rate specified as an enforceable permit condition, including those with a future compliance date.

"Baseline actual emissions," for the purposes of this chapter, means the rate of emissions, in tons per year, of a regulated NSR pollutant, as "regulated NSR pollutant" is defined in this subrule, and as determined in accordance with paragraphs "1" through "4."

1. For any existing electric utility steam generating unit, "baseline actual emissions" means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five-year period immediately preceding the date on which the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emissions limitation that was legally enforceable during the consecutive 24-month period.

(c) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period may be used for each regulated NSR pollutant.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph "1"(b).

2. For an existing emissions unit, other than an electric utility steam generating unit, "baseline actual emissions" means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the ten-year period immediately preceding either the date on which the owner or operator begins actual construction of the project, or the date on which a complete permit application is received by the department for a permit required either under this chapter or under a SIP approved by the Administrator, whichever is earlier, except that the ten-year period shall not include any period earlier than November 15, 1990.

(a) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emissions limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emissions limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emissions limitation is part of a maximum achievable control

technology standard that the Administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G) as amended through November 29, 2005.

(d) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period may be used for each regulated NSR pollutant.

(e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraphs "2"(b) and "2"(c).

3. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

4. For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph "1," for other existing emissions units in accordance with the procedures contained in paragraph "2," and for a new emissions unit in accordance with the procedures contained in paragraph "3."

"Baseline area" means:

1. Any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: equal to or greater than 1 μg/m3 (annual average) for sulfur dioxide (SO_2), nitrogen dioxide (NO_2) or PM_{10}; or equal to or greater than 0.3 μg/m3 (annual average) for $PM_{2.5}$.

2. Area redesignations under Section 107(d)(1)(A)(ii) or (iii) of the Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification that establishes a minor source baseline date or is subject to regulations specified in this rule, in 40 CFR 52.21 (PSD requirements), or in department rules approved by EPA and published in 40 CFR Part 51, Subpart I, as amended through October 20, 2010, and would be constructed in the same state as the state proposing the redesignation.

3. Any baseline area established originally for the total suspended particulate increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that such baseline area shall not remain in effect if the permitting authority rescinds the corresponding minor source baseline date in accordance with the definition of "baseline date" specified in this subrule.

"Baseline concentration" means:

1. The ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(a) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph "2";

(b) The allowable emissions of major stationary sources that commenced construction before the major source baseline date but were not in operation by the applicable minor source baseline date.

2. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(a) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

(b) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

"Baseline date" means:

1. Either "major source baseline date" or "minor source baseline date" as follows:

(a) The "major source baseline date" means, in the case of PM_{10} and sulfur dioxide, January 6, 1975; in the case of nitrogen dioxide, February 8, 1988; and in the case of $PM_{2.5}$, October 20, 2010.

(b) The "minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 as amended through October 20, 2010, or subject to this rule (PSD program requirements), or subject to a department rule approved by EPA and published in 40 CFR Part 51, Subpart I, as amended through October 20, 2010, submits a complete application under the relevant regulations. The trigger date for PM_{10} and sulfur dioxide is August 7, 1977. For nitrogen dioxide, the trigger date is February 8, 1988. For $PM_{2.5}$, the trigger date is October 20, 2011.

2. The "baseline date" is established for each pollutant for which increments or other equivalent measures have been established if:

(a) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 as amended through October 20, 2010, or under regulations specified in this rule (PSD program requirements); and

(b) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or in the case of a major modification, there would be a significant net emissions increase of the pollutant.

Any minor source baseline date established originally for the total suspended particulate increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that the reviewing authority may rescind any such minor source baseline date where it can be shown, to the satisfaction of the reviewing authority, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM_{10} emissions.

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities, other than preparatory activities, that mark the initiation of the change.

"Best available control technology" or *"BACT"* means an emissions limitation, including a visible emissions standard, based on the maximum degree of reduction for each regulated NSR pollutant that would be emitted from any proposed major stationary source or major modification that the reviewing authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combination techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant that would exceed the emissions allowed by any applicable standard under 567—subrules 23.1(2) through 23.1(5) (standards for new stationary sources, federal standards for hazardous air pollutants, and federal emissions guidelines), or federal regulations as set forth in 40 CFR Parts 60, 61 and 63 but not adopted by the state. If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation and shall provide for compliance by means that achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., that have the same two-digit code) as described in the Standard

Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

"CFR" means the Code of Federal Regulations, with standard references in this chapter by title and part, so that "40 CFR 51" or "40 CFR Part 51" means "Title 40 Code of Federal Regulations, Part 51."

"Clean coal technology" means the definition of "clean coal technology" set forth in 40 CFR 52.21(b)(34) and is adopted by reference.

"Clean coal technology demonstration project" means the definition of "clean coal technology demonstration project" set forth in 40 CFR 52.21(b)(35) and is adopted by reference.

"Commence," as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

1. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

2. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Complete" means, in reference to an application for a permit, that the application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.

"Construction" means any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit, that would result in a change in emissions.

"Continuous emissions monitoring system" or *"CEMS"* means the definition of "continuous emissions monitoring system" set forth in 40 CFR 52.21(b)(44) and is adopted by reference.

"Continuous emissions rate monitoring system" or *"CERMS"* means the definition of "continuous emissions rate monitoring system" set forth in 40 CFR 52.21(b)(47) and is adopted by reference.

"Continuous parameter monitoring system" or *"CPMS"* means the definition of "continuous parameter monitoring system" set forth in 40 CFR 52.21(b)(46) and is adopted by reference.

"Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit. For purposes of this chapter, there are two types of emissions units:

1. A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated.

2. An existing emissions unit is any emissions unit that does not meet the requirements in paragraph "1." A replacement unit is an existing emissions unit.

"Enforceable permit condition," for the purpose of this chapter, means any of the following limitations and conditions: requirements developed pursuant to new source performance standards, prevention of significant deterioration standards, emissions standards for hazardous air pollutants, requirements within the SIP, and any permit requirements established pursuant to this chapter, any permit requirements established pursuant to 40 CFR 52.21 or Part 51, Subpart I, as amended through October 20, 2010, or under construction or Title V operating permit rules.

"Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

"Federally enforceable" means all limitations and conditions that are enforceable by the Administrator and the department, including those federal requirements not adopted by the state, developed pursuant to 40 CFR Parts 60, 61 and 63; requirements within 567—subrules 23.1(2) through

23.1(5); requirements within the SIP; any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, as amended through October 20, 2010, including operating permits issued under an EPA-approved program, that are incorporated into the SIP and expressly require adherence to any permit issued under such program.

"Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

"Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

"Indian reservation" means any federally recognized reservation established by treaty, agreement, executive order, or Act of Congress.

"Innovative control technology" means the definition of "innovative control technology" set forth in 40 CFR 52.21(b)(19) and is adopted by reference.

"Lowest achievable emissions rate" or *"LAER"* means the definition of "lowest achievable emissions rate" or "LAER" set forth in 40 CFR 52.21(b)(53) and is adopted by reference.

"Low terrain" means any area other than high terrain.

"Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source.

1. Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds or NO_X shall be considered significant for ozone.

2. A physical change or change in the method of operation shall not include:

(a) Routine maintenance, repair and replacement;

(b) Use of an alternative fuel or raw material by reason of any order under Section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(c) Use of an alternative fuel by reason of an order or rule under Section 125 of the Act;

(d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) Use of an alternative fuel or raw material by a stationary source that the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition, or that the source is approved to use under any federally enforceable permit condition;

(f) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition that was established after January 6, 1975;

(g) Any change in ownership at a stationary source;

(h) Reserved.

(i) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the requirements within the SIP; and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated;

(j) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis;

(k) The reactivation of a very clean coal-fired electric utility steam generating unit.

3. This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 567—33.9(455B) for a PAL for that pollutant. Instead, the definition under 567—33.9(455B) shall apply.

"Major source baseline date" is defined under the definition of "baseline date."

"Major stationary source" means:

1. (a) Any one of the following stationary sources of air pollutants that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant:

- Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
- Coal cleaning plants (with thermal dryers);
- Kraft pulp mills;
- Portland cement plants;
- Primary zinc smelters;
- Iron and steel mill plants;
- Primary aluminum ore reduction plants;
- Primary copper smelters;
- Municipal incinerators capable of charging more than 50 tons of refuse per day;
- Hydrofluoric, sulfuric, and nitric acid plants;
- Petroleum refineries;
- Lime plants;
- Phosphate rock processing plants;
- Coke oven batteries;
- Sulfur recovery plants;
- Carbon black plants (furnace process);
- Primary lead smelters;
- Fuel conversion plants;
- Sintering plants;
- Secondary metal production plants;
- Chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS code 325193 or 312140);
- Fossil-fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input;
- Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- Taconite ore processing plants;
- Glass fiber processing plants; and
- Charcoal production plants.

(b) Notwithstanding the stationary source size specified in paragraph "1"(a), any stationary source that emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

(c) Any physical change that would occur at a stationary source not otherwise qualifying under this definition as a major stationary source if the change would constitute a major stationary source by itself.

2. A major source that is major for volatile organic compounds or NO_x shall be considered major for ozone.

3. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this rule whether it is a major stationary source, unless the source belongs to one of the categories of stationary sources listed in paragraph "1"(a) or to any other stationary source category that, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act.

"Minor source baseline date" is defined under the definition of "baseline date."

"Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations that are part of the SIP.

"Net emissions increase" means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the following exceeds zero:

- The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated according to the applicability requirements under 33.3(2); and

- Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this definition of "net emissions increase" shall be determined as provided for under the definition of "baseline actual emissions," except that paragraphs "1"(c) and "2"(d) of the definition of "baseline actual emissions," which describe provisions for multiple emissions units, shall not apply.

1. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if the increase or decrease in actual emissions occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.

2. An increase or decrease in actual emissions is creditable only if:

(a) The increase or decrease in actual emissions occurs within the contemporaneous time period, as noted in paragraph "1" of this definition; and

(b) The department has not relied on the increase or decrease in actual emissions in issuing a permit for the source under this rule, which permit is in effect when the increase in actual emissions from the particular change occurs.

3. An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if the increase or decrease in actual emissions is required to be considered in calculating the amount of maximum allowable increases remaining available.

4. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

5. A decrease in actual emissions is creditable only to the extent that:

(a) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) The decrease in actual emissions is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

(c) The decrease in actual emissions has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

6. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

7. The definition of "actual emissions," paragraph "2," shall not apply for determining creditable increases and decreases.

"Nonattainment area" means an area so designated by the Administrator, acting pursuant to Section 107 of the Act.

"Permitting authority" means the Iowa department of natural resources or the director thereof.

"Pollution prevention" means any activity that, through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal. "Pollution prevention" does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Predictive emissions monitoring system" or *"PEMS"* means the definition of "predictive emissions monitoring system" set forth in 40 CFR 52.21(b)(45) and is adopted by reference.

"Prevention of significant deterioration (PSD) program" means a major source preconstruction permit program that has been approved by the Administrator and incorporated into the SIP or means the program in 40 CFR 52.21. Any permit issued under such a program is a major NSR permit.

"Project" means a physical change in, or change in method of operation of, an existing major stationary source.

"Projected actual emissions," for the purposes of this chapter, means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) beginning on the first day of the month following the date when the unit resumes regular operation after the project, or in any one of the ten years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant, and full utilization of the unit would result in a significant emissions increase, or a significant net emissions increase at the major stationary source. For purposes of this definition, "regular" shall be determined by the department on a case-by-case basis.

In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

1. Shall consider all relevant information including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

2. Shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

3. Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

4. In lieu of using the method set out in paragraphs "1" through "3," may elect to use the emissions unit's potential to emit, in tons per year.

"Reactivation of a very clean coal-fired electric utility steam generating unit" means the definition of "reactivation of a very clean coal-fired electric utility steam generating unit" set forth in 40 CFR 52.21(b)(38) and is adopted by reference.

"Regulated NSR pollutant" means the following:

1. Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the Administrator:

(a) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas;

(b) Sulfur dioxide is a precursor to $PM_{2.5}$ in all attainment and unclassifiable areas;

(c) Nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all attainment and unclassifiable areas, unless the department demonstrates to EPA's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to the area's ambient $PM_{2.5}$ concentrations;

(d) Volatile organic compounds are presumed not to be precursors to $PM_{2.5}$ in any attainment and unclassifiable areas, unless the department demonstrates to EPA's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations;

2. Any pollutant that is subject to any standard promulgated under Section 111 of the Act;

3. Any Class I or Class II substance subject to a standard promulgated under or established by Title VI of the Act; or

4. Any pollutant that otherwise is subject to regulation under the Act as defined in 33.3(1), definition of "subject to regulation."

5. Notwithstanding paragraphs "1" through "4," the definition of "regulated NSR pollutant" shall not include any or all hazardous air pollutants that are either listed in Section 112 of the Act or added to the list pursuant to Section 112(b)(2) of the Act and that have not been delisted pursuant to Section

112(b)(3) of the Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the Act.

6. Particulate matter (PM) emissions, $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity that condense to form particulate matter at ambient temperatures.

"Replacement unit" means an emissions unit for which all the criteria listed in paragraphs "1" through "4" are met. No creditable emissions reductions shall be generated from shutting down the existing emissions unit that is replaced.

1. The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1) as amended through December 16, 1975, or the emissions unit completely takes the place of an existing emissions unit.

2. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

3. The replacement does not change the basic design parameter(s) of the process unit.

4. The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

"Repowering" means the definition of "repowering" set forth in 40 CFR 52.21(b)(37) and is adopted by reference.

"Reviewing authority" means the department, or the Administrator in the case of EPA-implemented permit programs under 40 CFR 52.21.

"Secondary emissions" means emissions that occur as a result of the construction or operation of a major stationary source or major modification but do not come from the major stationary source or major modification itself. For the purposes of this chapter, "secondary emissions" must be specific, well-defined, and quantifiable, and must impact the same general areas as the stationary source modification that causes the secondary emissions. "Secondary emissions" includes emissions from any offsite support facility that would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. "Secondary emissions" does not include any emissions that come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means:

1. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

- Carbon monoxide: 100 tons per year (tpy)
- Nitrogen oxides: 40 tpy
- Sulfur dioxide: 40 tpy
- Particulate matter: 25 tpy of particulate matter emissions
- PM_{10}: 15 tpy
- $PM_{2.5}$: 10 tpy of direct $PM_{2.5}$ emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions (unless the department demonstrates to EPA's satisfaction that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to the area's ambient $PM_{2.5}$ concentrations)
- Ozone: 40 tpy of volatile organic compounds or NO_x
- Lead: 0.6 tpy
- Fluorides: 3 tpy
- Sulfuric acid mist: 7 tpy
- Hydrogen sulfide (H_2S): 10 tpy
- Total reduced sulfur (including H_2S): 10 tpy
- Reduced sulfur compounds (including H_2S): 10 tpy
- Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.2 × 10-6 megagrams per year (3.5 × 10-6 tons per year)

- Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tons per year)
- Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tons per year)
- Municipal solid waste landfill emissions (measured as nonmethane organic compounds): 45 megagrams per year (50 tons per year)

2. "Significant" means, for purposes of this rule and in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant not listed in paragraph "1," any emissions rate.

3. Notwithstanding paragraph "1," "significant," for purposes of this rule, means any emissions rate or any net emissions increase associated with a major stationary source or major modification that would construct within ten kilometers of a Class I area and have an impact on such area equal to or greater than 1 μg/m3 (24-hour average).

"Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

"State implementation plan" or *"SIP"* means the plan adopted by the state of Iowa and approved by the Administrator that provides for implementation, maintenance, and enforcement of such primary and secondary ambient air quality standards as they are adopted by the Administrator, pursuant to the Act.

"Stationary source" means any building, structure, facility, or installation that emits or may emit a regulated NSR pollutant.

"Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the Act, or a nationally applicable regulation codified by the Administrator and published in 40 CFR Subchapter C (Air Programs) that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity, except that:

1. Greenhouse gases (GHGs), the air pollutant defined in 40 CFR 86.1818-12(a) (as amended through September 15, 2011) as the aggregate group of six greenhouse gases that includes carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in paragraph "4," and shall not be subject to regulation if the stationary source maintains its total sourcewide emissions below the GHG PAL level, meets the requirements in 567—33.9(455B), and complies with the PAL permit containing the GHG PAL.

2. For purposes of paragraphs "3" and "4," the term "tpy CO_2 equivalent emissions (CO_2e)" shall represent an amount of GHGs emitted and shall be computed as follows:

(a) Multiply the mass amount of emissions (tpy) for each of the six greenhouse gases in the pollutant GHGs by the associated global warming potential of the gas published at 40 CFR Part 98, Subpart A, Table A-1, "Global Warming Potentials," (as amended through December 24, 2014). For purposes of this definition, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or microorganisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

(b) Sum the resultant value from paragraph (a) for each gas to compute a tpy CO_2e.

3. The term "emissions increase," as used in this paragraph and in paragraph "4," shall mean that both a significant emissions increase (as calculated using the procedures specified in 33.3(2)*"c"* through *"h"*) and a significant net emissions increase (as specified in 33.3(1), in the definitions of "net emissions increase" and "significant") occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e and shall be calculated assuming the pollutant GHGs are a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e rather than calculated by applying the value specified in 33.3(1), in paragraph "2" of the definition of "significant."

4. Beginning January 2, 2011, the pollutant GHGs are subject to regulation if:

(a) The stationary source is a new major stationary source for a regulated NSR pollutant that is not a GHG, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more, or

(b) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not a GHG, and also will have an emissions increase of a regulated NSR pollutant and an emissions increase of 75,000 tpy CO_2e or more.

"Temporary clean coal technology demonstration project" means the definition of "temporary clean coal technology demonstration project" set forth in 40 CFR 52.21(b)(36) and is adopted by reference.

"Title V permit" means an operating permit under Title V of the Act.

"Volatile organic compounds" or *"VOC"* means any compound included in the definition of "volatile organic compounds" found at 40 CFR 51.100(s) as amended through February 8, 2023.

33.3(2) *Applicability.* The requirements of this rule (PSD program requirements) apply to the construction of any new "major stationary source" as defined in 33.3(1) or any project at an existing major stationary source in an area designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the Act.

In addition to the provisions set forth in 567—33.3(455B) through 567—33.9(455B), the provisions of 40 CFR Part 51, Appendix W (Guideline on Air Quality Models) as amended through January 17, 2017, are adopted by reference. Provisions set forth in 567—33.3(455B) through 567—33.9(455B) that are adopted by reference from 40 CFR 51.166 or 52.21 are as amended through July 19, 2021, unless otherwise noted. The following phrases contained in 40 CFR 51.166 are not adopted by reference: "it shall also provide that," "mechanism whereby," "the plan may provide that," "the plan provides that," "the plan shall provide," and "the plan shall provide that." Additionally, the term "the plan" shall mean "State Implementation Plan" or "SIP."

a. The requirements of 33.3(10) through 33.3(18) apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this rule (PSD program requirements) otherwise provides.

b. No new major stationary source or major modification to which the requirements of 33.3(10) through 33.3(18)*"e"* apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.

c. Except as otherwise provided in 33.3(2)*"i"* and *"j,"* and consistent with the definition of "major modification" contained in 33.3(1), a project is a major modification for a "regulated NSR pollutant" if it causes two types of emissions increases: a "significant emissions increase" and a "net emissions increase" that is "significant." The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

d. The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs 33.3(2)*"e"* through *"h"* of this subrule. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition of "net emissions increase." Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

e. Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the "projected actual emissions" and the "baseline actual emissions" for each existing emissions unit equals or exceeds the significant amount for that pollutant.

f. Actual-to-potential test for projects that involve only construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the "potential to emit" from each new emissions unit following completion of the project and the "baseline actual emissions" for a new emissions unit before the project equals or exceeds the significant amount for that pollutant.

g. Reserved.

h. Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs 33.3(2)*"e"* through *"g"* of this subrule,

as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

i. For any major stationary source with a PAL for a regulated NSR pollutant, the major stationary source shall comply with rule requirements under 567—33.9(455B).

33.3(3) *Ambient air increments.* The provisions for ambient air increments as specified in 40 CFR 52.21(c) as amended through October 20, 2010, are adopted by reference.

33.3(4) *Ambient air ceilings.* The provisions for ambient air ceilings as specified in 40 CFR 52.21(d) are adopted by reference.

33.3(5) *Restrictions on area classifications.* The provisions for restrictions on area classifications as specified in 40 CFR 52.21(e) are adopted by reference.

33.3(6) *Exclusions from increment consumption.* The provisions by which the SIP may provide for exclusions from increment consumption as specified in 40 CFR 51.166(f) are adopted by reference.

33.3(7) *Redesignation.* The provisions for redesignation as specified in 40 CFR 52.21(g) are adopted by reference.

33.3(8) *Stack heights.* The provisions for stack heights as specified in 40 CFR 52.21(h) are adopted by reference.

33.3(9) *Exemptions.* The provisions for allowing exemptions from certain requirements for PSD-subject sources as specified in 40 CFR 52.21(i) are adopted by reference.

33.3(10) *Control technology review.* The provisions for control technology review as specified in 40 CFR 52.21(j) are adopted by reference.

33.3(11) *Source impact analysis.* The provisions for a source impact analysis as specified in 40 CFR 52.21(k) are adopted by reference.

33.3(12) *Air quality models.* The provisions for air quality models as specified in 40 CFR 52.21(l) are adopted by reference.

33.3(13) *Air quality analysis.* The provisions for an air quality analysis as specified in 40 CFR 52.21(m) are adopted by reference.

33.3(14) *Source information.* The provisions for providing source information as specified in 40 CFR 52.21(n) are adopted by reference.

33.3(15) *Additional impact analyses.* The provisions for an additional impact analysis as specified in 40 CFR 52.21(o) are adopted by reference.

33.3(16) *Sources impacting federal Class I areas—additional requirements.* The provisions for sources impacting federal Class I areas as specified in 40 CFR 51.166(p) are adopted by reference.

33.3(17) *Public participation.*

a. The department shall notify all applicants within 30 days as to the completeness of the application or any deficiency in the application or information submitted. In the event of such a deficiency, the date of receipt of the application shall be the date on which the department received all required information.

b. Within one year after receipt of a complete application, the department shall:

(1) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

(2) Make available in at least one location in each region in which the proposed source would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(3) Notify the public, by posting on a publicly available website identified by the department, of the application, of the preliminary determination, of the degree of increment consumption that is expected from the source or modification, and of the opportunity for comment at a public hearing as well as written public comment. The electronic notice shall be available for the duration of the public comment period and shall include the notice of public comment, the draft permit(s), information on how to access the administrative record for the draft permit(s) and how to request or attend a public hearing on the draft permit(s). The department may use other means if necessary to ensure adequate notice to the affected public. At least 30 days shall be provided for public comment and for notification of any public hearing.

(4) Send a copy of the notice of public comment to the applicant, to the Administrator and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: any other state or local air pollution control agencies; the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands may be affected by emissions from the source or modification.

(5) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source, alternatives to the proposed source or modification, the control technology required, and other appropriate considerations. At least 30 days' notice shall be provided for any public hearing.

(6) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. The department shall make all comments available for public inspection at the same locations where the department made available preconstruction information relating to the proposed source or modification.

(7) Make a final determination whether construction should be approved, approved with conditions, or disapproved.

(8) Notify the applicant in writing of the final determination and make such notification available for public inspection at the same locations where the department made available preconstruction information and public comments relating to the proposed source or modification.

c. Reopening of the public comment period.

(1) If comments submitted during the public comment period raise substantial new issues concerning the permit, the department may, at its discretion, take one or more of the following actions:

1. Prepare a new draft permit, appropriately modified;
2. Prepare a revised fact sheet;
3. Prepare a revised fact sheet and reopen the public comment period; or
4. Reopen or extend the public comment period to provide interested persons an opportunity to comment on the comments submitted.

(2) The public notice provided by the department pursuant to this rule shall define the scope of the reopening. Department review of any comments filed during a reopened comment period shall be limited to comments pertaining to the substantial new issues causing the reopening.

33.3(18) *Source obligation.*

a. Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the plan and any other requirements under local, state or federal law.

b. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation that was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, the requirements of 33.3(10) through 33.3(19) shall apply to the source or modification as though construction had not yet commenced on the source or modification.

c. Any owner or operator who constructs or operates a source or modification not in accordance with the application pursuant to the provisions in 567—33.3(455B) or with the terms of any approval to construct, or any owner or operator of a source or modification subject to the provisions in 567—33.3(455B) who commences construction after April 15, 1987 (the effective date of Iowa's PSD program), without applying for and receiving department approval, shall be subject to appropriate enforcement action.

d. Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The department may extend the 18-month period upon a satisfactory showing that an extension is justified. These provisions do not apply to the time between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

e. Reserved.

f. Except as otherwise provided in subparagraph (8), the following specific provisions shall apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source, other than projects at a source with a PAL, in circumstances where there is a "reasonable possibility," within the meaning of subparagraph (8), that a project that is not part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method for calculating projected actual emissions as specified in 33.3(1), paragraphs "1" through "3" of the definition of "projected actual emissions."

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

1. A description of the project;

2. Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

3. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph "3" of the definition of "projected actual emissions" in 33.3(1), an explanation describing why such amount was excluded, and any netting calculations, if applicable.

(2) No less than 30 days before beginning actual construction, the owner or operator shall meet with the department to discuss the owner's or operator's determination of projected actual emissions for the project and shall provide to the department a copy of the information specified in 33.3(18)*"f."* The owner or operator is not required to obtain a determination from the department regarding the project's projected actual emissions prior to beginning actual construction.

(3) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in subparagraph (1) to the department. The requirements in subparagraphs (1), (2) and (3) shall not be construed to require the owner or operator of such a unit to obtain any determination from the department before beginning actual construction.

(4) The owner or operator shall:

1. Monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subparagraph (1);

2. Calculate the annual emissions, in tons per year on a calendar-year basis, for a period of five years following resumption of regular operations and maintain a record of regular operations after the change, or for a period of ten years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit (for purposes of this requirement, "regular" shall be determined by the department on a case-by-case basis); and

3. Maintain a written record containing the information required in this subparagraph.

(5) The written record containing the information required in subparagraph (4) shall be retained by the owner or operator for a period of ten years after the project is completed.

(6) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under subparagraph (4) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(7) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in subparagraph (1), exceed the baseline actual emissions, as documented and maintained pursuant to subparagraph (4), by an amount that is "significant" as defined in 33.3(1) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to subparagraph (4). Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

1. The name, address and telephone number of the major stationary source;

2. The annual emissions as calculated pursuant to subparagraph (4); and

3. Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(8) A "reasonable possibility" under this paragraph (33.3(18)*"f"*) occurs when the owner or operator calculates the project to result in either:

1. A projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as defined under 33.3(1) (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

2. A projected actual emissions increase that, when added to the amount of emissions excluded under 33.3(1), paragraph "3" of the definition of "projected actual emissions," equals at least 50 percent of the amount that is a "significant emissions increase," as defined under 33.3(1) (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of this numbered paragraph, and not also within the meaning of numbered paragraph "1" of this subparagraph (subparagraph (8)), then the provisions of subparagraphs (3) through (7) do not apply to the project.

g. The owner or operator of the source shall make the information required to be documented and maintained pursuant to paragraph 33.3(18)*"f"* available for review upon request for inspection by the department or the general public pursuant to the requirements for Title V operating permits contained in 567—subrule 22.107(6).

33.3(19) *Innovative control technology.* The provisions for innovative control technology as specified in 40 CFR 51.166(s) are adopted by reference.

33.3(20) *Conditions for permit issuance.* Except as explained below, a permit may not be issued to any new "major stationary source" or "major modification" as defined in 33.3(1) that would locate in any area designated as attainment or unclassifiable for any national ambient air quality standard pursuant to Section 107 of the Act, when the source or modification would cause or contribute to a violation of any national ambient air quality standard. A major stationary source or major modification will be considered to cause or contribute to a violation of a national ambient air quality standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable national standard:

	Averaging Time				
	Annual	24 hrs.	8 hrs.	3 hrs.	1 hr.
Pollutant	(μg/m^3)	(μg/m^3)	(μg/m^3)	(μg/m^3)	(μg/m^3)
SO_2	1.0	5	———	25	———
PM_{10}	1.0	5	———	———	———
$PM_{2.5}$	0.3	1.2	———	———	———
NO_2	1.0	———	———	———	———
CO	———	———	500	———	2,000

A permit may be granted to a major stationary source or major modification as identified above if the major stationary source or major modification reduces the impact of its emissions upon air quality by obtaining sufficient emissions reductions to compensate for its adverse ambient air impact where the major stationary source or major modification would otherwise contribute to a violation of any national ambient air quality standard. This subrule shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that the source is located in an area designated under Section 107 of the Act as nonattainment for that pollutant.

33.3(21) *Administrative amendments.*

a. Upon request for an administrative amendment, the department may take final action on any such request and may incorporate the requested changes without providing notice to the public or to affected states, provided that the department designates any such permit revisions as having been made pursuant to 33.3(21).

b. An administrative amendment is a permit revision that does any of the following:

(1) Corrects typographical errors;

(2) Corrects word processing errors;

(3) Identifies a change in name, address or telephone number of any person identified in the permit or provides a similar minor administrative change at the source; or

(4) Allows for a change in ownership or operational control of a source where the department determines that no other change in the permit is necessary, provided that a written agreement that contains a specific date for transfer of permit responsibility, coverage, and liability between the current permittee and the new permittee has been submitted to the department.

33.3(22) *Permit rescission.* Any permit issued under 40 CFR 52.21 or this chapter or any permit issued under 567—22.4(455B) shall remain in effect unless and until it expires or is rescinded under 40 CFR 52.21(w) or this chapter. The provisions for permit rescission as set forth in 40 CFR 52.21(w) are adopted by reference. The department will consider requests for rescission that meet the conditions specified in this subrule. If the department rescinds a permit or a condition in a permit issued under 40 CFR 52.21, this chapter, or 567—22.4(455B), the public shall be given adequate notice of the proposed rescission. Posting of an announcement of rescission on a publicly available website identified by the department 60 days prior to the proposed date for rescission shall be considered adequate notice.
[**ARC 7962C**, IAB 5/15/24, effective 6/19/24]

567—33.4 to **33.8** Reserved.

567—33.9(455B) Plantwide applicability limitations (PALs). This rule provides an existing major source the option of establishing a PAL on emissions, provided the conditions in this rule are met. The provisions for a PAL as set forth in 40 CFR 52.21(aa) are adopted by reference, except that the term "Administrator" shall mean "the department of natural resources."
[**ARC 7962C**, IAB 5/15/24, effective 6/19/24]

567—33.10(455B) Exceptions to adoption by reference. All references to Clean Units and Pollution Control Projects set forth in 40 CFR 51.166 and 52.21 are not adopted by reference.
[**ARC 7962C**, IAB 5/15/24, effective 6/19/24]

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

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CHAPTER 34
PROVISIONS FOR AIR QUALITY EMISSIONS TRADING PROGRAMS
Rescinded **ARC 7963C**, IAB 5/15/24, effective 6/19/24

CHAPTER 35
AIR EMISSIONS REDUCTION ASSISTANCE PROGRAM
Rescinded **ARC 7964C**, IAB 5/15/24, effective 6/19/24

CHAPTER 36
Reserved

CHAPTER 37
Reserved

CHAPTER 65
ANIMAL FEEDING OPERATIONS

[Prior to 7/1/83, DEQ Ch 20]
[Prior to 12/3/86, Water, Air and Waste Management[900]]

DIVISION I
GENERAL PROVISIONS

The provisions in Division I apply to all confinement feeding operations, open feedlot operations, animal truck washes, dry bedded confinement feeding operations, and associated manure and waste storage structures, unless otherwise noted in this chapter.

The following acronyms will be used throughout this chapter:

"AFO" means animal feeding operation.

"CAFO" means concentrated animal feeding operation.

"MMP" means manure management plan.

"NMP" means nutrient management plan.

"NPDES" means National Pollutant Discharge Elimination System.

567—65.1(455B,459,459A,459B) Definitions and incorporation by reference. In addition to the definitions in Iowa Code sections 455B.101, 455B.171, 459.102, 459A.102, and 459B.102 and in 567—Chapter 60, the following definitions shall apply to this chapter:

65.1(1) *Definitions.*

"Abandoned AFO structure" means the AFO structure has been razed, removed from the site of an AFO, filled in with earth, or converted to uses other than an AFO structure so that it cannot be used as an AFO structure without significant reconstruction.

"Adjacent" for open feedlot operation. Two or more open feedlot operations are defined as adjacent if both of the following occur:

1. At least one open feedlot operation structure is constructed on or after July 17, 2002; and
2. An open feedlot operation structure that is part of one open feedlot operation is separated by less than 1,250 feet from an open feedlot operation structure that is part of the other open feedlot operation.

"Adjacent—air quality" for confinement feeding operations means, for the purpose of determining separation distance requirements pursuant to rule 567—65.106(455B,459,459B), that two or more confinement feeding operations are adjacent if they have AFO structures that are separated at their closest points by less than the following:

1. 1,250 feet for a confinement feeding operation having an animal unit capacity of less than 1,250 animal units for swine maintained as part of a farrowing and gestating operation, less than 2,700 animal units for swine maintained as part of a farrow-to-finish operation, less than 4,000 animal units for cattle maintained as part of a cattle operation, or less than 3,000 animal units for any other confinement feeding operation, or for a confinement feeding operation consisting of dry bedded confinement feeding operation structures.
2. 1,500 feet for a confinement feeding operation having an animal unit capacity of 1,250 or more but less than 2,000 animal units for swine maintained as part of a swine farrowing and gestating operation, 2,700 or more but less than 5,400 animal units for swine maintained as part of a farrow-to-finish operation, 4,000 or more but less than 6,500 animal units for cattle maintained as part of a cattle operation, or for any other confinement feeding operation having an animal unit capacity of 3,000 or more but less than 5,000 animal units.
3. 2,500 feet for a confinement feeding operation having an animal unit capacity of 2,000 or more animal units for swine maintained as part of a swine farrowing and gestating operation, 5,400 or more animal units for swine maintained as part of a farrow-to-finish operation, or 6,500 or more animal units for cattle maintained as part of a cattle operation, or for any other confinement feeding operation with 5,000 or more animal units.

The distances in paragraphs "1" to "3" above shall only be used to determine that two or more confinement feeding operations are adjacent if at least one confinement feeding operation structure was constructed on or after March 21, 1996.

To determine if two or more confinement feeding operations are adjacent, for the purpose of determining the separation distance requirements, the animal unit capacity of each individual operation shall be used. If two or more confinement feeding operations do not have the same animal unit capacity, the greater animal unit capacity shall be used to determine the separation distance.

Dry manure that is stockpiled within a distance of 1,250 feet from another stockpile shall be considered part of the same stockpile.

"Adjacent—water quality" for confinement feeding operations means, for the purpose of determining the construction permit requirements pursuant to rule 567—65.103(455B,459,459B) and MMP requirements pursuant to rule 567—65.110(455B,459,459B), that two or more confinement feeding operations are adjacent if they have confinement feeding operation structures that are separated at their closest points by less than the following:

1. 1,250 feet for confinement feeding operations having a combined animal unit capacity of less than 1,000 animal units.
2. 2,500 feet for confinement feeding operations having a combined animal unit capacity of 1,000 or more animal units.
3. The distances in paragraphs "1" and "2" above shall only be used to determine that two or more confinement feeding operations are adjacent if at least one confinement feeding operation structure is constructed or expanded on or after May 21, 1998.

"Aerobic structure" means an AFO structure other than an egg washwater storage structure which relies on aerobic bacterial action which is maintained by the utilization of air or oxygen and which includes aeration equipment to digest organic matter. Aeration equipment shall be used and shall be capable of providing oxygen at a rate sufficient to maintain an average of 2 milligrams per liter dissolved oxygen concentration in the upper 30 percent of the depth of manure in the structure at all times.

"AFO structure" means a confinement building, manure storage structure, dry bedded confinement feeding operation structure, or egg washwater storage structure.

"Agricultural drainage well" means a vertical opening to an aquifer or permeable substratum which is constructed by any means including but not limited to drilling, driving, digging, coring, augering, jetting, or washing and which is capable of intercepting or receiving surface or subsurface drainage water from land directly or by a drainage system.

"Agricultural drainage well area" means an area of land where surface or subsurface water drains into an agricultural drainage well directly or through a drainage system connecting to the agricultural drainage well.

"Alluvial aquifer area" means an area underlaid by sand or gravel aquifers situated beneath floodplains along stream valleys and includes alluvial deposits associated with stream terraces and benches, contiguous windblown sand deposits, and glacial outwash deposits.

"Alluvial soils" means soils formed in materials deposited by moving water.

"Alternative technology settled open feedlot effluent control system" or *"AT system"* means use of an open feedlot effluent control technology other than a conventional runoff containment system to control and dispose of settled open feedlot effluent.

"Anaerobic digester system" or *"digester"* means a manure storage structure that is covered if the primary function of the manure storage structure is to process manure by employing environmental conditions including bacteria to break down organic matter in the absence of oxygen, and the structure is used for producing, collecting, and utilizing a biogas.

"Anaerobic lagoon" means an unformed manure storage structure if the primary function of the structure is to store and stabilize manure, the structure is designed to receive manure on a regular basis, and the structure's design waste loading rates provide that the predominant biological activity is anaerobic. An anaerobic lagoon does not include the following:

1. A runoff control basin or a settled open feedlot effluent basin that collects and stores only precipitation-induced runoff from an open feedlot operation.

2. An anaerobic treatment system that includes collection and treatment facilities for all off gases.

"Animal" means cattle, swine, horses, sheep, chickens, turkeys, goats, fish, or ducks.

"Animal capacity" means the maximum number of animals that the owner or operator will confine in an AFO at any one time. The animal capacity shall be what is currently approved or permitted on the site and is listed in the MMP or NMP, unless a portion of the facility has been properly closed or taken out of operation through the small AFO election as provided in paragraph 65.110(1)*"f."* In a confinement feeding operation, the animal capacity of all confinement buildings will be included in the determination of the animal capacity of the operation, unless the building has been abandoned, in accordance with the definition of "abandoned AFO structure."

"Animal feeding operation" or *"AFO"* means a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for 45 days or more in any 12-month period, and all structures used for the storage of manure from animals in the operation. Except as required for an NPDES permit required pursuant to the Act, an AFO does not include a livestock market. Open feedlot operations and confinement feeding operations are considered to be separate AFOs.

"Animal truck wash effluent" means a combination of manure, washwater-induced runoff, or other runoff derived from an animal truck wash facility, which may include solids.

"Animal truck wash effluent structure" means an impoundment that is part of an animal truck wash facility, if the primary function of the impoundment is to collect and store animal truck wash effluent.

"Animal truck wash facility" means an operation engaged solely in washing single-unit trucks, truck-tractors, semitrailers, or trailers used to transport animals. An animal truck wash facility is considered to be part of an AFO if the animal truck wash facility and the AFO are under common ownership or management and the animal truck wash facility is located within 1,250 feet of the AFO.

"Animal unit" means a unit of measurement based upon the product of multiplying the number of animals of each category by a special equivalency factor, as follows:

1. Slaughter and feeder cattle	1.00
2. Immature dairy cattle	1.00
3. Mature dairy cattle	1.400
4. Butcher or breeding swine weighing more than 55 pounds	0.400
5. Swine weighing 15 pounds or more but not more than 55 pounds	0.100
6. Sheep or lambs	0.100
7. Goats	0.100
8. Horses	2.00
9. Turkeys weighing 7 pounds or more	0.018
10. Turkeys weighing less than 7 pounds	0.0085
11. Broiler or layer chickens weighing 3 pounds or more	0.010
12. Broiler or layer chickens weighing less than 3 pounds	0.0025
13. Ducks	0.040
14. Fish weighing 25 grams or more	0.001
15. Fish weighing less than 25 grams	0.00006

"Animal unit capacity" means a measurement used to determine the maximum number of animal units that may be maintained as part of an AFO at any one time, including as provided in Iowa Code sections 459.201, 459.301, and 459A.103. For dry bedded confinement feeding operations, "animal unit capacity" means the maximum number of animal units that the owner or operator confines in a dry bedded confinement feeding operation at any one time, including the animal unit capacity of all dry bedded confinement feeding operation buildings that are used to house cattle or swine in the dry bedded confinement feeding operation. For purposes of determining whether an open feedlot operation must obtain an NPDES permit, the animal unit capacity of the AFO shall include the animal unit capacities of

both the open feedlot operation and any adjacent confinement feeding operation if all of the following occur:

1. The animals in the open feedlot operation and any adjacent confinement feeding operation are all in the same category of animals as used in the definitions of "large CAFO" and "medium CAFO" in 40 CFR Part 122;

2. The closest open feedlot operation structure is separated by less than 1,250 feet from the closest confinement feeding operation structure; and

3. The open feedlot operation and the confinement feeding operation are under common ownership or management.

"Animal weight capacity" means the sum of the average weight of all animals in a confinement feeding operation when the operation is at full animal capacity. For confinement feeding operations with only one species, the animal weight capacity is the product of multiplying the animal capacity by the average weight during a production cycle. For operations with more than one species, the animal weight capacity of the operation is the sum of the animal weight capacities for all species. This definition applies to confinement feeding operations constructed prior to March 1, 2003.

"Applicant" means the person applying for a construction permit or an NPDES permit for an AFO.

"Bedding" means crop, vegetation, sand, or forage residue or similar materials placed in a dry bedded confinement building for the care of animals.

"Business" means a commercial enterprise.

"Cemetery" means a space held for the purpose of permanent burial, entombment or interment of human remains that is owned or managed by a political subdivision or private entity or a cemetery regulated pursuant to Iowa Code chapter 523I. A cemetery does not include a pioneer cemetery as defined by Iowa Code section 331.325.

"Church" means a religious institution.

"Commercial enterprise" means a building which is used as a part of a business that manufactures goods, delivers services, or sells goods or services, which is customarily and regularly used by the general public during the entire calendar year and which is connected to electric, water, and sewer systems. A commercial enterprise does not include a farm operation.

"Commercial manure service" means a sole proprietor or business association engaged in the business of transporting, handling, storing, or applying manure for a fee.

"Commercial manure service representative" means a manager, employee, agent, or contractor of a commercial manure service, if the person is engaged in transporting, handling, storing, or applying manure on behalf of the service.

"Common management" means significant control by an individual of the management of the day-to-day operations of each of two or more AFOs. "Common management" does not include control over a contract livestock facility by a contractor as defined in Iowa Code section 202.1.

"Common ownership" for confinement feeding operations means the ownership of a confinement feeding operation as a sole proprietor, or a 10 percent or more ownership interest held by a person, in each of two or more confinement feeding operations as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The ownership interest is a common ownership interest when it is held directly, indirectly through a spouse or dependent child, or both. The following exceptions shall apply to this definition:

1. For a confinement feeding operation structure constructed before June 19, 2024, that has not been expanded, "common ownership" means the ownership of a confinement feeding operation as a sole proprietor, or a majority ownership interest held by a person, in each of two or more confinement feeding operations as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The majority ownership interest is a common ownership interest when it is held directly, indirectly through a spouse or dependent child, or both. This exception shall not apply to a confinement feeding structure or operation expanded after June 19, 2024; instead, the 10 percent or more ownership interest standard shall apply.

2. This definition shall not apply to a dry bedded confinement feeding operation that is subject to the common ownership requirements in Iowa Code section 459B.103(3)*"a"*(3) nor to an open feedlot operation as defined in this rule.

"Common ownership" for open feedlot operations means to hold an interest in each of two or more open feedlot operations as any of the following:

1. A sole proprietor;
2. A joint tenant or tenant in common; or
3. A holder of a majority equity interest in a business association as defined in Iowa Code section 202B.102, including as a shareholder, partner, member, beneficiary, or other equity interest holder.

An interest in an open feedlot operation under paragraph "2" or "3" is a common ownership interest when it is held directly or indirectly through a spouse or dependent child, or both.

"Complete application" means an application that is substantially complete and approvable when all necessary questions on the application forms have been completed, the application is signed and all applicable portions of the application, including the application form, required attachments, and application fees, have been submitted.

"Concentrated AFO" or *"CAFO"* means an AFO that is a designated CAFO, or that is defined as a large CAFO or a medium CAFO as defined in 40 CFR 122.23(b).

"Confinement feeding operation" means an AFO in which animals are confined to areas that are totally roofed and includes an AFO that is not an open feedlot operation as defined in this chapter.

1. For purposes of water quality regulation, Iowa Code section 459.301 provides that two or more AFOs under common ownership or management are deemed to be a single AFO if they are adjacent or utilize a common area or system for manure disposal. For purposes of the air quality-related separation distances in Iowa Code section 459.202, Iowa Code section 459.201 provides that two or more AFOs under common ownership or management are deemed to be a single AFO if they are adjacent or utilize a common system for manure storage. The distinction is due to regulation of AFOs for water quality purposes under the Act. 40 CFR 122.23 sets out the requirements for an AFO and requires that two or more AFOs under common ownership be considered a single operation if they adjoin each other or if they use a common area or system for disposal of wastes. However, this federal regulation does not control regulation of AFOs for the purposes of the separation distances in Iowa Code section 459.202, and therefore the definition is not required by federal law to include common areas for manure disposal.

2. To determine if two or more AFOs are deemed to be one AFO, the first test is whether the AFOs are under common ownership or management. If they are not under common ownership or management, they are not one AFO. For purposes of water quality regulation, the second test is whether the two AFOs are adjacent or utilize a common area or system for manure disposal. If the two operations are not adjacent and do not use a common area or system for manure disposal, they are not one AFO. For purposes of the air quality-related separation distances in Iowa Code section 459.202, the second test is whether the two AFOs are adjacent or utilize a common system for manure storage. If the two operations are not adjacent and do not use the same system for manure storage, they are not one AFO.

3. A common area or system for manure disposal includes but is not limited to use of the same manure storage structure, confinement feeding operation structure, egg washwater storage structure, stockpile, permanent manure transfer piping system or center pivot irrigation system. A common area or system for manure disposal does not include manure application fields included in a manure management plan or anaerobic digester system.

"Confinement feeding operation building" or *"confinement building"* means a building used in conjunction with a confinement feeding operation to house animals.

"Confinement feeding operation structure" means an AFO structure that is part of a confinement feeding operation.

"Confinement site" means a site where there is located a manure storage structure which is part of a confinement feeding operation, other than a SAFO.

"Confinement site manure applicator" means a person, other than a commercial manure service or a commercial manure service representative, who applies manure on land if the manure originates from a manure storage structure.

"Construction approval letter" means a written document of the department to acknowledge that the preconstruction submittal requirements of rule 567—65.104(455B,459,459B) have been met for a confinement feeding operation that is not required to obtain a construction permit pursuant to rule 567—65.103(455B,459,459B).

"Construction design statement" means a document required to be submitted by a confinement feeding operation prior to constructing a formed manure storage structure, other than a SAFO, but that does not meet the threshold engineering requirements.

"Construction permit" means a written approval of the department to construct, modify or alter the use of an AFO structure as required by rules 567—65.103(455B,459,459B) and 567—65.203(455B,459A).

"Controlling interest" means ownership of a confinement feeding operation as a sole proprietor or a majority ownership interest held by a person in a confinement feeding operation as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The majority ownership interest is a controlling interest when it is held directly, indirectly through a spouse or dependent child, or both. The majority ownership interest must be a voting interest or otherwise control management of the confinement feeding operation.

"Covered" means organic or inorganic material, placed upon an AFO structure used to store manure, which significantly reduces the exchange of gases between the stored manure and the outside air. Organic materials include but are not limited to a layer of chopped straw, other crop residue, or a naturally occurring crust on the surface of the stored manure. Inorganic materials include but are not limited to wood, steel, aluminum, rubber, plastic, or Styrofoam. The materials shall shield at least 90 percent of the surface area of the stored manure from the outside air. Cover shall include an organic or inorganic material which current scientific research shows reduces detectable odor by at least 75 percent. A formed manure storage structure directly beneath a floor where animals are housed in a confinement feeding operation is deemed to be covered.

"Critical public area" means land that is owned or managed by the federal government, by the department, or by a political subdivision and that has unique scenic, cultural, archaeological, scientific, or historic significance or contains a rare or valuable ecological system. Critical public areas include:

1. State wildlife and waterfowl refuges listed in 571—subrules 52.1(2) and 52.1(3);
2. Recreation areas, state parks, state parks managed by another governmental agency, and state preserves as listed in rule 571—61.2(461A);
3. County parks and recreation areas as provided in subrule 65.1(2);
4. National wildlife refuges listed as follows: Union Slough National Wildlife Refuge, DeSoto National Wildlife Refuge, Boyer Chute National Wildlife Refuge, Upper Mississippi River National Wildlife and Fish Refuge, Driftless Area National Wildlife Refuge, Neal Smith National Wildlife Refuge, and Port Louisa National Wildlife Refuge;
5. National monuments and national historic sites listed as follows: Effigy Mounds National Monument and Herbert Hoover National Historic Site;
6. Parks in Iowa that are under the federal jurisdiction listed with the United States Army Corps of Engineers as provided in subrule 65.1(2).

"Cropland" means any land suitable for use in agricultural production including but not limited to feed, grain and seed crops, fruits, vegetables, forages, sod, trees, grassland, pasture and other similar crops.

"Deep well" means a well located and constructed in such a manner that there is a continuous layer of low permeability soil or rock at least 5 feet thick located at least 25 feet below the normal ground surface and above the aquifer from which water is to be drawn.

"Designated area" means a known sinkhole, abandoned well, unplugged agricultural drainage well, agricultural drainage well cistern, agricultural drainage well surface tile inlet, drinking water well, designated wetland, or water source. "Designated area" does not include a terrace tile inlet or surface tile inlet other than an agricultural drainage well surface tile inlet.

"Designated CAFO" means an AFO that has been designated as a CAFO pursuant to rule 567—65.201(455B,459A).

"Designated wetland" means land designated as a protected wetland by the United States Department of the Interior or the department, including but not limited to a protected wetland as defined in Iowa Code section 456B.1, if the land is owned and managed by the federal government or the department. However, a designated wetland does not include land where an agricultural drainage well has been plugged causing a temporary wetland or land within a drainage district or levee district. Designated wetlands in the state are listed in the department's "Designated Wetlands in Iowa" (more information is contained in subrule 65.1(2), incorporation by reference).

"Discontinued AFO" means an AFO whose structures have been abandoned or whose use has been discontinued as evidenced by the removal of all animals and the owner or operator has no immediate plans to repopulate.

"Discontinued AFO structure" means an AFO structure that has been abandoned or whose use has been discontinued as evidenced by the removal of all animals from the structure and the owner or operator has no immediate plans to repopulate.

"Document" means any form required to be processed by the department under this chapter regulating AFOs, including but not limited to applications or related materials for permits as provided in Iowa Code section 459.303, MMPs as provided in Iowa Code section 459.312, comment or evaluation by a county board of supervisors considering an application for a construction permit, the department's analysis of the application including using and responding to a master matrix pursuant to Iowa Code section 459.304, and notices required under those sections.

"Dry bedded confinement feeding operation" means a confinement feeding operation in which cattle or swine are confined to areas which are totally roofed and in which all manure is stored as dry bedded manure. Unless specifically stated otherwise, all requirements in Divisions I and II of this chapter do apply to dry bedded confinement feeding operations.

"Dry bedded confinement feeding operation structure" means a dry bedded confinement feeding operation building or a dry bedded manure storage structure.

"Dry bedded manure" means manure from cattle or swine that meets all of the following requirements:

1. The manure does not flow perceptibly under pressure.
2. The manure is not capable of being transported through a mechanical pumping device designed to move a liquid.
3. The manure contains bedding.

"Dry bedded manure confinement feeding operation building" or *"building"* means a building used in conjunction with a confinement feeding operation to house cattle or swine and in which any manure from the animals is stored as dry bedded manure.

"Dry bedded manure storage structure" means a covered or uncovered structure, other than a building, used to store dry bedded manure originating from a confinement feeding operation.

"Dry manure" means manure that meets all of the following conditions:

1. The manure does not flow perceptibly under pressure.
2. The manure is not capable of being transported through a mechanical pumping device designed to move a liquid.
3. The constituent molecules of the manure do not flow freely among themselves but may show a tendency to separate under stress.

"Dry manure" includes manure marketed as a bulk dry animal nutrient product that is stored 1,250 feet or less from the confinement animal feeding structure from which it originated.

"Earthen manure storage basin" means an earthen cavity, either covered or uncovered, that, on a regular basis, receives manure discharges from a confinement feeding operation if accumulated manure from the basin is completely removed at least once each year.

"Earthen waste slurry storage basin" means an uncovered and exclusively earthen cavity that, on a regular basis, receives manure discharges from a confinement AFO if accumulated manure from the basin is completely removed at least twice each year and that was issued a permit, constructed or expanded on or after July 1, 1990, but prior to May 31, 1995.

"Educational institution" means a building in which an organized course of study or training is offered to students enrolled in kindergarten through grade 12 and served by local school districts, accredited or approved nonpublic schools, area education agencies, community colleges, institutions of higher education under the control of the state board of regents, and accredited independent colleges and universities.

"Egg washwater storage structure" means an aerobic or anaerobic structure used to store the wastewater resulting from the washing and in-shell packaging of eggs. It does not include a structure also used as a manure storage structure.

"Enforcement action" means an action against a person with a controlling interest in a confinement feeding operation initiated by the department or the attorney general to enforce the provisions of Iowa Code chapter 459 or 459B or rules adopted pursuant to either chapter. An enforcement action begins when the attorney general institutes proceedings in district court pursuant to Iowa Code section 455B.112. An enforcement action is pending until final resolution of the action by satisfaction of a court order, for which all judicial appeal rights are exhausted, expired, or waived.

"Family member" means a person related to another person as parent, grandparent, child, grandchild, sibling, or a spouse of such related person.

"Feed storage runoff basin" means a covered or uncovered impoundment with the primary function to collect and store runoff from a feed storage area.

"Formed animal truck wash effluent structure" means a covered or uncovered impoundment used to store effluent from an animal truck wash facility, which has walls and a floor constructed of concrete, concrete block, wood, steel, or similar materials.

"Formed manure storage structure" means a covered or uncovered impoundment used to store manure from an AFO, which has walls and a floor constructed of concrete, concrete block, wood, steel, or similar materials. Subject to department approval, similar materials may include but are not limited to plastic, rubber, fiberglass, or other synthetic materials. Materials used in a formed manure storage structure shall have the structural integrity to withstand expected internal and external load pressures.

"Formed settled open feedlot effluent basin" means a settled open feedlot effluent basin which has walls and a floor constructed of concrete, concrete block, wood, steel, or similar materials. Similar materials may include but are not limited to plastic, rubber, fiberglass, or other synthetic materials. Materials used in a formed settled open feedlot effluent basin shall have the structural integrity to withstand expected internal and external load pressures.

"Freeboard" means the difference in elevation between the liquid level and the confinement feeding operation structure's overflow level.

"Frozen ground" means soil that is impenetrable due to frozen soil moisture but does not include soil that is only frozen to a depth of two inches or less.

"Grassed waterway" means a natural or constructed channel that is shaped or graded to required dimensions and established in suitable vegetation for the stable conveyance of runoff.

"Highly erodible land" means a field that has one-third or more of its acres or 50 acres, whichever is less, with soils that have an erodibility index of eight or more, as determined by rules promulgated by the United States Department of Agriculture.

"Human sanitary waste" means wastewater derived from domestic uses including bathroom and laundry facilities generating wastewater from toilets, baths, showers, lavatories and clothes washing.

"Incidental" means a duty which is secondary or subordinate to a primary job or function.

"Incorporation" means a soil tillage operation following the surface application of manure which mixes the manure into the upper four inches or more of soil.

"Indemnity fund" means the livestock remediation fund created in Iowa Code section 459.501.

"Injection" means the application of manure into the soil surface using equipment that discharges it beneath the surface.

"Interest" means ownership of a confinement feeding operation as a sole proprietor or a 10 percent or more ownership interest held by a person in a confinement feeding operation as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The ownership interest is an interest when it is held directly, indirectly through a spouse or dependent child, or both.

"Karst terrain" means land having karst formations that exhibit surface and subterranean features of a type produced by the dissolution of limestone, dolomite, or other soluble rock and characterized by closed depressions, sinkholes, or caves.

"Known sinkhole" means a sinkhole that has been included in the department's sinkhole coverage and displayed in the AFO Siting Atlas or a sinkhole known to the applicant.

"Liquid manure" means manure that meets all of the following requirements:

1. The manure flows perceptibly under pressure.
2. The manure is capable of being transported through a mechanical pumping device designated to move a liquid.
3. The constituent molecules of the liquid manure flow freely among themselves and show a tendency to separate under stress.

Liquid manure that is frozen or partially frozen is included in this definition.

"Livestock market" means any place where animals are assembled from two or more sources for public auction, private sale, or on a commission basis, which is under state or federal supervision, including a livestock sale barn or auction market, if such animals are kept for ten days or less.

"Long-term stockpile location" means an area where a person stockpiles manure for more than a total of six months in any two-year period.

"Low-pressure irrigation system" means spray irrigation equipment that discharges manure from a maximum height of nine feet in a downward direction and that utilizes spray nozzles that discharge manure at a maximum pressure of 25 pounds per square inch.

"Major water source" means a water source that is a lake, reservoir, river or stream located within the territorial limits of the state, or any marginal river area adjacent to the state, if the water source is capable of supporting a floating vessel capable of carrying one or more persons during a total of a six-month period in one out of ten years, excluding periods of flooding. Major water sources in the state are listed in Table 1 and Table 2 at iowadnr.gov/afo/rules (more information is contained in subrule 65.1(2), incorporation by reference).

"Manager" means a person who is actively involved in the operation of the commercial manure service and makes management decisions in the operation of the service.

"Man-made manure drainage system" means a drainage ditch, flushing system, or other drainage device which was constructed by human beings and is used for the purpose of transporting manure.

"Manure" means animal excreta or other commonly associated wastes of animals including but not limited to bedding, litter, or feed losses. Manure does not include wastewater resulting from the washing and in-shell packaging of eggs. For the purposes of NPDES permitting, "manure" includes manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal. If a manure storage structure or animal truck wash effluent structure contains both manure from an AFO and animal truck wash effluent from an animal truck wash facility, the effluent shall be deemed to be manure.

"Manure storage structure" means a formed manure storage structure, an unformed manure storage structure, digester, or a dry bedded manure storage structure. A manure storage structure does not include the following: (1) egg washwater storage structure, (2) areas of a confinement building where no manure is stored, and (3) areas of a confinement building where the animals have direct contact with the manure and the manure is removed regularly during the production cycle or at the conclusion of the production cycle (referred to as the "animal production area"). An animal truck wash effluent structure may be the same as a manure storage structure that is part of the confinement feeding operation, so long as the primary function of such impoundment is to collect and store both effluent from the animal truck wash facility and manure from the confinement feeding operation.

"NPDES permit" means a written permit of the department, pursuant to the National Pollutant Discharge Elimination System (NPDES) program, to authorize and regulate the operation of a CAFO.

"NRCS" means United States Department of Agriculture Natural Resources Conservation Service.

"Nutrient management plan" or *"NMP"* means a plan that provides for the management of manure, process wastewater, settled open feedlot effluent, settleable solids, open feedlot effluent, animal truck wash effluent, including the application of effluent, as provided in rule 567—65.209(455B,459A).

"One hundred year floodplain" means the land adjacent to a major water source, if there is at least a 1 percent chance that the land will be inundated in any one year. In making the calculations, the department shall consider available maps or data compiled by the Federal Emergency Management Agency.

"Open feedlot" means a lot, yard, corral, building, or other area used to house animals in conjunction with an open feedlot operation.

"Open feedlot effluent" means a combination of manure, precipitation-induced runoff, or other runoff from an open feedlot before its settleable solids have been removed. If an open feedlot operation structure or animal truck wash effluent structure contains effluent from both an open feedlot operation and an animal truck wash facility, the animal truck wash effluent shall be deemed to be open feedlot effluent.

"Open feedlot effluent basin" means an open feedlot basin that does not settle solids before the effluent goes to the basin.

"Open feedlot operation" means an unroofed or partially roofed AFO if crop, vegetation, or forage growth or residue is not maintained as part of the AFO during the period that animals are confined in the AFO. "Open feedlot operation" includes a "partially roofed AFO" as defined in this rule. Iowa Code section 459A.103 provides that two or more open feedlot operations under common ownership or management are deemed to be a single open feedlot operation if they are adjacent or utilize a common area or system for open feedlot effluent disposal. To determine if two or more open feedlot operations are deemed to be one open feedlot operation, the first test is whether the open feedlot operations are under common ownership or management. If they are not under common ownership or management, they are not one open feedlot operation. The second test is whether the two open feedlot operations are adjacent or utilize a common area or system for open feedlot effluent disposal. If the two operations are not adjacent and do not use a common area or system for open feedlot effluent disposal, they are not one open feedlot operation.

"Open feedlot operation structure" means an open feedlot, an open feedlot effluent basin, a settled open feedlot effluent basin, a solids settling facility, or an AT system. "Open feedlot operation structure" does not include a manure storage structure as defined in Iowa Code section 459.102.

"Owner" means a person who has legal or equitable title to the property where the AFO is located or a person who has legal or equitable title to the AFO structures. "Owner" does not include a person who has a lease to use the land where the AFO is located or to use the AFO structures.

"Partially roofed AFO" means an AFO in which the animals are confined under a roof and there exists unroofed areas located on the perimeter of the roofed structure, where the animals have unrestricted access at all times. The square footage of the unroofed area shall be at least 10 percent of the square footage of the attached roofed production area. Openings or vents in the roofed portion shall not be included in the 10 percent unroofed calculation.

"Permanent vegetation cover" means land that is maintained in perennial vegetative cover consisting of grasses, legumes, or both, and includes but is not limited to pastures, grasslands or forages.

"Process wastewater" means water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing of pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts, including manure, litter, feed, milk, eggs or bedding.

"Production area" means that part of an AFO that includes the area in which animals are confined, the manure storage area, the raw materials storage area, egg washing and egg processing facilities, and the waste containment areas. The area in which animals are confined includes but is not limited to open lots, housed lots, feedlots, stall barns, free stall barns, milk rooms, milking centers, cow yards, barnyards, medication pens, walkers, animal walkways, confinement houses, and stables. The manure storage area includes but is not limited to lagoons, solids settling facilities, settled open feedlot effluent basins, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins and areas

within berms and diversions that separate uncontaminated storm water. Also included in the definition of production area is any area used in the storage, handling, treatment, or disposal of mortalities.

"Professional engineer" or *"PE"* means a person engaged in the practice of engineering as defined in Iowa Code section 542B.2 who is issued a certificate of licensure as a PE pursuant to Iowa Code section 542B.17.

"Public thoroughfare" means a road, street, or bridge that is constructed or maintained by the state or a political subdivision.

"Public use area" means that portion of land owned by the United States, the state, or a political subdivision with facilities that attract the public to congregate and remain in the area for significant periods of time. Facilities include but are not limited to picnic grounds, campgrounds, cemeteries, lodges and cabins, shelter houses, playground equipment, swimming beaches at lakes, and fishing docks, fishing houses, fishing jetties or fishing piers at lakes. It does not include a highway, road right-of-way, parking areas, recreational trails or other areas where the public passes through but does not congregate or remain in the area for significant periods of time.

"Public water supply" (also referred to as a system or a water system) means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes (1) any collection, treatment, storage, and distribution facilities under control of the supplier of water and used primarily in connection with such system, and (2) any collection (including wells) or pretreatment storage facilities not under such control that are used primarily in connection with such system. A public water supply system is either a "community water system" or a "noncommunity water system."

"Q100," as defined in rule 567—70.2(455B,481A), means a flood having a 1 percent chance of being equaled or exceeded in any one year as determined by the department.

"Qualified confinement feeding operation" means a confinement feeding operation that has an animal unit capacity of:

1. 5,333 or more for animals other than swine as part of a farrowing and gestating operation or farrow-to-finish operation or cattle as part of a cattle operation.
2. 2,500 or more for a swine farrowing and gestating operation, not including replacement breeding swine if the following apply:
   - The replacement breeding swine are raised at the confinement feeding operation; and
   - The replacement breeding swine are used in the farrowing and gestation operation.
3. 5,400 or more for a swine farrow-to-finish operation.
4. 8,500 or more for a confinement feeding operation maintaining cattle.

"Qualified stockpile cover" means a barrier impermeable to precipitation that is used to protect a stockpile from precipitation.

"Qualified stockpile structure" means a building or roofed structure that is all of the following:

1. Impermeable to precipitation.
2. Constructed using wood, steel, aluminum, vinyl, plastic, or other similar materials.
3. Constructed with walls or other means to prevent precipitation-induced surface runoff from contacting the stockpile.

"Release" means an actual, imminent or probable discharge of manure, process wastewater, open feedlot effluent, settled open feedlot effluent, or settleable solids from an AFO or animal truck wash facility to surface water, groundwater, drainage tile line or intake or to a designated area resulting from storing, handling, transporting or land-applying manure, process wastewater, open feedlot effluent, settled open feedlot effluent, or settleable solids.

"Religious institution" means a building in which an active congregation is devoted to worship.

"Research college" means an accredited public or private college or university, including but not limited to a university under control of the state board of regents as provided in Iowa Code chapter 262, or a community college under the jurisdiction of a board of directors for a merged area as provided in Iowa Code chapter 260C, if the college or university performs research or experimental activities regarding animal agriculture or agronomy.

"Residence" means a house or other building, including all structures attached to the building, not owned by the owner of the AFO that meets all of the following criteria at the location of the intended residence:

1. Used as a place of habitation for humans on a permanent and frequent basis.
2. Not readily mobile.
3. Connected to a permanent source of electricity, a permanent private water supply or a public water supply system and a permanent domestic sewage disposal system including a private, semipublic or public sewage disposal system.
4. Assessed and taxed as real property.

If a house or other building has not been occupied by humans for more than six months in the last two years, or if a house or other building has been constructed or moved to its current location within the past six months, the owner of the intended residence has the burden of proving that the house or other building is a residence. Paragraph "3" shall not apply to a house or other building inhabited by persons who are exempt from the compulsory education standards of Iowa Code section 299.24 and whose religious principles or tenets prohibit the use of the utilities listed.

"Restricted spray irrigation equipment" means spray irrigation equipment that disperses manure through an orifice at a rate of 80 pounds per square inch or more.

"School" means an educational institution.

"Seasonal high-water table" means the part of the soil profile closest to the soil surface that becomes saturated (usually in the spring) as observed in a monitoring well or determined by recognition of soil redoxomorphic features.

NOTE: "Redoxomorphic features" refers to the gleying or mottling or both that occur under saturated conditions within the soil profile.

"Secondary containment barrier" means a structure used to retain accidental manure overflow from a manure storage structure.

"Settleable solids," "scraped solids," or *"solids"* means that portion of the effluent that meets all the following requirements:

1. The solids do not flow perceptibly under pressure.
2. The solids are not capable of being transported through a mechanical pumping device designed to move a liquid.
3. The constituent molecules of the solids do not flow freely among themselves but do show the tendency to separate under stress.

"Settled open feedlot effluent" means a combination of manure, precipitation-induced runoff, or other runoff originating from an open feedlot operation after its settleable solids have been removed.

"Settled open feedlot effluent basin" or *"runoff control basin"* means a covered or uncovered impoundment that is part of an open feedlot operation, if the primary function of the impoundment is to collect and store settled open feedlot effluent. An animal truck wash facility may be part of an open feedlot operation. An animal truck wash effluent structure may be the same as a settled open feedlot effluent basin that is part of the open feedlot operation, so long as the primary function of such impoundment is to collect and store effluent from both the animal truck wash facility and the open feedlot operation.

"Shallow well" means a well located and constructed in such a manner that there is not a continuous layer of low permeability soil or rock (or equivalent retarding mechanism acceptable to the department) at least 5 feet thick, the top of which is located at least 25 feet below the normal ground surface and above the aquifer from which water is to be drawn.

"Sinkhole" means any closed depression that was caused by the dissolution or collapse of subterranean materials in a carbonate formation or in gypsum or rock salt deposits through which water may drain to the local groundwater system. Such depressions may or may not be open to the surface at times. Intermittently, sinkholes may hold water forming a pond.

"Small AFO" or *"SAFO"* means an AFO that has an animal unit capacity of 500 or fewer animal units.

"Small animal truck wash facility" means an animal truck wash facility, if all of the following apply:

1. The animal truck wash facility and all single-unit trucks, truck-tractors, semitrailers, or trailers that are washed at the facility are owned by the same person; and

2. The average total per-day volume of washwater used by the animal truck wash facility does not exceed 2,000 gallons as calculated on a monthly basis.

"Snow-covered ground" means soil covered by one inch or more of snow or soil covered by one-half inch or more of ice.

"Solids settling facility" means a basin, terrace, diversion, or other structure or solids removal method that is part of an open feedlot operation and which is designed and operated to remove settleable solids from open feedlot effluent. A "solids settling facility" does not include a basin, terrace, diversion, or other structure or solids removal method that retains the liquid portion of open feedlot effluent for more than seven consecutive days following a precipitation event.

"Spray irrigation equipment" means mechanical equipment used for the aerial application of manure, if the equipment receives manure from a manure storage structure during application via a pipe or hose connected to the structure, and includes a type of equipment customarily used for aerial application of water to aid the growing of general farm crops.

"Stockpile" means dry manure or dry bedded manure originating from a confinement feeding operation that is stored at a particular location outside a confinement feeding operation building or a manure storage structure. For open feedlot operations and animal truck washes, "stockpile" means any accumulation of manure, scraped solids, settleable solids or combination of manure and solids located outside of the open feedlot or animal truck wash facility or outside of an area that drains to an open feedlot or animal truck wash facility, where the scraped manure or solids are stored for less than six months.

"Stockpile dry bedded manure" means to store dry bedded manure outside a dry bedded manure confinement feeding operation building or a dry bedded manure storage structure.

"Stockpile dry manure" means to create or add to a dry manure stockpile.

"Surface water drain tile intake" means an opening to a drain tile, including intake pipes and French drains, which allows surface water to enter the drain tile without filtration through the soil profile.

"Swine farrow-to-finish operation" means a confinement feeding operation in which porcine animals are produced and in which a primary portion of the phases of the production cycle is conducted at one confinement feeding operation. Phases of the production cycle include but are not limited to gestation, farrowing, growing and finishing. At a minimum, farrowing, growing, and finishing shall be conducted at the operation with a majority of the pigs farrowed at the site finished to market weight in order to qualify as a farrow-to-finish operation.

"Threshold requirements for an engineer" means the limits, pursuant to Iowa Code section 459.303, that require that the design of a formed manure storage structure or egg washwater storage structure be prepared and signed by a PE licensed in the state of Iowa or by an engineer working for the NRCS. A confinement feeding operation that utilizes a formed manure storage structure meets threshold requirements for an engineer if any of the following apply:

1. A confinement feeding operation with an animal unit capacity of 1,250 or more animal units for swine maintained as part of a swine farrowing and gestating operation.

2. A confinement feeding operation with an animal unit capacity of 2,750 or more animal units for swine maintained as part of a swine farrow-to-finish operation.

3. A confinement feeding operation with an animal unit capacity of 4,000 or more animal units for cattle maintained as part of a cattle operation.

4. Any other confinement feeding operation with an animal unit capacity of 3,000 or more animal units.

"Unformed animal truck wash effluent structure" means a covered or uncovered impoundment used to store animal truck wash effluent, other than a formed animal truck wash effluent structure.

"Unformed manure storage structure" means a covered or uncovered impoundment used to store manure, other than a formed manure storage structure, which includes an anaerobic lagoon, aerobic structure, or earthen manure storage basin.

"Unformed settled open feedlot effluent basin" means a settled open feedlot effluent basin, other than a formed settled open feedlot effluent basin.

"Vegetative infiltration basin" or *"VIB"* means an open feedlot operation structure in which settled open feedlot effluent is discharged into a relatively flat basin area which is bermed to prevent entry or discharge of surface water flows and is planted to permanent vegetation. An extensive tile system installed at a depth of three to five feet is used to collect infiltrated settled open feedlot effluent from the VIB and discharge it into a VTA for further treatment. As opposed to wetlands, which are designed to maintain a permanent water level, a VIB is designed to maximize water infiltration into the soil and thus normally will have standing water for only short periods of time. Removal of settleable solids is required prior to discharge of open feedlot effluent into the VIB. Soil suitability is essential to ensure adequate filtration and treatment of pollutants. Periodic harvesting of vegetation is required.

"Vegetative treatment area" or *"VTA"* means an open feedlot operation structure in which settled open feedlot effluent is discharged into areas that are level in one dimension and have a slight slope (less than 5 percent) in the other dimension and are planted to relatively dense permanent vegetation. Settled open feedlot effluent must be discharged evenly across the top width of the VTA and allowed to slowly flow downslope through the VTA. Level spreaders or other practices may be required to maintain even flow throughout the length of the VTA. Management to maintain a dense vegetation cover is required, as is periodic harvesting of vegetation.

"Water of the state" means any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, that are contained within, flow through or border upon the state or any portion thereof.

"Water source" means a lake, river, reservoir, creek, stream, ditch, or other body of water or channel having definite banks and a bed with water flow, except lakes or ponds without outlet to which only one landowner is riparian.

"Water well" means an excavation that is drilled, cored, augered, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for groundwater, monitoring groundwater, utilizing the geothermal properties of the ground, or extracting water from or injecting water into the aquifer. "Water well" does not include an open ditch or drain tiles or an excavation made for obtaining or prospecting for oil, natural gas, minerals, or products mined or quarried.

"Wetted perimeter" means the outside edge of land where the direct discharge of manure occurs from spray irrigation equipment.

65.1(2) *Incorporation by reference.* The text of the following incorporated materials is not included in this chapter. The materials are provided at iowadnr.gov/afo/rules. The materials listed below are hereby made a part of this chapter. For material subject to change, only the specific version specified in this subrule is incorporated. Any amendment or revision to a reference document is not incorporated until this subrule has been amended to specify the new version.

a. "Act" means the federal Water Pollution Control Act, also known as the Clean Water Act, as defined by 40 CFR 403.3 as amended through July 19, 2023;

b. "AFO Siting Atlas" means an online mapping tool to assist in determining compliance of potential building sites to meet regulatory requirements. The AFO Siting Atlas is located on the department's website, and the regulatory layers are effective as of June 19, 2024. Any changes to the regulatory layers of the AFO Siting Atlas shall be done through rulemaking. Regulatory layers include: karst, one hundred year floodplains in major water sources, and sinkholes;

c. "CFR" or "Code of Federal Regulations" means the federal administrative rules adopted by the United States as amended through July 19, 2023;

d. County Parks and Recreation Areas listed in Iowa's County Conservation System Guide to Outdoor Adventure – effective June 19, 2024;

e. Parks in Iowa under the federal jurisdiction of the United States Army Corps of Engineers listed on the United States Army Corps of Engineers' website – effective June 19, 2024;

f. Designated Wetlands in Iowa – effective August 23, 2006;

g. Emergency spill line telephone number is 515.725.8694 – effective January 1, 2023;

h. Appendix A: Open feedlot effluent control alternatives for open feedlot operations – effective December 14, 2016;

i. Appendix B: Master matrix – effective March 1, 2003;

j. Appendix C: Design specifications—formed manure storage structures – effective March 24, 2004;

k. Table 1: Major water sources—Rivers and Streams – effective December 14, 2016;

l. Table 2: Major water sources—Lakes – effective December 14, 2016;

m. Table 3: Annual pounds of nitrogen per space of capacity – effective September 15, 2010;

n. Table 4: Crop nitrogen usage rate factors – effective December 14, 2016;

o. Table 5: Manure production per space of capacity – effective September 15, 2010;

p. Table 6: Required separation distances for confinement feeding operations construction on or after March 1, 2003—swine, sheep, horses, poultry, and beef and dairy cattle – effective September 15, 2010;

q. Table 6a: Required separation distances for confinement feeding operations constructed on or after January 1, 1999, but prior to March 1, 2003—swine, sheep, horses and poultry – effective September 15, 2010;

r. Table 6b: Required separation distances for confinement feeding operations constructed on or after January 1, 1999, but prior to March 1, 2003—beef and dairy cattle – effective September 15, 2010;

s. Table 6c: Required separation distances for confinement feeding operations constructed prior to January 1, 1999—swine, sheep, horses and poultry – effective September 15, 2010;

t. Table 6d: Required separation distances for confinement feeding operations constructed prior to January 1, 1999—beef and dairy cattle – effective September 15, 2010;

u. Table 7: Required separation distances for open feedlot operations, stockpiles from open feedlot operations, stockpiles from dry manure confinement operations and stockpiles from dry bedded confinement operations – effective September 15, 2010;

v. Table 8: Summary of credit for mechanical aeration – effective September 15, 2010;

w. List of high-quality water resources in 567—Chapter 61 – effective January 1, 2001;

x. NRCS Iowa Technical Note No. 25 Iowa Phosphorus Index – published March 2024;

y. Iowa State University Extension and Outreach publication PM 1688, "A General Guide for Crop Nutrient and Limestone Recommendations in Iowa" – published February 2023;

z. Iowa State University Extension and Outreach publication PMR 1003, "Using Manure Nutrients for Crop Production"– published April 2023;

aa. Iowa State University Extension and Outreach publication AE 3550, "How to Sample Manure for Nutrient Analysis" – published January 2021; and

bb. Iowa State University Extension and Outreach publication CROP 31-8, "Take a Good Soil Sample to Help Make Good Fertilization Decisions" – published December 2016.

cc. NRCS Iowa Agronomy Technical Note No. 29 Dominant Critical Area – published April 2024.

[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.2(455B,459,459A,459B) Reporting of releases. A release, as defined in rule 567—65.1(455B,459,459A,459B), shall be reported to the department as provided in this subrule. This rule does not apply to land application of manure in compliance with these rules.

65.2(1) *Notification.* A person storing, handling, transporting, or land-applying manure from an AFO or animal truck wash facility who becomes aware of a release shall notify the department of the occurrence of release as soon as possible but not later than six hours after the onset or discovery of the release by contacting the department's spill line. The local police department or the office of the sheriff of the affected county shall also be contacted within the same time period if the spill involves a public roadway and public safety could be threatened. Reports made pursuant to this rule shall be confirmed in writing as provided in paragraph 65.2(1)*"c."*

65.2(2) *Verbal report.* The verbal report of such a release should provide information on as many items listed in paragraph 65.2(1)*"c"* as available information will allow.

65.2(3) *Written report.* The written report of a release shall be submitted at the request of the department within 30 days after the verbal report of the release and contain at a minimum the following information:

a. The approximate location of the alleged release (including at a minimum the quarter-quarter section, township and county in which the release occurred or was discovered).

b. The time and date of onset of the alleged release, if known, and the time and date of the discovery of the alleged release.

c. The time and date of the verbal report to the department of the alleged release.

d. The name, mailing address and telephone number of the person reporting the alleged release.

e. The name, mailing address and telephone number of any other person with knowledge of the event who can be contacted for further information.

f. The source of the manure allegedly released (e.g., formed storage, earthen storage) and the form of the manure or process water released.

g. The estimated or known volume of manure allegedly released.

h. The weather conditions at the time of the onset or discovery of the alleged release.

i. If known, the circumstances under which the alleged release occurred or exists (e.g., overflow, storage structure breach, equipment malfunction or breakdown, land runoff).

j. The approximate location of the nearest stream or other water body that is or could be impacted by the alleged release and the approximate location to the alleged release of any known tile intakes or tile lines that could be a direct conveyance to a surface water or groundwater.

k. A description of any containment or remedial measures taken to minimize the impact of the alleged release.

l. Any information that may assist the department in evaluating the alleged release.

65.2(4) *Reporting of subsequent findings.* All subsequent findings and laboratory results should be reported and submitted in writing to the department as soon as they become available.

[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.3(455B,459,459A,459B) CAFOs and NPDES permits. Iowa Code sections 459B.306 and 459.311(2) require a confinement feeding operation and Iowa Code section 459A.401(2) requires an open feedlot operation that is a CAFO as defined in 40 CFR 122.23(b) to comply with applicable NPDES permit requirements pursuant to rules adopted by the commission. The following regulations are adopted by reference:

1. 40 CFR 122.21, application for a permit.
2. 40 CFR 122.23, CAFOs.
3. 40 CFR 122.42(e), additional conditions applicable to specified categories of NPDES permits.
4. 40 CFR 122.63(h), minor modification of permits.
5. 40 CFR Part 412, CAFO point source category.

[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.4(455B,459,459A,459B) Complaint investigations. Complaints of violations of Iowa Code chapters 455B, 459, 459A and 459B and this rule, which are received by the department or are forwarded to the department by a county, following a county board of supervisors' determination that a complainant's allegation constitutes a violation, shall be investigated by the department if it is determined that the complaint is legally sufficient and an investigation is justified.

65.4(1) If after evaluating a complaint to determine whether the allegation may constitute a violation, without investigating whether the facts supporting the allegation related to violations of the Iowa Code or this chapter are true or untrue, the county board of supervisors shall forward its finding to the department director.

65.4(2) A complaint is legally sufficient if it contains adequate information to investigate the complaint and if the allegation constitutes a violation, without investigating whether the facts supporting the allegation are true or untrue, of rules adopted by the department; Iowa Code chapters 455B, 459, 459A and 459B or environmental standards in regulations subject to federal law and enforced by the department.

65.4(3) The department in its discretion shall determine the urgency of the investigation, and the time and resources required to complete the investigation, based upon the circumstances of the case, including the severity of the threat to the quality of surface water or groundwater.

65.4(4) The department shall notify the complainant and the alleged violator if an investigation is not conducted specifying the reason for the decision not to investigate.

65.4(5) The department will notify the county board of supervisors where the violation is alleged to have occurred before doing a site investigation unless the department determines that a clear, present and impending danger to the public health or environment requires immediate action.

65.4(6) The county board of supervisors may designate a county employee to accompany the department on the investigation of any site as a result of a complaint.

65.4(7) A county employee accompanying the department on a site investigation has the same right of access to the site as the department official conducting the investigation during the period that the county designee accompanies the department official. The county shall not have access to records required in subrule 65.111(9).

65.4(8) Upon completion of an investigation, the department shall notify the complainant of the results of the investigation, including any anticipated, pending or complete enforcement action arising from the investigation. The department shall deliver a copy of the notice to the AFO or animal truck wash facility that is the subject of the complaint, any alleged violators if different from the AFO or animal truck wash facility and the county board of supervisors of the county where the violation is alleged to have occurred.

65.4(9) When a person who is a department official, an agent of the department, or a person accompanying the department official or agent enters the premises of an AFO or animal truck wash facility, both of the following shall apply:

a. The person may enter at any reasonable time in and upon any private or public property to investigate any actual or possible violation of this chapter or the rules or standards adopted under this chapter. However, the owner or person in charge shall be notified.

(1) If the owner or occupant of any property refuses admittance to the operation, or if prior to such refusal the director demonstrates the necessity for a warrant, the director may make application under oath or affirmation to the district court of the county in which the property is located for the issuance of a search warrant.

(2) In the application, the director shall state that an inspection of the premises is mandated by the laws of this state or that a search of certain premises, areas, or things designated in the application may result in evidence tending to reveal the existence of violations of public health, safety, or welfare requirements imposed by statutes, rules or ordinances established by the state or a political subdivision thereof. The application shall describe the area, premises, or thing to be searched; give the date of the last inspection if known; give the date and time of the proposed inspection; declare the need for such inspection; recite that notice of desire to make an inspection has been given to affected persons and that admission was refused if that be the fact; and state that the inspection has no purpose other than to carry out the purpose of the statute, ordinance, or regulation pursuant to which inspection is to be made. If an item of property is sought by the director, it shall be identified in the application.

(3) If the court is satisfied from the examination of the applicant, and of other witnesses, if any, and of the allegations of the application of the existence of the grounds of the application, or that there is probable cause to believe their existence, the court may issue such search warrant.

(4) In making inspections and searches pursuant to the authority of this rule, the director must execute the warrant:

1. Within ten days after its date.

2. In a reasonable manner, and any property seized shall be treated in accordance with the provisions of Iowa Code chapters 808, 809, and 809A.

3. Subject to any restrictions imposed by the statute, ordinance or regulation pursuant to which inspection is made.

b. The person shall comply with standard biosecurity requirements customarily required by the AFO or animal truck wash facility which are necessary in order to control the spread of disease among an animal population.
[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.5(455B,459,459A,459B) Transfer of legal responsibilities or title. If title or legal responsibility for a permitted AFO or an animal truck wash facility is transferred, the person to whom title or legal responsibility is transferred shall be subject to all terms and conditions of the construction permit and these rules. The person to whom the construction permit was issued and the person to whom title or legal responsibility is transferred shall notify the department, in writing, of the transfer of legal responsibility or title of the operation within 30 days of the transfer. Within 30 days of receiving a written request from the department, the person to whom legal responsibility is transferred shall submit to the department all information needed to modify the construction permit to reflect the transfer of legal responsibility. A person who has been classified as a habitual violator under Iowa Code section 459.604 shall not acquire legal responsibility or a controlling interest to any additional permitted confinement feeding operations for the period that the person is classified as a habitual violator.
[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.6(455B,459,459A,459B) Construction. For purposes of these rules:

65.6(1) Construction of an AFO structure, open feedlot operation structure, or animal truck effluent structure begins or an AFO structure, open feedlot operation structure, or animal truck wash effluent structure is constructed when any of the following occurs:

a. Excavation for a proposed AFO structure, open feedlot operation structure, or animal truck wash effluent structure; excavation for footings; or filling or compacting of the soil or soil amendments for a proposed AFO structure, open feedlot operation structure, or animal truck wash effluent structure.

b. Installation of forms for concrete for an AFO structure, open feedlot operation structure, or animal truck wash effluent structure.

c. Installation of piping for movement of manure within, from or between AFO structures, open feedlot operation structures, or animal truck wash effluent structures.

65.6(2) Construction does not begin upon occurrence of any of the following:

a. Removal of trees, brush, or other vegetative growth.

b. Construction of driveways or roads.

c. General earth moving for leveling at the site.

d. Installation of temporary utility services.

e. Installation of temporary or permanent groundwater lowering tiles.

65.6(3) Prohibition on construction for confinement feeding operations.

a. A person shall not construct or expand an AFO structure that is part of a confinement feeding operation, if the person is either of the following:

(1) A party to a pending action for a violation of this chapter concerning a confinement feeding operation in which the person has a controlling interest and the action is commenced in district court by the attorney general.

(2) A habitual violator.

b. A person shall not construct or expand a confinement feeding operation structure for five years after the date of the last violation committed by a person or a confinement feeding operation in which the person holds a controlling interest during which the person or operation was classified as a habitual violator under Iowa Code sections 459.317 and 459.604.

c. Paragraphs 65.6(3)*"a"* and *"b"* shall not prohibit a person from completing the construction or expansion of an AFO structure, if either of the following applies:

(1) The person has an unexpired permit for the construction or expansion of the AFO structure.

(2) The person is not required to obtain a permit for the construction or expansion of the AFO structure.

d. A person shall not construct or expand an unformed manure storage structure within an agricultural drainage well area as specified in Iowa Code sections 459.310 and 460.205.
[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.7(455B,459,459A,459B) Karst terrain. Except as provided for in subrules 65.7(4) and 65.7(5), the provisions of this rule shall apply to the following structures: (1) confinement feeding operation structures at confinement feeding operations with over 500 animal units, (2) settled open feedlot effluent basins at open feedlot operations requiring a construction permit, (3) egg washwater structures, (4) AT systems, and (5) animal truck wash effluent structures.

65.7(1) *Karst terrain submittal requirements.* Prior to beginning construction of a structure identified in the introductory paragraph of this rule, the person planning the construction shall determine whether the proposed structure will be located in potential "karst terrain," as defined in subrule 65.1(1). The AFO Siting Atlas shall be used to determine if the proposed structure is in potential karst terrain. The results of the karst terrain determination shall be submitted to the department according to the following:

a. If the proposed structure is not in potential karst terrain, the person planning the construction shall submit a printed map from the AFO Siting Atlas indicating the location of the structure, with the potential karst layer turned on, with the construction permit application documents or with the construction design statement if a construction permit is not required.

b. If the proposed formed manure storage structure is located in potential karst terrain, a PE licensed in Iowa, an NRCS-qualified staff person or a qualified organization shall submit a soil report, based on the results from soil corings, test pits or acceptable well log data, describing the subsurface materials and vertical separation distance from the bottom of the proposed structure to the underlying limestone, dolomite or soluble rock. A minimum of two soil corings spaced equally within the structure or two test pits located within five feet of the outside of the structure are required if acceptable well log data is not available. The soil corings shall be taken to a minimum depth of seven feet below the bottom elevation of the proposed structure or into bedrock, whichever is shallower. Any limestone, dolomite, or soluble bedrock in the corings or test pits shall be considered the bedrock surface rather than augur refusal. After the soil exploration is complete, each coring or test pit shall be properly plugged with concrete grout, bentonite or similar materials, and completion of this activity shall be documented in the soil report. If a 25-foot vertical separation distance can be maintained between the bottom of the proposed formed manure storage structure and limestone, dolomite, or other soluble rock, then the structure is not considered to be in karst terrain.

65.7(2) *Construction standards for formed manure storage structures.* A formed manure storage structure shall be constructed in accordance with the minimum concrete standards set forth in subrule 65.108(10) or Iowa Code section 459.307 if the structure is not constructed of concrete. No intact or weathered bedrock, including sandstone, shale, limestone, dolomite, or soluble rock, shall be removed or excavated during the construction of a storage structure.

65.7(3) *Vertical separation distance requirements for formed manure storage structures.* Except as provided for in subrule 65.7(5) related to the construction of a dry bedded confinement feeding operation structure, in addition to the concrete standards set forth in subrule 65.108(10) or Iowa Code section 459.307 if not constructed of concrete, a person constructing a formed manure storage structure on karst terrain shall comply with the following:

a. A minimum five-foot layer of low permeability soil ($1 \times 10\text{-}6$ cm/sec) or rock between the bottom of a formed manure storage structure and limestone, dolomite, or other soluble rock is required if the formed manure storage structure is not designed by a PE or NRCS-qualified staff person.

b. If the vertical separation distance between the bottom of the proposed formed manure storage structure and limestone, dolomite, or other soluble rock is less than five feet, the structure shall be designed and sealed by a PE or NRCS-qualified staff person who certifies the structural integrity of the structure. A two-foot-thick layer of compacted clay liner material shall be constructed underneath the floor of the formed manure storage structure. However, it is recommended that any formed manure

storage structure be constructed aboveground if the vertical separation distance between the bottom of the structure and the limestone, dolomite, or other soluble rock is less than five feet.

c. Groundwater monitoring shall be performed as specified by the department.

d. Backfilling shall not start until the floor slats have been placed or permanent bracing has been installed and grouted and shall be performed with material free of vegetation, large rocks, or debris.

65.7(4) *Unformed manure storage structures.* The construction of unformed manure storage structures, including unformed manure storage structures at SAFOs, is prohibited in karst terrain or an area that drains into a known sinkhole. In potential karst, at least one coring shall be taken to a minimum depth of 25 feet below the bottom elevation of the proposed unformed manure storage structure or into bedrock, whichever is shallower. If a 25-foot vertical separation distance can be maintained between the bottom of the unformed manure storage structure and limestone, dolomite, or other soluble rock, then the structure is not considered to be in karst terrain. No intact or weathered bedrock, including sandstone, shale, limestone, dolomite, or soluble rock, shall be removed or excavated during the construction of a manure storage structure.

65.7(5) *Dry bedded confinement feeding operation structure.* A person constructing any dry bedded confinement feeding operation structure, including structures at SAFOs, on karst terrain shall comply with all of the following:

a. The person must construct the structure at a location where there is a vertical separation distance of at least five feet between the bottom of the floor of the structure and the underlying limestone, dolomite, or other soluble rock in karst terrain or the underlying sand and gravel aquifer in an alluvial aquifer area.

b. The person must construct the structure with a floor consisting of reinforced concrete at least five inches thick.

[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.8(455B,459,459A,459B) Karst terrain—stockpile requirements. The provisions of this rule shall apply to locations at confinement feeding operations where dry manure or dry bedded manure is stockpiled.

65.8(1) *Karst terrain submittal requirements.* Prior to stockpiling dry manure or dry bedded manure, the person planning to stockpile shall determine whether the proposed stockpile location will be located in potential "karst terrain," as defined in subrule 65.1(1). The AFO Siting Atlas shall be used to determine if the proposed stockpile location is in potential karst terrain. The results of the karst terrain determination shall be submitted to the department according to the following:

a. If the proposed stockpile location is not in potential karst terrain, the person planning the stockpiling shall submit a printed map from the AFO Siting Atlas indicating the location of the stockpile location, with the potential karst layer turned on, to the department.

b. If the proposed stockpile is located in potential karst terrain, a PE licensed in Iowa, NRCS-qualified staff person or a qualified organization shall submit a soil report to the department, based on the results from soil corings, test pits or acceptable well log data, describing the subsurface materials and vertical separation distance from the proposed bottom of the stockpile to the underlying limestone, dolomite or soluble rock. A minimum of two soil corings spaced equally within the stockpile location or two test pits located within five feet of the outside of the stockpile location are required if acceptable well log data is not available. The soil corings shall be taken to a minimum depth of 25 feet below the bottom elevation of the proposed stockpile or into bedrock, whichever is shallower. After the soil exploration is complete, each coring or test pit shall be properly plugged with concrete grout, bentonite or similar materials and completion of this activity shall be documented in the soil report. If a 25-foot vertical separation distance can be maintained between the bottom of the proposed stockpile and limestone, dolomite, or other soluble rock, then the structure is not considered to be in karst terrain.

65.8(2) *Dry manure stockpiling.* A person shall comply with all of the following when stockpiling dry manure on karst terrain:

a. Maintain a minimum five-foot vertical separation distance between the bottom of the stockpile and the underlying limestone, dolomite, or other soluble rock.

b. A person who stockpiles dry manure for more than 15 days shall use any of the following:

(1) A qualified stockpile structure; or

(2) A qualified stockpile cover. However, a person shall not stockpile dry manure using a qualified stockpile cover at a long-term stockpile location unless the stockpile is located on a reinforced concrete slab at least five inches thick.

65.8(3) *Dry bedded manure stockpiling.* A person shall comply with all of the following when stockpiling dry bedded manure on karst terrain or above an alluvial aquifer:

a. Maintain a minimum five-foot vertical separation distance between the bottom of the stockpile and the underlying limestone, dolomite, or other soluble rock in karst terrain or the underlying sand and gravel aquifer in an alluvial aquifer area.

b. Stockpiles shall be placed on a reinforced concrete slab that is a minimum of five inches thick.

[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.9(455B,459,459A,459B) Floodplains. The provisions of this rule shall apply to the following structures: (1) confinement feeding operation structures, (2) settled open feedlot effluent basins at open feedlot operations requiring a construction permit, (3) egg washwater structures, (4) AT systems, and (5) animal truck wash effluent structures.

65.9(1) *Floodplains.* A person shall not construct a manure storage structure in the one hundred year floodplain of a major water source. The one hundred year floodplain of major water source designations are included on the AFO Siting Atlas. For construction of facilities located in the counties that do not have a Federal Emergency Management Agency (FEMA) flood insurance rate map (FIRM), which are Black Hawk, Johnson, Louisa, Winneshiek, and Woodbury, a person shall have the ability to contest the one hundred year floodplain determination by supplying supporting documents to the department for further evaluation. Placing fill material on floodplain land to elevate the land above the one hundred year flood elevation will not be considered as removing the land from the one hundred year floodplain for the purpose of this subrule. Even if the proposed location of the manure storage structure is not on the one hundred year floodplain of a major water source, the site may be on the floodplain of a nonmajor water source and the department may require a floodplain development permit pursuant to 567—Chapters 70 through 76 if the drainage area of the nonmajor water source adjacent to the proposed structure is greater than ten square miles in a rural location or two square miles in an urban location. The proposed construction can be screened through the department's online floodplain database siting tool.

65.9(2) *Flooding protection.* A confinement feeding operation or open feedlot structure proposed to be constructed on land that would be inundated by Q100 shall meet requirements as specified in 567—Chapters 70 through 76, unless otherwise prohibited according to subrule 65.9(1).

65.9(3) *Submittal requirements.* The person planning the construction shall submit a printed map from the AFO Siting Atlas indicating the location of the structure, with the one hundred year floodplain layer turned on, with the construction permit application documents or with the construction design statement if a construction permit is not required.

65.9(4) *Exemptions to prohibition on one hundred year floodplain construction and separation distance requirements from water sources, major water sources, known sinkholes, agricultural drainage wells, designated wetlands confinement structures and animal truck wash effluent structures.* As specified in Iowa Code sections 459.310(4) and 459A.404(3), a separation distance required in subrules 65.106(3) and 65.106(4) or the prohibition against construction of a confinement feeding operation structure on a one hundred year floodplain as provided in subrule 65.9(1) shall not apply to a confinement feeding operation or animal truck wash that includes a confinement feeding operation structure or animal truck wash effluent structure that was constructed prior to March 1, 2003, if any of the following apply:

a. One or more unformed manure storage structures or animal truck wash effluent structures that are part of the confinement feeding operation or animal truck wash are replaced with one or more formed manure storage structures or formed animal truck wash effluent structures on or after April 28, 2003, and all of the following apply:

(1) The animal weight capacity or animal unit capacity, whichever is applicable, is not increased for that portion of the confinement feeding operation or animal truck wash that utilizes all replacement formed manure storage structures or animal truck wash effluent structures.

(2) The use of each replaced unformed manure storage structure is discontinued within one year after the construction of the replacement formed manure storage structure or formed animal truck wash effluent structure.

(3) The capacity of all replacement formed manure storage structures or animal truck wash effluent structures does not exceed the amount required to store manure produced by that portion of the confinement feeding operation or animal truck wash utilizing the replacement formed manure storage structures or animal truck wash effluent structures during any 18-month period.

(4) No portion of the replacement formed manure storage structure or animal truck wash effluent structure is closer to the location or object from which separation is required under subrules 65.106(3) and 65.106(4) than any other confinement feeding operation structure or animal truck wash effluent structure which is part of the operation.

(5) The replacement formed manure storage structure or animal truck wash effluent structure meets or exceeds the requirements of Iowa Code section 459.307 and subrule 65.108(10).

b. A replacement formed manure storage structure that is part of the confinement feeding operation or animal truck wash is constructed on or after April 28, 2003, if it complies with the following provisions:

(1) The replacement formed manure storage structure or animal truck wash effluent structure replaces the confinement feeding operation or animal truck wash's existing manure storage and handling facilities.

(2) The replacement formed manure storage structure or animal truck wash effluent structure complies with standards adopted pursuant to Iowa Code section 459.307 and subrule 65.108(10).

(3) The replacement formed manure storage structure or animal truck wash effluent structure more likely than not provides a higher degree of environmental protection than the confinement feeding operation or animal truck wash's existing manure storage and handling facilities. If the formed manure storage structure or animal truck wash effluent structure will replace any existing manure storage structure or animal truck wash effluent structure, the department shall require that the replaced manure storage structure or animal truck wash effluent structure be properly closed.

[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.10 to **65.99** Reserved.

DIVISION II
CONFINEMENT FEEDING OPERATIONS AND DRY BEDDED CONFINEMENT FEEDING OPERATIONS

567—65.100(455B,459,459B) Minimum manure control requirements. Confinement feeding operations shall be constructed, managed and maintained to meet the minimum manure control requirements stated in subrules 65.100(1) to 65.100(6). A release shall be reported to the department as provided in subrule 65.2(1). Dry manure stockpiling requirements are stated in subrule 65.100(7). Dry bedded manure stockpiling requirements are stated in subrule 65.100(8).

65.100(1) The minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application and as specified in this rule. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to waters of the state.

a. Control of manure from confinement feeding operations may be accomplished through use of manure storage structures or other manure control methods. Sufficient capacity shall be provided in the manure storage structure to store all manure between periods of manure application. A confinement feeding operation, other than a SAFO, that is constructed or expanded on or after July 1, 2009, shall not surface-apply liquid manure on frozen or snow-covered ground when there is an emergency, as described in subrule 65.101(4), unless the operation has a minimum of 180 days of manure storage

capacity. Additional capacity shall be provided if precipitation, manure or wastes from other sources can enter the manure storage structure.

b. Manure shall be removed from the control facilities as necessary to prevent overflow or discharge of manure from the facilities. Manure stored in unformed manure storage structures or unformed egg washwater storage structures shall be removed from the structures as necessary to maintain a minimum of two feet of freeboard in the structure, unless a greater level of freeboard is required to maintain the structural integrity of the structure or prevent manure overflow. Manure stored in unroofed formed manure storage structures or formed egg washwater storage structures shall be removed from the structures as necessary to maintain a minimum of one foot of freeboard in the structure unless a greater level of freeboard is required to maintain the structural integrity of the structure or prevent manure overflow.

c. To ensure that adequate capacity exists in the manure storage structure to retain all manure produced during periods when manure application cannot be conducted (due to inclement weather conditions, lack of available land disposal areas, or other factors), the manure shall be removed from the manure storage structure as needed prior to these periods.

d. Dry manure or dry bedded manure originating at a confinement feeding operation may be retained as a stockpile so long as the stockpiled dry manure or dry bedded manure meets the following:

(1) Dry manure stockpiling requirements provided in subrule 65.100(7) or dry bedded manure stockpiling requirements provided in subrule 65.100(8).

(2) Applicable NPDES requirements pursuant to the Act.

(3) The dry manure or dry bedded manure is removed from the stockpile and applied in accordance with rule 567—56.101(459,459B) within six months after the dry manure or dry bedded manure is first stockpiled.

(4) Dry manure stockpiles are not required to meet the requirements in subparagraphs 65.100(1)*"d"*(1) to 65.100(1)*"d"*(3) above if the dry manure originates from a confinement feeding operation that was constructed prior to January 1, 2006, unless any of the following apply:

1. The confinement feeding operation is expanded after January 1, 2006.
2. Dry manure is stockpiled in violation of subrule 65.100(1).
3. Precipitation-induced runoff from the stockpile has drained off the property.

65.100(2) If site topography, operation procedures, experience, or other factors indicate that a greater or lesser level of manure control than that specified in subrule 65.100(1) is required to provide an adequate level of water pollution control for a specific AFO, the department may establish different minimum manure control requirements for that operation.

65.100(3) In lieu of using the manure control methods specified in subrule 65.100(1), the department may allow the use of manure treatment or other methods of manure control if it determines that an adequate level of manure control will result.

65.100(4) No direct discharge shall be allowed from an AFO into a publicly owned lake, a sinkhole, or an agricultural drainage well.

65.100(5) All manure removed from an AFO or its manure control facilities shall be land-applied in a manner that will not cause surface or groundwater pollution. Application in accordance with the provisions of state law and this chapter shall be deemed as compliance with this requirement.

65.100(6) As soon as practical but not later than six months after the use of an AFO is discontinued, all manure shall be removed from the discontinued AFO and its manure control facilities and be land applied.

65.100(7) Dry manure stockpiling requirements for a confinement feeding operation.

a. Requirements for terrain, other than karst terrain. Dry manure stockpiled on terrain, other than karst terrain, for more than 15 consecutive days shall comply with either of the following:

(1) Dry manure shall be stockpiled using any of the following:

1. A qualified stockpile structure; or
2. A qualified stockpile cover. Long-term stockpiles utilizing a qualified stockpile cover shall be placed on a constructed impervious base that can support the load of the equipment used under all weather conditions. The coefficient of permeability of the impervious base shall be less than $1 \times 10\text{-}7$

cm/sec (0.00028 feet/day). Permeability results shall be submitted to the department prior to use of the stockpile site.

(2) A stockpile inspection statement shall be delivered to the department as follows:

1. The department must receive the statement by the fifteenth day of each month.

2. The stockpile inspection statement shall provide the location of the stockpile and document the results of an inspection conducted during the previous month. The inspection must evaluate whether precipitation-induced runoff is draining away from the stockpile and, if so, describe actions taken to prevent the runoff. If an inspection by the department documents that precipitation-induced runoff is draining away from a stockpile, the dry manure must be immediately removed from the stockpile or comply with all directives of the department to prevent the runoff.

3. The stockpile inspection statement must be in writing and may be on a form prescribed by the department.

b. Dry manure stockpile siting prohibitions.

(1) Grassed waterway. A stockpile or stockpile structure shall not be placed in a grassed waterway.

(2) Sloping land. A stockpile or stockpile structure shall not be placed on land having a slope of more than 3 percent, unless the dry manure is stockpiled using methods, structures, or practices that contain the stockpile, including but not limited to silt fences, temporary earthen berms, or other effective measures, and that prevent or diminish precipitation-induced runoff from the stockpile.

65.100(8) Prohibitions and siting restrictions for dry bedded manure stockpiling requirements for a dry bedded confinement feeding operation.

a. Prohibition in a grassed waterway. A stockpile or stockpile structure shall not be placed in a grassed waterway, where water pools on the soil surface, or in any location where surface water will enter the stockpile.

b. Siting restrictions. A stockpile or stockpile structure shall not be placed on land having a slope of more than 3 percent, unless the dry manure or dry bedded manure is stockpiled using methods, structures, or practices that contain the stockpile, including but not limited to hay bales, silt fences, temporary earthen berms, or other effective measures that prevent or diminish precipitation-induced runoff from the stockpile. A stockpile or stockpile structure located in karst terrain must comply with the karst requirements in subrule 65.8(3).

[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.101(455B,459,459B) Requirements for land application of manure from a confinement feeding operation.

65.101(1) *General requirements for application rates and practices for confinement feeding operations.*

a. For manure originating from an anaerobic lagoon or aerobic structure, application rates and practices shall be used to minimize groundwater or surface water pollution resulting from application, including pollution caused by runoff or other manure flow resulting from precipitation events. In determining appropriate application rates and practices, the person land-applying the manure shall consider the site conditions at the time of application including anticipated precipitation and other weather factors, field residue and tillage, site topography, the existence and depth of known or suspected tile lines in the application field, and crop and soil conditions, including a good-faith estimate of the available water-holding capacity given precipitation events, the predominant soil types in the application field and planned manure application rate.

b. Spray irrigation equipment shall be operated in a manner and with an application rate and timing that does not cause runoff of the manure onto the property adjoining the property where the spray irrigation equipment is being operated.

c. For manure from an earthen waste slurry storage basin, earthen manure storage basin, or formed manure storage structure, restricted spray irrigation equipment shall not be used unless the manure has been diluted with surface water or groundwater to a ratio of at least 15 parts water to 1 part manure.

Emergency use of spray irrigation equipment without dilution shall be allowed to minimize the impact of a release as approved by the department.

65.101(2) *Separation distance requirements for land application of manure.* Land application of manure shall be separated from objects and locations as specified in this subrule.

a. For liquid manure from a confinement feeding operation, the required separation distance from a residence not owned by the titleholder of the land, a business, a church, a school, or a public use area is 750 feet, as specified in Iowa Code section 459.204. The separation distance for application of manure by spray irrigation equipment shall be measured from the actual wetted perimeter and the closest point of the residence, business, church, school, or public use area.

b. The separation distance specified in paragraph 65.101(2)*"a"* shall not apply if any of the following apply:

(1) The liquid manure is injected into the soil or incorporated within the soil not later than 24 hours after the original application.

(2) The titleholder of the land benefitting from the separation distance requirement executes a written waiver with the titleholder of the land where the manure is applied.

(3) The liquid manure originates from a SAFO.

(4) The liquid manure is applied by low-pressure spray irrigation equipment pursuant to paragraph 65.101(2)*"a."*

c. Separation distance for spray irrigation from property boundary line. Spray irrigation equipment shall be set up to provide for a minimum distance of 100 feet between the wetted perimeter as specified in the spray irrigation equipment manufacturer's specifications and the boundary line of the property where the equipment is being operated. The actual wetted perimeter, as determined by wind speed and direction and other operating conditions, shall not exceed the boundary line of the property where the equipment is being operated. For property that includes a road right-of-way, railroad right-of-way or an access easement, the property boundary line shall be the boundary line of the right-of-way or easement.

d. Distance from structures for low-pressure irrigation systems. Low-pressure irrigation systems shall have a minimum separation distance of 250 feet between the actual wetted perimeter and the closest point of a residence, a business, church, school or public use area.

e. Waivers. Waivers to paragraph 65.101(2)*"c"* may be granted by the department if sufficient and proposed alternative information is provided to substantiate the need and propriety for such action. Waivers may be granted on a temporary or permanent basis. The request for a waiver shall be in writing and include information regarding:

(1) The type of manure storage structure from which the manure will be applied by spray irrigation equipment.

(2) The spray irrigation equipment to be used in the application of manure.

(3) Other information as the department may request.

f. Agricultural drainage wells. Manure shall not be applied by spray irrigation equipment on land located within an agricultural drainage well area.

g. Designated areas. A person shall not apply manure on land within 200 feet from a designated area or in the case of a high-quality water resource, within 800 feet, unless one of the following applies:

(1) The manure is land-applied by injection or incorporation on the same date as the manure was land-applied.

(2) An area of permanent vegetation cover, including filter strips and riparian forest buffers, exists for 50 feet surrounding the designated area other than an unplugged agricultural drainage well or surface intake to an unplugged agricultural drainage well, and the area of permanent vegetation cover is not subject to manure application.

h. Setback requirements for confinement feeding operations with NPDES permits. For confinement feeding operations with NPDES permits, the following is adopted by reference: 40 CFR 412.4(a), (b) and (c)(5).

65.101(3) *Surface application of liquid manure on frozen or snow-covered ground.* A person who applies liquid manure on frozen or snow-covered ground shall comply with applicable NPDES permit requirements pursuant to the Act and also shall comply with the following requirements:

a. Snow-covered ground. During the period beginning December 21 and ending April 1, a person may apply liquid manure originating from a manure storage structure that is part of a confinement feeding operation on snow-covered ground only when there is an emergency.

b. Frozen ground. During the period beginning February 1 and ending April 1, a person may apply liquid manure originating from a manure storage structure that is part of a confinement feeding operation on frozen ground only when there is an emergency.

c. What constitutes an emergency. For the purposes of this subrule, an emergency application is only allowed when there is an immediate need to apply manure to comply with the manure retention requirement of subrule 65.100(1) due to unforeseen circumstances affecting the storage of the liquid manure. The unforeseen circumstances must be beyond the control of the owner of the confinement feeding operation, including but not limited to natural disaster, unusual weather conditions, or equipment or structural failure. The authorization to apply liquid manure pursuant to this subrule does not apply to either of the following:

(1) An immediate need to apply manure in order to comply with the manure retention requirement of subrule 65.100(1) caused by the improper design or management of the manure storage structure, including but not limited to a failure to properly account for the volume of the manure to be stored. Based on the restrictions described in paragraphs 65.101(3)*"a"* and *"b"* and the possibility that the ground could be snow-covered and frozen for the entire period of December 21 to April 1, an operation should not plan to apply liquid manure during that time period. Confinement feeding operations with manure storage structures constructed after May 26, 2009, and without alternatives to manure application must have sufficient storage capacity to retain manure generated from December 21 to April 1 under normal circumstances in order to properly account for the volume of manure to be stored. For confinement feeding operations that have no manure storage structures constructed after May 26, 2009, the department will accept insufficient manure storage capacity as a reason for emergency application in the notification required in subrule 65.101(3).

(2) Liquid manure originating from a confinement feeding operation constructed or expanded on or after July 1, 2009, if the confinement feeding operation has a capacity to store manure for less than 180 days.

d. Procedure for emergency application. A person who is authorized to apply liquid manure on snow-covered ground or frozen ground when there is an emergency shall comply with all of the following:

(1) The person must notify the appropriate department field office by telephone prior to the application. The department will not consider the notification complete unless the owner's name, facility name, facility ID number, reason for emergency application, application date, estimated number of gallons of manure to be applied, and application fields as listed in the MMP are given. In cases where the emergency is not easily confirmed by weather reports, the owner must make documentation of the emergency available to the field office upon request.

(2) The liquid manure must be applied on land identified for such application in the current MMP maintained by the owner of the confinement feeding operation as required in subrule 65.111(7). The land must be identified in the current MMP prior to the application, and that change must also be reflected in the next annual update or complete MMP submitted to the department and county boards of supervisors following the application as required in paragraph 65.110(3)*"b."*

(3) The liquid manure must be applied on a field with a phosphorus index rating of 2 or less.

(4) Any surface water drain tile intake that is on land in the owner's MMP and located downgradient of the application must be temporarily blocked beginning not later than the time that the liquid manure is first applied and ending not earlier than two weeks after the completion of the application.

(5) Additional measures to contain runoff may be necessary in order to prevent violation of federal effluent standards in subrule 62.4(12).

e. Exceptions. Paragraphs 65.101(3)*"a"* through *"d"* do not apply to any of the following:

(1) The application of liquid manure originating from a SAFO.

(2) The application of liquid manure injected or incorporated into the soil on the same date.

[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.102(455B,459,459B) Departmental evaluation.

65.102(1) The department may evaluate any AFO to determine if any of the following conditions exist:

a. Manure from the operation is being discharged into a water of the state and the operation is not providing the applicable minimum level of manure control as specified in subrule 65.100(1);

b. Manure from the operation is causing or may reasonably be expected to cause pollution of a water of the state; or

c. Manure from the operation is causing or may reasonably be expected to cause a violation of state water quality standards.

65.102(2) If departmental evaluation determines that any of the conditions listed in subrule 65.102(1) exist, the operation shall institute necessary remedial actions to eliminate the conditions if the operation receives a written notification from the department of the need to correct the conditions. This subrule shall apply to all permitted and unpermitted AFOs, regardless of animal capacity.

[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.103(455B,459,459B) Construction permits—required approvals and permits. A person required to obtain a construction permit pursuant to subrule 65.103(1) or a construction approval letter pursuant to subrule 65.103(7) shall not begin construction, expansion or modification of a confinement feeding operation structure until the department issues a construction permit or a construction approval letter for a proposed or existing confinement feeding operation. In addition, the owner of a SAFO with formed manure storage structures who is not required to obtain a construction permit pursuant to subrule 65.103(1) or a construction approval letter pursuant to subrule 65.103(7) shall comply with the applicable construction approval requirements pursuant to subrule 65.103(8).

65.103(1) *Confinement feeding operations required to obtain a construction permit prior to any of the following.* Except as provided in subrule 65.103(2), a confinement feeding operation shall obtain a construction permit prior to any of the following:

a. Constructing or installing a confinement building that uses an unformed manure storage structure or constructing, installing or modifying an unformed manure storage structure.

b. Constructing or installing a confinement building that uses a formed manure storage structure or constructing, installing or modifying a formed manure storage structure if, after construction, installation or modification, the animal unit capacity of the operation is 1,000 animal units or more. This paragraph also applies to confinement feeding operations that store manure exclusively in a dry form.

c. Initiating a change, even if no construction of, or physical alteration to, an unformed manure storage structure is necessary, that would result in an increase in the volume of manure or a modification in the manner in which manure is stored in any unformed manure storage structure. Increases in the volume of manure due to an increase in animal capacity, animal weight capacity or animal unit capacity up to the limits specified in a previously issued construction permit do not require a new construction permit.

d. Initiating a change, even if no construction of or physical alteration to, a formed manure storage structure is necessary, that would result in an increase in the volume of manure or a modification in the manner in which manure is stored in a formed manure storage structure if, after the change, the animal unit capacity of the operation is 1,000 animal units or more. Increases in the volume of manure due to an increase in animal capacity, animal weight capacity or animal unit capacity up to the limits specified in a previously issued construction permit do not require a new construction permit.

e. Purchasing or acquiring an adjacent animal feeding confinement operation if after acquisition the animal unit capacity of the combined operation is 1,000 animal units or more. The construction permit application must be submitted within 60 days of the acquisition or purchase.

f. Constructing or modifying an egg washwater storage structure or a confinement building at a confinement feeding operation that includes an egg washwater storage structure.

g. Initiating a change, even if no construction of, or physical alteration to, an egg washwater storage structure is necessary, that would result in an increase in the volume of egg washwater or a modification in the manner in which egg washwater is stored. Increases in the volume of egg washwater due to an increase in animal capacity, animal weight capacity or animal unit capacity up to the limits specified in a previously issued construction permit do not require a new construction permit.

h. Repopulating a confinement feeding operation that had been a discontinued AFO for 24 months or more and if any of the following apply:

(1) The confinement feeding operation uses an unformed manure storage structure or egg washwater storage structure;

(2) The confinement feeding operation includes only confinement buildings and formed manure storage structures and has an animal unit capacity of 1,000 animal units or more.

i. Installing a permanent manure transfer piping system, unless the department determines that a construction permit is not required.

j. Initiating a remedial change, upgrade, replacement or construction when directed by the department as a result of departmental evaluation pursuant to rule 567—65.102(455B,459,459B) or as required by an administrative order or court order pursuant to Iowa Code section 455B.112 or 455B.175. Repairs to a confinement building or additions such as fans, slats, gates, roofs, or covers do not require a construction permit. In some instances, the department may determine that a construction permit is not required to increase the volume of manure or egg washwater or a modification in the manner in which manure or egg washwater is stored if the increase or modification is deemed insignificant. Plans for repairs or modifications to a manure storage structure shall be submitted to the department to determine if a permit is required.

65.103(2) *Confinement feeding operations not required to obtain a construction permit.*

a. A construction permit shall not be required for a formed manure storage structure or for a confinement building that uses a formed manure storage structure in conjunction with a SAFO. However, this paragraph shall not apply to a SAFO that uses an unformed manure storage structure.

b. A construction permit shall not be required for a confinement feeding operation structure related to research activities and experiments performed under the authority and regulations of a research college.

c. A construction permit is not required to construct a formed manure storage structure at a confinement feeding operation having an animal unit capacity of more than 500 but less than 1,000 animal units; however, a construction approval letter is required from the department pursuant to subrule 65.103(8) and rule 567—65.104(455B,459,459B).

d. A construction permit is not required for a confinement feeding operation that exclusively confines fish and elects to comply with the permitting requirements of Iowa Code section 455B.183.

65.103(3) *Operations that shall not be issued construction permits.*

a. The department shall not issue a construction permit to a person if an enforcement action by the department, relating to a violation of this chapter concerning a confinement feeding operation in which the person has an interest, is pending.

b. The department shall not issue a construction permit to a person for five years after the date of the last violation committed by a person or confinement feeding operation in which the person holds a controlling interest during which the person or operation was classified as a habitual violator under Iowa Code sections 459.317 and 459.604.

c. The department shall not issue a construction permit to expand or modify a confinement feeding operation for 120 days after completion of the last construction or modification at the operation, if a permit was not required for the last construction or modification.

65.103(4) *Construction permit application plan review criteria.* Review of plans and specifications submitted with a construction permit application shall be conducted to determine the potential of the proposed manure control system to achieve the level of manure control being required of the confinement feeding operation. In conducting this review, applicable criteria contained in federal law, state law, these rules, NRCS design standards and specifications unless inconsistent with federal or state law or these rules, and U.S. Department of Commerce precipitation data shall be used. If the proposed facility plans

are not adequately covered by these criteria, applicable criteria contained in current technical literature shall be used.

65.103(5) *Expiration of construction permits.* A construction permit shall expire if construction, as defined in rule 567—65.6(455B,459,459A,459B), is not begun within one year and completed within four years of the date of issuance. The director may grant an extension of time to begin or complete construction if it is necessary or justified, upon showing of such necessity or justification to the director, unless a person who has an interest in the proposed operation is the subject of a pending enforcement action or a person who has a controlling interest in the proposed operation has been classified as a habitual violator. If a permitted site has not completed all proposed permitted structures within the four-year limit, then the approved animal unit capacity in the construction permit shall be lowered to be equal to what was constructed and the department shall issue a construction permit amendment for what was constructed. Once all permitted construction has been completed, no amendments for new construction may be issued even though the four-year period has not expired. A new construction permit must be issued for the new proposed construction.

65.103(6) *Revocation of construction permits.* The department may revoke a construction permit or refuse to renew a permit expiring according to subrule 65.103(5) if it determines that the operation of the confinement feeding operation constitutes a clear, present and impending danger to public health or the environment.

65.103(7) *Confinement feeding operations required to obtain a construction approval letter.* A person planning to construct a confinement feeding operation, other than a SAFO as defined in rule 567—65.1(455B,459,459A,459B) or other than an operation required to obtain a construction permit pursuant to subrule 65.103(1), shall obtain from the department a construction approval letter as provided in subrule 65.104(2) prior to beginning construction of a formed manure storage structure or a confinement building. The construction approval letter shall expire if construction, as defined in subrule 65.6(1), is not begun within one year and completed within four years of the date of the construction approval letter.

65.103(8) *SAFOs.* The following requirements apply to SAFOs:

a. A construction permit shall not be required for a SAFO utilizing a formed manure storage structure; however, a construction permit is required for any unformed manure storage structures utilized at a SAFO.

b. If a SAFO cannot meet the required separation distance provided in Iowa Code section 459.310(1), a SAFO must comply with secondary containment barrier design in accordance with subrule 65.104(5).

c. A SAFO must comply with drain tile removal requirements if the SAFO utilizes an unformed manure storage structure in accordance with subrule 65.108(1).

d. SAFO confinement structures must comply with applicable separation distance requirements in rule 567—65.106(455B,459,459B).

65.103(9) *Compliance with permit conditions.* A person who constructs, modifies or expands a confinement feeding operation structure pursuant to a construction permit shall comply with all terms and conditions of the construction permit.

[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.104(455B,459,459B) Preconstruction submittal requirements. Prior to beginning construction, expansion or modification of a confinement feeding operation structure, a person shall obtain from the department a construction permit pursuant to subrule 65.103(1), a construction approval letter pursuant to subrule 65.103(7) or approval of a secondary containment barrier design pursuant to subrule 65.104(5), according to procedures established in this rule.

65.104(1) *Construction permit application.* Application for a construction permit for a confinement feeding operation shall be made on a form provided by the department. The application shall include all of the information required in the form. At the time the department receives a complete application, the department shall make a determination regarding the approval or denial of the permit in accordance

with subrule 65.105(5). A construction permit application for a confinement feeding operation shall be filed as instructed on the form and shall include the following:

a. The name of the applicant and the name of the confinement feeding operation, including mailing address and telephone number.

b. The name of the current landowner or the proposed landowner of the land where the confinement feeding operation will be located.

c. The contact person for the confinement feeding operation, including mailing address and telephone number.

d. The location of the confinement feeding operation.

e. Whether the application is for the expansion of an existing operation or the construction of a proposed confinement feeding operation, and the date when it was first constructed if an existing operation.

f. The animal unit capacity by animal species of the current confinement feeding operation to be expanded, if applicable, and of the proposed confinement feeding operation. If the confinement feeding operation includes a confinement feeding operation structure that was constructed prior to March 1, 2003, the animal weight capacity by animal species of the current confinement feeding operation to be expanded, if applicable, and of the proposed confinement feeding operation shall also be included.

g. Engineering documents. A confinement feeding operation that utilizes an unformed manure storage structure, an egg washwater storage structure or a formed manure storage structure at an operation that meets the threshold requirements for an engineer as defined in rule 567—65.1(455B,459,459A,459B) shall include an engineering report, construction plans and specifications. The engineering report, construction plans and specifications must be prepared and signed by a licensed PE or by an NRCS-qualified staff person, must detail the proposed structures, and must include a statement certifying that the manure storage structure complies with the requirements of Iowa Code chapter 459. In addition, a qualified soils or groundwater professional, licensed PE or NRCS-qualified staff person shall submit a hydrogeologic report on soil corings in the area of the unformed manure storage structure or egg washwater storage structure as described in subrules 65.108(5) and 65.108(9).

h. Construction design statement or PE design certification. A confinement feeding operation that uses a formed manure storage structure and that is below the threshold requirements for an engineer as defined in rule 567—65.1(455B,459,459A,459B) shall submit a construction design statement pursuant to subrule 65.104(3) or a PE design certification pursuant to subrule 65.104(4). All elevations shall be in NAV 88 datum for sites with alluvial soils or floodplain requirements.

i. Payment to the department of the indemnity fund fee as required in Iowa Code section 459.502.

j. If the construction permit application is for three or more confinement feeding operation structures, a drainage tile certification shall be submitted as follows:

(1) If the application is for an unformed manure storage structure, an egg washwater storage structure or a formed manure storage structure that meets the threshold requirements for an engineer as defined in rule 567—65.1(455B,459,459A,459B), a licensed PE shall certify that either the construction of the structure will not impede the drainage through established drainage tile lines which cross property boundary lines or that if the drainage is impeded during construction, the drainage tile will be rerouted to reestablish the drainage prior to operation of the structure.

(2) If the application is for a formed manure storage structure that does not meet the threshold engineering requirements, a drainage tile certification shall be submitted as part of the construction design statement pursuant to subrule 65.104(3) or as part of the PE design certification pursuant to subrule 65.104(4).

k. Information (e.g., maps, drawings, aerial photos) that clearly shows the proposed location of the confinement feeding operation structures; any existing confinement feeding operation structures; any locations or objects from which a separation distance is required by Iowa Code sections 459.202, 459.203 and 459.310; and that the structures will meet all applicable separation distances. If applicable, a copy of a recorded separation distance waiver, pursuant to paragraph 65.107(1)*"b,"* must be included with the

application. Also, if applicable, a secondary containment barrier design, pursuant to subrules 65.104(5) and 65.107(7), shall be included.

l. The names of all parties with an interest or controlling interest in the confinement feeding operation who also have an interest or controlling interest in at least one other confinement feeding operation in Iowa, and the names and locations of such other operations; for a partnership or corporation owning the confinement feeding operation, a list of all members and their percentage of ownership in the partnership or corporation.

m. Copies of the MMP pursuant to rule 567—65.110(455B,459,459B).

n. A construction permit application fee of $250 and the MMP filing fee of $250 as required in subrule 65.110(7).

o. A copy of the AFO Siting Atlas indicating the location of the proposed structure, with the one hundred year floodplain and karst layers included.

p. A copy of any master matrix evaluation provided to the county.

q. A livestock odor mitigation evaluation certificate issued by Iowa State University as provided in Iowa Code section 266.49. The applicant is not required to submit the certificate if any of the following apply:

(1) The confinement feeding operation is twice the minimum separation distance required from the nearest object or location from which a separation distance is required pursuant to Iowa Code section 459.202 on the date of the application, not including a public thoroughfare.

(2) The owner of each object or location that is less than twice the minimum separation distance required pursuant to Iowa Code section 459.202 from the confinement feeding operation on the date of the application, other than a public thoroughfare, executes a document consenting to the construction.

(3) The applicant submits a document swearing that Iowa State University has failed to furnish a certificate to the applicant within 45 days after the applicant requested Iowa State University to conduct a livestock odor mitigation evaluation as provided in Iowa Code section 266.49.

(4) The application is for a permit to expand a confinement feeding operation, if the confinement feeding operation was first constructed before January 1, 2009.

(5) Iowa State University does not provide for a livestock odor mitigation evaluation effort as provided in Iowa Code section 266.49, for any reason, including because funding is not available.

r. Documentation that copies of all the construction permit application documents have been provided to the county board of supervisors or county auditor in the county where the operation or structure subject to the permit is to be located, and documentation of the date received by the county.

65.104(2) *Construction approval letter.*

a. A confinement feeding operation that, pursuant to subrule 65.103(7), is required to obtain a construction approval letter as defined in rule 567—65.1(455B,459,459A,459B), but that is not required to obtain a construction permit pursuant to subrule 65.103(1), shall file with the department, at least 30 days prior to the date the proposed construction is scheduled to begin, all of the following:

(1) A construction design statement pursuant to subrule 65.104(3). In lieu of a construction design statement, a PE design certification pursuant to subrule 65.104(4) may be submitted.

(2) A copy of the MMP pursuant to rule 567—65.110(455B,459,459B).

(3) Information (e.g., maps, drawings, aerial photos) that clearly shows the intended location of the confinement feeding operation structures and animal weight capacities of any other confinement feeding operations within a distance of 2,500 feet in which the owner has an ownership interest or which the owner manages.

(4) A fee of $250 for filing an MMP pursuant to subrule 65.110(7) and a manure storage indemnity fee pursuant to subrule 65.110(6).

(5) Documentation that the board of supervisors or auditor of the county where the confinement feeding operation structure is proposed to be located received a copy of the MMP.

b. After submission of items in subparagraphs 65.104(2)*"a"*(1) through 65.104(2)*"a"*(5) and prior to issuance of the construction approval letter, the confinement feeding operation may make nonsubstantial revisions to the items and maintain the date construction is scheduled to begin.

65.104(3) *Construction design statement.* Prior to beginning construction of a formed manure storage structure, a person planning construction at a confinement feeding operation, other than a SAFO, that is below the threshold requirements for an engineer as defined in rule 567—65.1(455B,459,459A,459B) shall file with the department a construction design statement, as follows:

a. A confinement feeding operation with an animal unit capacity of more than 500 but less than 1,000 animal units that is required to obtain a construction approval letter from the department pursuant to subrule 65.103(7) but that is not required to obtain a construction permit pursuant to subrule 65.103(1) shall file with the department a construction design statement, as required in subrule 65.104(2). Within 30 days after the filing of a construction design statement, the department may issue a construction approval letter as defined in rule 567—65.1(455B,459,459A,459B) if the proposed formed manure storage structure meets the requirements of this chapter.

b. A confinement feeding operation that has an animal unit capacity of 1,000 animal units or more but that is below the threshold requirements for an engineer as defined in rule 567—65.1(455B,459,459A,459B) shall file a construction design statement as part of the construction permit application and as required in subrule 65.104(1).

c. The construction design statement shall be filed on a form provided by the department and shall include all of the following:

(1) The name of the person planning construction at the confinement feeding operation, the name of the confinement feeding operation, the location of the proposed formed manure storage structure, a detailed description of the type of confinement feeding operation structure being proposed, the dimensions of the structure, and whether the structure will be constructed of reinforced concrete or steel.

(2) An MMP pursuant to rule 567—65.110(455B,459,459B).

(3) A certification signed by the person responsible for constructing the formed manure storage structure that the proposed formed manure storage structure will be constructed according to the minimum concrete standards set forth in subrule 65.108(10). Otherwise, if the formed manure storage structure is to be constructed of steel, including a Slurrystore® tank, a certification signed by the person responsible for constructing the formed manure storage structure that the proposed formed manure storage structure will be constructed according to the requirements of Iowa Code chapter 459 and this chapter.

(4) If the confinement feeding operation is also required to obtain a construction permit at a confinement feeding operation proposing three or more confinement feeding operation structures, the construction design statement shall include a drainage tile certification signed by the person responsible for constructing or excavating the formed manure storage structure, shall certify that construction will not impede established existing drainage, and shall verify that if existing drainage tiles are found, corrective actions will be implemented to immediately reestablish existing drainage.

d. The following operations are not required to file a construction design statement with the department:

(1) A SAFO that constructs a formed manure storage structure.

(2) A confinement feeding operation that submits a PE design certification pursuant to this subrule.

(3) A confinement feeding operation that meets or exceeds threshold requirements for an engineer as defined in rule 567—65.1(455B,459,459A,459B).

(4) A confinement feeding operation that utilizes an unformed manure storage structure or an egg washwater storage structure.

65.104(4) *PE design certification.* In lieu of a construction design statement prior to beginning construction of a formed manure storage structure, a confinement feeding operation, other than a SAFO, that is below the threshold requirements for an engineer pursuant to rule 567—65.1(455B,459,459A,459B) may file with the department a PE design certification and design plans signed by a PE licensed in the state of Iowa or an NRCS-qualified staff person. The PE design certification shall be site-specific and shall be filed on a form provided by the department as follows:

a. A confinement feeding operation with an animal unit capacity of more than 500 but less than 1,000 animal units that is not required to obtain a construction permit pursuant to subrule 65.103(1)

shall file with the department, at least 30 days before beginning construction of a formed manure storage structure, the PE design certification as required in subrule 65.104(2). Within 30 days after the filing of a PE design certification, the department may issue a construction approval letter if the proposed formed manure storage structure meets the requirements of this chapter.

b. A confinement feeding operation with an animal unit capacity of 1,000 animal units or more that is required to obtain a construction permit pursuant to subrule 65.103(1) but that is below the threshold requirements for an engineer pursuant to rule 567—65.1(455B,459,459A,459B) shall file with the department the PE design certification as part of the construction permit application and as required in subrule 65.104(1).

65.104(5) *Secondary containment barrier design submittal requirements.* The design for a secondary containment barrier to qualify any confinement feeding operation for the separation distance exemption provision in subrule 65.107(7) shall be filed with the department for approval prior to beginning construction of a formed manure storage structure that is part of a SAFO, shall accompany the construction design statement pursuant to subrule 65.104(2) if a construction permit is not required, or shall be filed as part of the construction permit application pursuant to subrule 65.104(1). The secondary containment barrier shall meet the design standards of subrule 65.108(11) and shall be prepared according to the following:

a. If a manure storage structure stores liquid or semiliquid manure, the secondary containment barrier design shall include engineering drawings prepared and signed by a PE licensed in the state of Iowa or an NRCS-qualified staff person. For purposes of this subrule only, "semiliquid manure" means manure that contains a percentage of dry matter that results in manure too solid for pumping but too liquid for stacking.

b. If the manure storage structure will store only dry manure or dry bedded manure, the owner or a representative of a confinement feeding operation may submit to the department detailed drawings of the design for a secondary containment barrier.

[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.105(455B,459,459B) Construction permit application review process, site inspections and complaint investigations.

65.105(1) *Delivery of application to county.* The applicant for a construction permit for a confinement feeding operation or related AFO structure shall deliver in person or by certified mail a copy of the permit application and MMP to the county board of supervisors of the county where the confinement feeding operation or related AFO structure is proposed to be constructed. Receipt of the application and MMP by the county auditor or other county official or employee designated by the county board of supervisors is deemed receipt of the application and MMP by the county board of supervisors. Documentation of the delivery or mailing of the permit application and MMP shall be forwarded to the department.

65.105(2) *Public notice and county comment.*

a. Public notice. The county board of supervisors shall publish a notice that the board has received the construction permit application in a newspaper having general circulation in the county. The county board shall publish the notice as soon as possible but no later than 14 days after receiving instructions from the department that a complete application has been received. The notice shall include all of the following:

(1) The name of the person applying to receive the construction permit;

(2) The name of the township where the confinement feeding operation structure is to be constructed;

(3) Each type of confinement feeding operation structure proposed to be constructed;

(4) The animal unit capacity of the confinement feeding operation if the construction permit were to be approved;

(5) The time when and the place where the application may be examined as provided in Iowa Code section 22.2;

(6) Procedures for providing public comments to the board as provided by the board.

The county shall submit to the department, within 30 days of receipt of the construction permit application, proof of publication to verify that the county provided public notice as required in this paragraph.

b. County comment. Regardless of whether the county board of supervisors has adopted a construction evaluation resolution, the board may submit to the department comments by the board and the public regarding compliance of the construction permit application and MMP with the requirements in this chapter and Iowa Code chapter 459 for obtaining a construction permit. Comments may include but are not limited to the following:

(1) The existence of an object or location not included in the construction permit application that benefits from a separation distance requirement as provided in Iowa Code section 459.202 or 459.310.

(2) The suitability of soils and the hydrology of the site where construction or expansion of a confinement feeding operation or related AFO structure is proposed.

(3) The availability of land for the application of manure originating from the confinement feeding operation.

(4) Whether the construction or expansion of a proposed AFO structure will impede drainage through established tile lines, laterals, or other improvements which are constructed to facilitate the drainage of land not owned by the person applying for the construction permit.

65.105(3) *Master matrix.* A county board of supervisors may adopt a construction evaluation resolution relating to the construction of a confinement feeding operation structure. The board must submit such resolution to the director of the department for filing. Adoption and filing of a construction evaluation resolution authorizes a county board of supervisors to conduct an evaluation of a construction permit application using the master matrix as follows:

a. Enrollment periods.

(1) The county board of supervisors must file an adopted construction evaluation resolution with the department between January 1 and January 31 of each year to evaluate construction permit applications received by the department between February 1 of that year and January 31 of the following year.

(2) Filed construction evaluation resolutions shall remain in effect until the applicable enrollment period expires or until such time as the county board of supervisors files with the department a resolution rescinding the construction evaluation resolution, whichever is earlier.

(3) Filing of an adopted construction evaluation resolution requires a county board of supervisors to conduct an evaluation of a construction permit application using the master matrix. However, if the board fails to submit an adopted recommendation to the department or fails to comply with the evaluation requirements in paragraph 65.105(3)*"b,"* the department shall disregard any adopted recommendation from that board until the board timely submits a new construction evaluation resolution.

b. Use of the master matrix. If a county board of supervisors has adopted and filed with the department a construction evaluation resolution, as provided in paragraph 65.105(3)*"a,"* the board shall evaluate all construction permit applications filed during the applicable period using the master matrix as follows:

(1) In completing the master matrix, the board shall not score criteria on a selective basis. The board must score all criteria that are part of the master matrix according to the terms and conditions relating to construction as specified in the application or commitments for manure management that are to be incorporated into an MMP as provided in Iowa Code section 459.312.

(2) The board shall include with the adopted recommendation a copy of the master matrix analysis, calculations, and scoring for the application. The board's adopted recommendation submitted to the department may be based on the master matrix or on comments received by the board. The adopted recommendation shall include the specific reasons and any supporting documentation for the decision to recommend approval or disapproval of the application.

(3) The board shall not use the master matrix to evaluate a construction permit application for the construction or expansion of a confinement feeding operation structure if the construction or expansion is for expansion of a confinement feeding operation that includes a confinement feeding operation structure constructed prior to April 1, 2002, and, after the expansion of the confinement feeding operation, its

animal unit capacity is 1,666 animal units or less. The board may still submit comments regarding the application.

65.105(4) *Inspection of proposed construction site.* The department may conduct an inspection of the site on which construction of the confinement feeding operation is proposed after providing a minimum of 24 hours' notice to the construction permit applicant or sooner with the consent of the applicant. If the county in which the proposed facility is located has adopted and submitted a construction evaluation resolution pursuant to subrule 65.105(3) and has not failed subsequently to submit an adopted recommendation, the county may designate a county employee to accompany a department official during the site inspection. In such cases, the department shall notify the county board of supervisors or county designee at least three days prior to conducting an inspection of the site where construction of the confinement feeding operation is proposed. The county designee shall have the same right to access to the site's real estate on which construction of the confinement feeding operation is proposed as the departmental official conducting the inspection during the period that the county designee accompanies the departmental official. The departmental official and the county designee shall comply with standard biosecurity requirements customarily required by the owner of the confinement feeding operation that are necessary in order to control the spread of disease among an animal population.

65.105(5) *Determination by the department.* The department must receive the county board of supervisors' comments or evaluation for approval or disapproval of an application for a construction permit not later than 30 days following the applicant's delivery of a complete application to the department. Regardless of whether the department receives comments or an evaluation by a county board of supervisors, the department must render a determination or a preliminary determination to approve or disapprove an application for a construction permit within 60 days following the applicant's delivery of a complete application to the department. However, the applicant may deliver a notice requesting a continuance. Upon receipt of a notice, the time required for the county or department to act upon the application shall be suspended for the period provided in the notice but for not more than 30 days after the department's receipt of the notice. The applicant may submit more than one notice. However, the department may terminate an application if no action is required by the department for one year following delivery of the application to the board. The department may also provide for a continuance when it considers the application. The department shall provide notice to the applicant and the board of the continuance. The time required for the department to act upon the application shall be suspended for the period provided in the notice but for not more than 30 days. However, the department shall not provide for more than one continuance. If review of the application is delayed because the application is incomplete, and the applicant fails to supply requested information within a reasonable time prior to the deadline for action on the application, the permit may be denied and a new application will be required if the applicant wishes to proceed. The department will approve or disapprove an application as follows:

a. If the county board of supervisors does not submit a construction evaluation resolution to the department, fails to submit an adopted recommendation, submits only comments, or fails to submit comments, the department shall approve the application if the application meets the requirements of this chapter and Iowa Code chapters 455B, 459, 459A and 459B. The department will disapprove the application if it does not meet such requirements.

b. If the board of supervisors for the county in which the confinement feeding operation is proposed to be constructed has filed a county construction evaluation resolution and submits an adopted recommendation to approve the construction permit application, which may be based on a satisfactory rating produced by the master matrix, to the department, the department shall preliminarily approve an application for a construction permit if the department determines that the application meets the requirements of this chapter and Iowa Code chapters 455B, 459, 459A and 459B. The department shall preliminarily disapprove an application that does not satisfy the requirements of this chapter and Iowa Code chapters 455B, 459, 459A and 459B regardless of the adopted recommendation of the board of supervisors. The department shall consider any timely filed comments made by the board as provided

in this subrule to determine if an application meets the requirements of this chapter and Iowa Code chapters 455B, 459, 459A and 459B.

c. If the board submits to the department an adopted recommendation to disapprove an application for a construction permit that is based on a rating produced by the master matrix, the department shall first determine if the application meets the requirements of this chapter and Iowa Code chapters 455B, 459, 459A and 459B. The department shall preliminarily disapprove an application that does not satisfy the requirements of this chapter and Iowa Code chapters 455B, 459, 459A and 459B, regardless of any result produced by using the master matrix. If the application meets the requirements of this chapter and Iowa Code chapters 455B, 459, 459A and 459B, the department shall conduct an independent evaluation of the application using the master matrix. The department shall preliminarily approve the application if it achieves a satisfactory rating according to the department's evaluation. The department shall preliminarily disapprove the application if it produces an unsatisfactory rating regardless of whether the application satisfies the requirements of this chapter and Iowa Code chapters 455B, 459, 459A and 459B. The department shall consider any timely filed comments made by the board as provided in this subrule to determine if an application meets the requirements of this chapter and Iowa Code chapters 455B, 459, 459A and 459B.

65.105(6) *Departmental notification of permit application decision.* Within three days following the department's determination or preliminary determination to approve or disapprove the application for a construction permit, the department shall deliver a notice of the decision to the applicant.

a. If the county board of supervisors has submitted to the department an adopted recommendation for the approval or disapproval of a construction permit application, the department shall notify the board of the department's preliminary decision to approve or disapprove the application at the same time. For a preliminary decision to approve an application, the notice shall consist of a copy of the draft construction permit. For a preliminary decision to disapprove an application, the notice shall consist of a copy of the department's letter of preliminary denial. The preliminary decision to approve or disapprove an application becomes final without further proceedings if neither the county board of supervisors nor the applicant demands a hearing before the commission or appeals pursuant to subrules 65.105(7) and 65.105(8).

b. If the county board of supervisors has not submitted to the department an adopted recommendation for the approval or disapproval of a construction permit application, the department notice shall include the construction permit or letter of denial. The applicant may appeal the permit or denial as provided in subrule 65.105(8).

65.105(7) *County board of supervisors' demand for hearing.*

a. A county board of supervisors that has submitted an adopted recommendation to the department may contest the department's preliminary decision to approve or disapprove an application for permit by filing a written intent to demand a hearing and a demand for a hearing before the commission. The intent to demand a hearing shall be sent to the director of the department and must be postmarked no later than 14 days following the board's receipt of the department's notice of preliminary decision. The demand for hearing shall be sent to the director of the department and must be postmarked no later than 30 days following the board's receipt of the department's notice of preliminary decision. A county board of supervisors that has submitted an adopted recommendation to the department may waive the right to file a demand for hearing following the receipt of the department's notice of preliminary decision by filing a written notice of waiver with the department.

b. The demand for hearing shall include a statement setting forth all of the county board of supervisors' reasons why the application for a permit should be approved or disapproved, including legal briefs and all supporting documentation, and a further statement indicating whether an oral presentation before the commission is requested.

65.105(8) *Applicant's demand for hearing.* The applicant may contest the department's preliminary decision to approve or disapprove an application for permit by filing a written intent to demand a hearing and a demand for a hearing. The applicant may elect, as part of the written demand for hearing, to have the hearing conducted before the commission pursuant to paragraph 65.105(8)*"a"* or before an administrative law judge pursuant to paragraph 65.105(8)*"b."* If no such election is made, the demand

for hearing shall be considered to be a request for hearing before the commission. If both the applicant and the county board of supervisors are contesting the department's preliminary decision, the applicant may request that the commission conduct the hearing on a consolidated basis.

a. Applicant demand for hearing before the commission. The intent to demand a hearing shall be sent to the director of the department and must be postmarked no later than 14 days following the board's receipt of the department's notice of preliminary decision. The demand for hearing shall be sent to the director of the department and must be postmarked no later than 30 days following the applicant's receipt of the department's notice of preliminary decision. If the county board of supervisors has filed a demand for hearing, the times for facsimile notification and filing a demand for hearing are extended an additional three business days. It is the responsibility of the applicant to communicate with the department to determine if a county demand for hearing has been filed. The demand for hearing shall include a statement setting forth all of the applicant's reasons why the application for permit should be approved or disapproved, including legal briefs and all supporting documentation, and a further statement indicating whether an oral presentation before the commission is requested.

b. Applicant contested case appeal before an administrative law judge. The applicant may contest the department's preliminary decision to approve or disapprove an application according to the contested case procedures set forth in 561—Chapter 7; however, if the county board of supervisors has demanded a hearing pursuant to subrule 65.105(7), the applicant shall provide facsimile notification to the department within the time frame set forth in paragraph 65.105(7)*"a"* that the applicant intends to contest the department's preliminary decision according to contested case procedures. In that event, the applicant may request that the hearings be consolidated and conducted as a contested case.

65.105(9) *Hearing and decision by the commission.*

a. Hearing before the commission.

(1) All hearings before the commission requested pursuant to subrules 65.105(7) and 65.105(8) shall be handled as other agency action and not as a contested case.

(2) Upon receipt of a timely demand for a hearing before the commission pursuant to subrules 65.105(7) or 65.105(8), the director shall set a hearing during a regular meeting of the commission scheduled no more than 35 days from the date the director receives the first such request. However, if the next regular meeting of the commission will take place more than 35 days after receipt of the demand for hearing, the director shall schedule a special in-person meeting or an electronic meeting of the commission pursuant to Iowa Code section 21.8.

(3) No later than five days from the date the director receives a demand for hearing, the director shall post on the department's website the demand for hearing and associated documents, letters notifying the parties of the hearing date, and the department's complete file on the application under review. The director shall provide hard copies of these documents to members of the commission as requested by each member. The director shall contact the applicant and the county board of supervisors and provide copies of documents they request.

(4) No later than 15 days from the date set for hearing, the applicant, the county board of supervisors and the department shall, if any chooses to do so, send one copy of a reply brief to respond to issues raised in the demand for hearing and any supporting documentation to the department. The director shall post the briefs and associated written documents on the department's website and provide hard copies to members of the commission as requested by each member. No further briefs or documents shall be permitted except upon request and permission of the commission.

(5) No later than 15 days from the date set for hearing, any person may submit written material for the commission to review. Whether such material is accepted into the record will be the decision of the chairperson of the commission depending on whether the chairperson deems it relevant to the appeal.

(6) The commission shall use the following hearing procedures:

1. All written material accepted by the chairperson of the commission for inclusion in the record at the hearing shall be marked as coming from the person or entity presenting the document.

2. Objections to submitted written material shall be noted for the record.

3. Oral participation before the commission shall be limited to time periods specified by the chairperson of the commission and, unless otherwise determined by the commission, to presentations by

representatives for the applicant, the county board of supervisors and the department and by technical consultants or experts designated by the commission. Representatives of the department shall not advocate for either the county board of supervisors or the applicant but may summarize the basis for the department's preliminary decision and respond to questions by members of the commission.

4. Members of the commission, and the commission's legal counsel, may ask questions of the representatives for the applicant, the county board of supervisors and the department and of technical consultants or experts designated by the commission. The members and counsel may also ask questions of any other person or entity appearing or in attendance at the hearing. Representatives for the applicant and the county board of supervisors may ask questions of technical consultants or experts designated by the commission. No other persons or entities may ask questions of anyone making a presentation or comment at the hearing except upon request and permission by the chairperson of the commission.

(7) The commission shall use the following hearing format:

1. Announcement by the chairperson of the commission of the permit application under review.

2. Receipt into the hearing record of the demand or demands for hearing, a copy of the department's complete file on the application under review and the briefs and written documents previously provided by the applicant and county board of supervisors pursuant to subparagraph 65.105(9)*"a"*(4).

3. Oral presentation, if any, by the applicant if that party timely requested the hearing. If the applicant did not timely request the hearing, then the county board of supervisors shall make the first presentation.

4. Oral presentation, if any, by the applicant or county board of supervisors, whichever party did not have the opportunity to make the first presentation.

5. Oral presentation, if any, by the department.

6. Oral presentation, if any, by technical consultants or experts designated by the commission to assist in its establishment of a record at the hearing. No later than seven days prior to the hearing, the commission shall notify the applicant and the board of the names, addresses and professional capacity of any such technical experts or consultants.

7. Discussion by the commission, motion and final decision on whether the application for permit is approved or disapproved.

(8) Only the issues submitted by the parties in the demand for hearing and responses shall be considered by the commission as a basis for its decision.

b. Decision by the commission. The decision by the commission shall be stated on the record and shall be final agency action pursuant to Iowa Code chapter 17A. If the commission reverses or modifies the department's decision, the department shall issue the appropriate permit or letter of denial to the applicant. The letter of decision shall contain the reasons for the action regarding the permit.

[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.106(455B,459,459B) Confinement feeding operation and stockpile separation distance requirements. All confinement feeding operation structures, stockpiles and qualified stockpile structures shall be separated from locations and objects as specified in this rule regardless of whether a construction permit is required. The separation distance requirements of this rule shall apply to all confinement feeding operation structures, unless specifically stated otherwise. If two or more confinement feeding operations are considered one operation as provided in rule 567—65.1(455B,459,459A,459B), definitions of "adjacent—air quality" and "adjacent—water quality," the combined animal unit capacities of the individual operations shall be used for the purpose of determining the required separation. Exemptions to the following requirements are allowed to the extent provided in rule 567—65.107(455B,459,459B).

65.106(1) *Separation distance from residences, businesses, churches, schools and public use areas for new confinement feeding operations.* Separation from residences, businesses, churches, schools and public use areas shall be as specified in Iowa Code section 459.202 and summarized in Table 6 located at iowadnr.gov/afo/rules. The residence, business, church, school or public use area must exist at the time an applicant submits an application for a construction permit to the department, at the time an MMP or

construction design statement is filed with the department if a construction permit is not required, or at the time construction of the confinement feeding operation structure begins if a construction permit or construction approval letter is not required.

65.106(2) *Separation distance from residences, businesses, churches, schools and public use areas for the expansion of prior constructed operations.* Except as provided in rule 567—65.107(455B,459,459B) or as specified in Iowa Code section 459.203, an existing confinement feeding operation may be expanded if any of the following applies:

a. For a confinement feeding operation constructed prior to January 1, 1999, any construction or expansion of a confinement feeding operation structure complies with the distance requirements applying to that structure as provided in Iowa Code sections 459.202(1) and 459.202(3) and summarized in Tables 6c (for swine, sheep, horses and poultry) and 6d (for beef and dairy cattle) located at iowadnr.gov/afo/rules.

b. For a confinement feeding operation constructed on or after January 1, 1999, but prior to March 1, 2003, any construction or expansion of a confinement feeding operation structure complies with the distance requirements applying to that structure as provided in Iowa Code sections 459.202(2) and 459.202(3) and summarized in Tables 6a (for swine, sheep, horses and poultry) and 6b (for beef and dairy cattle) located at iowadnr.gov/afo/rules.

c. For a confinement feeding operation constructed on or after March 1, 2003, any construction or expansion of a confinement feeding operation structure complies with the distance requirements applying to that structure as provided in Iowa Code sections 459.202(4) and 459.202(5) and summarized in Table 6 located at iowadnr.gov/afo/rules.

65.106(3) *Separation distance from water sources, major water sources, known sinkholes and agricultural drainage wells.* Separation distances specified in this subrule shall apply to any confinement feeding operation structure, including a SAFO. Separation distances from any confinement feeding operation structure to surface intakes, wellheads or cisterns of agricultural drainage wells, known sinkholes, water sources and major water sources shall be as specified in Iowa Code section 459.310 and summarized in Tables 6 to 6d located at iowadnr.gov/afo/rules. For the required separation distance to a major water source to apply, the major water source must be included in Table 1 located at iowadnr.gov/afo/rules at the time an applicant submits an application for a construction permit to the department, at the time an MMP or construction design statement is filed with the department if a construction permit is not required, or at the time construction of the AFO structure if a construction permit, MMP or construction design statement is not required.

65.106(4) *Separation distance from designated wetlands.* Separation distances specified in this subrule shall apply to any confinement feeding operation structure, including a SAFO. A confinement feeding operation structure shall not be constructed closer than 2,500 feet away from a "designated wetland" as defined and referenced in rule 567—65.1(455B,459,459A,459B). This requirement shall not apply to a confinement feeding operation structure if any of the following occur before the wetland is included in "Designated Wetlands in Iowa":

a. The confinement feeding operation structure already exists. This exemption also applies to additional confinement feeding operation structures constructed at the site of such an existing confinement feeding operation structure after a wetland is included in "Designated Wetlands in Iowa."

b. Construction of a confinement feeding operation structure has begun as provided in subrule 65.6(1).

c. An application for a permit to construct a confinement feeding operation structure has been submitted to the department.

d. An MMP concerning a proposed confinement feeding operation structure for which a construction permit is not required has been submitted to the department.

65.106(5) *Separation distance from water wells.* For a confinement feeding operation structure constructed after March 20, 1996, the separation distance to water wells shall be as specified in Tables 6 to 6d located at iowadnr.gov/afo/rules.

65.106(6) *Separation distance from public thoroughfares.* A confinement feeding operation structure shall not be constructed or expanded within 100 feet from the right-of-way or a public easement of a public thoroughfare.

65.106(7) *Stockpile and qualified stockpile structures—separation distance from residences.* A stockpile or qualified stockpile structure shall not be placed closer than 1,250 feet from a residence not owned by the titleholder of the land where the stockpile is located, a commercial enterprise, a bona fide religious institution, an educational institution, or a public use area.

65.106(8) *Stockpile and qualified stockpile structures—separation distance from tile inlets, designated areas, high-quality water resources, agricultural drainage wells and known sinkholes.* A stockpile or qualified stockpile structure shall not be placed within the following distances from any of the following:

a. A terrace tile inlet or surface tile inlet, 200 feet, unless the dry manure is stockpiled in a manner that does not allow precipitation-induced runoff to drain from the stockpile to the terrace tile inlet or surface tile inlet. A terrace tile inlet or surface tile inlet does not include a tile inlet that is not directly connected to a tile line that discharges directly into a water of the state.

b. Designated area, 400 feet. However, an increased separation distance of 800 feet shall apply to all of the following:

(1) A high-quality water resource.

(2) An agricultural drainage well (400 feet for dry bedded manure).

(3) A known sinkhole (400 feet for dry bedded manure).

c. Paragraph 65.106(8)*"b"* does not apply if dry manure is stockpiled in a manner that does not allow precipitation-induced runoff to drain from the stockpile to the designated area.

65.106(9) *Measurement of separation distances.* Except as provided in paragraph 65.106(9)*"f,"* the distance between confinement feeding operation structures and locations or objects from which separation is required shall be measured horizontally by standard survey methods between the closest point of the location or object (not a property line) and the closest point of the confinement feeding operation structure. The department may require that a separation distance be measured and certified by a licensed land surveyor, a PE licensed in the state of Iowa, or an NRCS-qualified staff person in cases where the department cannot confirm a separation distance. For purposes of this subrule, structure shall not include areas that do not house animals or store manure or litter.

a. Measurement to an unformed manure storage structure shall be to the point of maximum allowable level of manure pursuant to paragraph 65.100(1)*"b."*

b. Measurement to a public use area shall be to the facilities that attract the public to congregate and remain in the area for significant periods of time, not to the property line.

c. Measurement to a major water source or water source shall be to the top of the bank of the stream channel of a river or stream or the ordinary high-water mark of a lake, reservoir or designated wetland.

d. Measurement to a public thoroughfare shall be to the closest point of the right-of-way.

e. The separation distance for a confinement feeding operation structure qualifying for the exemption to separation distances under paragraphs 65.107(4)*"b"* and *"c"* shall be measured from the closest point of the confinement feeding operation structure.

f. Measurement to a cemetery shall be to the closest point of its property line.

g. Measurement to a stockpile shall be to the closest point of the stockpile.

[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.107(455B,459,459B) Exemptions to confinement feeding operation and stockpile separation distance requirements and prohibition of construction on the one hundred year floodplain.

65.107(1) *Exemptions to separation distance requirements from a residence, business, church, school and public use area.* As specified in Iowa Code section 459.205, the separation distances required from residences, businesses, churches, schools and public use areas specified in Iowa Code

sections 459.202 and 459.204B and required in subrules 65.106(1), 65.106(2), and 65.106(7), including Tables 6 to 6d located at iowadnr.gov/afo/rules, shall not apply to the following:

a. A confinement feeding operation structure, other than an unformed manure storage structure, if the structure is part of a SAFO or if the stockpile consists of dry manure originating from a SAFO.

b. A confinement feeding operation structure that is constructed or expanded, if the titleholder of the land benefiting from the distance separation requirement executes a written waiver with the titleholder of the land where the structure, stockpile or qualified stockpile structure is located, under such terms and conditions that the parties negotiate. The waiver shall be specific to the construction or expansion project for which it is submitted. The waiver may include specific language to include future projects or expansions. The written waiver becomes effective only upon the recording of the waiver in the office of the recorder of deeds of the county in which the benefited land is located. The benefited land is the land upon which is located the residence, business, church, school or public use area from which separation is required. The filed waiver shall preclude enforcement by the department of the separation distance requirements of Iowa Code section 459.202. A copy of the recorded waiver shall be submitted with the construction design statement pursuant to subrule 65.104(2) if a construction permit is not required or as part of the construction permit application documents pursuant to subrule 65.104(1).

c. A confinement feeding operation structure that is constructed or expanded closer than the separation distances required in subrule 65.106(1) and 65.106(2), including Tables 6 to 6d located at iowadnr.gov/afo/rules, if the residence, business, church or school was constructed or expanded after the date that the confinement feeding operation commenced operating or if the boundaries of the public use area or the city expanded after the date that the confinement feeding operation commenced operating. A confinement feeding operation commences operating when it is first occupied by animals. A change in ownership or expansion of the confinement feeding operation does not change the date the operation commenced operating.

d. The stockpile consists of dry manure originating exclusively from a confinement feeding operation that was constructed before January 1, 2006, unless the confinement feeding operation is expanded after that date.

65.107(2) *Exemptions to separation distance requirements from public thoroughfares.* As specified in Iowa Code section 459.205, the separation required from public thoroughfares specified in Iowa Code section 459.202 and summarized in Tables 6 to 6d located at iowadnr.gov/afo/rules shall not apply to any of the following:

a. A confinement building or a formed manure storage structure that is part of a SAFO. However, the exemptions of this subrule shall not apply if the confinement feeding operation structure is an unformed manure storage structure.

b. If the state or a political subdivision constructing or maintaining the public thoroughfare executes a written waiver with the titleholder of the land where the confinement feeding operation structure is located. The written waiver becomes effective only upon the recording of the waiver in the office of the recorder of deeds of the county in which the benefited land is located. The recorded waiver shall be submitted with the construction design statement pursuant to subrule 65.104(2) if a construction permit is not required, or as part of the construction permit application documents pursuant to subrule 65.104(1).

65.107(3) *Exemptions to separation distance requirements for prior constructed operations and for operations that expand based on prior separation distance requirements.* As specified in Iowa Code section 459.203, a confinement feeding operation constructed or expanded prior to the date that a distance requirement became effective under Iowa Code section 459.202 and that does not comply with the statute's distance requirement may continue to operate regardless of the distance requirement and may expand as provided in subrule 65.106(2).

65.107(4) *Exemptions to separation distance requirements for prior constructed operations that expand and cannot comply with prior separation distance requirements.* As specified in Iowa Code section 459.203, a confinement feeding operation constructed or expanded prior to the date that a distance requirement became effective under Iowa Code section 459.202 and that does not comply with the

distance requirements established in rule 567—65.106(455B,459,459B) and the exemption in subrule 65.107(3) may be expanded if all of the following apply to the expansion:

a. No portion of the confinement feeding operation after expansion is closer than before expansion to a location or object for which separation is required in Iowa Code section 459.202.

b. For a confinement feeding operation that includes a confinement feeding operation structure constructed prior to March 1, 2003, the animal weight capacity of the confinement feeding operation as expanded is not more than the lesser of the following:

(1) Double its animal weight capacity on the following dates:

1. May 31, 1995, for a confinement feeding operation that includes a confinement feeding operation structure constructed prior to January 1, 1999.

2. January 1, 1999, for a confinement feeding operation that only includes a confinement feeding operation structure constructed on or after January 1, 1999, but does include a confinement feeding operation structure constructed prior to March 1, 2003.

(2) Either of the following:

1. An animal weight capacity of 625,000 pounds for animals other than cattle.

2. An animal weight capacity of 1,600,000 pounds for cattle.

c. For a confinement feeding operation that does not include a confinement feeding operation structure constructed prior to March 1, 2003, the animal unit capacity of the confinement feeding operation as expanded is not more than the lesser of the following:

(1) Double its animal unit capacity on March 1, 2003.

(2) 1,000 animal units.

65.107(5) *Exemptions to separation distance requirements for prior constructed operations that replace an unformed manure storage structure.* As specified in Iowa Code section 459.203, a confinement feeding operation that includes a confinement feeding operation structure that is constructed prior to March 1, 2003, may be expanded by replacing one or more unformed manure storage structures with one or more formed manure storage structures if all of the following apply:

a. The animal weight capacity or animal unit capacity, whichever is applicable, is not increased for that portion of the confinement feeding operation that utilizes all replacement formed manure storage structures.

b. Use of each replaced unformed manure storage structure is discontinued within one year after the construction of the replacement formed manure storage structure.

c. The capacity of all replacement formed manure storage structures does not exceed the amount required to store manure produced by that portion of the confinement feeding operation utilizing the formed manure storage structures during any 14-month period.

d. No portion of the replacement formed manure storage structure is closer to an object or location for which separation is required under Iowa Code section 459.202 than any other confinement feeding operation structure that is part of the operation.

65.107(6) *Exemption to separation distance requirements from cemeteries.* As specified in Iowa Code section 459.205, the separation distance required between a confinement feeding operation structure and a cemetery shall not apply if the confinement feeding operation structure was constructed or expanded prior to January 1, 1999.

65.107(7) *Exemptions to separation distance requirements from water sources, major water sources, known sinkholes, agricultural drainage wells and designated wetlands and secondary containment.* As specified in Iowa Code section 459.310(3), the separation distance required from surface intakes, wellheads or cisterns of agricultural drainage wells, known sinkholes, water sources, major water sources and designated wetlands, specified in Iowa Code section 459.310 and summarized in Tables 6 to 6d located at iowadnr.gov/afo/rules, shall not apply to a farm pond or privately owned lake as defined in Iowa Code section 462A.2, or to a confinement building, a manure storage structure or an egg washwater storage structure constructed with a secondary containment barrier according to subrule 65.108(11). To qualify for this separation distance exemption, the design of the secondary containment barrier shall be filed in accordance with subrule 65.104(5) prior to beginning construction of the confinement feeding operation structure.

65.107(8) *Exemptions to prohibition on one hundred year floodplain construction and separation distance requirements from water sources, major water sources, known sinkholes, agricultural drainage wells and designated wetlands—replacement formed manure storage structures.* As specified in Iowa Code section 459.310(4), a separation distance required in subrules 65.106(3) and 65.106(4) or the prohibition against construction of a confinement feeding operation structure on a one hundred year floodplain as provided in subrule 65.9(1) shall not apply to a confinement feeding operation that includes a confinement feeding operation structure that was constructed prior to March 1, 2003, if any of the following apply:

a. One or more unformed manure storage structures that are part of the confinement feeding operation are replaced with one or more formed manure storage structures on or after April 28, 2003, and all of the following apply:

(1) The animal weight capacity or animal unit capacity, whichever is applicable, is not increased for that portion of the confinement feeding operation that utilizes all replacement formed manure storage structures.

(2) The use of each replaced unformed manure storage structure is discontinued within one year after the construction of the replacement formed manure storage structure.

(3) The capacity of all replacement formed manure storage structures does not exceed the amount required to store manure produced by that portion of the confinement feeding operation utilizing the replacement formed manure storage structures during any 18-month period.

(4) No portion of the replacement formed manure storage structure is closer to the location or object from which separation is required under subrules 65.106(3) and 65.106(4) than any other confinement feeding operation structure that is part of the operation.

(5) The replacement formed manure storage structure meets or exceeds the requirements of Iowa Code section 459.307 and subrule 65.108(10).

b. A replacement formed manure storage structure that is part of the confinement feeding operation is constructed on or after April 28, 2003, pursuant to a waiver granted by the department. In granting the waiver, the department shall make a finding of all of the following:

(1) The replacement formed manure storage structure replaces the confinement feeding operation's existing manure storage and handling facilities.

(2) The replacement formed manure storage structure complies with standards adopted pursuant to Iowa Code section 459.307 and subrule 65.108(10).

(3) The replacement formed manure storage structure more likely than not provides a higher degree of environmental protection than the confinement feeding operation's existing manure storage and handling facilities. If the formed manure storage structure will replace any existing manure storage structure, the department shall, as a condition of granting the waiver, require that the replaced manure storage structure be properly closed.

[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.108(455B,459,459B) Manure storage structure design requirements. The requirements in this rule apply to all confinement feeding operation structures unless specifically stated otherwise.

65.108(1) *Drainage tile removal for new construction of a manure storage structure.* Prior to constructing a manure storage structure, other than storage of manure in an exclusively dry form, the site for the AFO structure shall be investigated for drainage tile lines as provided in this subrule. All applicable records of known drainage tiles shall be examined for the existence of drainage tile lines.

a. An inspection trench of at least ten inches wide shall be dug around the structure to a depth of at least 6 feet below the original grade and within 25 feet of the proposed outside of the toe of the berm prior to excavation for an unformed manure storage structure.

b. Drainage tile lines discovered during the tile inspection of an unformed manure storage structure shall be removed and rerouted in or in an area outside the inspection trench. All tiles within the inspection trench perimeter shall be removed or completely plugged with concrete, grout or similar materials. Drainage tile lines installed at the time of construction to lower the groundwater may remain in place as long as they are outside of the proposed toe of berm.

c. The applicant for a construction permit for a formed manure storage structure shall investigate for tile lines during excavation for the structure. Drainage tile lines discovered upgrade from the structure shall be rerouted around the formed manure storage structure to continue the flow of drainage. All other drainage tile lines discovered shall be rerouted, capped, or plugged with concrete, Portland cement concrete grout or similar materials. Drainage tile lines installed at the time of construction to lower a groundwater table may remain where located even if located under the floor; however, the tile lines must be tied into the perimeter drain tile.

d. Other proven methods approved by the department may be utilized to discover drainage tile lines.

e. The requirements of this subrule do not apply if sufficient information is provided that allows the department to conclude that the location does not have a history of drainage tile.

65.108(2) *Drainage tile removal around an existing manure storage structure.* The owner of an aerobic structure, anaerobic lagoon or earthen manure storage basin or earthen waste slurry storage basin, other than an egg washwater storage structure, that is part of a confinement feeding operation with a construction permit granted before March 20, 1996, but after December 31, 1992, shall inspect for drainage tile lines as provided in this subrule, and all applicable records of known drainage tiles shall be examined. The owner of an aerobic structure, anaerobic lagoon, earthen manure storage basin or earthen waste slurry storage basin, other than an egg washwater storage structure, that is part of a confinement feeding operation with a construction permit granted before January 1, 1993, but after May 31, 1985, shall inspect for drainage tiles as provided in this subrule, and all applicable records of known drainage tiles shall be examined. Drainage tile lines shall not be installed within the separation distance provided in paragraph 65.108(1)*"b"* once the basin has been constructed.

a. Inspection shall be by digging an inspection trench of at least ten inches wide around the structure to a depth of at least 6 feet from the original grade and within 25 feet from the outside edge of the berm. The owner first shall inspect the area where trenching is to occur and manure management records to determine if there is any evidence of leakage and, if so, shall contact the department for further instructions as to proper inspection procedures. The owner of a confinement feeding operation shall either obtain permission from an adjoining property owner or trench up to the boundary line of the property if the distance of 25 feet would require the inspection trench to go onto the adjoining property.

b. The owner of the confinement feeding operation may utilize other proven methods approved by the department to discover drainage tile lines.

c. The drainage tile lines discovered near an aerobic structure, anaerobic lagoon, earthen manure storage basin or earthen waste slurry storage basin, other than an egg washwater storage structure, shall be removed within 25 feet of the outside edge of the berm. Drainage tile lines discovered upgrade from the aerobic structure, anaerobic lagoon or earthen manure storage basin shall be rerouted within 25 feet from the berm to continue the flow of drainage. All other drainage tile lines discovered shall be rerouted, capped, plugged with concrete, or Portland cement concrete grout or similar materials, or reconnected to upgrade tile lines. Drainage tile lines that were installed at the time of construction to lower a groundwater table may either be avoided if the location is known or may remain at the location if discovered.

d. The owner of an aerobic structure, anaerobic lagoon, earthen manure storage structure or an earthen waste slurry storage basin with a tile drainage system to artificially lower the groundwater table shall have a device to allow monitoring of the water in the drainage tile lines that lower the groundwater table and to allow shutoff of the drainage tile lines if the drainage tile lines do not have a surface outlet accessible on the property where the aerobic structure, anaerobic lagoon, earthen manure storage basin or earthen waste slurry storage basin is located.

e. If the owner of the confinement feeding operation discovers drainage tile that projects underneath the berm, the owner shall follow one of the following options:

(1) Contact the department to obtain permission to remove the drainage tile under the berm. The manure in the structure must be lowered to a point below the depth of the tile prior to removing the drainage tile from under the berm. Prior to using the structure, a new percolation test must be submitted to the department and approval received from the department.

(2) Grout the length of the tile under the berm to the extent possible. The material used to grout shall include concrete, Portland cement concrete grout or similar materials.

f. A waiver to this subrule may be granted by the director if sufficient information is provided that the location does not have a history of drainage tile.

g. A written record describing the actions taken to determine the existence of tile lines, the findings, and actions taken to comply with this subrule shall be prepared and maintained as part of the MMP records.

65.108(3) *Earthen waste slurry storage basins.* An earthen waste slurry storage basin shall have accumulated manure removed at least twice each year, unless there is sufficient basin capacity to allow removal of manure once each year and maintain freeboard as determined pursuant to paragraph 65.100(1)*"b."*

65.108(4) *Earthen manure storage basins.* An earthen manure storage basin shall have accumulated manure removed at least once each year. An earthen manure storage basin constructed after June 19, 2024, must have enough manure storage capacity for eight months. An earthen manure storage basin may have enough manure storage capacity to contain the manure from the confinement feeding operation for up to 14 months and maintain freeboard as determined pursuant to paragraph 65.100(1)*"b."*

65.108(5) *Soil testing for earthen structures.* Applicants for construction permits for earthen manure storage structures shall submit soils information according to this subrule for the site of the proposed structure. All subsurface soil classification shall be based on American Society for Testing and Materials Designations D 2487-06, effective May 1, 2006, or D 2488-06, effective November 1, 2006. Soil corings shall be taken to determine subsurface soil characteristics and groundwater elevation and direction of flow of the proposed site for an anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin. Soil corings shall be conducted by a qualified person normally engaged in soil testing activities. Data from the soil corings shall be submitted with a construction permit application and shall include a description of the geologic units encountered; a discussion of the effects of the soil and groundwater elevation and direction of flow on the construction and operation of the anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin and a discussion that addresses the suitability of the proposed structure at the site. All soil corings shall be taken by a method that identifies the continuous soil profile and does not result in the mixing of soil layers. The number and location of the soil corings will vary on a case-by-case basis as determined by the designing engineer and accepted by the department. The following are minimum requirements:

a. A minimum of four soil corings reflecting the continuous soil profile is required for each anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin. Corings which are intended to represent soil conditions at the corner of the structure must be located within 50 feet of the bottom edge of the structure and spaced so that one coring is as close as possible to each corner. Should there be no bottom corners, corings shall be equally spaced around the structure to obtain representative soil information for the site. An additional coring will be required if necessary to ensure that one coring is at the deepest point of excavation. For an anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin larger than four acres water surface area, one additional coring per acre is required for each acre above four acres surface area.

b. All corings shall be taken to a minimum depth of ten feet below the bottom elevation of the anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin.

c. At least one coring shall be taken to a minimum depth of 25 feet below the bottom elevation of the anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin or into bedrock, whichever is shallower.

d. Upon abandonment of the soil core holes, all soil core holes including those developed as temporary water level monitoring wells shall be plugged with concrete, Portland cement concrete grout, bentonite, or similar materials.

65.108(6) *Hydrology.*

a. Groundwater table. A minimum separation of four feet between the top of the liner for any unformed manure storage structure or earthen egg washwater storage structure and the groundwater table is recommended; however, in no case shall the top of the liner for an unformed manure storage structure or earthen egg washwater storage structure be below the groundwater table. If the groundwater table is less than two feet below the top of the liner for an unformed manure storage structure or earthen egg washwater storage structure, the unformed manure storage structure or earthen egg washwater storage structure shall be provided with a synthetic liner as described in paragraph 65.108(8)*"f."*

b. Permanent artificial lowering of groundwater table.

(1) Unformed manure storage structures. The groundwater table around an unformed manure storage structure or earthen egg washwater storage structure may be artificially lowered to levels required in paragraph 65.108(6)*"a"* by using a gravity flow tile drainage system or other permanent nonmechanical system for artificial lowering of the groundwater table. Detailed engineering and soil drainage information shall be provided with a construction permit application for an unformed manure storage structure or earthen egg washwater storage structure if a drainage system for artificially lowering the groundwater table will be installed. The level to which the groundwater table will be lowered will be considered to represent the seasonal high-water table. If a drainage tile around the perimeter of the basin is installed a minimum of two feet below the top of the basin liner to artificially lower the seasonal high-water table, the top of the basin's liner may be a maximum of four feet below the seasonal high-water table which existed prior to installation of the perimeter tile system. Drainage tile lines shall be installed between the outside of the proposed toe of the berm and within 25 feet of the outside of the toe of the berm. Drainage tile lines shall be placed in a vertical trench and encased in granular material which extends upward to the level of the seasonal high-water table which existed prior to installation of the perimeter tile system. A device to allow monitoring of the water in the drainage tile lines installed to lower the groundwater table and a device to allow shutoff of the drainage tile lines shall be installed if the drainage tile lines do not have a surface outlet accessible on the property where the unformed manure storage structure is located.

(2) Formed manure storage structures. For a formed manure storage structure or a formed egg washwater storage structure, partially or completely constructed below the normal soil surface, a perimeter tile drainage system or other permanent system for artificial lowering of groundwater levels shall be installed around the structure if the groundwater table is above the bottom of the structure. The perimeter tile shall include a sample port to allow monitoring of the water in the drainage tile lines and a device to allow shutoff of the drainage tile lines if the drainage tile lines do not have a surface outlet accessible on the property where the formed manure storage structure is located or if the perimeter tile is connected to an existing tile. The perimeter tile may be tied into the monitoring port or a sump; however, there shall be a permanent automatic pump installed.

c. Determination of groundwater table. For purposes of this rule, groundwater table is the seasonal high-water table determined by a licensed PE, a groundwater professional certified pursuant to 567—Chapter 134, or qualified staff from the department or NRCS. If a construction permit is required, the department must approve the groundwater table determination.

(1) Current groundwater levels shall be measured using at least one of the following for either formed or unformed manure storage structures:

1. Temporary monitoring wells. A minimum of three temporary monitoring wells shall be installed. The top of the well screen shall be within five feet of the ground surface. Each well shall be extended to at least two feet below the bottom of the liner of an unformed manure storage structure or to at least two feet below the footings of a formed manure storage structure.

- Unformed manure storage structures. For an unformed manure storage structure, each monitoring well may be installed in the existing core holes resulting from the corings required in subrule 65.108(5).
- Formed manure storage structures. For a formed manure storage structure, at least three temporary monitoring wells shall be installed as close as possible to three corners of the structure, with one of the wells close to the corner of deepest excavation. If the formed manure storage structure is

circular, the three monitoring wells shall be equally spaced and one well shall be placed at the point of deepest excavation.

2. Test pits. The department may allow use of test pits in lieu of temporary monitoring wells if seasonal variation in climatic patterns, soil and geologic conditions prevent accurate determination of the seasonal high-water table or prior to the construction of an unformed manure storage structure liner to ensure that the required separation distance to the groundwater table is being met. The bottom of each test pit shall be at least two feet below the floor of the manure storage structure or egg washwater storage structure. Each pit shall be allowed to remain open and unaltered for a minimum of seven days for viewing by the department or NRCS-qualified staff person for the determination of soil characteristics and related groundwater influence. Adequate protection (temporary berms and covers) shall be provided to prevent surface runoff from entering the test pits. One test pit shall be located in each corner and one in the center of the proposed manure control structure, unless otherwise specified by the department. Test pits shall be backfilled and compacted to achieve the seepage loss as outlined in subrule 65.108(7). A description of the materials present in the test pit shall be documented by all of the following:

- Digital photos;
- Description of soils including mottling;
- Construction specifications; and
- Weather conditions both prior to and during the period in which test pits are open.

(2) The seasonal high-water table shall be determined by measuring the groundwater level in the temporary monitoring wells not earlier than seven days following installation and shall include consideration of NRCS soil survey information, soil characteristics such as color and mottling, other existing water table data, and other pertinent information. If a drainage system for artificially lowering the groundwater table will be installed in accordance with the requirements of paragraph 65.108(6)*"b,"* the level to which the groundwater table will be lowered will be considered to represent the seasonal high-water table.

65.108(7) *Seals for unformed manure storage structures and unformed egg washwater storage structures.* An unformed manure storage structure or egg washwater storage structure shall be sealed such that seepage loss through the seal shall not exceed 1/16 inch per day at the design depth of the structure. Following construction of the structure, the results of a testing program that indicates the adequacy of the seal shall be provided to that department in writing prior to start-up of a permitted operation.

65.108(8) *Unformed manure storage structure and unformed egg washwater storage structure liner design and construction standards.* An unformed manure storage structure or unformed egg washwater storage structure that receives a construction permit after January 21, 1998, shall comply with the following minimum standards in addition to subrule 65.108(7).

a. If the location of the proposed unformed manure storage structure or unformed egg washwater storage structure contains suitable materials as determined by the soil corings taken pursuant to subrule 65.108(5), those materials shall be compacted to establish a minimum of a 12-inch liner. A minimum initial overexcavation of six inches of material shall be required. The underlying material shall be scarified, reworked and compacted to a depth of six inches. The overexcavated materials shall be replaced and compacted.

b. If the location of the proposed unformed manure storage structure or unformed egg washwater storage structure does not contain suitable materials as determined by the soil corings taken pursuant to subrule 65.108(5), suitable materials shall be obtained from another location approved by the department and shall be compacted to establish a minimum of a 24-inch liner.

c. Where sand seams, gravel seams, organic soils or other materials that are not suitable are encountered during excavation, the area where they are discovered shall be overexcavated a minimum of 24 inches and replaced with suitable materials and compacted.

d. All loose lift material must be placed in lifts of nine inches or less and compacted. The material shall be compacted at or above optimum moisture content and meet a minimum of 95 percent of the maximum density as determined by the Standard Proctor test after compaction.

e. For purposes of this rule, suitable materials means soil, soil combinations or other similar material that is capable of meeting the permeability and compaction requirements. Sand seams, gravel seams, organic soils or other materials generally not suitable for unformed manure storage structure or unformed egg washwater storage structure construction are not considered suitable liner materials.

f. As an alternative to the above standards, a synthetic liner may be used. If the use of a synthetic liner is planned for an unformed manure storage structure or unformed egg washwater storage structure, the permit application shall outline how the site will be prepared for placement of the liner, the physical, chemical, and other pertinent properties of the proposed liner, and information on the procedures to be used in liner installation and maintenance. In reviewing permit applications that involve use of synthetic liners, the department will consider relevant synthetic liner standards adopted by industry, governmental agencies, and professional organizations as well as technical information provided by liner manufacturers and others.

g. For berm erosion control, the following requirements apply to unformed manure storage structures and unformed egg washwater storage structures constructed after May 12, 1999:

(1) Concrete, riprap, synthetic liners or similar erosion control materials or measures shall be used on the berm surface below pipes where manure will enter the structure.

(2) Concrete, riprap, synthetic liners or similar erosion control materials or measures of sufficient thickness and area to accommodate manure removal equipment and to protect the integrity of the liner shall be placed at all locations on the berm, side slopes, and base of the structure where agitation or pumping may cause damage to the liner.

(3) Erosion control materials or measures shall be used at the corners of the structure.

(4) To control erosion, perennial (grass) vegetation must be maintained on the outer, top and inner dikes up to the two-foot freeboard level of the unformed storage structure or earthen egg washwater storage structure, unless covered by concrete, riprap, synthetic liners or similar erosion control materials or measures.

(5) The owner of a confinement feeding operation with an unformed manure storage structure or an unformed egg washwater storage structure shall inspect the structure berms at least semiannually for evidence of erosion. Erosion problems found that may impact either structural stability or liner integrity shall be corrected in a timely manner.

h. After May 29, 1997, a person shall not construct a new or expand an existing unformed manure storage structure or an unformed egg washwater storage structure within an agricultural drainage well area.

i. The top width of any dike shall be a minimum of ten feet wide. The interior and exterior dike slopes shall not be steeper than three feet horizontal to one foot vertical.

65.108(9) *Anaerobic lagoon design standards.* An anaerobic lagoon shall meet the requirements of this subrule.

a. General.

(1) Depth. Liquid depth shall be at least 8 feet, but 15 to 20 feet is preferred if soil and other site conditions allow.

(2) Inlet. One subsurface inlet at the center of the lagoon or dual (subsurface and surface) inlets are preferred to increase dispersion. If a center inlet is not provided, the inlet structure shall be located at the center of the longest side of the anaerobic lagoon.

(3) Shape. Long, narrow anaerobic lagoon shapes decrease manure dispersion and should be avoided. Anaerobic lagoons with a length-to-width ratio of greater than 3:1 shall not be allowed.

(4) Aeration. Aeration shall be treatment as an “add-on process” and shall not eliminate the need for compliance with all anaerobic lagoon criteria contained in these rules.

(5) Manure loading frequency. The anaerobic lagoon shall be loaded with manure and dilution water at least once per week.

(6) Design procedure. Total anaerobic lagoon volume shall be determined by summation of minimum stabilization volume; minimum dilution volume (not less than 50 percent of minimum stabilization volume); manure storage between periods of disposal; and storage for eight inches of precipitation.

(7) Manure storage period. Annual or more frequent manure removal from the anaerobic lagoon, preferably prior to May 1 or after September 15 of the given year, shall be practiced to minimize odor production. Design manure storage volume between disposal periods shall not exceed the volume required to store 14 months' manure production. Manure storage volume shall be calculated based on the manure production values found in Table 5 located at iowadnr.gov/afo/rules.

b. Minimum stabilization volume and loading rate.

(1) For all animal species other than beef cattle, there shall be 1,000 cubic feet minimum design volume for each 5 pounds of volatile solids produced per day if the volatile solids produced per day are 6,000 pounds or fewer and for each 4 pounds if the volatile solids produced per day are more than 6,000 pounds. For beef cattle, there shall be 1,000 cubic feet minimum design volume for each 10 pounds of volatile solids produced per day.

(2) In Lyon, Sioux, Plymouth, Woodbury, Osceola, Dickinson, Emmet, Kossuth, O'Brien, Clay, Palo Alto, Cherokee, Buena Vista, Pocahontas, Humboldt, Ida, Sac, Calhoun, and Webster Counties for all animal species other than beef there shall be 1,000 cubic feet minimum design volume for each 4.5 pounds of volatile solids per day if the volatile solids produced per day are 6,000 pounds or fewer. However, if a water analysis as required in subparagraph 65.108(9)*"c"*(2) below indicates that the sulfate level is below 500 milligrams per liter, then the rate is 1,000 cubic feet for each 5.0 pounds of volatile solids per day.

(3) Credit shall be given for removal of volatile solids from the manure stream prior to discharge to the lagoon. The credit shall be in the form of an adjustment to the volatile solids produced per day. The adjustments shall be at the rate of 0.5 pound for each pound of volatile solids removed. For example, if a swine facility produces 7,000 pounds of volatile solids per day, and if 2,000 pounds of volatile solids per day are removed, the volatile solids produced per day would be reduced by 1,000 pounds, leaving an adjusted pounds of volatile solids produced per day of 6,000 pounds (for which the loading rate would be 5 pounds according to subparagraph 65.108(9)*"b"*(1) above).

(4) Credit shall be given for mechanical aeration if the upper one-third of the lagoon volume is mixed by the aeration equipment and if at least 50 percent of the oxygen requirement of the manure is supplied by the aeration equipment. The credit shall be in the form of an increase in the maximum loading rate (which is the equivalent of a decrease in the minimum design volume) in accordance with Table 8 located at iowadnr.gov/afo/rules.

(5) If a credit for solids removal is given in accordance with subparagraph 65.108(9)*"b"*(3) above, the credit for qualified aeration shall still be given. The applicant shall submit evidence of the five-day biochemical oxygen demand (BOD5) of the manure after the solids removal so that the aeration credit can be calculated based on an adjustment rate of 0.5 pound for each pound of solids removed.

(6) American Society of Agricultural and Biological Engineers standards, "Manure Production and Characteristics," D384.2, effective March 2005, or Midwest Plan Service-18, Table 2-1, effective January 2004, shall be used in determining the BOD5 production and volatile solid production of various animal species.

c. Water supply.

(1) The source of the dilution water discharged to the anaerobic lagoon shall be identified.

(2) The sulfate concentration of the dilution water to be discharged to the anaerobic lagoon shall be identified. The sulfate concentration shall be determined by standard methods as defined in rule 567—60.2(455B).

(3) A description of available water supplies shall be provided to prove that adequate water is available for dilution. It is recommended that, if the sulfate concentration exceeds 250 mg/l, then an alternate supply of water for dilution should be sought.

d. Initial lagoon loading. Prior to the discharge of any manure to the anaerobic lagoon, the lagoon shall be filled to a minimum of 50 percent of its minimum stabilization volume with fresh water.

e. Lagoon manure and water management during operation. Following initial loading, the manure and water content of the anaerobic lagoon shall be managed according to either of the following:

(1) For single-cell lagoons or multicell lagoons without a site-specific lagoon operation plan. The total volume of fresh water for dilution added to the lagoon annually shall equal one-half the minimum

stabilization volume. At all times, the amount of fresh water added to the lagoon shall equal or exceed the amount of manure discharged to the lagoon.

(2) For a two- or three-cell anaerobic lagoon. The manure and water content of the anaerobic lagoon may be managed in accordance with a site-specific lagoon operation plan approved by the department. The lagoon operation plan must describe in detail the operational procedures and monitoring program to be followed to ensure proper operation of the lagoon. Operational procedures shall include identifying the amounts and frequencies of planned additions of manure, fresh water and recycle water, and amount and frequencies of planned removal of solids and liquids. Monitoring information shall include locations and intervals of sampling, specific tests to be performed, and test parameter values used to indicate proper lagoon operation. As a minimum, annual sampling and testing of the first lagoon cell for electrical conductivity and either chemical oxygen demand (COD) or total ammonia (NH3 + NH4) shall be required.

f. Manure removal. If the anaerobic lagoon is to be dewatered once a year, manure should be removed to approximate the annual manure volume generated plus the dilution water used. If the anaerobic lagoon is to be dewatered more frequently, the anaerobic lagoon liquid level should be managed to maintain adequate freeboard.

65.108(10) *Concrete standards.*

a. A formed manure storage structure that is constructed of concrete on or after March 24, 2004, and that is part of a confinement feeding operation other than a SAFO shall meet the following minimum design and concrete standards and be designed by either of the two methods listed below:

(1) Design of a formed manure storage structure prepared and sealed by a PE or an NRCS engineer shall be in accordance with the American Concrete Institute (ACI) Building Code ACI 318-19, effective May 3, 2019, ACI 360R-10, effective April 2010, or ACI 350-20, effective November 6, 2020; Portland Cement Association (PCA) publication EB075, effective April 19, 2021, or PCA EB001.16, effective September 2016; or Midwest Plan Service (MWPS) publication MWPS-36 2nd Edition, effective 2005, or MWPS TR-9, effective 1999, and shall also meet the minimum design and concrete standards in paragraph 65.108(10)*"b."*

(2) If a formed manure storage structure is not designed by a PE or NRCS engineer, the design and specifications shall be in conformance with MWPS-36 2nd Edition (for a belowground rectangular tank), with MWPS TR-9 (for a circular tank) or in accordance with Appendix C located at iowadnr.gov/afo/rules (for a belowground, laterally braced rectangular tank). A formed manure storage structure with a depth greater than 12 feet shall be designed by a PE or NRCS engineer.

b. Formed manure storage structures used to store liquid manure, dry manure or dry bedded manure shall meet all of the following minimum requirements:

(1) All concrete shall have the following minimum as-placed compressive strengths and shall meet American Society for Testing and Materials (ASTM) standard ASTM C 94-18, effective December 15, 2018:

1. 4,000 pounds per square inch (psi) for walls, floors, beams, columns and pumpouts;
2. 3,000 psi for the footings.

The average concrete strength by testing shall not be below design strength. No single test result shall be more than 500 psi less than the minimum compressive strength.

(2) Cementitious materials shall consist of Portland cement conforming to ASTM C 150, effective July 1, 2022. Aggregates shall conform to ASTM C 33-18, effective March 15, 2018. Blended cements in conformance with ASTM C 595, effective December 15, 2008, are allowed only for concrete placed between March 15 and October 15. Portland-pozzolan cement or Portland blast furnace slag blended cements shall contain at least 75 percent, by mass, of Portland cement.

(3) All concrete placed for walls shall be consolidated or vibrated, by manual or mechanical means, or a combination, in a manner that meets ACI 309R, effective January 2005.

(4) All steel rebar used shall be a minimum of grade 40 steel. All rebar, with the exception of rebar dowels connecting the walls to the floor or footings, shall be secured and tied in place prior to the placing of concrete.

(5) Waterstops shall be installed in all areas where fresh concrete meets hardened concrete. Waterstops shall be made of plastic, rolled bentonite or similar materials approved by the department. Only embedded waterstops are allowed in vertical joints. Adhesive or self-sticking waterstops shall not be used on vertical joints.

(6) The finished subgrade of a formed manure storage structure shall be graded and compacted to provide a uniform and level base and shall be free of vegetation, manure and debris. For the purpose of this subrule, "uniform" means a finished subgrade with similar soils.

(7) When the groundwater table, as determined in paragraph 65.108(6)*"c"* is above the bottom of the formed manure storage structure, a drain tile shall be installed along the footings to artificially lower the groundwater table pursuant to paragraph 65.108(6)*"b."* The drain tile shall be placed within three feet of the footings as indicated in Appendix C, Figure C-1, located at iowadnr.gov/afo/rules, and shall be covered with a minimum of two inches of gravel, granular material, fabric or a combination of these materials to prevent plugging the drain tile.

(8) All floor slabs shall be a minimum of five inches thick and have minimum primary reinforcement using one of the following methods:

1. Grade 40 #4 steel rebar, placed at a maximum of 18 inches on center each way in a single mat. Floor slab reinforcement shall be located in the middle of the thickness of the floor slab.

2. Glass fiber-reinforced polymer (GFRP) rebar, fiber-reinforced polymer (FRP) rebar or composite rebar may be used in floor slabs only and shall conform to ACI 440.11.22, effective September 2, 2022, and Table 3 of ASTM 7957, effective February 1, 2022. Supporting documentation shall be submitted for nonsteel rebar demonstrating the equivalency to #4 steel rebar at 18 inches on center each way. GFRP rebar shall not be manufactured using a polyester-based resin system per ASTM D7957 and shall meet the additional following ASTM D7957 parameters:

- Mean Tensile Modulus of Elasticity.....>6,500,000 psi (44,800 MPa)
- Guaranteed Bond Strength.....>1,100 psi (7.6 MPa)

3. Fiber-reinforced concrete (FRC) may be used in floor slabs only and shall conform to the requirements of ASTM C1116/C1116M Type I (steel FRC) and Type III (synthetic FRC), effective September 1, 2023. FRC shall provide a minimum average equivalent strength ratio (Re3) of 30 percent when tested in accordance with ASTM C1812/1812M, effective December 15, 2022.

4. Fiber mesh shall not be substituted for primary reinforcement.

5. Nondestructive methods to verify the floor slab thickness may be required by the department. The results shall indicate that at least 95 percent of the floor slab area meets the minimum required thickness. In no case shall the floor slab thickness be less than four and one-half inches.

(9) The footing or the area where the floor comes in contact with the walls and columns shall have a thickness equal to the wall thickness, but in no case be less than eight inches, and the width shall be at least twice the thickness of the footing. All exterior walls shall have footings below the frostline. Tolerances shall not exceed negative one-half inch of the minimum footing dimensions.

(10) The vertical steel of all walls shall be extended into the footing and be bent at 90° or a separate dowel shall be installed as a #4 rebar that is bent at 90° with at least 20 inches of rebar in the wall and extended into the footing within 3 inches of the bottom of the footing and extended at least 3 inches horizontally, as indicated in Appendix C, Figure C-1, located at iowadnr.gov/afo/rules. As an alternative to the 90° bend, the dowel may be extended at least 12 inches into the footing, with a minimum concrete cover of 3 inches at the bottom. Dowel spacing (bend or extended) shall be the same as the spacing for the vertical rebar. In lieu of dowels, mechanical means or alternate methods may be used as anchorage of interior walls to footings.

(11) All footings, slabs, and walls shall be formed with rigid forming systems and shall not be earth-formed. Form ties shall be nonremovable to provide a liquid-tight structure. No conduits or pipes shall be installed through an outside wall below the maximum liquid level of the structure.

(12) All wall reinforcement shall be placed so as to have a rebar cover of two inches from the inside face of the wall for a belowground manure storage structure. Vertical wall reinforcement should be placed closest to the inside face. Rebar placement shall not exceed tolerances specified in ACI 318-19.

(13) All construction joints in exterior walls shall be constructed to prevent discontinuity of steel and have properly spliced rebar placed through the joint.

(14) All concrete shall be cured for at least seven days after placing, in a manner which meets ACI 308R-16, effective May 2016, by maintaining adequate moisture or preventing evaporation. Proper curing shall be done by ponding, spraying or fogging water; by using a curing compound that meets ASTM C 309, effective August 22, 2019; or by using wet burlap, plastic sheets or similar materials.

(15) Backfilling of the walls shall not start until the floor slats or permanent bracing has been installed and grouted. Backfilling shall be performed with material free of vegetation, large rocks or debris.

(16) If air temperature is below 40 degrees Fahrenheit, the ACI Standard 306R-16, "Recommended Practice for Cold Weather Concreting," effective September 2016, should be followed. If ready-mix concrete temperature is above 90 degrees Fahrenheit, the ACI Standard 305R-20, "Recommended Practice for Hot Weather Concreting," effective date September 2020, should be followed.

c. Formed manure storage structures constructed of steel or pre-cast concrete shall be designed by a PE and certified by the PE and the manufacturer's representative that the structure was built in accordance with the manufacturer's requirements.

65.108(11) *Secondary containment barriers for manure storage structures.* Secondary containment barriers used to qualify any confinement feeding operation for the exemption provision in subrule 65.107(7) shall be filed with the department according to subrule 65.104(5) and shall meet the following design standards:

a. A secondary containment barrier shall consist of a structure surrounding or downslope of a manure storage structure and shall be designed according to either of the following:

(1) If the manure storage structure is used to store liquid or semiliquid manure, the secondary containment barrier shall be designed to contain 120 percent of the volume of manure stored above the manure storage structure's final grade or 50 percent of the volume of manure stored belowground or partially belowground, whichever is greater. Engineering drawings prepared by a PE licensed in Iowa or an NRCS-qualified staff person must be submitted according to procedures set forth in subrule 65.104(5) and must show compliance with subrule 65.108(11). If the containment barrier does not surround the manure storage structure, upland drainage must be diverted. For purposes of this subrule only, semiliquid manure means manure that contains a percentage of dry matter that results in manure too solid for pumping but too liquid for stacking.

(2) If the manure storage structure is used for the storage of only dry manure or dry bedded manure, the secondary containment barrier shall be designed to contain at least 10 percent of the volume of manure stored. Detailed drawings prepared by the owner or a representative must be submitted according to procedures set forth in subrule 65.104(5) and must show compliance with subrule 65.108(1). If the containment barrier does not surround the manure storage structure, upland drainage must be diverted. Any dry manure retained by the secondary containment barrier shall be removed and properly disposed of within 14 days.

b. The barrier may be constructed of earth, concrete, or a combination of both. If a relief outlet or valve is installed, the relief outlet or valve shall remain closed. Any accumulated liquid due to an overflow shall be land-applied as stated in the operation's MMP.

c. The base shall slope to a collecting area where storm water can be pumped out. If storm water is contaminated with manure, it shall be land-applied at normal fertilizer application rates in compliance with rule 567—65.101(455B,459,459B).

d. Secondary containment barriers constructed entirely or partially of earth shall comply with the following requirements:

(1) The soil surface, including dike, shall be constructed to prevent downward water movement at rates greater than $1 \times 10\text{-}6$ cm/sec and shall be maintained to prevent downward water movement at rates greater than $1 \times 10\text{-}5$ cm/sec.

(2) Dikes shall not be steeper than 45 degrees and shall be protected against erosion. If the slope is 19 degrees or less, grass can be sufficient protection, provided it does not interfere with the required soil seal.

(3) The top width of the dike shall be no less than three feet.

e. Secondary containment barriers constructed of concrete shall be watertight and comply with the following requirements:

(1) The base of the containment structure shall be designed to support the manure storage structure and its contents.

(2) The concrete shall be routinely inspected for cracks, which shall be repaired with a suitable sealant.

f. Nothing shall be stored within a secondary containment barrier, including but not limited to machinery or feedstock.

65.108(12) *Human sanitary waste.* Human sanitary waste shall not be discharged to a manure storage structure or egg washwater storage structure.

65.108(13) *Requirements for qualified operations.* A confinement feeding operation that meets the definition of a qualified operation shall only use an aerobic structure for manure storage and treatment. This requirement does not apply to the following types of confinement feeding operations: (1) one that only handles dry manure; (2) an egg washwater storage structure; (3) a confinement feeding operation that was constructed before May 31, 1995, and does not expand; or (4) a confinement feeding operation that processes manure using an anaerobic digester system.

65.108(14) *Aboveground formed manure storage structures with external outlet or inlet below the liquid level.* A formed manure storage structure that is constructed to allow the storage of manure wholly or partially above ground and that has an external outlet or inlet below the liquid level shall have all of the following:

a. Two or more shutoff valves on any external outlet or inlet below the liquid level. At least one shutoff valve shall be located inside the structure and be operable if the external valve becomes inoperable or broken off. Alternative options may be considered by the department.

b. All external outlets or inlets below the liquid level shall be barricaded, encased in concrete, or otherwise protected to minimize accidental destruction.

c. Construction shall comply with the manufacturer's requirements.

d. An emergency response plan for retaining manure at the site and cleanup if the manure storage structure fails or there is any other type of accidental discharge. The plan shall consist of telephone numbers to comply with subrule 65.2(1) and a list of contractors, equipment, equipment technical support, and alternative manure storage or land application sites that can be used during inclement weather.

[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.109(455B,459,459B) Construction certification. A confinement feeding operation that obtains a construction permit after March 20, 1996, shall submit to the department a construction certification according to the following:

65.109(1) For a confinement feeding operation that is below the threshold requirements for an engineer prior to using a permitted confinement feeding operation structure, the person responsible for constructing a formed manure storage structure or the permittee shall submit to the department a construction certification, as specified in the construction permit.

65.109(2) For a confinement feeding operation that uses an unformed manure storage structure or an egg washwater storage structure, or an operation that meets or exceeds the threshold requirements for an engineer, a certification from a licensed PE that the confinement feeding operation structure was:

a. Constructed in accordance with the design plan. Any changes to the approved plans must first be authorized by the department and must include a certification that the proposed changes are consistent with the standards of these rules or statute;

b. Supervised by the licensed PE or a designee of the PE during critical points of the construction. A designee shall not be the permittee, the owner of the confinement feeding operation, a direct employee of the permittee or owner, or the contractor or an employee of the contractor;

c. Inspected by the licensed PE after completion of construction and before commencement of operation; and

d. Constructed in accordance with the drainage tile removal standards of subrule 65.108(1) and including a report of the findings and actions taken to comply with subrule 65.108(1).
[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.110(455B,459,459B) Manure management plan (MMP) requirements.

65.110(1) In accordance with Iowa Code section 459.312, the following persons are required to submit MMPs to the department, including an original MMP and an updated MMP, as required by this rule:

a. An applicant for a construction permit for a confinement feeding operation. However, an MMP shall not be required of an applicant for an egg washwater storage structure or for a SAFO.

b. The owner of a confinement feeding operation, other than a SAFO, if one of the following applies:

(1) The confinement feeding operation was constructed or expanded after May 31, 1985, regardless of whether the confinement feeding operation structure was required to have a construction permit.

(2) The owner constructs a manure storage structure, regardless of whether the person is required to be issued a permit for the construction pursuant to Iowa Code section 459.303 or whether the person has submitted a prior MMP. If the new manure storage structure does not result in an increase in manure volume for the confinement feeding operation and there is no change in animal category for determining animal units, then a new MMP is not required to be submitted.

c. A person who applies manure in Iowa that was produced in a confinement feeding operation, other than a small operation, located outside of Iowa.

d. A new owner of a confinement feeding operation may apply manure under the most recent owner's MMP until the new owner develops and submits an original MMP. The new owner must develop and submit an original MMP within 60 days after acquiring the operation.

e. Exceptions.

(1) A research college is exempt from this subrule and the MMP requirements of rule 567—65.111(455B,459,459B) for research activities and experiments performed under the authority of the research college and related to confinement feeding operations.

(2) An AFO otherwise required to submit an updated MMP and pay an annual compliance fee may make an election to be considered a SAFO for purposes of filing updated MMPs and annual compliance fees if the confinement feeding operation maintains an animal unit capacity of 500 or fewer animal units. The election shall automatically terminate when more than 500 animal units are housed at the confinement feeding operation at any one time. If the confinement feeding operation exceeds more than 500 animal units, an MMP shall be submitted.

65.110(2) The owner of a proposed confinement feeding operation who is not required to obtain a construction permit pursuant to subrule 65.103(1) but who is required to file an MMP pursuant to paragraph 65.110(1)*"b"* shall file a construction design statement and provide the information required in subrule 65.104(2), including the confinement feeding operation's MMP, to the department at least 30 days before the construction of an AFO structure begins, as defined in subrules 65.6(1) and 65.6(2).

65.110(3) Scope of MMP; updated plans; annual compliance fee.

a. Each confinement feeding operation required to submit an MMP shall be covered by a separate MMP.

b. The owner of a confinement feeding operation who is required to submit an MMP under this rule shall submit an updated MMP on an annual basis to the department. The updated MMP may be submitted by hard copy or by electronic submittal. The updated plan must reflect all amendments made during the period of time since the previous MMP submission.

(1) If the plan is submitted by hard copy, the submittal process shall be as follows: The owner of the AFO shall also submit the updated MMP on an annual basis to the board of supervisors of each county where the confinement feeding operation is located and to the board of supervisors of each county where manure from the confinement feeding operation is land-applied. If the owner of the AFO has not previously submitted an MMP to the board of supervisors of each county where the confinement feeding operation is located and each county where manure is land-applied, the owner must submit a complete

MMP to each required county. The county auditor or other county official or employee designated by the county board of supervisors may accept the updated plan on behalf of the board. The updated plan shall include documentation that the county board of supervisors or other designated county official or employee received the MMP update.

(2) If the plan is submitted electronically, the submittal process shall be as follows: The owner of the AFO shall submit the updated MMP to the department through the department's electronic web application. Once the submittal has been completed, the department shall provide electronic access of the updated MMP to the board of supervisors of each county where the confinement feeding operation is located and each county where manure is land-applied.

(3) The department will stagger the dates by which the updated MMPs are due and will notify each confinement feeding operation owner of the date on which the updated MMP is due. To satisfy the requirements of an updated MMP, an owner of a confinement feeding operation must submit one of the following:

1. A complete MMP;

2. A department-approved document stating that the MMP submitted in the prior year has not changed; or

3. A department-approved document listing all the changes made since the previous MMP was submitted and approved.

c. An annual compliance fee of $0.15 per animal unit at the AFO shall accompany an annual MMP update submitted to the department for approval. The annual compliance fee is based on the animal unit capacity of the confinement feeding operation stated in the updated annual MMP submission. If the person submitting the MMP is a contract producer, as provided in Iowa Code chapter 202, the active contractor shall pay the annual compliance fee.

65.110(4) The department shall review and approve or disapprove all complete MMPs within 60 days of the date they are received.

65.110(5) Manure shall not be removed from a manure storage structure which is part of a confinement feeding operation required to submit an MMP until the department has approved the plan. Manure shall be applied in compliance with rule 567—65.100(455B,459,459B).

65.110(6) Manure storage indemnity fee. All persons required to submit an MMP to the department shall also pay to the department an indemnity fee as required in Iowa Code section 459.503 except those operations constructed prior to May 31, 1995, which were not required to obtain a construction permit.

65.110(7) Filing fee. Any person submitting an original MMP must also pay to the department an MMP filing fee of $250. This fee shall be included with each original MMP being submitted. If the confinement feeding operation is required to obtain a construction permit and to submit an original MMP as part of the construction permit requirements, the applicant must pay the MMP filing fee together with the construction permit application fee, which total $500.

[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.111(455B,459,459B) MMP content requirements. All MMPs are to be submitted on forms or electronically as prescribed by the department. The plans shall include all of the information specified in Iowa Code section 459.312 and as described below.

65.111(1) *General.*

a. A confinement feeding operation that is required to submit an MMP to the department shall not apply manure in excess of the nitrogen use levels necessary to obtain optimum crop yields. A confinement feeding operation shall not apply manure in excess of the rates determined in conjunction with the phosphorus index. Information to complete the required calculations may be obtained from the tables in this chapter, actual testing samples or from other credible sources reviewed and approved by the department including but not limited to Iowa State University, the United States Department of Agriculture (USDA), a licensed PE, or an individual certified as a crop consultant under the American Registry of Certified Professionals in Agronomy, Crops, and Soils program, the Certified Crop Advisors program, or the Registry of Environmental and Agricultural Professionals program.

b. MMPs shall include all of the following:

(1) The name of the owner and the name of the confinement feeding operation, including mailing address and telephone number.

(2) The name of the contact person for the confinement feeding operation, including mailing address and telephone number.

(3) The location of the confinement feeding operation identified by county, township, section, ¼ section and, if available, the 911 address.

(4) The animal unit capacity of the confinement feeding operation and, if applicable, the animal weight capacity.

c. A person who submits an MMP shall include a phosphorus index as part of the MMP as required in subrule 65.111(12).

d. A new owner of a confinement feeding operation may apply manure under the most recent owner's MMP until the new owner develops and submits an original MMP. The new owner must develop and submit an original MMP within 60 days after acquiring the confinement feeding operation.

e. A research college is exempt from this subrule for research activities and experiments performed under the authority of the research college and related to confinement feeding operations.

65.111(2) *MMP contents.* Confinement feeding operations that will not sell all of their manure shall submit the following for that portion of the manure which will not be sold:

a. The name of the owner and the name of the confinement feeding operation, including mailing address and telephone number.

b. The name of the contact person for the confinement feeding operation, including mailing address and telephone number.

c. The location of the confinement feeding operation identified by county, township, section, ¼ section and, if available, the 911 address.

d. An estimate of the nitrogen and phosphorus concentration of the manure and estimate of annual manure production.

e. Application rate calculations based on regulations in subrule 65.111(12).

f. The location of manure application.

g. Soil loss calculations using methods specified for Iowa phosphorus index.

h. A phosphorus index of each field in the MMP, as defined in paragraph 65.111(12)*"a,"* including the factors used in the calculation. A copy of the NRCS phosphorus index detailed report shall satisfy the requirement to include the factors used in the calculation.

65.111(3) *Estimate of manure concentration and production.* An MMP must include an estimate of nitrogen and phosphorus concentration and an estimate of annual manure production by one of the following methods.

a. Table values in Table 4 located at iowadnr.gov/afo/rules or other credible sources.

b. Actual concentration and production values from the operation or a similar operation. If an actual sample is used to represent the nutrient content of manure, the sample shall be taken in accordance with Iowa State University Extension and Outreach publication AE 3550, "How to Sample Manure for Nutrient Analysis." The department may require documentation of the manure sampling protocol or take a split sample to verify the nutrient content of the operation's manure. If actual nitrogen and phosphorus are used for concentration in the MMP, actual manure production must also be used. Any sample used to estimate the concentration of manure must be less than four years old.

65.111(4) *Optimum crop yield and crop schedule.*

a. To determine the optimum crop yield, the applicant may either exclude the lowest crop yield for the period of the crop schedule in the determination or allow for a crop yield increase of 10 percent. In using these methods, adjustment to update yield averages to current yield levels may be made if it can be shown that the available yield data is not representative of current yields. The optimum crop yield shall be determined using any of the following methods for the cropland where the manure is to be applied:

(1) Soil survey interpretation record. The plan shall include a map showing soil map units for the fields where manure will be applied. The optimum crop yield for each field shall be determined by using the weighted average of the soil interpretation record yields for the soils on the cropland where the

manure is to be applied. Soil interpretation records from NRCS shall be used to determine yields based on soil map units.

(2) USDA county crop yields. The plan shall use the county yield data from the USDA Iowa Agricultural Statistics Service.

(3) Proven yield methods. Proven yield methods may only be used if a minimum of the most recent three years of yield data for the crop is used. These yields can be proven on a field-by-field or farm-by-farm basis. To be considered a farm-by-farm basis, the fields must be owned, rented or leased for crop production by the person required to keep records pursuant to subrule 65.111(8) or included in a manure application agreement in that person's MMP. Crop disaster years may be excluded when there is a 30 percent or more reduction in yield for a particular field or farm from the average yield over the most recent five years. Excluded years shall be replaced by the most recent nondisaster years. Proven yield data used to determine application rates shall be maintained with the current MMP. Any of the following proven yield methods may be used:

1. Proven yields for USDA Farm Service Agency. The plan shall use proven yield data or verified yield data for Farm Service Agency programs.

2. Proven yields for multiperil crop insurance. Yields established for the purpose of purchasing multiperil crop insurance shall be used as proven yield data.

3. Proven yields from other methods. The plan shall use the proven yield data and indicate the method used in determining the proven yield.

b. Crop schedule. Crop schedules shall include the name and total acres of the planned crop on a field-by-field or farm-by-farm basis where manure application will be made. A map may be used to indicate crop schedules by field or farm. The planned crop schedule shall name the crop(s) planned to be grown for the length of the crop rotation beginning with the crop planned or actually grown during the year this plan is submitted or the first year manure will be applied. The confinement feeding operation owner shall not be penalized for exceeding the nitrogen or phosphorus application rate for an unplanned crop if crop schedules are altered because of weather, farm program changes, market factor changes, or other unforeseeable circumstances. However, the penalty preclusion in the previous sentence does not apply to a confinement feeding operation owner subject to the NPDES permit program.

65.111(5) *Location of manure application.*

a. The MMP shall identify each field where the manure will be applied, the number of acres that will be available for the application of manure from the confinement feeding operation, and the basis under which the land is available.

b. A copy of each written agreement executed with the owner of the land where manure will be applied shall be maintained with the current MMP. The written agreement shall indicate the number of acres on which manure from the confinement feeding operation may be applied and the length of the agreement. A written agreement is not required if the land is owned or rented for crop production by the owner of the confinement feeding operation. Owners of dry bedded confinement feeding operations required to have an MMP may execute a written agreement with the landowner or the person renting the land for crop production where the dry bedded manure will be applied.

65.111(6) *Soil loss calculations for phosphorus index.* The MMP shall indicate for each field in the plan the crop rotation, tillage practices and supporting practices used to calculate sheet and rill erosion for the phosphorus index. A copy of an NRCS RUSLE2 erosion calculation record shall satisfy this requirement. The plan shall also identify the highly erodible cropland where manure will be applied.

65.111(7) *Current MMP.* The owner of a confinement feeding operation who is required to submit an MMP shall maintain a current MMP at the site of the confinement feeding operation or at a residence or office of the owner or operator of the operation within 30 miles of the site. The MMP may be an electronic or hard copy. The MMP should include completed manure sales forms if the manure is sold. If manure management practices change, a person required to submit an MMP shall make appropriate changes consistent with this chapter. If values other than the standard table values are used for MMP calculations, the source of the values used shall be identified.

65.111(8) *Recordkeeping.* Records shall be maintained by the owner of a confinement feeding operation who is required to submit an MMP. Records shall be maintained for five years following

the year of application or for the length of the crop rotation, whichever is greater. Records shall be maintained at the site of the confinement feeding operation or at a residence or office of the owner or operator of the facility within 30 miles of the site. Electronic records are acceptable in lieu of paper records at the facility or the office. Records to demonstrate compliance with the MMP shall include the following:

a. Factors used to calculate the manure application rate:

(1) Optimum yield for the planned crop.

(2) Types of nitrogen credits and amounts.

(3) Remaining crop nitrogen needed.

(4) Nitrogen and phosphorus concentration and first-year nitrogen availability of the manure. If an actual sample is used, documentation shall be provided.

b. If phosphorus-based application rates are used, the following shall be included:

(1) Crop rotation.

(2) Phosphorus removed by crop harvest of that crop rotation.

c. Maximum allowable manure application rate.

d. Actual manure application information:

(1) Methods of application when manure from the confinement feeding operation was applied.

(2) Date(s) when the manure from the confinement feeding operation was applied.

(3) Location of the field where the manure from the confinement feeding operation was applied, including the number of acres.

(4) The manure application rate.

e. The date(s) and application rate(s) of commercial nitrogen and phosphorus on fields that received manure. However, if the date and application rate information is for fields that are not owned for crop production or that are not rented or leased for crop production by the person required to keep records pursuant to this subrule, an enforcement action for noncompliance with an MMP or the requirements of this subrule shall not be pursued against the person required to keep records pursuant to this subrule or against any other person who relied on the date and application rate in records required to be kept pursuant to this subrule, unless that person knew or should have known that nitrogen or phosphorus would be applied in excess of maximum levels set forth in paragraph 65.111(1)*"a."* If manure is applied to fields not owned, rented or leased for crop production by the person required to keep records pursuant to this subrule, that person shall obtain from the person who owns, rents or leases those fields a statement specifying the planned commercial nitrogen and phosphorus fertilizer rates to be applied to each field receiving the manure.

f. A copy of the current soil test lab results for each field in the MMP.

g. For sales of manure under paragraph 65.111(15)*"b,"* recordkeeping requirements of subparagraph 65.111(15)*"b"*(7) shall be followed.

h. The name and certification number of the certified manure applicator.

65.111(9) *Record inspection.* The department may inspect a confinement feeding operation at any time during normal working hours and may inspect the MMP and any records required to be maintained. As required in Iowa Code section 459.312(12), Iowa Code chapter 22 shall not apply to the records which shall be kept confidential by the department and its agents and employees. The contents of the records are not subject to disclosure except as follows:

a. Upon waiver by the owner of the confinement feeding operation.

b. In an action or administrative proceeding commenced under this chapter. Any hearing related to the action or proceeding shall be closed.

c. When required by subpoena or court order.

65.111(10) *Enforcement action.* An owner required to provide the department an MMP pursuant to this rule who fails to provide the department an MMP or who is found in violation of the terms and conditions of the MMP shall not be subject to an enforcement action other than assessment of a civil penalty pursuant to Iowa Code section 455B.191.

65.111(11) *Soil sampling requirements for fields where the phosphorus index must be used.* Soil samples shall be obtained from each field in the MMP, and the soil samples shall be four years old or

less. Each soil sample shall be analyzed for phosphorus and pH. The soil sampling protocol shall meet all of the following requirements:

a. Acceptable soil sampling strategies include but are not limited to grid sampling, management zone sampling, and soil type sampling. Procedural details can be taken from Iowa State University Extension and Outreach publication CROP 31-8, "Take a Good Soil Sample to Help Make Good Fertilization Decisions," NCR-13 Report 348, "Soil Sampling for Variable-Rate Fertilizer and Lime Application," effective January 1, 2001, or other credible soil sampling publications.

b. Each soil sample must be a composite of at least ten soil cores from the sampling area, with each core containing soil from the top six inches of the soil profile.

c. Each soil sample shall represent no more than ten acres. For fields less than or equal to 15 acres, only one soil sample is necessary.

d. Soil analysis must be performed by a lab enrolled in the Iowa department of agriculture and land stewardship (IDALS) soil testing certification program.

e. The soil phosphorus test method must be an appropriate method for use with the phosphorus index. If soil pH is greater than or equal to 7.4, soil phosphorus data from the Bray-1 extraction method is not acceptable for use with the phosphorus index.

f. If manure is applied as phosphorus-based rates within soil sampling periods, each soil sample may represent up to 20 acres for the next required soil sampling.

65.111(12) *Use of the phosphorus index.* Manure application rates shall be determined in conjunction with the use of the Iowa Phosphorus Index as specified by NRCS Iowa Technical Note No. 25 Iowa Phosphorus Index.

a. When sheet and rill erosion is calculated for the Iowa Phosphorus Index, the soil map unit used for the calculation shall be the predominant soil map unit of the steepest slope class that comprises at least 10 percent of the total field area. For fields less than 25 acres in size, the predominant soil map unit of the steepest slope class that comprises at least 20 percent of the total field area shall be used. In all MMPs submitted to the department for approval, the soil map unit used for the sheet and rill erosion calculation will be consistent with NRCS Iowa Agronomy Technical Note No. 29 Dominant Critical Area. For the calculations of ephemeral gullies, the provisions of NRCS Iowa Technical Note No. 25 Iowa Phosphorus Index with in-field measurement or estimates from review of at least four aerial photographs shall be used. If aerial photographs are used for the evaluation, aerial photography from the spring prior to crop canopy or fall after harvest must be included in the evaluation when available.

b. When sheet and rill erosion is calculated for the phosphorus index, the soil map unit used for the calculation shall be the predominant highly erodible soil map unit when planning for a highly erodible field and the predominant non-highly erodible soil map unit when planning for a non-highly erodible field. For the calculations of ephemeral gullies, the provisions of NRCS Iowa Technical Note No. 25 Iowa Phosphorus Index shall be used with: (1) supporting documents and spreadsheets or (2) aerial photographs from at least four separate years, with at least one of the photographs being from the most vulnerable time of the year.

c. The average (arithmetic mean) soil phosphorus concentration of a field shall be used in the phosphorus index.

d. Soil phosphorus concentration data is considered valid for use in the phosphorus index if the data is four years old or less and meets the requirements of subrule 65.111(11).

e. For an original MMP, previous soil sampling data that does not meet the requirements of subrule 65.111(11) may be used in the phosphorus index if the data is four years old or less. In the case of fields for which soil sampling data is used that does not meet the requirements of subrule 65.111(11), the fields must be soil-sampled according to the requirements of subrule 65.111(11) no more than one year after the original MMP is approved and an updated original MMP shall be submitted with the results of the new samples at the time of the next MMP update.

f. The following are the manure application rate requirements for fields that are assigned the phosphorus index site vulnerability ratings below as determined by the NRCS Iowa Technical Note No. 25 Iowa Phosphorus Index to the NRCS 590 standard rounded to the nearest one-hundredth:

(1) Very Low or Low (0-2). Manure shall not be applied in excess of a nitrogen-based rate in accordance with subrule 65.111(13).

(2) Medium (>2-5). Manure shall not be applied (1) in excess of two times the phosphorus removed with crop harvest over the period of the crop rotation or (2) to exceed the nitrogen-based rate of the planned crop receiving the particular manure application.

(3) High or Very High (>5). Manure shall not be applied on a field with a rating greater than 5.

g. Additional commercial fertilizer may be applied as follows on fields receiving manure:

(1) Phosphorus fertilizer may be applied in addition to phosphorus provided by the manure up to amounts recommended by soil tests and Iowa State University Extension and Outreach publication PM 1688, "A General Guide for Crop Nutrient and Limestone Recommendations in Iowa."

(2) Nitrogen fertilizer may be applied in addition to nitrogen provided by the manure to meet the remaining nitrogen need of the crop as calculated in the current MMP. Additional nitrogen fertilizer may be applied up to the amounts indicated by soil test nitrogen results or crop nitrogen test results as necessary to obtain the optimum crop yield.

h. Updating the phosphorus index.

(1) When any inputs to the phosphorus index change, an operation shall recalculate the phosphorus index and adjust the application rates if necessary.

(2) If additional land becomes available for manure application, the phosphorus index shall be calculated to determine the manure application rate before manure is applied.

(3) An operation must submit a complete MMP using a new phosphorus index, including soil sampling as required in subrule 65.111(11), for each field in the MMP a minimum of once every four years.

65.111(13) *Requirements for application of a nitrogen-based manure rate to a field.*

a. Nitrogen-based application rates shall be based on the total nitrogen content of the manure unless the calculations are submitted to show that nitrogen crop usage rates based on plant-available nitrogen have not been exceeded for the crop schedule submitted.

b. The correction factor for nitrogen losses shall be determined for the method of application by the following or from other credible sources for nitrogen volatilization correction factors.

Knifed in or soil injection of liquids	0.98
Surface-apply liquid or dry with incorporation within 24 hours	0.95
Surface-apply liquid or dry with incorporation after 24 hours	0.80
Surface-apply liquids with no incorporation	0.75
Surface-apply dry with no incorporation	0.70
Irrigated liquids with no incorporation	0.60

c. Nitrogen-based applications rates shall be based on the optimum crop yields as determined in subrule 65.111(4) and crop nitrogen usage rate factor values in Table 4 located at iowadnr.gov/afo/rules or other credible sources. The calculations of manure applied from the facility must account for fertilizer from all other manure and nonmanure sources. Liquid manure applied to land that is currently planted to soybeans or to land where the current crop has been harvested and that will be planted to soybeans the next crop season shall not exceed 100 pounds of available nitrogen per acre. Further, the 100-pounds-per-acre application limitation in the previous sentence does not apply on or after June 1 of each year; in that event, subrule 65.111(4) and Table 4 would apply as provided in the first sentence of this paragraph.

d. A nitrogen-based manure rate shall account for legume production in the year prior to growing corn or other grass crops and shall account for any planned commercial fertilizer application.

65.111(14) *Requirements for application of a phosphorus-based manure rate to a field.*

a. Phosphorus removal by harvest for each crop in the crop schedule shall be determined using the optimum crop yield as determined in subrule 65.111(4) and phosphorus removal rates of the harvested crop from Table 4a located at iowadnr.gov/afo/rules or other credible sources. Phosphorus crop removal

shall be determined by multiplying optimum crop yield by the phosphorus removal rate of the harvested crop.

b. Phosphorus removal by the crop schedule shall be determined by summing the phosphorus crop removal values determined in paragraph 65.111(14)*"a"* for each crop in the crop schedule.

c. The phosphorus applied over the duration of the crop schedule shall be less than or equal to the phosphorus removed with harvest during that crop schedule as calculated in paragraph 65.111(14)*"b"* unless additional phosphorus is recommended by soil tests and Iowa State University Extension and Outreach publication PM 1688, "A General Guide for Crop Nutrient and Limestone Recommendations in Iowa."

d. Additional requirements for phosphorus-based rates.

(1) No single manure application shall exceed the nitrogen-based rate of the planned crop receiving the particular manure application.

(2) No single manure application shall exceed the rate that applies to the expected amount of phosphorus removed with harvest by the next four anticipated crops in the crop schedule.

e. If the actual crop schedule differs from the planned crop schedule, then any surplus or deficit of phosphorus shall be accounted for in the subsequent manure application.

f. Phosphorus in manure should be considered 100 percent available unless soil phosphorus concentrations are below optimum levels for crop production. If soil phosphorus concentrations are below optimum levels for crop production phosphorus availability, values suggested in Iowa State University Extension and Outreach publication PMR 1003, "Using Manure Nutrients for Crop Production" or other credible sources shall be used.

65.111(15) *MMPs for sales of manure.* Selling manure means the transfer of ownership of the manure for monetary or other valuable consideration. Selling manure does not include a transaction where the consideration is the value of the manure or where an easement, lease or other agreement granting the right to use the land only for manure application is executed.

a. Confinement feeding operations that will sell dry manure as a commercial fertilizer or soil conditioner regulated by IDALS under Iowa Code chapter 200 or bulk dry manure animal nutrient product regulated by IDALS under Iowa Code chapter 200A shall submit a copy of their site-specific IDALS license or documentation that manure will be sold pursuant to Iowa Code chapter 200 or 200A, along with the department-approved MMP form for sales of dry manure. Operations completely covered by this paragraph are not required to meet other MMP requirements in this rule.

b. A confinement feeding operation not fully covered by paragraph 65.111(15)*"a"* that has an established practice of selling manure, or a confinement feeding operation that contains an animal species for which selling manure is a common practice, shall submit an MMP that includes the following:

(1) An estimate of the number of acres required for manure application calculated by one of the following methods:

1. Dividing the total phosphorus (as P_2O_5) available to be applied from the confinement feeding operation by the corn crop removal of phosphorus. The corn crop removal of phosphorus may be estimated by using the phosphorus removal rate in Table 4a located at iowadnr.gov/afo/rules and an estimate of the optimum crop yield for the property in the vicinity of the operation.

2. Totaling the quantity of manure that can be applied to each available field based on application rates determined in conjunction with the phosphorus index in accordance with subrule 65.111(12), and ensuring that the total quantity that can be applied is equal to or exceeds the manure annually generated at the operation.

(2) The total nitrogen available to be applied from the confinement feeding operation.

(3) The total phosphorus (as P_2O_5) available to be applied from the confinement feeding operation if the phosphorus index is required in accordance with paragraph 65.111(1)*"c."*

(4) An estimate of the annual animal production and manure volume or weight produced.

(5) A manure sales form. If manure will be sold, the manure sales form shall include the following information:

1. A place for the name and address of the buyer of the manure.

2. A place for the quantity of manure purchased.

3. The planned crop schedule and optimum crop yields.

4. A place for the manure application methods and the timing of manure application.

5. A place for the location of the field, including the number of acres where the manure will be applied.

6. A place for the manure application rate.

7. A place for a phosphorus index of each field receiving manure, as defined in paragraph 65.111(12)*"a,"* including the factors used in the calculation. A copy of the NRCS phosphorus index detailed report shall satisfy the requirement to include the factors used in the calculation.

(6) Statements of intent if the manure will be sold. The number of acres indicated in the statements of intent shall be sufficient according to the MMP to apply the manure from the confinement feeding operation. The permit holder for an existing confinement feeding operation with a construction permit may submit past records of manure sales instead of statements of intent. The statements of intent shall include the following information:

1. The name and address of the person signing the statement.

2. A statement indicating the intent of the person to purchase the confinement feeding operation's manure.

3. The location of the farm where the manure can be applied, including the total number of acres available for manure application.

4. The signature of the person who may purchase the confinement feeding operation's manure.

(7) The owner shall maintain in the owner's records a current MMP and copies of all of the manure sales forms, the sales forms must be completed and signed by each buyer of the manure and the applicant, and the copies must be maintained in the owner's records for three years after each sale. The owner shall maintain in the owner's records copies of all of the manure sales forms for five years after each sale. An owner of a confinement feeding operation shall not be required to maintain current statements of intent as part of the MMP.

[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.112(455B,459,459B) Manure applicators certification.

65.112(1) *Certification.* A commercial manure service or a commercial manure service representative shall not transport, handle, store or apply dry or liquid manure to land unless the person is certified. A confinement site manure applicator shall not apply dry or liquid manure to land unless the person is certified. A person is not required to be certified as a confinement site manure applicator if the person applies manure that originates from a manure storage structure that is part of a SAFO. Certification of a commercial manure service representative under this rule will also satisfy the commercial license requirement under 567—Chapter 68 only as it applies to manure removal and application. Each person who operates a manure applicating vehicle or equipment must be certified individually except as allowed in subrule 65.112(7).

65.112(2) *Fees.*

a. Commercial manure service. The fee for a new or renewed certification of a service is $200. The commercial manure service shall designate one manager for the service and shall provide the department with documentation of the designation.

b. Commercial manure service representative. The fee for a new or renewed representative certification is $75. The manager of a commercial manure service must be certified as a commercial manure service representative but is exempt from paying the $75 certification fee.

c. Confinement site manure applicator. The fee for a new or renewed certification is $100. However, the fee is not required if all of the following apply:

(1) The person indicates that the person is a family member as defined in this chapter by submitting a completed form provided by the department;

(2) The person is certified as a confinement site manure applicator within one year of the date another family member was certified or whose certification as a confinement site manure applicator was renewed;

(3) The other family member certified as a confinement site manure applicator has paid the certification fee.

d. Educational fee. Commercial manure service representatives, managers and confinement site manure applicators shall pay an educational fee to be determined annually by the department.

e. Late fee. Renewal applications received after March 1 require that an additional $12.50 fee be paid before the certification is renewed. An application is considered to be received on the date it is postmarked.

f. Duplicate certificate. The fee for a duplicate certificate is $15.

65.112(3) *Certification requirements.* To be certified by the department as a commercial manure service, a commercial manure service representative or a confinement site manure applicator, a person must do all of the following:

a. Apply for certification on a form provided by the department.

b. Pay the required fees set forth in subrule 65.112(2).

c. Pass the examination given by the department or, in lieu of the examination, attend continuing instruction courses as described in subrule 65.112(6).

65.112(4) *Certification term, renewal and grace period.*

a. Certification term. Certification for a commercial manure service and commercial manure service representative shall be for a period of one year and shall expire on March 1 of each year. Certification for a confinement site manure applicator shall be for a period of three years and shall expire on December 31 of the third year.

b. Renewal. Application for renewal of a commercial manure service certification or a commercial manure service representative certification must be received by the department no later than March 1 of the year the certification expires. Application for renewal of a confinement site manure applicator certification must be received by the department or postmarked no later than March 1 after the year the certification expires. Application shall be on forms provided by the department and shall include:

(1) Certification renewal and educational fees.

(2) A passing grade on the certification examination or proof of attending the required hours of continuing instructional courses.

c. Substitution of employees. If a commercial manure service pays the certification fee for a representative, the service may substitute representatives. The substituted representative must be certified pursuant to subrule 65.112(3). The service shall provide documentation to the department, on forms provided by the department, that the substitution is valid.

d. Grace period. Except as provided in this paragraph, a commercial manure service, a commercial manure service representative or a confinement site manure applicator may not continue to apply manure after expiration of a certificate. A confinement site manure applicator may continue to apply manure until March 1 following the year the certification expires, provided a complete renewal application, as provided in paragraph 65.112(4)*"b,"* is postmarked or received by the department prior to March 1. Commercial manure services and representatives must submit an application for certification renewal by March 1 of each year.

65.112(5) *Examinations.*

a. A person wishing to take the examination required to become a certified commercial manure service representative or certified confinement site manure applicator may request an appointment. The applicant must have a photo identification card at the time of taking the examination.

b. If a person fails the examination, the person may retake the examination but not on the same business day.

c. Upon written request by an applicant, the director will consider the presentation of an oral examination on an individual basis when the applicant has failed the written examination at least twice and the applicant has shown difficulty in reading or understanding written questions but may be able to respond to oral questioning.

65.112(6) *Continuing instruction courses in lieu of examination.*

a. To establish or maintain certification, between March 1 and March 1 of the next year, a commercial manure service representative must each year either pass an examination or attend three hours of continuing instructional courses.

b. To establish or maintain certification, a confinement site manure applicator must either pass an examination every three years or attend two hours of continuing instructional courses each year. A confinement site manure applicator who chooses to attend instructional courses but fails to attend instructional courses each year must pass an examination as provided in subrule 65.112(5) to maintain certification.

65.112(7) *Exemption from certification.*

a. Certification as a commercial manure service representative is not required of a person who is any of the following:

(1) Actively engaged in farming and who trades work with another such person.

(2) Employed by a person actively engaged in farming not solely as a manure applicator but who applies manure as an incidental part of the person's general duties.

(3) Engaged in applying manure as an incidental part of a custom farming operation.

(4) Engaged in applying manure as an incidental part of the person's duties.

(5) Applying, transporting, handling or storing manure within a period of 30 days from the date of initial employment as a commercial manure service representative if the person applying the manure is acting under direct instructions and control of a certified commercial manure service representative who is physically present at the manure application site by being in sight or immediate communication distance of the supervised person where the certified commercial service representative can communicate with the supervised person at all times. If the prospective employee was previously certified for a commercial manure service, the 30-day exemption does not apply.

(6) Employed by a research college to apply manure from AFOs that are part of the research activities or experiments of the research college.

b. Certification as a confinement site manure applicator is not required of a person who is either of the following:

(1) A part-time employee or family member of a confinement site manure applicator and is acting under direct instruction and control of a certified confinement site manure applicator who is physically present at the manure application site by being in sight or hearing distance of the supervised person where the certified confinement site manure applicator can physically observe and communicate with the supervised person at all times.

(2) Employed by a research college to apply manure from an AFO that is part of the research activities or experiments of the research college.

65.112(8) *Obligations.* Certified commercial manure services have the following obligations:

a. Maintain the following records of manure disposal operations for a period of three years:

(1) A copy of instructions for manure application provided by the owner of the AFO.

(2) Dates that manure was applied or sold.

(3) The manure application rate.

(4) Location of fields where manure was applied.

b. Comply with the provisions of the MMP prepared for the confinement feeding operation and the requirements of rules 567—65.100(455B,459,459B) and 567—65.101(455B,459,459B). If an MMP does not exist, the requirements of rules 567—65.100(455B,459,459B) and 567—65.101(455B,459,459B) must still be met.

c. Any tanks or equipment used for hauling manure shall not be used for hauling hazardous or toxic wastes, as defined in 567—Chapter 131, or other wastes detrimental to land application and shall not be used in a manner that would contaminate a potable water supply or endanger the food chain or public health.

d. Pumps and associated piping on manure handling equipment shall be installed with watertight connections to prevent leakage.

e. Any vehicle used by a certified commercial manure service or commercial manure service representative to transport manure on a public road shall display the certification number of the

commercial manure service with three-inch or larger letters and numbers on the side of the tank or vehicle. The name and address of the certified commercial manure service representative designated as the manager shall also be prominently displayed on the side of the tank or vehicle.

f. Direct connection shall not be made between a potable water source and the tank or equipment on the vehicle.

65.112(9) *Discipline of certified applicators.*

a. Disciplinary action may be taken against a certified commercial manure service, a commercial manure service representative or a confinement site manure applicator on any of the following grounds:

(1) Violation of state law or rules applicable to a certified commercial manure service, a commercial manure service representative, or a confinement site manure applicator or the handling or application of manure.

(2) Failure to maintain required records of manure application or other reports required by this rule.

(3) Knowingly making any false statement, representation, or certification on any application, record, report or document required to be maintained or submitted under any applicable permit or rule of the department.

b. Disciplinary sanctions allowable are:

(1) Revocation of a certificate.

(2) Probation under specified conditions relevant to the specific grounds for disciplinary action. Additional training or reexamination may be required as a condition of probation.

c. The procedure for discipline is as follows:

(1) The director shall initiate disciplinary action.

(2) Written notice shall be given to an applicator against whom disciplinary action is being considered. The notice shall state the informal and formal procedures available for determining the matter. The applicator shall be given 20 days to present any relevant facts and indicate the person's position in the matter and to indicate whether informal resolution of the matter may be reached.

(3) An applicator who receives notice shall communicate verbally or in writing or in person with the director, and efforts shall be made to clarify the respective positions of the applicator and director.

(4) Failure to communicate facts and position relevant to the matter by the required date may be considered when determining appropriate disciplinary action.

(5) If agreement as to appropriate disciplinary sanction, if any, can be reached with the applicator and the director, a written stipulation and settlement between the department and the applicator shall be entered. The stipulation and settlement shall recite the basic facts and violations alleged, any facts brought forth by the applicator, and the reasons for the particular sanctions imposed.

(6) If an agreement as to appropriate disciplinary action, if any, cannot be reached, the director may initiate formal hearing procedures. Notice and formal hearing shall be in accordance with 561—Chapter 7 related to contested and certain other cases pertaining to license discipline.

65.112(10) *Revocation of certificates.*

a. Upon revocation of a certificate, application for commercial manure service representative or confinement site applicator certification may be allowed after two years from the date of revocation. Any such applicant must successfully complete an examination and be certified in the same manner as a new applicant.

b. Upon revocation of a certificate, application for a commercial manure service certification may be allowed after three years from the date of revocation. Any such applicant must successfully complete an examination and be certified in the same manner as a new applicant.

65.112(11) *Record inspection.* The department may inspect, with reasonable notice, the records maintained by a commercial manure service. If the records are for an operation required to maintain records to demonstrate compliance with an MMP, the confidentiality provisions of subrule 65.111(9) and Iowa Code section 459.312 shall extend to the records maintained by the commercial manure service.

[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.113(455B,459,459B) Livestock remediation fund. The livestock remediation fund created in Iowa Code section 459.501 will be administered by the department. Moneys in the fund shall be used for

the exclusive purpose of administration of the fund and the cleanup of eligible facilities at confinement feeding operation sites.

65.113(1) *Eligible facility site.* The site of a confinement feeding operation that contains one or more AFO structures is an eligible site for reimbursement of cleanup costs if one of the following conditions exists:

a. A county has acquired title to real estate containing the confinement feeding operation following nonpayment of taxes and the site includes a manure storage structure that contains stored manure or site contamination originating from the confinement feeding operation.

b. A county or the department determines that the confinement feeding operation has caused a clear, present and impending danger to the public health or environment.

65.113(2) *Site cleanup.* Site cleanup includes the removal and land application or disposal of manure from an eligible facility site according to manure management procedures approved by the department. Cleanup may include remediation of documented contamination that originates from the confinement feeding operation. Cleanup may also include demolishing and disposing of AFO structures if their existence or further use would contribute to further environmental contamination and their removal is included in a cleanup plan approved by the department. Buildings and equipment must be demolished or disposed of according to rules adopted by the department in 567—Chapter 101 that apply to the disposal of farm buildings or equipment by an individual or business organization.

65.113(3) *Claims against the fund.* Claims for cleanup costs may be made by a county that has acquired real estate containing an eligible facility site pursuant to a tax deed. A county claim shall be signed by the chairperson of the county board of supervisors. Cleanup may be initiated by the department or may be authorized by the department based on a claim by a county.

a. Advance notice of claim. Prior to or after acquiring a tax deed to an eligible facility site, a county shall notify the department in writing of the existence of the facility and the title acquisition. The county shall request in this notice that the department evaluate the site to determine whether the department will order or initiate cleanup pursuant to its authority under Iowa Code chapter 455B.

b. Emergency cleanup condition. If a county determines that there exists at a confinement feeding operation site a clear, present and impending danger to the public health or environment, the county shall notify the department of the condition. The danger should be documented as to its presence and the necessity to avoid delay due to its increasing threat. If no cleanup action is initiated by the department within 24 hours after being notified of an emergency condition requiring cleanup, the county may provide cleanup and submit a claim against the fund.

65.113(4) *Contents of a claim against the fund.*

a. A county claim against the fund for an eligible site acquired by a county following nonpayment of taxes shall be submitted to the department for approval prior to the cleanup action and shall contain the following information:

(1) A copy of the advance notice of claim as described in paragraph 65.113(3)*"a."*

(2) A copy of a bid by a qualified person, other than a governmental entity, to perform a site cleanup. The bid shall include a summary of the qualifications of the bidder including but not limited to prior experience in removal of hazardous substances or manure, experience in construction of confinement feeding operation facilities or manure storage structures, equipment available for conducting the cleanup, or any other qualifications bearing on the ability of the bidder to remove manure from a site. The bid must reference complying with a cleanup plan. The bid shall include a certification that the bidder has liability insurance in an amount not less than $1 million.

(3) A copy of the tax deed to the real estate containing the eligible facility site.

(4) Name and address, if known, of the former owner(s) of the site. The claim shall also include a description of any efforts to contact the former owner regarding the removal of manure and any other necessary cleanup at the site.

(5) A response to the request in the advance notice described in paragraph 65.113(3)*"a"* that the department will not initiate cleanup action at the site, or that 60 days have passed from the advance notice and request.

(6) A proposed cleanup plan describing all necessary activity including manure to be removed, application rates and sites, any planned remediation of site contamination, and any structure demolition and justification.

b. A county claim against the fund for an emergency cleanup condition may be submitted following the cleanup and shall contain the following information:

(1) A copy of a bid as described in subparagraph 65.113(4)*"a"*(2).

(2) Name and address of the owner(s), or former owner(s), of the site or any other person who may be liable for causing the condition.

(3) Information on the response from the department to the notice given as described in paragraph 65.113(3)*"b,"* or, if none was received, documentation of the time notice was given to the department.

(4) A cleanup plan or description of the cleanup activities performed.

65.113(5) *Department processing of claims against the fund.*

a. Processing of claims. The department will process claims in the order they are received.

b. The cleanup plan will be reviewed for acceptability to accomplish necessary actions according to subrule 65.113(2).

c. Review of bid. Upon receipt of a claim, the department will review the bid accompanying the claim. The department may consult with any person in reviewing the bid. Consideration will be given to the experience of the bidder, the bid amount, and the work required to perform the cleanup plan. If the department is satisfied that the bidder is qualified to perform the cleanup and costs are reasonable, the department will provide written approval to the county within 60 days from the date of receipt of the claim.

d. Obtaining a lower bid. If the department determines that it should seek a lower bid to perform the cleanup, it may obtain the names of qualified persons who may be eligible to perform the cleanup. One or more of those persons will be contacted and invited to view the site and submit a bid for the cleanup. If a lower bid is not received, the original bid may be accepted. If a bid is lower than the original bid submitted by the county, the department will notify the county that it should proceed to contract with that bidder to perform the cleanup.

65.113(6) *Certificate of completion.* Upon completion of the cleanup, the county shall submit a certificate of completion to the department. The certificate of completion shall indicate that the manure has been properly land-applied according to the cleanup plan and that any site contamination identified in the approved cleanup plan has been remediated and any approved structure demolition has been performed.

65.113(7) *Payment of claims.* Upon receipt of the certificate of completion, the department shall promptly authorize payment of the claim as previously approved. Payments will be made for claims in the order of receipt of certificates of completion.

65.113(8) *Subrogation.* The fund is subrogated to all county rights regarding any claim submitted or paid as provided in Iowa Code section 459.505.

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567—65.114(455B,459,459B) Validity of rules. If any part of these rules is declared unconstitutional or invalid for any reason, the remainder of said rules shall not be affected thereby and shall remain in full force and effect, and to that end, these rules are declared to be severable.

[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.115 to **65.199** Reserved.

DIVISION III
OPEN FEEDLOT OPERATIONS

567—65.200(455B,459A) Minimum open feedlot effluent control requirements. An open feedlot operation shall provide for the management of manure, process wastewater, settled open feedlot effluent, settleable solids, scraped solids, and open feedlot effluent by using an open feedlot control method as

provided in subrules 65.200(1) through 65.200(8). A release shall be reported to the department as provided in subrule 65.2(1).

65.200(1) All settleable solids from open feedlot effluent shall be removed prior to discharge into a water of the state.

a. The settleable solids shall be removed by use of a solids settling facility. The construction of a solids settling facility is not required where existing site conditions provide for removal of settleable solids prior to discharge into a water of the state.

b. The removal of settleable solids shall be deemed to have occurred when the velocity of flow of the open feedlot effluent has been reduced to less than one-half foot per second for a minimum of five minutes. A solids settling facility shall have sufficient capacity to store settleable solids between periods of land application and to provide required flow-velocity reduction for open feedlot effluent flow volumes resulting from a precipitation event of less intensity than a ten-year, one-hour frequency event. A solids settling facility that receives open feedlot effluent shall provide a minimum of one square foot of surface area for each eight cubic feet of open feedlot effluent per hour resulting from a ten-year, one-hour frequency precipitation event.

65.200(2) This subrule shall apply to an open feedlot operation which has obtained an NPDES permit pursuant to rule 567—65.3(455B,459,459A,459B) or 567—65.201(455B,459A).

a. An open feedlot operation may discharge manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent into any waters of the United States due to a precipitation event, if the open feedlot operation is designed, constructed, operated, and maintained to comply with the requirements of subrule 62.4(12) and 40 CFR Part 412.

b. If the open feedlot operation is designed, constructed, and operated in accordance with the requirements of subrule 2.4(12) and in accordance with any of the manure control alternatives listed in Appendix A located at iowadnr.gov/afo/rules or the AT system requirements in rule 567—65.207(455B,459A), the operation shall be considered to be in compliance with this rule, unless a discharge from the operation causes a violation of state water quality standards. If water quality standards violations occur, the department may impose additional open feedlot effluent control requirements upon the operation, as specified in subrule 65.200(3).

65.200(3) An open feedlot operation that has an animal unit capacity of 1,000 animal units or more, or an open feedlot operation that is a large CAFO, a medium CAFO, or a designated CAFO, shall not discharge manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent from an open feedlot operation structure or production area into any waters of the United States, unless the discharge is pursuant to an NPDES permit. The control of manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent originating from the open feedlot operation may be accomplished by the use of a solids settling facility, settled open feedlot effluent basin, AT system, or any other open feedlot effluent control structure or practice approved by the department. The department may require the diversion of surface drainage prior to contact with an open feedlot operation structure. Settleable solids shall be settled from open feedlot effluent before the effluent enters a settled open feedlot effluent basin or AT system.

65.200(4) Alternative control practices. If, because of topography or other factors related to the site of an open feedlot operation, it is economically or physically impractical to comply with open feedlot effluent control requirements using an open feedlot control method in subrule 65.200(4), the department shall allow an open feedlot operation covered by the NPDES permit application requirements of rule 567—65.3(455B,459,459A,459B) or 567—65.201(455B,459A) to use other open feedlot effluent control practices, provided the open feedlot operation satisfactorily demonstrates by appropriate methods that those practices will provide an equivalent level of open feedlot effluent control. Demonstration of equivalent performance must include the submission of computer modeling results that compares the predicted performance of the proposed system with that of a conventional runoff containment system over the same period. The specific requirements that must be met for an open feedlot operation to qualify for use of an AT system and the information that must be submitted to the department are outlined in rule 567—65.207(455B,459A). Design requirements have been established for a stand-alone VTA. If

other AT systems are developed that meet the equivalent performance standard established under EPA's CAFO rules, the department will consider their acceptance on a case-by-case basis.

65.200(5) No direct discharge of open feedlot effluent shall be allowed from an open feedlot operation into a publicly owned lake, a known sinkhole, or an agricultural drainage well.

65.200(6) Land application.

a. General requirements. Open feedlot effluent shall be land-applied in a manner that will not cause pollution of surface water or groundwater. Application in accordance with the provisions of state law and the rules in this chapter shall be deemed as compliance with this requirement.

b. Designated areas. A person shall not apply manure on land within 200 feet from a designated area or, in the case of a high-quality water resource, within 800 feet, unless one of the following applies:

(1) The manure is land-applied by injection or incorporation on the same date as the manure was land-applied.

(2) An area of permanent vegetation cover, including filter strips and riparian forest buffers, exists for 50 feet surrounding the designated area other than an unplugged agricultural drainage well or surface intake to an unplugged agricultural drainage well, and the area of permanent vegetation cover is not subject to manure application.

c. CAFOs.

(1) Land application discharges from a CAFO are subject to NPDES permit requirements. The discharge of manure, process wastewater, settled open feedlot effluent, settleable solids and open feedlot effluent to waters of the United States from a CAFO as a result of the application of that manure, process wastewater, settled open feedlot effluent, settleable solids and open feedlot effluent by the CAFO to land areas under its control is a discharge from that CAFO subject to NPDES permit requirements, except where the discharge is an agricultural storm water discharge as provided in 33 U.S.C. 1362(14). For the purpose of this paragraph, where the manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent has been applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, process wastewater, settled open feedlot effluent, settleable solids and open feedlot effluent as specified in subrule 65.209(8), a precipitation-related discharge of manure, process wastewater, settled open feedlot effluent, settleable solids and open feedlot effluent from land areas under the control of a CAFO is an agricultural storm water discharge.

(2) Setback requirements for open feedlot operations with NPDES permits. For open feedlot operations with NPDES permits, the following is adopted by reference: 40 CFR 412.4(a), (b) and (c)(5).

65.200(7) The owner of an open feedlot operation who discontinues the use of the operation shall remove and land-apply in accordance with state law all manure, process wastewater and open feedlot effluent from the open feedlot operation structures as soon as practical but not later than six months following the date the open feedlot operation is discontinued. The owner of a CAFO shall maintain compliance with all requirements in the CAFO's NPDES permit until all manure, process wastewater and open feedlot effluent has been removed and land applied pursuant to the CAFO's NMP, and the NPDES permit has been terminated in accordance with subrule 65.202(9).

65.200(8) Stockpiling of scraped solids and settleable solids. Stockpiles of solids scraped from open feedlot operations and stockpiles of settleable solids shall comply with the following requirements:

a. Stockpiles must be land-applied in accordance with subrule 65.200(6) as soon as possible but not later than six months after they are established.

b. Stockpiles shall not be located within 400 feet from a designated area or, in the case of a high-quality water resource, within 800 feet.

c. Stockpiles shall not be located in grassed waterways or areas where water ponds or has concentrated flow.

d. Stockpiles shall not be located within 200 feet of a terrace tile inlet or surface tile inlet or known sinkhole unless the stockpile is located so that any runoff from the stockpile will not reach the inlet or sinkhole.

e. Stockpiles shall not be located on land having a slope of more than 3 percent unless methods, structures or practices are implemented to contain the stockpiled solids, including but not limited to

hay bales, silt fences, temporary earthen berms, or other effective measures, and to prevent or diminish precipitation-induced runoff from the stockpiled solids.
[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.201(455B,459A) Departmental evaluation; CAFO designation; remedial actions.

65.201(1) The department may evaluate any AFO that is not defined as a large or medium CAFO, and designate it as a CAFO if, after an on-site inspection, it is determined to be a significant contributor of manure or process wastewater to waters of the United States. In making this determination, the department shall consider the following factors:

a. The size of the operation and the amount of manure or process wastewater reaching waters of the United States;

b. The location of the operation relative to waters of the United States;

c. The means of conveyance of manure or process wastewater to waters of the United States;

d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of manure or process wastewater into waters of the United States; and

e. Other relevant factors.

65.201(2) No AFO with an animal capacity less than that specified for a medium CAFO shall be designated as a CAFO unless manure or process wastewater from the operation is discharged into a water of the United States:

a. Through a manmade ditch, flushing system, or other similar manmade device; or

b. That originates outside of and passes over, across or through the facility or otherwise comes into direct contact with animals confined in the operation.

65.201(3) The owner or operator of a designated CAFO shall apply for an NPDES permit no later than 90 days after receiving written notice of the designation.

65.201(4) If departmental evaluation determines that any of the conditions listed in paragraph 65.201(4)*"a," "b,"* or *"c"* exist, the open feedlot operation shall institute necessary remedial actions within a time specified by the department to eliminate the conditions warranting the determination, if the operation receives a written notification from the department of the need to correct the conditions.

a. Settled open feedlot effluent, settleable solids from the open feedlot operation, or open feedlot effluent is being discharged into a water of the state and the operation is not providing the applicable minimum level of manure control as specified in rule 567—65.200(455B,459A);

b. Settled open feedlot effluent, settleable solids from the open feedlot operation, or open feedlot effluent is causing or may reasonably be expected to cause pollution of a water of the state; or

c. Settled open feedlot effluent, settleable solids from the open feedlot operation, or open feedlot effluent is causing or may reasonably be expected to cause a violation of state water quality standards.
[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.202(455B,459A) NPDES permits.

65.202(1) *Existing AFOs not holding an NPDES permit.* AFOs in existence prior to April 14, 2003, that were defined as CAFOs under rules that were in effect prior to April 14, 2003, but that have not obtained a permit, should have applied for an NPDES permit by April 14, 2003. AFOs in existence on April 14, 2003, that were not defined as CAFOs under rules that were in effect prior to April 14, 2003, shall apply for an NPDES permit no later than July 31, 2007.

65.202(2) *Expansion or modification of existing AFOs.* A person intending to expand or modify an existing AFO that, upon completion of the expansion or modification, will be defined as a CAFO and if the operation discharges pollutants to waters of the United States shall apply for an NPDES permit at least 90 days prior to the scheduled expansion or modification. Operation of the expanded portion of the facility shall not begin until an NPDES permit has been issued.

65.202(3) *New AFOs.* A person intending to construct a new AFO after July 22, 1987, or resuming a discontinued operation after 24 months or more, upon resumption or completion, will be defined as a CAFO and if the operation discharges pollutants to waters of the United States shall apply for an NPDES permit at least 180 days prior to the date operation of the animal feeding facility is scheduled. Operation of the facility shall not begin until an NPDES permit has been issued.

65.202(4) *Permits required as a result of departmental designation.* An AFO that is required to apply for an NPDES permit as a result of departmental designation (in accordance with the provisions of rule 567—65.201(455B,459A)) shall apply for an NPDES permit within 90 days of receiving written notification of the need to obtain a permit. Once application has been made, the AFO is authorized to continue to operate without a permit until the application has either been approved or disapproved by the department, provided that the owner or operator has submitted all requested information and promptly taken all steps necessary to obtain coverage.

65.202(5) *Application forms and requirements.* An application for an NPDES permit shall be made on a form provided by the department. The application shall be complete and shall contain information required by the department. Applications shall include an NMP as required in rule 567—65.209(455B,459A). Applications involving AT systems shall include results of predictive computer modeling as required by subrule 65.207(6). The application shall be signed and certified by the person who is legally responsible for the AFO and its associated manure or process wastewater control system.

65.202(6) *Compliance schedule.* When necessary to comply with a standard that must be met at a future date, an NPDES permit shall include a schedule for modification of the permitted facility to meet the standard. The schedule shall not relieve the permittee of the duty to obtain a construction permit pursuant to rule 567—65.203(455B,459A).

65.202(7) *Permit conditions.* NPDES permits shall contain conditions required by 40 CFR 122.41, monitoring conditions required by 40 CFR 122.48, and conditions considered necessary by the department to ensure compliance with all applicable rules of the department; to ensure that the production area and land application areas are operated and maintained as required by Iowa law; to protect the public health and beneficial uses of waters of the United States; and to prevent water pollution from manure storage or application operations. Any more stringent conditions of Iowa Code chapter 459A, subrule 62.4(12), and this chapter that apply to AFOs shall govern. For CAFOs that maintain cattle, swine, or poultry, the following applicable conditions shall be included:

a. NMP. Open feedlot CAFOs shall comply with the requirements of rule 567—65.209(455B,459A) and any additional NMP requirements for CAFOs in these rules. CAFOs that seek to obtain coverage under an NPDES permit shall have an NMP developed and implemented upon the date of permit coverage.

b. Inspections and recordkeeping.

(1) Visual inspections. Routine visual inspections of the CAFO production area must be conducted, and at a minimum, the following must be included:

1. Weekly inspections of all storm water diversion, runoff diversion structures, and devices channeling contaminated storm water to the open feedlot operation structure.

2. Daily inspection of water lines, including drinking water or cooling water lines.

(2) Corrective actions. Any deficiencies found as a result of the inspections required in subparagraph 65.202(7)*"b"*(1) or as a result of the liquid level reporting required in paragraph 65.202(7)*"e"* must be corrected as soon as possible.

(3) The following records must be maintained on site for a period of five years from the date they are created and must be made available to the department upon request:

1. Records documenting the inspections required in subparagraph 65.202(7)*"b"*(1).

2. Records of weekly liquid level observations as required in paragraph 65.202(7)*"e."*

3. Records documenting any actions taken to correct deficiencies as required in subparagraph 65.202(7)*"b"*(2).

c. Transfer of manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent. Prior to transferring manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent to other persons, a CAFO must provide the recipient of the manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent with the most current nutrient analysis. A CAFO must retain for five years records of the date, recipient name and address, nutrient analysis and approximate amount of manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent transferred to another person.

d. Minimum monitoring requirements for AT systems. Monitoring is required for the entire operational life of the AT system. The department may reduce or revise monitoring requirements after the first five years of system operation. During the first five years of operation of an AT system, the following minimum monitoring will be required:

(1) Discharge monitoring. An effluent collection point must be established at the outlet of the AT system, and the flow volume recorded and an effluent sample collected on each day a discharge from the AT system occurs. Discharge samples must be submitted to a certified laboratory and analyzed for: total Kjeldahl N, NH4 N, total P, COD, total suspended solids, and chloride.

(2) Discharge monitoring—tile lines. If the AT system includes a perforated tile system installed under any VTA berms to enhance infiltration within the VTA, water samples shall be collected from a sampling point located downgradient of the VTA on each individual tile line or combination of tile lines on the following schedule: one sample shall be taken from each sampling point in March or April of each year when the tile system is flowing and the level of flow in the tile system recorded at the time of sampling. If there is no discharge from the tile line at a time that meets these requirements, documentation on appropriate department forms can be substituted for the sample and analysis. Collected samples shall be submitted to a certified laboratory and analyzed for Ortho-phosphate as P.

(3) Groundwater monitoring. A minimum of two groundwater monitoring wells or piezometers (one upgradient and one downgradient) must be established at each AT system. Additional wells or piezometers may be required if the department determines they are necessary to adequately assess the impacts the AT system is having on groundwater. Samples must be collected from these wells in March or April of each year and analyzed for NH4 N, NO3 N, Ortho phosphate as P, and chloride.

(4) Soil sampling. Both shallow and deep soil sampling is required in the VTAs of an AT system.

1. Shallow soil sampling shall be conducted prior to initial discharge of open feedlot effluent into the AT system and repeated annually. Within the VTA, a minimum of three sampling locations shall be established at the entrance to each VTA to be sampled. The three sampling locations shall be spread evenly across the entrances to adequately monitor the effluent application onto the VTAs. Samples shall be collected in the spring. Each sample shall be taken to a depth of six inches and analyzed for pH and P using the Mehlich-3 method.

2. Deep soil sampling shall be conducted prior to initial discharge of open feedlot effluent into the AT system and repeated every five years prior to the submission of an application for an NPDES permit renewal. A minimum of two sampling sites shall be established within each VTA to be sampled, one located where runoff enters the VTA, generally the same location as the shallow soil sampling location, and one where runoff is discharged from the VTA. Soil samples shall be taken from these sites to a depth of four feet, with separate samples taken to represent the 0 to 6-inch depth, the 6- to 12-inch depth, and in one-foot increments thereafter. All samples shall be analyzed for NO3 N, NH4 N, pH, and P by the Mehlich-3 method.

If the length of effluent flow through the VTA exceeds 400 feet, an additional soil sample representing the zero to six-inch depth should be taken for each additional 200 feet of VTA length. Samples shall be analyzed for NO3 N, NH4 N, pH, and P by the Mehlich-3 method.

e. Quarterly reporting requirements for large CAFOs with outside liquid impoundments. A permittee with outside liquid impoundments must submit quarterly reports by April 10, July 10, October 10, and January 10, following the respective calendar quarters; documenting daily precipitation; weekly impoundment liquid levels; volume of liquid removed from the impoundments; and the date, time, duration, and estimated volume of any overflow. Liquid levels must be obtained by observing a depth marker that clearly indicates the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour precipitation event.

f. Annual reporting requirements for all CAFOs with systems other than AT systems. Permittees with systems other than an AT system must submit an annual report to the department by January 10 of the following year. The annual report must include:

(1) The number and type of animals in the open feedlot operation;

(2) Estimated amount of manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent generated by the CAFO in the previous 12 months (tons/gallons);

(3) Estimated amount of total manure transferred to other persons by the CAFO in the previous 12 months (tons/gallons);

(4) Total number of acres for land application covered by the NMP and the total number of acres under control of the CAFO that were used for land application of manure in the previous 12 months;

(5) Summary of all manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume;

(6) A statement indicating whether the current version of the CAFO's NMP was developed or approved by a certified nutrient management planner;

(7) Actual crops planted and actual yield for the preceding 12 months; and

(8) Results of all samples of manure, litter and process wastewater for nitrogen and phosphorus content for manure, litter and process wastewater that was land-applied.

g. Quarterly reporting requirements for CAFOs with AT systems. A permittee with an AT system must submit quarterly reports by April 10, July 10, October 10, and January 10, following the respective calendar quarters. The quarterly reports shall provide all of the following information:

(1) Daily precipitation.

(2) Dates on which manure, process wastewater, settled open feedlot effluent, open feedlot effluent, or settleable solids were removed from the production area and estimated amounts of manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent removed (tons/gallons).

(3) Dates on which discharges from the production area or the AT system occurred and the estimated duration and volume of discharge on each discharge date.

(4) Results of laboratory analyses of discharge samples for each date a discharge from the production area or the AT system occurred. If the results of laboratory analyses are not available by the due date of the quarterly report, the results shall be provided with the following quarter's report.

h. Annual reporting requirements for CAFOs with AT systems. A permittee shall submit an annual report by January 10 of the following year. The annual report must include all of the following:

(1) The number and type of animals in the open feedlot operation.

(2) Estimated amount of total manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent generated by the CAFO in the previous 12 months (tons/gallons).

(3) Estimated amount of total manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent transferred to other persons by the CAFO in the previous 12 months (tons/gallons).

(4) Total number of acres for land application covered by the NMP and the total number of acres under control of the CAFO that were used for land application of manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent in the previous 12 months.

(5) Summary of all manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent discharges from the production area or AT system that have occurred in the previous 12 months, including date, time, and approximate volume.

(6) Harvest dates and estimated amounts of forage removed from the AT system during the previous 12 months.

(7) Results of soil and groundwater monitoring well sampling within the AT system during the previous 12 months.

(8) A statement indicating whether the current version of the CAFO's NMP was developed or approved by a certified nutrient management planner.

65.202(8) *NPDES permit renewal.*

a. General requirements. An NPDES permit may be granted for any period of time not to exceed five years. An application for renewal of an NPDES permit must be submitted to the department at least 180 days prior to the date the permit expires. Each permit to be renewed shall be subject to the rules of the department in effect at the time of renewal. A permitted AFO that ceases to be a CAFO will be exempted from the need to retain an NPDES permit if the permittee can demonstrate to the satisfaction

of the department that there is no remaining potential for a discharge of manure that was generated while the operation was a CAFO, other than agricultural storm water from land application areas.

b. *Permits involving use of AT systems.*

(1) Renewal of a permit involving use of an AT system is contingent upon proper operation and maintenance of the AT system, submittal of all required records and reports, and demonstration that the AT system is providing an equivalent level of performance to that achieved by a containment system that is designed and operated as required by statute, subrule 62.4(12) and this division of this chapter.

(2) If departmental review of an AT system indicates the system is not meeting the equivalent performance standard, the permittee may either be required to make needed system modifications to enable compliance with this standard or be required to install a conventional runoff containment system. Open feedlot operations found to be in compliance with the equivalent performance standard will be issued a five-year NPDES permit that allows continued use of the AT system.

65.202(9) *Permit amendment, revocation, and reissuance or termination.* The department may amend, revoke and reissue or terminate in whole or part any NPDES permit for cause, either at the request of any interested person, including the permittee, or upon the director's initiative. Any more stringent requirement pursuant to 40 CFR 122.62, 122.63 or 122.64 shall control. All requests shall be in writing and shall contain reasons for the request. Cause for permit amendment, revocation and reissuance, or termination may include but is not limited to the following:

a. Violation of any term or condition of the permit.

b. Obtaining a permit by misrepresentation of fact or failure to disclose fully all material facts.

c. A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

d. Failure to retain, make available, or submit the records and information that the department requires in order to ensure compliance with the operation and discharge conditions of the permit.

e. Failure to provide all required application material or appropriate fees.

f. A determination by the department that the continued operation of a CAFO constitutes a clear, present and impending danger to public health or the environment.

[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.203(455B,459A) Construction permits.

65.203(1) *Open feedlot operations required to obtain a construction permit.* An open feedlot operation must obtain a construction permit prior to any of the following:

a. Constructing or expanding a settled open feedlot effluent basin or AT system or installing a settled open feedlot effluent transfer piping system if the open feedlot operation is required to be issued an NPDES permit.

b. Increasing the animal unit capacity of the open feedlot operation to more than the animal unit capacity approved by the department in a previous construction permit.

c. Increasing the volume of settled open feedlot effluent, settleable solids or open feedlot effluent stored at the open feedlot operation to more than the volume approved by the department in a previous construction permit.

d. Repopulating the open feedlot operation if it was discontinued for 24 months or more and the animal unit capacity will be 1,000 animal units or more.

65.203(2) *When a construction permit is not required.*

a. *Research colleges.* A construction permit is not required for construction of a settled open feedlot effluent basin or AT system if the basin or system is part of an open feedlot operation that is owned by a research college conducting research activities as provided in Iowa Code section 459A.105.

b. *Solids settling facilities.* If only solids settling facilities are being constructed, a construction permit is not required. If solids settling facilities are proposed as part of a project that includes facilities that require a construction permit, then the proposed solids settling facilities are subject to a construction permit.

65.203(3) *Applications that cannot be approved.* The department shall not approve an application for a construction permit unless the applicant submits all of the following:

a. An NMP as provided in rule 567—65.209(455B,459A).

b. An engineering report, construction plans, and specifications prepared by a PE or an NRCS-qualified staff person certifying that the design of the settled open feedlot effluent basin or AT system complies with the construction design standards required in this division.

65.203(4) *Plan review criteria; time for approval or disapproval.*

a. Plan review criteria. Review of plans and specifications shall be conducted by the department to determine the potential of the settled open feedlot effluent basin or AT system to achieve the level of control being required of the open feedlot operation. Applicable criteria contained in federal law, state law, these rules, NRCS design standards and specifications, unless inconsistent with federal or state law or these rules, and United States Department of Commerce precipitation data will be used in the review of large CAFOs. If the proposed facility plans are not adequately covered by these criteria, applicable criteria contained in current technical literature shall be used. Medium CAFOs and designated CAFOs shall be evaluated using the department's professional judgment.

b. Time for approval or disapproval. The department shall approve or disapprove an application for a construction permit within 60 days after receiving the permit application. However, the applicant may deliver a notice requesting a continuance. Upon receipt of a notice, the time required for the department to act upon the application shall be suspended for the period provided in the notice but for not more than 30 days after the department's receipt of the notice. The applicant may submit more than one notice. If review of the application is delayed because the application is incomplete, and the applicant fails to supply requested information within a reasonable time prior to the deadline for action on the application, the permit may be denied and a new application will be required if the applicant wishes to proceed. The department may also provide for a continuance when it considers the application. The department shall provide notice to the applicant of the continuance. The time required for the department to act upon the application shall be suspended for the period provided in the notice but for not more than 30 days. However, the department shall not provide for more than one continuance.

65.203(5) *Expiration of construction permits.* The construction permit shall expire if construction, as defined in rule 567—65.6(455B,459,459A,459B), is not begun within one year and completed within three years of the date of issuance. The director may grant an extension of time to begin or complete construction if it is necessary or justified, upon showing of such necessity or justification to the director.

65.203(6) *Revocation of construction permits.* The department may suspend or revoke a construction permit, modify the terms or conditions of a construction permit, or refuse to renew a permit expiring according to subrule 65.203(5) if it determines that the operation of the open feedlot operation constitutes a clear, present and impending danger to public health or the environment.

65.203(7) *Permit prior to construction.* An applicant for a construction permit shall notify the department prior to the start of construction for any open feedlot operation structure not required to be covered by a construction permit. The applicant shall not begin construction of a settled open feedlot effluent basin or AT system, or begin installation of a settled open feedlot effluent transfer piping system, until the person has been granted a permit for the construction by the department.

[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.204(455B,459A) Construction permit application. An open feedlot operation required to obtain a construction permit in accordance with the provisions of subrule 65.203(1) shall apply for a construction permit at least 90 days before the date that construction, installation, or modification is scheduled to start.

65.204(1) Conceptual design. Prior to submitting an application for a construction permit, the applicant may submit a conceptual design and site investigation report to the department for review and comment.

65.204(2) Application for a construction permit for an open feedlot operation shall be made on a form provided by the department. The application shall include all of the information necessary to enable the department to determine the potential of the proposed settled open feedlot effluent basin or AT system to achieve the level of control required of the open feedlot operation. A construction permit application shall include the following:

a. The name of the owner of the open feedlot operation and the name of the open feedlot operation, including the owner's mailing address and telephone number.

b. The name of the contact person for the open feedlot operation, including the person's mailing address and telephone number.

c. The location of the open feedlot operation.

d. A statement providing that the application is for any of the following:

(1) The construction or expansion of a settled open feedlot effluent basin or AT system for an existing open feedlot operation that is not expanding;

(2) The construction or expansion of a settled open feedlot effluent basin or AT system for an existing open feedlot operation that is expanding;

(3) The construction of a settled open feedlot effluent basin or AT system for a proposed new open feedlot operation.

e. The animal unit capacity for each animal species in the open feedlot operation before and after the proposed construction.

f. An engineering report, construction plans and specifications prepared by a PE or by an NRCS-qualified staff person for the settled open feedlot effluent basin or AT system.

g. A report on the soil and hydrogeologic information for the site, as described in subrules 65.206(2) and 65.207(4).

h. Information including but not limited to maps, drawings and aerial photos that clearly show the location of all the following:

(1) The open feedlot operation and all existing and proposed settled open feedlot effluent basins or AT systems, clean water diversions, and other pertinent features or structures.

(2) Any other open feedlot operation under common ownership or common management and located within 1,250 feet of the open feedlot operation.

(3) Any public water supply system as defined in Iowa Code section 455B.171 or drinking water well that is located less than the distance from the open feedlot operation required by rule 567—65.205(455B,459A). Information shall also be provided as to whether the proposed settled open feedlot effluent basin or AT system will meet all applicable separation distances.

[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.205(455B,459A) Water well separation distances for open feedlot operations.

65.205(1) *Unformed settled open feedlot effluent basins.* Unformed settled open feedlot effluent basins shall be separated from water wells as follows:

a. Public wells. 1,000 feet from shallow wells and 400 feet from deep wells;

b. Private wells. 400 feet from both shallow wells and deep wells.

65.205(2) *Open feedlots, solids settling facilities, formed settled open feedlot effluent basins, feed storage runoff control structures and AT systems.* Open feedlots, solids settling facilities, formed settled open feedlot effluent basins, feed storage runoff control structures and AT systems shall be separated from water wells as follows: for both public wells and private wells, 200 feet from shallow wells and 100 feet from deep wells.

[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.206(455B,459A) Settled open feedlot effluent basins—investigation, design and construction requirements. A settled open feedlot effluent basin required to be constructed pursuant to a construction permit issued pursuant to Iowa Code section 459A.205 shall meet the design and construction requirements set forth in this rule.

65.206(1) *Drainage tile investigation and removal.* Prior to constructing a settled open feedlot effluent basin, the site for the basin shall be investigated for drainage tile lines as provided in this subrule. All applicable records of known drainage tiles shall be examined for the existence of drainage tile lines. Prior to the excavation for an unformed manure storage structure, an inspection trench of at least ten inches wide shall be dug around the structure to a depth of at least 6 feet below the original grade and within 25 feet of the proposed outside of the toe of the berm. Drainage tile lines discovered during the tile inspection of a settled open feedlot effluent basin shall be removed and rerouted in the

inspection trench or in an area outside of the inspection trench. All tiles within the inspection trench perimeter shall be removed or completely plugged with concrete, grout or similar materials. Drainage tile lines installed at the time of construction to lower the groundwater may remain in place as long as they are outside of the proposed toe of the berm.

65.206(2) *Soils and hydrogeologic report.* A settled open feedlot effluent basin required to be constructed pursuant to a construction permit issued pursuant to rule 567—65.203(455B,459A) shall meet design standards as required by a soils and hydrogeologic report. The report shall be submitted with the construction permit application as provided in rule 567—65.204(455B,459A). The report shall include all of the following:

a. A description of the steps taken to determine the soils and hydrogeologic conditions at the proposed construction site, a description of the geologic units encountered, and a description of the effects of the soil and groundwater elevation and direction of flow on the construction and operation of the basin.

b. The subsurface soil classification of the site. A subsurface soil classification shall be based on ASTM international designation D 2487-06 or D 2488-06.

c. The results of a soils investigation conducted at a minimum of three locations within the area of the basin reflecting the continuous soil profile existing within the area of the basin. The soils investigation results shall be used in determining subsurface soil characteristics and groundwater elevation and direction of flow at the proposed site. The soils investigation shall be conducted and utilized as follows:

(1) By a qualified person ordinarily engaged in the practice of performing soils investigations.

(2) At locations that reflect the continuous soil profile conditions existing within the area of the proposed basin, including conditions found near the corners and the deepest point of the proposed basin. The soils investigation shall be conducted to a minimum depth of ten feet below the proposed bottom elevation of the basin.

(3) By methods that identify the continuous soil profile and do not result in mixing of soil layers. Soil corings using hollow stem augers and other suitable methods that do not result in soil layer mixing may be used.

(4) Soil corings may be used to determine current groundwater levels by completing the corings as temporary monitoring wells as provided in subparagraph 65.206(3)*"a"*(1) and measuring the water levels in these wells no earlier than seven days after installation as provided in subparagraph 65.206(3)*"a"*(2).

(5) Upon abandonment of soil core holes, all soil core holes including those developed as temporary water level monitoring wells shall be plugged with concrete, Portland cement concrete grout, bentonite, or similar materials.

(6) If excavation methods are used in conducting the soils investigation, upon closure these excavations must be filled with suitable materials and adequately compacted to ensure they will not compromise the integrity of the basin liner.

65.206(3) *Hydrology.*

a. For purposes of this rule, groundwater table is the seasonal high-water table determined by a PE, a groundwater professional certified pursuant to 567—Chapter 134, or qualified staff from the department or NRCS. If a construction permit is required, the department must approve the groundwater table determination.

(1) Current groundwater levels shall be measured as provided in this subparagraph for either a formed settled open feedlot effluent basin or an unformed settled open feedlot effluent basin. Three temporary monitoring wells shall be developed according to paragraph 65.108(6)*"c."* The top of the well screen shall be within five feet of the ground surface. Each well shall be extended to at least two feet below the proposed top of the liner of an unformed settled open feedlot effluent basin, or to at least two feet below the proposed bottom of the footings of a formed settled open feedlot effluent basin. In addition, the wells must be installed as follows:

1. Unformed basins. For an unformed settled open feedlot effluent basin, the monitoring wells may be installed in the soil core holes developed as part of conducting the soils investigation required in paragraph 65.206(2)*"c."*

2. Formed basins. For a formed settled open feedlot effluent basin, at least three temporary monitoring wells shall be installed as close as possible to three corners of the structure, with one of the wells close to the corner of deepest excavation. If the formed settled open feedlot effluent basin is circular, the three monitoring wells shall be equally spaced and one well shall be placed at the point of deepest excavation.

(2) The seasonal high-water table shall be determined by considering all relevant data, including the groundwater levels measured in the temporary monitoring wells not earlier than seven days following installation, NRCS soil survey information, soil characteristics such as color and mottling, other existing water table data, and other pertinent information. If a drainage system for artificially lowering the groundwater table will be installed in accordance with the requirements of paragraph 65.206(3)*"c,"* the level to which the groundwater table will be lowered will be considered to represent the seasonal high-water table.

b. The settled open feedlot effluent basin shall be constructed with a minimum separation of two feet between the top of the liner of the basin and the seasonal high-water table.

c. If a drainage tile line around the perimeter of the basin is installed a minimum of two feet below the top of the basin liner to artificially lower the seasonal high-water table, the top of the basin's liner may be a maximum of four feet below the seasonal high-water table which existed prior to installation of the perimeter tile system. The seasonal high-water table may be artificially lowered by gravity flow tile lines or other similar system. However, the following shall apply:

(1) Except as provided in subparagraph 65.206(3)*"b"*(2), an open feedlot operation shall not use a nongravity mechanical system that uses pumping equipment.

(2) If the open feedlot operation was constructed before July 1, 2005, the operation may continue to use its existing nongravity mechanical system that uses pumping equipment or it may construct a new nongravity mechanical system that uses pumping equipment. However, an open feedlot operation that expands the area of its open feedlot on or after April 1, 2011, shall not use a nongravity mechanical system that uses pumping equipment.

(3) Drainage tile lines may be installed to artificially lower the seasonal high-water table at a settled open feedlot effluent basin, if all of the following conditions are satisfied:

1. A device to allow monitoring of the water in the drainage tile lines and a device to allow shutoff of the flow in the drainage tile lines are installed, if the drainage tile lines do not have a surface outlet accessible on the property where the settled open feedlot effluent basin is located.

2. Drainage tile lines are installed horizontally within 25 feet away from the outside toe of the berm of the settled open feedlot effluent basin. Drainage tile lines shall be placed in a vertical trench and encased in granular material that extends upward to the level of the seasonal high-water table which existed prior to installation of the perimeter tile system.

d. Open feedlot operation structures exceeding storage capacity or dam height thresholds may be required to obtain department permits, as specified in rule 567—71.3(455B) and 567—Chapter 73.

65.206(4) *Liner design and construction.* The liner of a settled open feedlot effluent basin shall comply with all of the following:

a. The liner shall be constructed to have a percolation rate that shall not exceed one-sixteenth inch per day at the design depth of the basin as determined by percolation tests conducted by the PE. If a clay soil liner is used, the liner shall be constructed with a minimum thickness of 12 inches or the minimum thickness necessary to comply with the percolation rate in this paragraph, whichever is greater.

b. The liner shall be constructed to have a percolation rate that shall not exceed one-sixteenth inch per day at the design depth of the basin. The design of the liner will specify a moisture content, compaction requirement, and liner thickness that will comply with the maximum allowable percolation requirement, and will be based on moisture content and percentage of maximum density as determined by a standard 5-point proctor test performed in accordance with ASTM D698 (Method A), effective November 11, 1991. The liner thickness will be based on laboratory tests of the compacted material,

with a minimum liner thickness of 12 inches. Appropriate field or laboratory testing during construction shall be provided to verify the design requirements are met.

65.206(5) *Berm erosion inspection and repair.* The owner of an open feedlot operation using a settled open feedlot effluent basin shall inspect the berms of the basin at least semiannually for evidence of erosion. If the inspection reveals erosion which may impact the basin's structural stability or the integrity of the basin's liner, the owner shall repair the berms.

65.206(6) *Unformed basins containing confinement manure and open feedlot effluent.* Unformed basins containing confinement manure and open feedlot effluent shall meet the confinement construction standards and separation distance requirements provided in Division II of this chapter. The unformed basin design shall ensure adequate storage for the annual manure generation of confinement animals, the annual runoff from the open feedlot portion, including the basin surface area, and the open feedlot runoff resulting from the 25-year, 24-hour precipitation event below the two-foot freeboard level.

65.206(7) *Settled open feedlot effluent basin (SOFEB) design and operation requirements.*

a. All SOFEBs shall have a minimum ten-foot wide top of dike.

b. All SOFEBs shall have a minimum three-foot horizontal to one-foot vertical interior and exterior side slopes.

c. All SOFEBs shall have depth markers installed labeling each foot of depth and critical pumping depths noted according to the designed operating system.

d. All SOFEBs shall be designed using the latest available NOAA Atlas 14 Volume 8 Version 2, effective 2013, rainfall data for the county where the SOFEB is located. NOAA data can be obtained from the National Weather Service website.

[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.207(455B,459A) AT systems—design requirements.

65.207(1) *Containment volume.*

a. Adequate capacity must be provided within the AT system or within the solids settling facility for the open feedlot operation to contain expected open feedlot effluent from November 1 to March 30 or to hold the precipitation event as required by paragraph 65.200(2)*"a,"* whichever is greater. Controls on the solids settling facility or the AT system shall prevent release of collected open feedlot effluent to waters of the United States during the period from November 1 to March 30.

b. If the containment volume required in paragraph 65.207(1)*"a"* is provided in an open feedlot operation structure whose primary purpose is to remove settleable solids from open feedlot effluent prior to discharge into an AT system, the basin shall not be required to comply with the liner design and construction requirements of subrule 65.206(4), provided the basin does not retain collected open feedlot effluent for more than seven consecutive days following a precipitation event during the period from March 30 to November 1.

65.207(2) *Solids settling.* Settleable solids shall be removed from open feedlot effluent prior to discharge of the effluent into an AT system. Solids settling shall be conducted in conformance with the requirements of paragraph 65.200(1)*"b."*

65.207(3) *Drainage tile investigation and removal.* Prior to constructing an AT system, the owner of the open feedlot operation shall investigate the site for the AT system for drainage tile lines. The investigation shall be made by digging a core trench to a depth of at least six feet from ground level at the projected center of the berm of the AT system. A written record of the investigation shall be submitted as part of the construction certification required in rule 567—65.208(455B,459A). If a drainage tile line is discovered, one of the following solutions shall be implemented:

a. The drainage tile line shall be rerouted around the perimeter of the AT system at a distance of least 25 feet horizontally separated from the toe of the outside berm of the AT system. For an area of the system where there is not a berm, the drainage tile line shall be rerouted at least 50 feet horizontally separated from the edge of the system.

b. The drainage tile line shall be replaced with a nonperforated tile line under the AT system. The nonperforated tile line shall be continuous and without connecting joints. There must be a minimum of three feet of separation between the nonperforated tile line and the soil surface of the AT system.

65.207(4) *Soils and hydrogeologic report.* An AT system constructed pursuant to a construction permit issued pursuant to rule 567—65.203(455B,459A) shall meet design standards as required by a soils and hydrogeologic report. The report shall be submitted with the construction permit application as provided in rule 567—65.204(455B, 459A). The report shall include all of the following:

a. A description of the steps taken to determine the soils and hydrogeologic conditions at the proposed construction site, a description of the geologic units encountered, and a description of the effects of the soil and groundwater elevation and direction of flow on the construction and operation of the AT system.

b. Subsurface soil classification of the site. A subsurface soil classification shall be based on ASTM international designation D 2487-06 or D 2488-06.

c. The results of a soils investigation conducted at a minimum of three locations within the area of the proposed AT system for AT systems of five acres or less, with one additional soils investigation site utilized for each additional three acres of surface area or fraction thereof. The soils investigation results shall be used in determining subsurface soil characteristics and groundwater elevation and direction of flow at the proposed AT system site. The soils investigation shall be conducted and utilized as follows:

(1) By a qualified person ordinarily engaged in the practice of performing soils investigations.

(2) At locations that reflect the continuous soil profile conditions existing within the area of the proposed AT system. The soils investigation shall be conducted to a minimum depth of ten feet below the elevation of the soil surface of the proposed AT system.

(3) By methods that identify the continuous soil profile and do not result in mixing of soil layers. Investigation methods may include soil corings using hollow stem augers, soil test pits, or other suitable methods that do not result in soil layer mixing.

(4) Soil core holes may be used to determine current groundwater levels by completing the core holes as temporary monitoring wells and measuring the water levels in these wells not earlier than seven days after installation.

(5) Upon abandonment of the soil core holes, all soil core holes, including those developed as temporary water level monitoring wells, shall be plugged with concrete, Portland cement concrete grout, bentonite, or similar materials.

(6) If soil test pits or other excavation methods are used in conducting the soils investigation, upon closure these excavations must be filled with suitable materials and adequately compacted to ensure they will not compromise the integrity of the AT system.

65.207(5) *Hydrology—groundwater table.* For purposes of this rule, groundwater table is the seasonal high-water table determined by a PE, a groundwater professional certified pursuant to 567—Chapter 134, or qualified staff from the department or NRCS. If a construction permit is required, the department must approve the groundwater table determination.

a. Groundwater level measurements. Groundwater levels shall be measured using at least one of the following methods:

(1) Temporary monitoring wells. Three temporary monitoring wells shall be developed to a minimum of ten feet below the surface of the proposed AT system and constructed in accordance with requirements of paragraph 65.109(6)*"c."* The top of the well screen shall be within five feet of the ground surface. These monitoring wells may be installed in the soil core holes developed as part of conducting the soils investigation required in paragraph 65.207(4)*"c."*

(2) Test pits. Test pits may be used in lieu of temporary monitoring wells to determine the seasonal high-water table or prior to the construction of an AT system to ensure the required separation distance to the seasonal high-water table is being met. The bottom of each pit shall be a minimum of five feet below the proposed surface of the AT system. However, if the test pit is also being used to conduct the soils investigation required in paragraph 65.207(4)*"c,"* the bottom of the pit shall be a minimum of ten feet below the surface of the proposed AT system. Each pit shall be allowed to remain open and unaltered for a minimum of seven days for viewing by the department or an NRCS-qualified staff person. Adequate protection (temporary berms and covers) shall be provided to prevent surface runoff from entering the test pits. Test pits shall be located as needed to provide an accurate assessment of soil materials and

seasonal high groundwater levels throughout the area of the proposed AT system. A description of the materials present in the test pit shall be documented by all of the following:

1. Digital photos;
2. Description of soils including mottling;
3. Weather conditions both prior to and during the period in which test pits are open.

b. Determination of seasonal high-water table. The seasonal high-water table shall be determined by considering all relevant data, including the groundwater levels measured in the temporary monitoring wells or test pits not earlier than seven days following installation, NRCS soil survey information, soil characteristics such as color and mottling found in soil cores and test pits, other existing water table data, and other pertinent information. If a drainage system for artificially lowering the groundwater table will be installed, the level to which the groundwater table will be lowered will be considered to represent the seasonal high-water table.

c. Seasonal high-water table. The seasonal high-water table shall be a minimum of four feet below the finished grade of a VTA.

65.207(6) *Stand-alone VTA.*

a. Computer modeling. Results of predictive computer modeling for the proposed alternative technology system shall be used to determine suitability of the proposed site for the system and to predict performance of the alternative technology system as compared to the use of a 25-year, 24-hour runoff containment system, over a 25-year period. A summary of the computer modeling results shall be approved and provided to the department.

b. Size. The computer model used to determine whether the proposed AT system will meet the equivalent performance standard shall also be used to establish the minimum required size of the VTA. However, in no case shall the size of the VTA be less than the following:

(1) 100 percent of the total drainage area (feedlot and other) served if the soil permeability is from six-tenths of an inch to two inches per hour.

(2) 200 percent of the total drainage area (feedlot and other) served if the soil permeability is from two-tenths to six-tenths of an inch per hour.

c. Slope. The constructed VTA shall be level in one dimension and have a slight slope (maximum of 5 percent) in the other dimension.

d. Berming. The VTA must be bermed to prevent inflow of surface water from outside areas.

e. Spreaders. Settled open feedlot effluent must be discharged evenly across the top width of the VTA and allowed to slowly flow downslope through the VTA. Level spreaders, at a maximum six inches tall, or other practices may be required to maintain uniform flow of settled open feedlot effluent across the width of the VTA as flow moves downslope through the VTA.

f. Soil permeability. Soil permeability within the VTA must be from two-tenths to two inches per hour throughout the soil profile to a depth of five feet. Soil permeability must be verified by conducting on-site or laboratory soil permeability testing.

g. Groundwater lowering system. The seasonal high-water table within the VTA must be capable of being lowered to a depth of four to five feet with a perimeter tile system installed outside of the VTA. Design information must be provided that demonstrates the adequacy of the proposed groundwater lowering system. The tile system must satisfy the following requirements:

(1) If the tile system does not have a surface outlet accessible on the property where the AT system is located, a device to allow monitoring of the water in the tile system and a device to allow shutoff of the flow in the tile system must be installed.

(2) Tile lines in the system must be installed horizontally at least 25 feet away from the outside toe of the berm of the VTA.

h. Tile system to enhance infiltration within the VTA. A tile system may be installed at the perimeter of the VTA cells to enhance infiltration within the VTA. The tile system must satisfy the following requirements:

(1) Tile lines shall be installed at the centerline of the berms of the VTA cells.

(2) The tile lines shall be constructed such that no settled open feedlot effluent can enter the lines except through infiltration through the soil profile.

(3) A shutoff valve and sampling point located downslope of the VTA cell shall be provided for each individual tile line. However, if multiple tile lines are brought together into a common tile line, a single shutoff valve and sampling point may be utilized.

(4) Monitoring of the tile lines must be conducted in accordance with the requirements of subparagraph 65.202(7)*"d"*(2).

i. Depth to sands, gravels, or glacial outwash. A VTA is not allowed if the depth to sands, gravels, or glacial outwash is less than six feet. A soils investigation that documents sands found are in isolated sand lenses that will not have a significant impact on subsurface water flow or groundwater quality shall not prohibit use of the site.

j. Depth to bedrock. A minimum of ten feet of overburden or loose material must exist between the surface of the constructed VTA and underground bedrock.

k. Flooding. The VTA must be constructed in areas that are not subject to flooding more frequently than once in 25 years.

l. Distance to water bodies. The following distances, measured along the path of water flow, shall be provided between the point of discharge from the VTA and the receiving water body.

(1) Designated use streams referenced in 567—subrule 61.3(5). A minimum distance of 500 feet or ½ foot distance per animal unit capacity of the feedlot area which drains to the VTA, whichever is greater, shall be provided.

(2) All other uncrossable intermittent streams. A minimum distance of 200 feet shall be provided.

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567—65.208(455B,459A) Construction certification.

65.208(1) The owner of an open feedlot operation who is issued a construction permit for a settled open feedlot effluent basin or AT system as provided in rule 567—65.203(455B,459A) shall submit to the department a construction certification from a PE certifying all of the following:

a. The settled open feedlot effluent basin or AT system was constructed in accordance with the design plans submitted to the department as part of an application for a construction permit pursuant to rule 567—65.204(455B,459A). If the actual construction deviates from the approved design plans, the construction certification shall identify all changes and certify that the changes were consistent with all applicable standards of these rules.

b. The settled open feedlot effluent basin or AT system was inspected by the PE after completion of construction and before commencement of operation.

65.208(2) A written record of an investigation for drainage tile lines, including the findings of the investigation and actions taken to comply with subrules 65.206(1) and 65.207(3), shall be submitted as part of the construction certification.

[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.209(455B,459A) NMP requirements.

65.209(1) The owner of an open feedlot operation that has an animal unit capacity of 1,000 animal units or more or that is required to be issued an NPDES permit shall develop and implement an NMP meeting the requirements of this rule. The owner of an open feedlot operation who seeks to obtain or is required to be issued an NPDES permit shall develop and implement an NMP meeting the requirements of this rule no later than the date on which the NPDES permit becomes effective. For the purpose of this rule, requirements pertaining to open feedlot effluent also apply to settled open feedlot effluent and settleable solids.

65.209(2) Not more than one open feedlot operation shall be covered by a single NMP. For an open feedlot operation that is required to have an NPDES permit and the AFO includes an open feedlot operation and a confinement feeding operation, the NMP must include both the open feedlot operation and the confinement feeding operation if the confinement feeding operation does not have an MMP. If the confinement feeding operation portion of the AFO does have an MMP as required in rules 567—65.110(455B,459,459B) and 567—65.111(455B,459,459B), the confinement feeding operation portion shall not be included in the NMP; however, in that event, the MMP must be amended to include the information specified in paragraph 65.209(8)*"e."*

65.209(3) A person shall not remove manure, process wastewater or open feedlot effluent from an open feedlot operation structure that is part of an open feedlot operation for which an NMP is required under this rule, unless the department approves an NMP as required in this rule.

65.209(4) The department shall not approve an application for a permit to construct a settled open feedlot effluent basin or AT system unless the owner of the open feedlot operation applying for approval submits an NMP together with the application for the construction permit as provided in rule 567—65.203(455B,459A). The owner shall also submit proof that the owner has published a notice for public comment as provided in subrule 65.209(7).

65.209(5) If a construction permit is required as provided in rule 567—65.203(455B,459A), the department shall approve or disapprove the NMP as part of the construction permit application. If a construction permit is not required, the department shall approve or disapprove the NMP within 60 days from the date that the department receives the NMP.

65.209(6) Prior to approving or disapproving an NMP as required in this rule, the department may receive comments exclusively to determine whether the NMP is submitted according to procedures required by the department and that the NMP complies with the provisions of this rule.

65.209(7) Public notice.

a. The owner of the open feedlot operation shall publish a notice for public comment in a newspaper having a general circulation in the county where the open feedlot operation is or is proposed to be located and in the county where manure, process wastewater, or open feedlot effluent that originates from the open feedlot operation may be applied under the terms and conditions of the NMP.

b. The notice for public comment shall include all of the following:

(1) The name of the owner of the open feedlot operation submitting the NMP.

(2) The name of the township where the open feedlot operation is or is proposed to be located and the name of the township where manure, process wastewater, or open feedlot effluent originating from the open feedlot operation may be applied.

(3) The animal unit capacity of the open feedlot operation.

(4) The time when and the place where the NMP may be examined as provided in Iowa Code section 22.2.

(5) Procedures for providing public comment to the department. The notice shall also include procedures for requesting a public hearing conducted by the department. The department is not required to conduct a public hearing if it does not receive a request for the public hearing within ten days after the first publication of the notice for public comment as provided in this subrule. If such a request is received, the public hearing must be conducted within 30 days after the first date that the notice for public comment was published.

(6) A statement that a person may acquire information relevant to making comments under this subrule by accessing the department's Internet website. The notice for public comment shall include the address of the department's Internet website as required by the department.

65.209(8) Except as provided in paragraph 65.209(8)*"f,"* an NMP shall include all of the following:

a. An estimate of the nitrogen and phosphorus concentration of manure, process wastewater and open feedlot effluent and an estimate of the manure, process wastewater, and open feedlot volume or weight produced by the open feedlot operation, in accordance with subrule 65.111(3).

b. Application rate calculations consistent with the requirements of subrule 65.111(12). The 100 pounds of available nitrogen per acre limitation specified in paragraph 65.111(13)*"c"* (applicable to open feedlot operations and combined open feedlot operations and confinement operations with an NPDES permit because of requirements in subrule 65.111(4)) pertaining to liquid manure applied to land currently planted to soybeans or to land where a soybean crop is planned applies only to liquid manure, process wastewater or settled open feedlot effluent.

c. The location of manure application. If the application is on land other than land owned or rented for crop production by the owner of the open feedlot operation, the plan shall include a copy of each written agreement executed by the owner of the open feedlot operation and the landowner or the person renting the land for crop production where the manure, process wastewater or open feedlot

effluent may be applied. The written agreement shall indicate the number of acres on which the manure, process wastewater or effluent may be applied and the length of the agreement.

d. A phosphorus index of each field in the nutrient management plan, as defined in paragraph 65.111(12)*"a,"* including the factors used in the calculation. A copy of the NRCS phosphorus index detailed report shall satisfy the requirement to include the factors used in the calculation.

e. Information that shows all of the following:

(1) There is adequate storage for manure, process wastewater, stockpiled manure and open feedlot effluent, including procedures to ensure proper operation and maintenance of the storage structures.

(2) The proper management of animal mortalities to prevent discharge of pollutants to surface water and to ensure that animals are not disposed of in an open feedlot operation structure or a treatment system that is not specifically designed to treat animal mortalities.

(3) Surface drainage prior to contact with an open feedlot structure is diverted, as appropriate, from the open feedlot operation.

(4) Animals kept in the open feedlot operation do not have direct contact with any waters of the United States.

(5) Chemicals or other contaminants handled on site are not disposed of in manure, process wastewater, an open feedlot operation structure or a treatment system that is not specifically designed to treat such chemicals or contaminants.

(6) Equipment used for the land application of manure, process wastewater or open feedlot effluent must be periodically inspected for leaks.

(7) Appropriate site-specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States.

(8) Protocols for appropriate testing of manure, process wastewater, open feedlot effluent and soil.

(9) Protocols to land-apply manure, process wastewater or open feedlot effluent in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, process wastewater or open feedlot effluent.

(10) Identification of specific records that will be maintained to document the implementation and management of the requirements in this subrule.

f. Sales of scraped solids or settleable solids licensed by IDALS. Open feedlot operations that will sell scraped solids or settleable solids as a commercial fertilizer or soil conditioner regulated by IDALS under Iowa Code chapter 200 or bulk dry animal nutrient product under Iowa Code chapter 200A shall submit a copy of their site-specific IDALS license or documentation that manure will be sold pursuant to Iowa Code chapter 200 or 200A as regulated by IDALS and may, in lieu of complying with this subrule for that portion of open feedlot effluent, submit to the department a copy of the operation's site-specific IDALS license or documentation for any scraped solids or settleable solids that will be sold pursuant to Iowa Code chapter 200 or 200A, along with the department-approved NMP form for sales of scraped solids or settleable solids.

g. An open feedlot operation must submit a complete NMP using a new phosphorus index, including soil sampling as required in subrule 65.111(11), for each field in the NMP a minimum of once every five years, submitting the plan with the NPDES permit renewal application if the open feedlot operation has an NPDES permit.

65.209(9) If an open feedlot operation uses an alternative technology system as provided in rule 567—65.207(455B,459A), the NMP is not required to provide for settled open feedlot effluent that enters the AT system.

65.209(10) Current NMP; recordkeeping; record inspections.

a. Current NMP. The owner of an open feedlot operation who is required to submit an NMP shall maintain a current NMP at the site of the open feedlot operation and shall make the current NMP available to the department upon request. If nutrient management practices change, a person required to submit an NMP shall make appropriate changes consistent with this rule. If values other than the standard table values are used for NMP calculations, the source of the values used shall be identified.

b. Recordkeeping. Records shall be maintained by the owner of an open feedlot operation who is required to submit an NMP. This recorded information shall be maintained for five years following

the year of application or for the length of the crop rotation, whichever is greater. Records shall be maintained at the site of the open feedlot operation and shall be made available to the department upon request. Records to demonstrate compliance with the NMP shall include the requirements of rule 567—65.111(455B,459,459B) and the following:

(1) Weather conditions at time of application and for 24 hours prior to and following the application.

(2) Date(s) when application equipment was inspected.

(3) All applicable records identified in paragraph 65.209(8)*"e."*

c. Record inspection. The department may inspect an open feedlot operation at any time during normal working hours and may inspect the NMP and any records required to be maintained.

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567—65.210 to **65.299** Reserved.

DIVISION IV
ANIMAL TRUCK WASH FACILITIES

567—65.300(455B,459A) Minimum animal truck wash effluent control requirements. An animal truck wash facility shall provide for the management of manure, process wastewater, settleable solids, scraped solids, and animal truck wash effluent by using the control method as provided in subrules 65.300(1) through 65.300(4). A release shall be reported to the department as provided in subrule 65.2(1).

65.300(1) No direct discharge of animal truck wash effluent shall be allowed from an animal truck wash facility into a publicly owned lake, a known sinkhole, or an agricultural drainage well.

65.300(2) Land application.

a. General requirements. Animal truck wash effluent shall be land-applied in a manner which will not cause pollution of surface water or groundwater. Land application of animal truck wash effluent shall not exceed one inch per hour, and land application shall cease immediately if runoff occurs. Land application of animal truck wash effluent shall be conducted on days when weather and soil conditions are suitable. Weather and soil conditions are normally considered suitable for animal truck wash effluent application if (1) land application areas are not frozen or snow-covered, (2) temperatures during application are greater than 32 degrees Fahrenheit, and (3) precipitation has not exceeded the water holding capacity of the soil to accept the effluent application without the possibility of runoff. Application in accordance with the provisions of state law and the rules in this chapter shall be deemed as compliance with this requirement.

b. Separation distances. A person shall not apply animal truck wash effluent on land located within 750 feet from a residence not owned by the titleholder of the land, unless one of the following applies:

(1) The animal truck wash effluent is land-applied by injection or incorporation on the same date as the animal truck wash effluent was land-applied.

(2) The titleholder of the land benefiting from the separation distance requirement executes a written waiver with the titleholder of the land where the animal truck wash effluent is land-applied.

(3) The animal truck wash effluent is from a small animal truck wash facility or an animal truck wash facility that is part of a SAFO.

65.300(3) The owner of an animal truck wash facility who discontinues the use of the facility shall remove and land-apply in accordance with state law all manure, process wastewater and animal truck wash effluent from the animal truck wash effluent structures as soon as practical but not later than six months following the date the animal truck wash facility is discontinued.

65.300(4) Stockpiling of scraped solids and settleable solids. Stockpiles of solids scraped from animal truck wash facilities and stockpiles of settleable solids shall comply with the following requirements:

a. Stockpiles must be land-applied in accordance with subrule 65.300(2) as soon as possible but not later than six months after they are established.

b. Stockpiles shall not be located within 400 feet from a designated area or, in the case of a high-quality water, within 800 feet.

c. Stockpiles shall not be located in grassed waterways or areas where water ponds or has concentrated flow.

d. Stockpiles shall not be located within 200 feet of a terrace tile inlet or surface tile inlet or known sinkhole unless the stockpile is located so that any runoff from the stockpile will not reach the inlet or sinkhole.

e. Stockpiles shall not be located on land having a slope of more than 3 percent unless methods, structures or practices are implemented to contain the stockpiled solids, including but not limited to hay bales, silt fences, temporary earthen berms, or other effective measures, and to prevent or diminish precipitation-induced runoff from the stockpiled solids.

[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.301(455B,459,459A) Construction permits.

65.301(1) *Animal truck wash facilities required to obtain a construction permit.* An animal truck wash facility must obtain a construction permit as follows:

a. Prior to construction or expansion of an animal truck wash effluent structure.

b. When the department has previously issued the animal truck wash facility a construction permit and the volume of the animal truck wash effluent would be more than the volume approved by the department in the previous construction permit.

c. When the animal truck wash facility is part of a confinement feeding operation and all of the following apply:

(1) The department has issued a construction permit or an NPDES permit for the confinement feeding operation or a letter approving a construction design statement for the confinement feeding operation in lieu of a construction permit.

(2) The animal truck wash effluent will be added to an existing manure storage structure resulting in a total stored volume greater than that approved in the construction permit or the construction design statement approval letter.

d. When the animal truck wash facility is part of an open feedlot operation and all of the following apply:

(1) The department has issued a construction permit or an NPDES permit for an open feedlot operation.

(2) The animal truck wash effluent will be added to an existing settled open feedlot effluent basin resulting in a total stored volume greater than that approved in the construction permit or NPDES permit.

e. When an animal truck wash facility is constructed or expanded as part of a SAFO that includes a manure storage structure and the animal truck wash effluent will be added to the manure storage structure.

65.301(2) *Construction permit not required.* A construction permit is not required in the following situations:

a. When a small animal truck wash facility is constructed or expanded and remains a small animal truck wash facility.

b. When a small animal truck wash facility is part of a SAFO and the animal truck wash effluent is added to the manure storage structure.

65.301(3) *Construction permit applications that cannot be approved.* The department shall not approve an application for a construction permit unless the applicant submits all of the following:

a. An NMP as provided in rule 567—65.306(455B,459A).

b. An engineering report, construction plans, and specifications prepared by a PE or an NRCS-qualified staff person certifying that the design of the animal truck wash effluent structure complies with the construction design standards required in Division III of this chapter.

65.301(4) *Plan review criteria; time for approval or disapproval.*

a. Plan review criteria. Review of plans and specifications shall be conducted by the department to determine the potential of the animal truck wash effluent structure to achieve the level of control being required of the animal truck wash facility. Applicable criteria contained in federal law, state law, these rules, NRCS design standards and specifications unless inconsistent with federal or state law or

these rules will be used in this review. If the proposed facility plans are not adequately covered by these criteria, applicable criteria contained in current technical literature shall be used.

b. Time for approval or disapproval. The department shall approve or disapprove an application for a construction permit within 60 days after receiving the permit application. However, the applicant may deliver a notice requesting a continuance. Upon receipt of a notice, the time required for the department to act upon the application shall be suspended for the period provided in the notice but for not more than 30 days after the department's receipt of the notice. The applicant may submit more than one notice. If review of the application is delayed because the application is incomplete, and the applicant fails to supply requested information within a reasonable time prior to the deadline for action on the application, the permit may be denied and a new application will be required if the applicant wishes to proceed. The department may also provide for a continuance when it considers the application. The department shall provide notice to the applicant of the continuance. The time required for the department to act upon the application shall be suspended for the period provided in the notice but for not more than 30 days. However, the department shall not provide for more than one continuance.

65.301(5) *Expiration of construction permits.* The construction permit shall expire if construction, as defined in rule 567—65.6(455B,459,459A,459B), is not begun within one year and completed within three years of the date of issuance. The director may grant an extension of time to begin or complete construction if it is necessary or justified, upon showing of such necessity or justification to the director.

65.301(6) *Revocation of construction permits.* The department may suspend or revoke a construction permit, modify the terms or conditions of a construction permit, or refuse to renew a construction permit expiring according to subrule 65.301(5) if it determines that the operation of the animal truck wash facility constitutes a clear, present and impending danger to public health or the environment.

65.301(7) *Permit prior to construction.* An applicant for a construction permit shall notify the department prior to the start of construction for any animal truck wash facility. The applicant shall not begin construction of an animal truck wash facility until the person has been granted a permit for the construction by the department.

65.301(8) *Materials used in animal truck wash.* A facility that performs acid washing, aluminum brightening, or other such processes that significantly increase the metals concentration of the effluent is not considered an animal truck wash facility for purposes of this provision. Use of disinfectant materials to control and prevent animal diseases is allowed.

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567—65.302(455B,459,459A) Separation distances.

65.302(1) *Separation distances for the construction or expansion of an animal truck wash effluent structure.*

a. An animal truck wash effluent structure shall not be constructed or expanded within 1,250 feet from a residence not owned by the titleholder of the animal truck wash facility, a commercial enterprise, a bona fide religious institution, an educational institution, or a public use area.

b. An animal truck wash effluent structure shall not be constructed or expanded within 100 feet from a public thoroughfare.

c. Any separation distance required for a confinement feeding operation structure and a location or object specified in Table 6 for "Water Wells" and "Other Distances" located at iowadnr.gov/afo/rules shall also apply to the animal truck wash effluent structure and that same location or object.

d. An animal truck wash effluent structure shall not be constructed or expanded on land that is part of a one hundred year floodplain.

65.302(2) *Exemptions to separation distances for the construction or expansion of an animal truck wash effluent structure.*

a. Paragraph 65.302(1)*"a"* does not apply if a residence, educational institution, bona fide religious institution, or commercial enterprise was constructed or expanded, or if the boundaries of a public use area were expanded, after the date that the animal truck wash facility was established. The date the animal truck wash facility was established is the date on which the animal truck wash facility

commenced operating. A change in ownership or expansion of an animal truck wash facility shall not change the date of operation.

b. Paragraphs 65.302(1)*"a"* and *"b"* do not apply if the titleholder of the land benefiting from the separation distance requirement, including a person authorized by the titleholder, executes a written waiver with the owner of the animal truck wash effluent structure. The structure shall be constructed or expanded under such terms and conditions that the parties negotiate. The state or a political subdivision constructing or maintaining the public thoroughfare benefiting from the separation distance requirement may execute a written waiver with the titleholder of the land where the structure is located. The structure shall be constructed or expanded under such terms and conditions that the parties negotiate. The waiver shall be specific to the construction or expansion project for which it is submitted. The waiver may include specific language to include future projects or expansions.

c. Paragraphs 65.302(1)*"a"* and *"b"* shall not apply to small animal truck wash facilities.

d. Exemptions to separation distance requirements from water sources, major water sources, known sinkholes, agricultural drainage wells and designated wetlands and secondary containment. As specified in Iowa Code section 459.310(3), the separation distance required from surface intakes, wellheads or cisterns of agricultural drainage wells, known sinkholes, water sources, major water sources and designated wetlands, specified in Iowa Code section 459.310 and summarized in Tables 6 to 6d located at iowadnr.gov/afo/rules, shall not apply to a farm pond or privately owned lake as defined in Iowa Code section 462A.2 or to an animal truck wash effluent structure constructed with a secondary containment barrier according to subrule 65.108(11). To qualify for this separation distance exemption, the design of the secondary containment barrier shall be filed in accordance with subrule 65.104(5) prior to beginning construction of the animal truck wash facility.

e. Paragraphs 65.302(1)*"c"* and *"d"* shall not apply to the replacement of an unformed animal truck wash effluent structure constructed prior to April 28, 2003, with a formed animal truck wash effluent structure. The capacity of a replacement animal truck wash effluent structure shall not exceed the amount required to store animal truck wash effluent for any 18-month period.

65.302(3) *Unformed animal truck wash effluent structures.* Unformed animal truck wash effluent structures shall be separated from water wells as follows:

a. Public wells. 1,000 feet from shallow wells and 400 feet from deep wells;

b. Private wells. 400 feet from both shallow wells and deep wells.

65.302(4) *Formed animal truck wash effluent structures.* Formed animal truck wash effluent structures shall be separated from water wells as follows: for both public wells and private wells, 200 feet from shallow wells and 100 feet from deep wells.

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567—65.303(455B,459A) Construction permit application.

65.303(1) An animal truck wash facility required to obtain a construction permit in accordance with the provisions of subrule 65.301(1) shall apply for the construction permit at least 90 days before the date that construction, installation, or modification is scheduled to start.

65.303(2) Application for a construction permit for an animal truck wash facility shall be made on a form provided by the department. The application shall include all of the information necessary to enable the department to determine the potential of the proposed animal truck wash effluent structure to achieve the level of control required of the animal truck wash facility. A construction permit application shall include the following:

a. The name of the animal truck wash facility and the name of the owner of the animal truck wash facility, including the owner's mailing address and telephone number.

b. The name of the contact person for the animal truck wash facility, including the person's mailing address and telephone number.

c. The location of the animal truck wash facility.

d. A statement providing that the application is for any of the following:

(1) The construction or expansion of an animal truck wash effluent structure for an existing animal truck wash facility that is not expanding;

(2) The construction or expansion of an animal truck wash effluent structure for an existing animal truck wash facility that is expanding;

(3) The construction of an animal truck wash effluent structure for a proposed new animal truck wash facility.

e. An engineering report, construction plans, and specifications prepared by a PE or by an NRCS-qualified staff person. The engineering report must demonstrate that the storage capacity of the animal truck wash effluent structure is equal to or greater than the amount of effluent to be stored for any six-month period, in addition to two feet of freeboard for an unformed animal truck wash effluent structure or one foot of freeboard for a formed animal truck wash effluent structure.

f. A report on the soil and hydrogeologic information for the site, as described in subrule 65.304(2).

g. Information including but not limited to maps, drawings and aerial photos that clearly show the location of all the following:

(1) The animal truck wash facility and all existing and proposed animal truck wash effluent structures.

(2) Any animal truck wash facility under common ownership or common management and located within 1,250 feet of the animal truck wash facility.

(3) Any public water supply system as defined in Iowa Code section 455B.171 or drinking water well that is located less than the distance from the animal truck wash facility required by subrules 65.302(3) and 65.302(4). Information shall also be provided as to whether the proposed animal truck wash effluent structure will meet all applicable separation distances.

[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.304(455B,459A) Unformed animal truck wash effluent structure—investigation; design; construction requirements. An unformed animal truck wash effluent structure required to be constructed pursuant to a construction permit issued pursuant to Iowa Code section 459A.205 shall meet the design and construction requirements set forth in this rule.

65.304(1) *Drainage tile investigation and removal.* Prior to constructing an unformed truck wash effluent basin, the site for the basin shall be investigated for drainage tile lines as provided in this subrule. All applicable records of known drainage tiles shall be examined for the existence of drainage tile lines.

a. Prior to excavation for an unformed manure storage structure, an inspection trench of at least ten inches wide shall be dug around the structure to a depth of at least 6 feet below the original grade and within 25 feet of the proposed outside of the toe of the berm.

b. Drainage tile lines discovered during the tile inspection of an unformed manure storage structure shall be removed and rerouted in the inspection trench or in an area outside of the inspection trench. All tiles within the inspection trench perimeter shall be removed or completely plugged with concrete, grout or similar materials. Drainage tile lines installed at the time of construction to lower the groundwater may remain in place as long as they are outside of the proposed toe of berm.

65.304(2) *Soils and hydrogeologic report.* An unformed animal truck wash effluent structure required to be constructed pursuant to a construction permit issued pursuant to rule 567—65.301(455B,459,459A) shall meet design standards as required by a soils and hydrogeologic report. The report shall be submitted with the construction permit application as provided in rule 567—65.303(455B,459A). The report shall include all of the following:

a. A description of the steps taken to determine the soils and hydrogeologic conditions at the proposed construction site, a description of the geologic units encountered, and a description of the effects of the soil and groundwater elevation and direction of flow on the construction and operation of the unformed animal truck wash effluent structure.

b. The subsurface soil classification of the site. A subsurface soil classification shall be based on ASTM international designation D 2487-06 or D 2488-06.

c. The results of a soils investigation conducted at a minimum of three locations within the area of the unformed animal truck wash effluent structure reflecting the continuous soil profile existing within the area of the unformed animal truck wash effluent structure. The soils investigation results shall be

used in determining subsurface soil characteristics and groundwater elevation and direction of flow at the proposed site. The soils investigation shall be conducted and utilized as follows:

(1) By a qualified person ordinarily engaged in the practice of performing soils investigations.

(2) At locations that reflect the continuous soil profile conditions existing within the area of the proposed unformed animal truck wash effluent structure, including conditions found near the corners and the deepest point of the proposed unformed animal truck wash effluent structure. The soils investigation shall be conducted to a minimum depth of ten feet below the proposed bottom elevation of the unformed animal truck wash effluent structure.

(3) By methods that identify the continuous soil profile and do not result in mixing of soil layers. Soil corings using hollow-stem augers and other suitable methods may be used.

(4) Soil corings may be used to determine current groundwater levels by completing the corings as temporary monitoring wells as provided in subparagraph 65.304(3)*"a"*(1) and measuring the water levels in these wells no earlier than seven days after installation as provided in subparagraph 65.304(3)*"a"*(1).

(5) Upon abandonment of soil core holes, all soil core holes, including those developed as temporary water level monitoring wells, shall be plugged with concrete, Portland cement concrete grout, bentonite, or similar materials.

(6) If excavation methods are used in conducting the soils investigation, upon closure these excavations must be filled with suitable materials and adequately compacted to ensure they will not compromise the integrity of the unformed animal truck wash effluent structure liner.

65.304(3) *Hydrology.*

a. Determination of groundwater table. For purposes of this rule, the groundwater table is the seasonal high-water table determined by a PE, a groundwater professional certified pursuant to 567—Chapter 134, or qualified staff from the department or NRCS. If a construction permit is required, the department must approve the groundwater table determination.

(1) Current groundwater levels shall be measured as provided in this subparagraph for an unformed animal truck wash effluent structure. Three temporary monitoring wells shall be installed. The top of the well screen shall be within five feet of the ground surface. Each well shall be extended to at least two feet below the proposed top of the liner of an unformed animal truck wash effluent structure or to at least two feet below the proposed bottom of the footings of a formed animal truck wash effluent structure. In addition, the wells must be installed as follows:

1. Unformed animal truck wash effluent structure. For an unformed animal truck wash effluent structure, the monitoring wells may be installed in the soil core holes developed as part of conducting the soils investigation required in paragraph 65.304(2)*"c."*

2. Formed animal truck wash effluent structure. For a formed animal truck wash effluent structure, at least three temporary monitoring wells shall be installed as close as possible to three corners of the structure, with one of the wells close to the corner of deepest excavation. If the formed animal truck wash effluent structure is circular, the three monitoring wells shall be equally spaced and one well shall be placed at the point of deepest excavation.

(2) The seasonal high-water table shall be determined by considering all relevant data, including the groundwater levels measured in the temporary monitoring wells not earlier than seven days following installation, NRCS soil survey information, soil characteristics such as color and mottling, other existing water table data, and other pertinent information. If a drainage system for artificially lowering the groundwater table will be installed in accordance with the requirements of paragraph 65.304(3)*"c,"* the level to which the groundwater table will be lowered will be considered to represent the seasonal high-water table.

b. The unformed animal truck wash effluent structure shall be constructed with a minimum separation of two feet between the top of the liner of the unformed animal truck wash effluent structure and the seasonal high-water table.

c. If a drainage tile line around the perimeter of the basin is installed a minimum of two feet below the top of the unformed animal truck wash effluent structure liner to artificially lower the seasonal high-water table, the top of the unformed animal truck wash effluent structure's liner may be a maximum

of four feet below the seasonal high-water table which existed prior to installation of the perimeter tile system. The seasonal high-water table may be artificially lowered by gravity flow tile lines or other similar system. However, the following shall apply:

(1) Except as provided in subparagraph 65.304(3)*"c"*(2), an animal truck wash facility shall not use a nongravity mechanical system that uses pumping equipment.

(2) If the animal truck wash facility was constructed before July 1, 2005, the operation may continue to use its existing nongravity mechanical system that uses pumping equipment or it may construct a new nongravity mechanical system that uses pumping equipment. However, an animal truck wash facility that expands the area of its animal truck wash facility on or after April 1, 2011, shall not use a nongravity mechanical system that uses pumping equipment.

(3) Drainage tile lines may be installed to artificially lower the seasonal high-water table at an unformed animal truck wash effluent structure, if all of the following conditions are satisfied:

1. A device to allow monitoring of the water in the drainage tile lines and a device to allow shutoff of the flow in the drainage tile lines are installed, if the drainage tile lines do not have a surface outlet accessible on the property where the unformed animal truck wash effluent structure is located.

2. Drainage tile lines are installed horizontally no greater than 25 feet away from the outside toe of the berm of the unformed animal truck wash effluent structure. Drainage tile lines shall be placed in a vertical trench and encased in granular material which extends upward to the level of the seasonal high-water table which existed prior to installation of the perimeter tile system.

65.304(4) *Liner design and construction.* The liner of an unformed animal truck wash effluent structure shall comply with all of the following:

a. The liner shall comply with any of the following permeability standards:

(1) The liner shall be constructed to have a percolation rate that shall not exceed one-sixteenth inch per day at the design depth of the unformed animal truck wash effluent structure as determined by percolation tests conducted by the PE. If a clay soil liner is used, the liner shall be constructed with a minimum thickness of 12 inches or the minimum thickness necessary to comply with the percolation rate in this subparagraph, whichever is greater.

(2) The liner shall be constructed to have a percolation rate that shall not exceed one-sixteenth inch per day at the design depth of the unformed animal truck wash effluent structure. The design of the liner will specify a moisture content, compaction requirement, and liner thickness that will comply with the maximum allowable percolation requirement and will be based on moisture content and percentage of maximum density as determined by a standard 5-point proctor test performed in accordance with ASTM D698 (Method A), effective date November 11, 1991. The liner thickness will be based on laboratory tests of the compacted material, with a minimum liner thickness of 12 inches. Appropriate field or laboratory testing during construction shall be provided to verify the design requirements are met.

b. If a synthetic liner is used, the liner shall be installed to comply with the percolation rate required in subparagraph 65.304(4)*"a"*(1).

65.304(5) *Berm erosion inspection and repair.* The owner of an animal truck wash facility using an unformed animal truck wash effluent structure shall inspect the berms of the unformed animal truck wash effluent structure at least semiannually for evidence of erosion. If the inspection reveals erosion that may impact the unformed animal truck wash effluent structure's structural stability or the integrity of the unformed animal truck wash effluent structure's liner, the owner shall repair the berms.

65.304(6) *Basins containing confinement manure and animal truck wash effluent.* Basins containing confinement manure and animal truck wash effluent shall meet the confinement construction standards and separation distance requirements provided in Division II of this chapter. The basin design shall ensure adequate storage including two feet of freeboard for an unformed animal truck wash effluent structure or one foot of freeboard for a formed animal truck wash effluent structure. The basin shall contain the annual manure generated from all confinement animals.

65.304(7) *Formed animal truck wash effluent structures.* An animal truck wash facility electing to use a formed animal truck wash effluent structure may submit, in lieu of an engineering report, a construction design statement that meets the requirements in subrule 65.104(3).

[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.305(455B,459A) Construction certification.

65.305(1) The owner of an animal truck wash facility who is issued a construction permit for an animal truck wash effluent structure as provided in rule 567—65.301(455B,459,459A) shall submit to the department a construction certification on a form provided by the department from a PE certifying all of the following:

a. The animal truck wash effluent structure was constructed in accordance with the design plans submitted to the department as part of an application for a construction permit pursuant to rule 567—65.303(455B,459A). If the actual construction deviates from the approved design plans, the construction certification shall identify all changes and certify that the changes were consistent with all applicable standards of these rules.

b. The animal truck wash effluent structure was inspected by the PE after completion of construction and before commencement of operation.

65.305(2) A written record of an investigation for drainage tile lines, including the findings of the investigation and actions taken to comply with subrule 65.304(1), shall be submitted as part of the construction certification.

[**ARC 7965C**, IAB 5/15/24, effective 6/19/24]

567—65.306(455B,459A) NMP requirements.

65.306(1) The owner of an animal truck wash facility, other than a small animal truck wash facility, that has an animal truck wash effluent structure shall develop and implement an NMP meeting the requirements of this rule. However, an animal truck wash facility that is part of a confinement feeding operation, in lieu of submitting an NMP, may submit an original MMP and an updated MMP to the department.

65.306(2) A person shall not remove animal truck wash effluent from an animal truck wash facility for which an NMP is required under this rule, unless the department approves an NMP as required in this rule.

65.306(3) The department shall not approve an application for a permit to construct an animal truck wash effluent structure unless the owner of the animal truck wash facility applying for approval submits an NMP together with the application for the construction permit as provided in rule 567—65.301(455B,459,459A).

65.306(4) If a construction permit is required as provided in rule 567—65.301(455B,459,459A), the department shall approve or disapprove the NMP as part of the construction permit application. If a construction permit is not required, the department shall approve or disapprove the NMP within 60 days from the date that the department receives the NMP.

65.306(5) An NMP shall include all of the following:

a. Restrictions on the application of animal truck wash effluent based on all of the following:

(1) A phosphorus index of each field in the NMP, as required in subrule 65.111(12), including the factors used in the calculation. A copy of the NRCS phosphorus index detailed report shall satisfy the requirement to include the factors used in the calculation. In addition, total phosphorus (as P_2O_5) available to be applied from the animal truck wash facility shall be included.

(2) Calculations necessary to determine the land area required for the application of animal truck wash effluent from an animal truck wash facility based on nitrogen or phosphorus use levels (as determined by the phosphorus index) in order to obtain optimum crop yields according to a crop schedule specified in the NMP and according to requirements specified in subrule 67.111(4).

b. Information relating to the application of the animal truck wash effluent, including application methods, the timing of the application, and the location of the land where the application occurs.

c. If the application is on land other than land owned or rented for crop production by the owner of the animal truck wash facility, the plan shall include a copy of each written agreement executed by the owner and the landowner or the person renting the land for crop production where the animal truck wash effluent may be applied. The written agreement shall indicate the number of acres on which the animal truck wash effluent may be applied and the length of the agreement.

d. An estimate of the animal truck wash effluent volume or weight produced by the animal truck wash facility.

e. Information that shows all of the following:

(1) There is adequate storage for animal truck wash effluent, including procedures to ensure proper operation and maintenance of the storage structures.

(2) Surface drainage is diverted from the animal truck wash facility.

(3) Chemicals or other contaminants handled on site are not disposed of in an animal truck wash facility that is not specifically designed to store such chemicals or contaminants.

(4) Equipment used for the land application of animal truck wash effluent must be periodically inspected for leaks.

(5) Appropriate site-specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States.

(6) Protocols for appropriate testing of animal truck wash effluent and soil.

(7) Protocols to land-apply animal truck wash effluent in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the animal truck wash effluent.

(8) Identification of specific records that will be maintained to document the implementation and management of the requirements in this subrule.

65.306(6) Current NMP; recordkeeping; record inspections.

a. Current NMP. The owner of an animal truck wash facility who is required to submit an NMP shall maintain a current NMP at the site of the animal truck wash facility and shall make the current NMP available to the department upon request. If nutrient management practices change, a person required to submit an NMP shall make appropriate changes consistent with this rule. If values other than the standard table values are used for NMP calculations, the source of the values used shall be identified.

b. Recordkeeping. Records shall be maintained by the owner of an animal truck wash facility who is required to submit an NMP. This recorded information shall be maintained for five years following the year of application or for the length of the crop rotation, whichever is greater. Records shall be maintained at the site of the animal truck wash facility, either as a hard copy or electronically, and shall be made available to the department upon request. Records to demonstrate compliance with the NMP shall include requirements of rule 567—65.111(455B,459,459B) and the following:

(1) Weather conditions at time of application and for 24 hours prior to and following the application.

(2) For animal truck wash facilities, the soil test analysis must include phosphorus.

(3) Dates when application equipment was inspected.

(4) All applicable records identified in paragraph 65.306(5)*"e."*

c. Record inspection. The department may inspect an animal truck wash facility at any time during normal working hours and may inspect the NMP and any records required to be maintained.

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These rules are intended to implement Iowa Code sections 455B.103, 455B.134, and 455B.171 and chapters 459, 459A, and 459B.

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PLUMBING AND MECHANICAL SYSTEMS BOARD—LICENSEE PRACTICE

641—23.1(105) Definitions. The definitions set forth in Iowa Code section 105.2 are incorporated herein by reference. For purposes of these rules, the following additional definitions apply:

"Inactive license" means a license that is available for a plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic professional who is not actively engaged in running a business or working in the business in the corresponding discipline at that license level. An inactive license must be renewed prior to its expiration date. An inactive license is not valid for practice until the license is reactivated by the board.

"Lapsed license" means a license that has expired. A lapsed license is no longer valid for practice.

"Licensee" means a person holding a license issued by the board, including an apprentice, journeyperson, or master license in the plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronics trades; a combined license; a special, restricted sublicense; or a medical gas certificate.

"Master of record" means an individual possessing an active master license under Iowa Code chapter 105 who shall be responsible for the proper designing, installing, and repairing of plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic systems and who is actively in charge of the plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic work of a contractor.

[**ARC 7992C**, IAB 5/15/24, effective 6/19/24]

641—23.2(105) Duties of all licensees, specialty licensees, and certificate holders.

23.2(1) While conducting business or performing work covered under Iowa Code chapter 105, each licensee will keep a copy of the licensee's board-issued license on the licensee's person or in an easily retrievable area at the work site.

23.2(2) Each licensee will maintain a residential or business address on record with the board. In the event the licensee's residential or business address changes, the licensee will so notify the board.

23.2(3) Each licensee will apply for and obtain all applicable permits prior to performing any work covered under Iowa Code chapter 105 as may be mandated by any law, ordinance, or regulation of this state, or a political subdivision therein.

23.2(4) A licensee will present upon request a copy of the licensee's board-issued license issued under Iowa Code section 105.12(2).

23.2(5) A licensee possessing a lapsed license cannot operate as a contractor or work in the plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic disciplines or work as a medical gas system installer or work in a specialty license discipline until the license is reinstated and renewed.

23.2(6) Each licensee will perform all Iowa Code chapter 105-covered work in conformity with the applicable professional code.

23.2(7) A licensee will not perform any Iowa Code chapter 105-covered work for which the licensee does not possess the requisite license.

23.2(8) A licensee will conform to the minimum standard of acceptable and prevailing practice and will exercise the degree of workmanlike care that is ordinarily exercised by the average licensee in the applicable trade acting in the same or similar circumstances.

23.2(9) A licensee who utilizes the services of an unlicensed person as a helper will be responsible for the work performed by the helper and shall ensure that such work conforms to the minimum standard of acceptable and prevailing practice.

[**ARC 7992C**, IAB 5/15/24, effective 6/19/24]

641—23.3(105) Contractor license. A contractor licensed under Iowa Code chapter 105 will adhere to the following, the violation of which may give rise to disciplinary action:

23.3(1) *Master license.* A contractor will not engage in the business of designing, installing, or repairing plumbing, mechanical, HVAC-refrigeration, or hydronic systems unless at all times the contractor holds or employs at least one person holding an active master license issued by the board for each discipline in which the contractor conducts business. Without prior board approval, a

contractor will not knowingly utilize a master licensee to meet this requirement if the master licensee is simultaneously associated with another contractor in that discipline.

a. Notwithstanding subrule 23.3(1), in the event a licensed master of record's employment with the contractor is terminated, or the master of record otherwise discontinues the master of record's relationship with the contractor, or the master of record's master license is lapsed, suspended, revoked, expired, or otherwise invalidated, the contractor may continue to provide plumbing, mechanical, HVAC-refrigeration, or hydronic systems services for a period of up to six months without identifying a new master of record.

b. To utilize the six-month grace period set forth in paragraph 23.3(1)*"a,"* a contractor will notify the board of the contractor's loss of the master of record within 30 days from the date the master of record is no longer associated with the contractor, absent exigent circumstances.

23.3(2) *Display of license.* A person holding a contractor license will keep the current license certificate publicly displayed in the primary place in which the person practices.

23.3(3) *Surety bond.* A person or entity holding a contractor license must maintain during the licensing period a surety bond issued by an entity licensed to do business in Iowa in a minimum amount of $5,000. If a person operates the contractor business as a sole proprietorship, the person must personally obtain and maintain the surety bond. If a person operates the contractor business as an employee or owner of a legal entity, the legal entity must obtain and maintain the surety bond, and the surety bond must cover all plumbing or mechanical work performed by the legal entity. The surety bond mandated under this subrule must contain a provision that requires the issuing entity to provide the board ten days' written notice before the surety bond can be canceled.

23.3(4) *Public liability insurance.* A person or entity holding a contractor license must maintain during the licensing period public liability insurance issued by an entity licensed to do business in Iowa in a minimum amount of $500,000. If a person operates the contractor business as a sole proprietorship, the person must personally obtain and maintain the public liability insurance. If a person operates the contractor business as an employee or owner of a legal entity, the legal entity must obtain and maintain the public liability insurance, and the public liability insurance must cover all plumbing and mechanical work performed by the legal entity. The public liability insurance mandated under this subrule must contain a provision that requires the issuing entity to provide the board ten days' written notice before the public liability insurance can be canceled.

23.3(5) *Contractor registration with the department.* A contractor will maintain registration as a contractor with the director pursuant to Iowa Code chapter 91C by providing the board with the necessary information.

23.3(6) *Permanent place of business.* A contractor will maintain a permanent place of business, the address of which will be provided to the board. If a contractor changes the permanent place of business, the contractor will provide the board the new address within 30 days of the change.

23.3(7) *Licensure.* A contractor will not knowingly allow an employee to perform work covered under Iowa Code chapter 105 without the applicable license.

23.3(8) *Supervision.* A contractor will not knowingly allow an apprentice employed by the contractor to perform work covered under Iowa Code chapter 105 without supervision of the apprentice by a master or journeyperson who is also employed by the contractor and who is licensed in the discipline in which the apprentice is performing such work.

[**ARC 7992C**, IAB 5/15/24, effective 6/19/24]

641—23.4(105) Master license. A master licensed under Iowa Code chapter 105 will adhere to the following, the violation of which may give rise to disciplinary action:

23.4(1) *Contractor relationship.* A master may only be a master of record for one contractor in any particular discipline at any one time, except that a contractor or a master may seek prior board approval to serve as the master of record for more than one contractor in a particular discipline. An individual who possesses master licenses in multiple disciplines may be a master of record for multiple contractors so long as the individual is only a master of record for one contractor in any particular discipline at one time.

23.4(2) *Contractor.* A master will not knowingly perform work covered under Iowa Code chapter 105 for an unlicensed contractor.

23.4(3) *Supervision.* A master who superintends the design, installation, or repair of plumbing, mechanical, HVAC-refrigeration, or hydronic systems will be available to supervise journeypersons or apprentices as needed and may only provide such supervision in the discipline or disciplines in which the master is licensed. A master will not knowingly supervise unlicensed persons who perform work covered under Iowa Code chapter 105 for which a board-issued license is required.

23.4(4) *Master of record.* A master who serves as a master of record for a contractor and who disassociates from the contractor will notify the board and the contractor of the disassociation, if notice was not previously provided, within 30 days from the date of disassociation, absent exigent circumstances.

[**ARC 7992C**, IAB 5/15/24, effective 6/19/24]

641—23.5(105) Journeyperson license. A journeyperson licensed under Iowa Code chapter 105 will adhere to the following, the violation of which may give rise to disciplinary action:

23.5(1) *Working under supervision.* A journeyperson will work under the supervision of a master licensed in the discipline of the work being performed in the design, installation, and repair of plumbing, mechanical, HVAC-refrigeration, or hydronic systems.

23.5(2) *Contractor.* A journeyperson will not knowingly perform work covered under Iowa Code chapter 105 for an unlicensed contractor.

23.5(3) *Supervision.* A journeyperson who superintends one or more apprentices may only provide such supervision in the discipline(s) in which the journeyperson is licensed and only while performing work for the same contractor licensed under Iowa Code chapter 105. A journeyperson shall not knowingly supervise unlicensed persons who perform work covered under Iowa Code chapter 105 for which a board-issued license is required.

[**ARC 7992C**, IAB 5/15/24, effective 6/19/24]

641—23.6(105) Apprentice license. An apprentice licensed under Iowa Code chapter 105 will adhere to the following mandates, the violation of which may give rise to disciplinary action:

23.6(1) *Working under supervision.* An apprentice may only perform work covered under Iowa Code chapter 105 under the supervision of a master or journeyperson.

23.6(2) *Contractor.* An apprentice will not knowingly perform work covered under Iowa Code chapter 105 for an unlicensed contractor.

23.6(3) *Dual licensure as an apprentice barred.* A licensee cannot simultaneously possess both an active apprentice license and an active specialty license.

[**ARC 7992C**, IAB 5/15/24, effective 6/19/24]

641—23.7(105) Specialty licenses and certifications.

23.7(1) *Medical gas certification.*

a. A person who possesses a medical gas certification and who performs medical gas brazing will maintain the person's brazing continuity.

b. A person who possesses a medical gas certification will maintain the person's valid certification issued from the National Inspection Testing Certification Corporation (NITC) or an equivalent authority approved by the board.

23.7(2) *Hearth systems specialty license.*

a. A person who possesses a hearth systems specialty license will maintain the person's valid certification issued from the National Fireplace Institute or equivalent authority approved by the board.

b. A hearth systems specialty license allows a licensee to perform work in the installation of gas burning and solid fuel appliances that offer a decorative view of the flames, from the connector pipe to the shutoff valve located within three feet of the appliance. A hearth systems specialty license further allows for work in the venting systems associated with a hearth appliance, log lighters, gas log sets, fireplace inserts, and freestanding stoves. A hearth systems specialty license does not allow a licensee to install a shutoff valve or perform any other mechanical or HVAC-refrigeration work.

c. A person possessing a hearth systems specialty license will not perform Iowa Code chapter 105-covered work beyond the limited scope of the person's specialty license, and will not perform work within the limited scope of the person's specialty license unless the person can conform to the minimum standard of acceptable and prevailing practice of a licensee performing such work.

23.7(3) *Service technician HVAC specialty license.*

a. A licensee who holds a service technician HVAC specialty license by demonstrating the licensee possesses a valid certification from North American Technician Excellence, Inc. or an equivalent authority approved by the board will maintain valid certification from North American Technician Excellence, Inc. or an equivalent authority approved by the board.

b. A service technician HVAC specialty license allows a licensee to perform work from the appliance shutoff valve to the appliance and any part and component of the appliance, including the disconnection and reconnection of the existing appliance to the gas piping and the installation of a shutoff valve no more than three feet from the appliance. A service technician HVAC specialty license does not allow a licensee to perform any other mechanical or HVAC-refrigeration work.

c. A person possessing a service technician HVAC specialty license will not perform Iowa Code chapter 105-covered work beyond the limited scope of the person's specialty license, and will not perform work within the limited scope of the person's specialty license unless the person can conform to the minimum standard of acceptable and prevailing practice of a licensee performing such work.

23.7(4) *Disconnect/reconnect plumbing technician specialty license.*

a. A disconnect/reconnect plumbing technician specialty license allows a licensee to perform work from the appliance shutoff valve or the fixture shutoff valve to the appliance or fixture and any part or component of the appliance or fixture, including the disconnection and reconnection of the existing appliance or fixture to the water or sewer piping and the installation of a shutoff valve no more than three feet from the appliance or fixture. A disconnect/reconnect plumbing technician specialty license does not allow a licensee to perform any other plumbing work.

b. A person possessing a disconnect/reconnect plumbing technician specialty license will not perform Iowa Code chapter 105-covered work beyond the limited scope of the person's specialty license, and will not perform work within the limited scope of the person's specialty license unless the person can conform to the minimum standard of acceptable and prevailing practice of a licensee performing such work.

23.7(5) *Private school or college routine maintenance specialty license.*

a. A private school or college routine maintenance specialty license allows a licensee to perform routine maintenance within the scope of the licensee's employment with a private school or college. For purposes of this subrule, "routine maintenance" means the maintenance, repair, or replacement of existing fixtures or parts of plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic systems in which no changes in original design are made. Fixtures or parts do not include smoke and fire dampers or water, gas, or steam piping permanent repairs except for traps and strainers. Routine maintenance includes emergency repairs. Routine maintenance does not include the replacement of furnaces, boilers, cooling appliances, or water heaters more than 100 gallons in size.

b. A person possessing a private school or college routine maintenance specialty license will not perform Iowa Code chapter 105-covered work beyond the limited scope of the person's specialty license, and will not perform work within the limited scope of the person's specialty license unless the person can conform to the minimum standard of acceptable and prevailing practice of a licensee performing such work.

23.7(6) *Dual licensure as an apprentice prohibited.* A licensee cannot simultaneously possess both an active apprentice license and an active specialty license.

[**ARC 7992C**, IAB 5/15/24, effective 6/19/24]

641—23.8(105) Inactive license.

23.8(1) A person possessing an inactive license under 641—subrule 29.2(6) will not perform any plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic work for which licensure is mandated so long as the person's license is held in inactive status.

23.8(2) A person possessing an active journeyperson/inactive master license under 641—subrule 29.2(5) will not perform any plumbing, mechanical, HVAC-refrigeration, or hydronic work for which a master license is mandated so long as the person's master license is held in inactive status.

23.8(3) Inactive specialty license.

a. A person possessing an active specialty license under rule 641—23.7(105) will submit a written request to place the specialty license on inactive status in order to obtain an active apprentice license. The licensee will acknowledge that the licensee is unable to perform any work covered under Iowa Code chapter 105 outside of the apprenticeship program.

b. Notwithstanding 641—subrule 28.1(3), a person possessing both an inactive specialty license and an active apprentice license need not pay a renewal fee for the inactive specialty license so long as the person remains actively licensed as an apprentice.

c. Notwithstanding 641—subrule 30.2(2), a person possessing an inactive specialty license and an active apprentice license need not obtain any continuing education hours for renewal so long as the person remains actively licensed as an apprentice.

d. A person possessing both an inactive specialty license and an active apprentice license may surrender the apprentice license and reactivate the specialty license upon written request and payment of the fee for an active specialty license in the amount specified in 641—Chapter 28.

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CHAPTER 27
PLUMBING AND MECHANICAL SYSTEMS BOARD—ADMINISTRATIVE AND REGULATORY AUTHORITY

641—27.1(17A,105) Definitions. The definitions set forth in Iowa Code section 105.2 are incorporated herein by reference. For purposes of this chapter, the following definitions also apply:

"Board office" means the office of the administrative staff.

"Disciplinary proceeding" means any proceeding under the authority of the board pursuant to which licensee discipline may be imposed.

"License" means a license to operate as a contractor or work in the plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic disciplines or work as a certified medical gas system installer or work in the specialty license disciplines developed by the board.

"Licensee" means a person or entity licensed to operate as a contractor or work in the plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic disciplines or work as a certified medical gas system installer or work in the specialty license disciplines developed by the board.

[**ARC 7993C**, IAB 5/15/24, effective 6/19/24]

641—27.2(17A,105) Purpose of board. The purpose of the board is to administer and enforce the provisions of Iowa Code chapters 17A and 105 with regard to the licensing and regulation of plumbers, mechanical professionals, and contractors. The mission of the board is to protect the public health, safety and welfare by licensing qualified individuals who provide services to consumers and by fair and consistent enforcement of the statutes and regulations of the licensure board. Responsibilities include, but are not limited to:

27.2(1) Licensing of qualified applicants to operate as a contractor or work in the plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic disciplines or work as a certified medical gas system installer or work in the specialty license disciplines developed by the board by examination, renewal, endorsement, and reciprocity.

27.2(2) Developing and administering a program of continuing education to ensure the continued competency of individuals licensed by the board.

27.2(3) Imposing discipline on licensees as provided by statute or rule.

[**ARC 7993C**, IAB 5/15/24, effective 6/19/24]

641—27.3(17A,105) Organization of board and proceedings.

27.3(1) Membership of the board is as provided in Iowa Code section 105.3.

27.3(2) The board will elect a chairperson, vice chairperson, and secretary from its membership at the first meeting after April 30 of each year.

27.3(3) The board will hold at least four meetings annually.

27.3(4) A majority of the members of the board shall constitute a quorum.

27.3(5) Board meetings shall be governed in accordance with Iowa Code chapter 21, and the board's proceedings will be conducted in accordance with Robert's Rules of Order, Revised.

27.3(6) The department will furnish the board with the necessary facilities and employees to perform the duties mandated by this chapter but shall be reimbursed for all costs incurred from funds appropriated to the board and subsequent fees from licensing activities.

27.3(7) The board has the authority to:

a. Develop and implement a program of continuing education to ensure the continued competency of individuals licensed by the board.

b. Establish fees.

c. Establish committees of the board, the members of which are appointed by the board chairperson and do not constitute a quorum of the board. The board chairperson appoints committee chairpersons.

d. Hold a closed session pursuant to Iowa Code section 21.5.

e. Investigate alleged violations of statutes or rules that relate to operation as a contractor; work in the plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic disciplines; work as a certified

medical gas system installer; or work in the specialty license disciplines developed by the board upon receipt of a complaint or upon the board's own initiation. The investigation will be based on information or evidence received by the board.

f. Initiate and impose licensee discipline.

g. Monitor licensees that are limited by a board order.

h. Perform any other functions authorized by a provision of law.

[**ARC 7993C**, IAB 5/15/24, effective 6/19/24]

641—27.4(17A,105) Official communications.

27.4(1) All official communications, including submissions and requests, should be addressed to the Plumbing and Mechanical Systems Board at its current address.

27.4(2) Notice of change of name or address. Each licensee and licensed entity shall notify the board in writing of a change of name or change of current mailing address within 30 days after the occurrence.

[**ARC 7993C**, IAB 5/15/24, effective 6/19/24]

641—27.5(21) Public meetings. Members of the public may be present during board meetings unless the board votes to hold a closed session. Dates and location of board meetings may be obtained through the board's website or directly from the board office.

27.5(1) At every regularly scheduled board meeting, time will be designated for public comment. During the public comment period, any person may speak for up to two minutes. Any additional time allowances will be at the discretion of the chairperson or acting chairperson.

27.5(2) Persons who have not asked to address the board during the public comment period may raise their hands to be recognized by the chairperson. Acknowledgment and an opportunity to speak will be at the discretion of the chairperson.

27.5(3) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

27.5(4) Cameras and recording devices may be used at open meetings, provided the cameras or recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

[**ARC 7993C**, IAB 5/15/24, effective 6/19/24]

These rules are intended to implement Iowa Code chapters 17A, 21, and 105.

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CHAPTER 28
PLUMBING AND MECHANICAL SYSTEMS BOARD—LICENSURE FEES

641—28.1(105) Fees. All fees are nonrefundable.

28.1(1) Fees for three-year initial licenses are as follows:

a. An apprentice license as defined in 641—subrule 29.2(1) is $50.

b. A journey license as defined in 641—subrule 29.2(2) is $180.

c. A master license as defined in 641—subrule 29.2(3) is $240.

d. A medical gas pipe certificate as defined in rule 641—29.3(105) is $75.

e. An inactive license as defined in 641—subrules 29.2(5) and 29.2(6) is $50.

f. A contractor license as defined in 641—subrule 29.2(4) is $250.

g. A special restricted license as defined in 641—subrules 29.2(8), 29.2(9), and 29.2(10) is $50.

h. Fees for all initial licenses issued for a period of less than three years will be prorated using a one-sixth deduction for each six-month period.

28.1(2) Fees for three-year reciprocal licenses or three-year licenses obtained by verification in accordance with 641—Chapter 35 are as follows:

a. An apprentice license as defined in 641—subrule 29.2(1) is $50.

b. A journey license as defined in 641—subrule 29.2(2) is $180.

c. A master license as defined in 641—subrule 29.2(3) is $240.

d. Fees for all reciprocal licenses or three-year licenses obtained by verification in accordance with 641—Chapter 35 issued for a period of less than three years will be prorated using a one-sixth deduction for each six-month period.

28.1(3) Fees for renewal of licenses are as follows:

a. An apprentice license as defined in 641—subrule 29.2(1) is $50.

b. A journey license as defined in 641—subrule 29.2(2) is $180.

c. A master license as defined in 641—subrule 29.2(3) is $240.

d. A medical gas pipe certificate as defined in rule 641—29.3(105) is $75.

e. An inactive license as defined in 641—subrules 29.2(5) and 29.2(6) is $50. However, no fee is necessary for an inactive specialty license as defined in 641—subrule 23.8(3) so long as the person possessing the inactive specialty license remains actively licensed as an apprentice.

f. A contractor license as defined in 641—subrule 29.2(4) is $250.

g. A special restricted license as defined in 641—subrules 29.2(8), 29.2(9), and 29.2(10) is $50. However, no fee is necessary for an inactive specialty license as defined in 641—subrule 23.8(3) so long as the person possessing the inactive specialty license remains actively licensed as an apprentice.

28.1(4) The examination application fee is $35.

28.1(5) A late fee for failure to renew before expiration is determined as follows:

a. A licensee who does not timely renew but renews a license on or before the following July 31 may reinstate and renew the license upon payment of the appropriate renewal fee and without payment of a late fee.

b. A licensee who does not timely renew but renews a license between the following August 1 and August 31 may reinstate and renew the license without examination upon payment of a $60 late fee and the appropriate renewal of license fee.

c. A licensee who does not timely renew but renews a license after the following August 31 and on or before the following June 30 may reinstate and renew the license without examination upon payment of a $100 late fee and the appropriate renewal of license fee.

28.1(6) Reserved.

28.1(7) The fee for written verification of licensee status is $20.

28.1(8) The returned check fee is $25.

28.1(9) The disciplinary hearing fee is a maximum of $75.

28.1(10) The paper application fee is $25 plus the appropriate license fee.

28.1(11) Combined license.

a. For purposes of this subrule, "combined license" means more than one active master, contractor, or journeyperson license in one or multiple disciplines held by the same individual.

b. A license fee for a combined license is the sum total of each of the separate license fees as set forth in subrules 28.1(1) through 28.1(3) reduced by 30 percent.

c. Only individual licenses purchased in a single transaction are eligible for the combined licensee fee reduction.

28.1(12) The fee for combining an HVAC-refrigeration or hydronics license to a mechanical license is $50. This fee does not apply at the time of reissue.

28.1(13) The fee for submitting a petition for eligibility determination as defined in 641—subrule 29.13(2) is $25.

[**ARC 7994C**, IAB 5/15/24, effective 6/19/24]

641—28.2(105) Annual review of fee schedule. Within 60 days following the end of each fiscal year, the board will submit a report to the general assembly in accordance with Iowa Code section 105.9(5)*"a."*

[**ARC 7994C**, IAB 5/15/24, effective 6/19/24]

641—28.3(105) Waiver of fees. Fee waivers are available under the following circumstances:

28.3(1) The board will waive any fee charged to an applicant for a license if the applicant's household income does not exceed 200 percent of the federal poverty income guidelines and the applicant is applying for the license for the first time in this state.

28.3(2) For an applicant who has been honorably or generally discharged from federal active duty or national guard duty, the board will waive an initial application fee and one renewal fee if those fees would otherwise be charged within five years of the discharge.

[**ARC 7994C**, IAB 5/15/24, effective 6/19/24]

These rules are intended to implement Iowa Code section 105.9.

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CHAPTER 29
PLUMBING AND MECHANICAL SYSTEMS BOARD—APPLICATION, LICENSURE, AND EXAMINATION

641—29.1(105) Definitions. The definitions set forth in Iowa Code section 105.2 are incorporated herein by reference. For purposes of these rules, the following definitions also apply:

"Complete criminal record" means the complaint and judgment of conviction for each offense of which the applicant has been convicted, regardless of whether the offense is classified as a felony or a misdemeanor, and regardless of the jurisdiction in which the offense occurred.

"Conviction" means a finding, plea, or verdict of guilt made or returned in a criminal proceeding, even if the adjudication of guilt is deferred, withheld, or not entered. "Conviction" includes Alford pleas and pleas of nolo contendere.

"Corresponding" means the same discipline.

"Directly relates" or *"directly related"* means the same as Iowa Code section 272C.1(8)*"a"* and *"b."*

"Disconnect/reconnect plumbing technician specialty license" means a sublicense under a plumbing license to perform work from the appliance shutoff valve or fixture shutoff valve to the appliance or fixture and any part or component of the appliance or fixture, including the disconnection and reconnection of the existing appliance or fixture to the water or sewer piping and the installation of a shutoff valve no more than three feet from the appliance or fixture.

"Disqualifying conviction" or *"disqualifying offense"* means a conviction directly related to the practice of the profession.

"Eligibility determination" means the process by which a person who has not yet submitted a completed license application may request that the board determine whether one or more of the person's convictions are disqualifying offenses that would prevent the individual from receiving a license or certification.

"Emergency repairs" means the repair of water pipes to prevent imminent damage to property.

"Hearth systems specialty license" means a sublicense under an HVAC-refrigeration or mechanical license to perform work in the installation of gas burning and solid fuel appliances that offer a decorative view of the flames, from the connector pipe to the shutoff valve located within three feet of the appliance. This sublicense is further allowed to perform work in the venting systems, log lighters, gas log sets, fireplace inserts, and freestanding stoves.

"Inactive license" means a license that is available for a plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic professional who is not actively engaged in running a business or working in the business in the corresponding discipline at that license level. An inactive license must be renewed prior to its expiration date. An inactive license is not valid for practice until the license is reactivated by the board.

"Lapsed license" means a license that expired prior to June 30, 2017, and was not renewed within 60 days following its expiration date or a license that expired on or after June 30, 2017, and was not renewed by the following August 31. A lapsed license is no longer valid for practice.

"Licensee" means any person licensed to practice pursuant to Iowa Code chapter 105.

"Reactivated license" means a license that is changed from inactive status to active status pursuant to rule 641—29.8(105).

"Reissued license" means a refrigeration or HVAC license that was changed to an HVAC-refrigeration license pursuant to rule 641—29.8(105). "Reissued license" also means an HVAC or refrigeration license and a hydronic license that was changed to a mechanical license pursuant to rule 641—29.8(105).

"Service technician HVAC specialty license" means a sublicense under an HVAC-refrigeration or mechanical license to perform work from the appliance shutoff valve to the appliance and any part and component of the appliance, including the disconnection and reconnection of the existing appliance to the gas piping and the installation of a shutoff valve no more than three feet away from the appliance.

"Surety bond" means a performance bond written by an entity licensed to do business in this state that guarantees that a contractor will fully perform the contract and which guarantees against breach of that contract.

[**ARC 7995C**, IAB 5/15/24, effective 6/19/24]

641—29.2(105) Available licenses and general requirements. All licenses issued by the board will be for a three-year period, except where a shorter or longer period is required or allowed by statute. Subject to the general requirements set forth herein and the minimum qualifications for licensure set forth in rule 641—29.4(105), the following licenses are available:

29.2(1) *Apprentice license.* An applicant for an apprentice license will submit an application that provides evidence of meeting the qualifications specified in Iowa Code section 105.18. If the applicant currently holds an active specialty license, the specialty license will be placed on inactive status as specified in 641—subrule 23.8(3).

29.2(2) *Journeyperson license.* An applicant for a journeyperson license will submit an application that provides evidence of meeting the qualifications specified in Iowa Code section 105.18, including an applicant who possesses a master-level license and who seeks a journeyperson license in the same discipline.

29.2(3) *Master license.* An applicant for a master license will submit an application that provides evidence of meeting the qualifications specified in Iowa Code section 105.18. Applicants previously licensed as a journeyperson will provide evidence of at least two years of journeyperson experience in the applicable discipline.

29.2(4) *Contractor license.* An applicant for a contractor license will submit an application that provides evidence of meeting the qualifications specified in Iowa Code section 105.18, and the insurance and surety bond requirements specified in Iowa Code section 105.19.

29.2(5) *Active journeyperson license/inactive master license combination.* An applicant for an active journeyperson license and an inactive master license in the same discipline will submit an application approved by the department, and pay the fees for both an active journeyperson license and an inactive master license in accordance with subrule 29.2(3) and rule 641—29.5(105).

29.2(6) *Inactive license.* An applicant for an inactive license that does not fall within subrule 29.2(5) will submit an application approved by the department and pay the fee for an inactive license in accordance with rule 641—29.5(105).

29.2(7) *Service technician HVAC specialty license.* An applicant for a service technician HVAC specialty license will submit an application approved by the department and pay the fee for a specialty license in accordance with rule 641—29.5(105). It will also provide the board with evidence that:

a. The applicant possesses a valid certification from North American Technician Excellence, Inc. or an equivalent authority approved by the board, or

b. The applicant completed a Service Technician Associate degree or equivalent educational or similar training approved by the board.

29.2(8) *Disconnect/reconnect plumbing technician specialty license.* An applicant for a disconnect/reconnect plumbing technician specialty license will submit an application approved by the department and pay the fee for a specialty license in accordance with rule 641—29.5(105). It will also provide the board with evidence that:

a. The applicant is receiving or has previously received industry training to perform work covered under this specialty license, or

b. The applicant completed a Service Technician Associate degree or equivalent educational or similar training approved by the board.

29.2(9) *Private school or college routine maintenance specialty license.* An applicant for a private school or college routine maintenance specialty license will submit an application approved by the department and pay the fee for a specialty license in accordance with rule 641—29.5(105) and:

a. Provide the board with evidence that the applicant is currently employed by a private school or college.

b. Provide the board with evidence that the applicant is performing routine maintenance within the scope of employment with the private school or college.

29.2(10) *Hearth systems specialty license.* An applicant for a hearth systems specialty license will submit an application approved by the department and pay the fee for a specialty license in accordance with rule 641—29.5(105) and provide the board with evidence that the applicant possesses a valid certification issued by the National Fireplace Institute or equivalent authority approved by the board.
[**ARC 7995C**, IAB 5/15/24, effective 6/19/24]

641—29.3(105) Medical gas piping certification. The following certification is required for a person who performs work as a medical gas system installer. An applicant for a medical gas certificate will submit an application approved by the department and pay the fee for a medical gas piping certification in accordance with rule 641—29.5(105) and possess valid certification from the National Inspection Testing Certification (NITC) Corporation, or an equivalent authority approved by the board. Documentation must be submitted on a form provided by the board.
[**ARC 7995C**, IAB 5/15/24, effective 6/19/24]

641—29.4(105) Minimum qualifications for licensure. An applicant for any type of license must be at least 18 years old. All apprentice applicants must have completed a high school education or attained GED equivalent.
[**ARC 7995C**, IAB 5/15/24, effective 6/19/24]

641—29.5(105) General requirements for application for licensure. The following criteria apply to application for licensure:

29.5(1) *Application.* An applicant will complete an application online or on a paper application approved by the board.

29.5(2) *Fees.* An application must be accompanied by the appropriate fees. All fees are nonrefundable. Fees for online applications are by credit card only. A check or money order may accompany a paper application.

29.5(3) *Applicant responsibilities.* An applicant for an initial license or license renewal bears full responsibility for each of the following:

a. Paying all fees charged by regulatory authorities, state or national testing or credentialing organizations, and educational institutions providing the information necessary to complete a license, certification, or renewal application;

b. Providing accurate, up-to-date, and truthful information on the application including, but not limited to, prior professional experience, education, training, criminal history, and disciplinary history; and

c. Submitting complete application materials. An application for a license or certification or renewal of a license or certification will be considered active for 90 days from the date the application is received. For purposes of establishing timely filing, the postmark on a paper submittal or the date of the electronic time stamp for online renewals will be used. If the applicant does not submit all materials within this time period or if the applicant does not meet the requirements for the license or certification, the application will be considered incomplete and will be destroyed.

29.5(4) *Verifiable documentation.* No application will be considered by the board without the appropriate verifiable documentation, including:

a. A passing score for a discipline-appropriate examination provided by the testing vendor under contract with the board, when testing is required for a license.

b. Verification that the applicant has met the minimum requirements as defined in rule 641—29.4(105) and the established employment experience criteria for each type of license.

c. Documentation of the applicant's complete criminal record, including the applicant's personal statement regarding whether each offense directly relates to the practice of the profession. No application will be considered complete unless and until the applicant responds to board requests for additional information regarding the applicant's complete criminal record.
[**ARC 7995C**, IAB 5/15/24, effective 6/19/24]

641—29.6(105) Examination.

29.6(1) *General.* An applicant for licensure as a plumbing or mechanical system professional must successfully pass the licensing examination for the discipline. The examination will be specific to each license type, approved by the board, and administered by the board-approved vendor.

29.6(2) *Examination.*

a. The examination will be written and proctored by a testing agency selected by the board and conducted either in person or online.

b. The examination will be offered periodically during the year. The time and location will rotate between multiple sites in the state of Iowa, as determined by the department, with approval of the board.

c. The examination will not be subject to review by applicants. Upon request from an applicant, the testing vendor will provide information about the sections that the applicant failed, but shall not provide an applicant access to actual examination questions or answers. Any fees associated with the review process will be assessed by and payable to the testing vendor. The applicant is responsible for paying all associated examination fees.

d. A score of 75 percent or better is considered passing.

29.6(3) *Examination application.*

a. An applicant will complete and submit a board-approved examination application either online or on a paper application a minimum of 15 business days prior to taking an examination.

b. An application must be accompanied by the appropriate fees. All fees are nonrefundable. Fees for online applications are by credit card only. A check or money order may accompany a paper application.

c. No application will be considered by the board without the appropriate verifiable documentation.

d. The applicant will be notified and issued an examination entrance letter upon approval of the examination application.

e. If the applicant is notified that the application is incomplete, the applicant must contact the board office within 90 days. Incomplete applications will be considered invalid and after 90 days will be destroyed.

f. Examination fees are payable directly to the board-approved testing vendor. All transactions are the responsibility of the applicant and testing vendor. The board is not responsible for refunds from the testing vendor.

g. An applicant shall present current photo identification in order to sit for the examination.

h. An applicant for licensure by examination who does not pass the examination within one year from the original application date has to submit a new application.

i. A master examination applicant will not receive permission to sit for a master examination unless the applicant establishes that the applicant:

(1) Has previously been licensed as a master in the applicable discipline; or

(2) Has previously been licensed as a journeyperson in the applicable discipline and has at least two years of journeyperson experience in the applicable discipline.

j. A journeyperson examination applicant may apply to sit for the examination up to 12 months prior to completion of the 48 months of required apprentice credit, which include the granting of advanced standing or credit for previously acquired experience, training, or skills.

29.6(4) *Expiration of passing examination score.* An applicant who successfully passes an examination must apply for licensure in the applicable discipline at the applicable discipline level within two years of notification that the applicant successfully passed the examination. A passing examination score will expire if the applicant fails to apply for licensure within the two-year period as set forth herein, and the applicant will be required to successfully retake said examination to become licensed.

[**ARC 7995C**, IAB 5/15/24, effective 6/19/24]

641—29.7(105) License renewal.

29.7(1) *Renewal period.* The period of licensure to operate as a contractor or work as a master, journeyperson or apprentice in the plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic

disciplines or work as a certified medical gas system installer or work in the specialty license disciplines developed by the board is a period of three years. All licenses issued will expire on June 30 every three years, beginning with June 30, 2026. Fees for new licenses issued after the July 1 beginning of each three-year renewal cycle will be prorated using a one-sixth deduction for each six-month period of the renewal cycle.

29.7(2) *Renewal notification.* The licensee is responsible for renewing the license prior to its expiration.

29.7(3) *Specific renewal requirements.*

a. Active and inactive apprentice, specialty, journeyperson, and master licenses. An apprentice, specialty, journeyperson, or master licensee seeking renewal shall:

(1) Submit an application for renewal online or on the forms provided by the board office.

(2) Meet the continuing education requirements as set forth in rule 641—30.2(105), unless no continuing education is necessary as specified in 641—subrule 23.8(3), 30.2(2), or 30.6(1).

(3) Include the appropriate fee as specified in 641—Chapter 28. A penalty will be assessed by the board for late renewal, as specified in 641—Chapter 28.

b. Medical gas piping certification holders. A medical gas piping certification holder seeking renewal shall:

(1) Submit an application for renewal either electronically or on the forms provided by the board office.

(2) Provide evidence that the person has maintained valid certification issued from the National Inspection Testing Certification (NITC) Corporation or an equivalent authority approved by the board.

(3) Include the appropriate fee as specified in 641—Chapter 28.

c. Contractor licenses. Renewal of the contractor license constitutes registration as a contractor under Iowa Code chapter 91C. A contractor licensee seeking renewal shall:

(1) Submit an application for renewal on the forms provided by the board office. Licensees may renew their licenses online or via paper application.

(2) Include evidence of professional liability insurance and a surety bond mandated by subrule 29.2(4).

(3) As specified in 875—Chapter 150, include proof of workers' compensation insurance coverage, proof of unemployment insurance compliance and, for out-of-state contractors, a bond as described in Iowa Code chapter 91C.

(4) Include the appropriate license fee as specified in 641—Chapter 28. A penalty will be assessed by the board for late renewal, as specified in 641—Chapter 28.

(5) Include the fee for a three-year contractor registration as specified in 875—Chapter 150.

29.7(4) *Complete and timely filed application.* Renewal applications are due 30 days prior to expiration per Iowa Code section 105.20(2). No renewal application is considered timely and sufficient until received by the board office and accompanied by all material necessary for renewal, including applicable renewal and late fees. Incomplete applications will not be accepted. For purposes of establishing timely filing, the postmark on a paper submittal or the date of the electronic time stamp for online renewals will be used.

29.7(5) *Late renewal.* A licensee has a one-month grace period after the expiration date of the license to renew without payment of a late fee.

a. A licensee who seeks to renew more than one month but less than two months after the license expiration date may renew upon payment of the late fee in the amount specified in 641—Chapter 28 in addition to the renewal fee.

b. A license remains valid for practice for up to two months past the expiration date of the license. After two months, the license lapses and becomes invalid for practice until the license is reinstated.

29.7(6) *Reinstatement.* A person seeking reinstatement of a lapsed license must submit an application for reinstatement electronically or on the forms provided by the board office and include all mandated documentation and fees.

a. A licensee who allows a license to lapse for more than two months but not more than 365 days may reinstate and renew the license upon payment of the late penalty fee in the amount specified in

641—Chapter 28 in addition to the renewal fee. A specialty, journeyperson or master licensee must also meet the continuing education requirements as set forth in rule 641—30.2(105), unless no continuing education is mandated as specified in 641—subrule 23.8(3), 30.2(2), or 30.6(1).

b. A person holding a specialty, journeyperson or master license who allows the license to lapse for more than one year may reinstate and renew the license by providing evidence of one of the following:

(1) For a journeyperson or master licensee, retaking and successfully passing the applicable licensing examination; or

(2) Retaking and successfully completing all continuing education requirements as set forth in rule 641—30.2(105) for each renewal period in which the license was not timely renewed.

c. A contractor licensee seeking reinstatement of a license that has been lapsed for more than one year may reinstate and renew the license by submitting evidence of meeting the requirements specified in subrule 29.7(3) and payment of any mandated fees.

d. A licensee who reinstates and renews a lapsed license is not entitled to a prorated renewal fee.
[**ARC 7995C**, IAB 5/15/24, effective 6/19/24]

641—29.8(105) Waiver from examination for military service. The written examination requirements and prior experience requirements set forth in Iowa Code sections 105.18(2)*"b"*(1) and 105.18(2)*"c"* are waived for a journeyperson license or master license if the applicant meets the requirements set forth in Iowa Code section 105.18(4).
[**ARC 7995C**, IAB 5/15/24, effective 6/19/24]

641—29.9(105) Reactivation of an inactive license.

29.9(1) An inactive license is not valid for practice but must be renewed in accordance with rule 641—29.7(105). If an inactive license has not been timely renewed and becomes lapsed, the requirements for reinstatement of the license will have to be met. A person with an inactive license that is not lapsed who is seeking to reactivate the license shall:

a. Submit a written request to the board office for active license status; and

b. Pay the fee for an active license in the amount specified in 641—Chapter 28.

29.9(2) A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal period following reactivation.
[**ARC 7995C**, IAB 5/15/24, effective 6/19/24]

641—29.10(105) Review of applications.

29.10(1) Upon receipt of a completed application, the board executive officer or designee has discretion to:

a. Authorize the issuance of the license, certification, or examination application.

b. Refer the application to a committee of the board for review and consideration when the board executive officer determines that matters raised in or revealed by the application are relevant in determining the applicant's qualifications for a license, certification, or examination. Matters that may justify referral to a committee of the board include, but are not limited to:

(1) Prior criminal history, which is reviewed and considered in accordance with Iowa Code chapter 272C and rule 641—29.13(105).

(2) Chemical dependence.

(3) Competency.

(4) Physical or psychological illness or disability.

(5) Judgments entered on, or settlements of, claims, lawsuits, or other legal actions related to the profession.

(6) Professional disciplinary history.

(7) Education or experience.

29.10(2) Following review and consideration of an application referred by the board executive officer, the committee may at its discretion:

a. Authorize the issuance of the license, certification, or examination application.

b. Recommend to the board denial of the license, certification, or examination application.

c. Recommend to the board issuance of the license or certification under certain terms and conditions or with certain limitations.

d. Refer the license, certification, or examination application to the board for review and consideration without recommendation.

29.10(3) Following review and consideration of a license, certification, or examination application referred by the committee, the board will:

a. Authorize the issuance of the license, certification, or examination application;

b. Deny the issuance of the license, certification, or examination application; or

c. Authorize the issuance of the license or certification under certain terms and conditions or with certain limitations.

29.10(4) The committee or board may require an applicant to appear for an interview before the committee or the full board as part of the application process.

[**ARC 7995C**, IAB 5/15/24, effective 6/19/24]

641—29.11(105) Grounds for denial of an application. The board may deny an application for license, certification, or examination for any of the following reasons:

1. Failure to meet the requirements for license, certification, or examination as specified in these rules.
2. Failure to provide accurate and truthful information, or the omission of material information.
3. Pursuant to Iowa Code section 105.22, upon any of the grounds for which licensure may be revoked or suspended.

[**ARC 7995C**, IAB 5/15/24, effective 6/19/24]

641—29.12(105) Use of criminal convictions in eligibility determinations and initial licensing decisions.

29.12(1) *License application.* Unless an applicant for licensure petitions the board for an eligibility determination, the applicant's convictions will be reviewed when the board receives a completed license application.

a. Full disclosure. An applicant must disclose all convictions on a license application. Failure to disclose all convictions is grounds for license denial or disciplinary action following license issuance.

b. Documentation and personal statement. An applicant with one or more convictions must submit the complete criminal record for each conviction and a personal statement regarding whether each conviction directly relates to the practice of the profession in order for the license application to be considered complete.

c. Rehabilitation. As part of the license application, an applicant will submit all evidence of rehabilitation that the applicant wishes to be considered by the board. The board may deny a license if the applicant has a disqualifying offense, unless the applicant demonstrates by clear and convincing evidence that the applicant is rehabilitated pursuant to Iowa Code section 272C.15. An applicant with one or more disqualifying offenses who has been found rehabilitated must still satisfy all other requirements for licensure.

d. Nonrefundable fees. Any application fees will not be refunded if the license is denied.

29.12(2) *Eligibility determination.* An individual who has not yet submitted a completed license application may petition the board for an eligibility determination. An individual with a conviction does not have to petition the board for an eligibility determination before applying for a license. To petition the board for an eligibility determination, a petitioner must submit all of the following:

a. A completed eligibility determination form, which is available on the board's website;

b. The complete criminal record for each of the petitioner's convictions;

c. A personal statement regarding whether each conviction directly relates to the practice of the profession and why the board should find the petitioner is rehabilitated;

d. All evidence of rehabilitation that the petitioner wants the board to consider; and

e. Payment of a nonrefundable fee in the amount of $25.

29.12(3) *Appeal.* A petitioner found ineligible or an applicant denied a license because of a disqualifying offense may appeal the decision in the manner and time frame set forth in the board's written decision. A timely appeal will initiate a nondisciplinary contested case proceeding. The board's rules governing nondisciplinary contested case proceedings apply unless otherwise specified in this rule. If the petitioner fails to timely appeal, the board's written decision will become a final order.

a. Presiding officer. The presiding officer will be the board. However, any party to an appeal of a license denial or ineligibility determination may file a written request, in accordance with rule 641—33.10(17A), that the presiding officer be an administrative law judge. Additionally, the board may, on its own motion, request that an administrative law judge be assigned to act as presiding officer. When an administrative law judge serves as the presiding officer, the decision rendered will be a proposed decision.

b. Burden. The office of the attorney general will represent the board's initial ineligibility determination or license denial and has the burden of proof to establish that the petitioner's or applicant's convictions include at least one disqualifying offense. Upon satisfaction of this burden by a preponderance of the evidence by the office of the attorney general, the burden of proof shifts to the petitioner or applicant to establish rehabilitation by clear and convincing evidence.

c. Judicial review. A petitioner or applicant must appeal an ineligibility determination or a license denial in order to exhaust administrative remedies. A petitioner or applicant may only seek judicial review of an ineligibility determination or license denial after the issuance of a final order following a contested case proceeding. Judicial review of the final order following a contested case proceeding is in accordance with Iowa Code chapter 17A.

29.12(4) *Future petitions or applications.* If a final order determines a petitioner is ineligible, the petitioner cannot submit a subsequent petition for eligibility determination or a license application prior to the date specified in the final order. If a final order denies a license application, the applicant cannot submit a subsequent license application or a petition for eligibility determination prior to the date specified in the final order.

[**ARC 7995C**, IAB 5/15/24, effective 6/19/24]

These rules are intended to implement Iowa Code chapters 105 and 272C.

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[1] May 1, 2014, effective date of ARC 1220C, Item 12 [rescission of 29.4(3)], delayed until the adjournment of the 2014 General Assembly by the Administrative Rules Review Committee at its meeting held January 10, 2014.

[2] 641—paragraph 29.2(4)*"d"* editorially reinstated IAC Supplement 12/24/14.

CHAPTER 30
CONTINUING EDUCATION FOR PLUMBING AND MECHANICAL SYSTEMS PROFESSIONALS

641—30.1(105) Definitions. The definitions set forth in Iowa Code section 105.2 are incorporated herein by reference. For the purpose of these rules, the following definitions apply:

"Approved program/activity" means a continuing education program/activity meeting the standards set forth in these rules.

"Compliance review" means the selection by the board of licensees for verification of satisfactory completion of continuing education requirements during a specified continuing education compliance period.

"Continuing education" means planned, organized learning acts acquired during licensure designed to maintain, improve, or expand a licensee's knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

"Continuing education compliance period" means the period between renewals during which a licensee must obtain the requisite amount of continuing education in order to renew the licensee's license.

"Hour of continuing education" means at least 50 minutes spent in one sitting by a licensee in actual attendance at and in completion of an approved continuing education activity.

"Iowa mechanical code" means the most current version of the International Mechanical Code, as adopted and amended by the board.

"Iowa plumbing code" means the most current version of the Uniform Plumbing Code, as adopted and amended by the board.

"License" means a license to practice pursuant to Iowa Code chapter 105.

"Licensee" means any person licensed to work in a specific discipline covered under Iowa Code chapter 105.

[**ARC 7996C**, IAB 5/15/24, effective 6/19/24]

641—30.2(105) Continuing education requirements.

30.2(1) The continuing education compliance period begins on the license issue date and ends on the license expiration date.

30.2(2) During each continuing education compliance period, each active or inactive master and journeyperson licensee shall obtain the following continuing education:

a. Safety education. Two hours of continuing education in the content area of the Iowa occupational safety and health Act if holding a single license and four hours if holding multiple licenses.

b. Code education.

(1) Two hours of continuing education in the content area of the Iowa mechanical code if holding one or more licenses or sublicenses in a mechanical discipline.

(2) Two hours of continuing education in the content area of the Iowa plumbing code if holding a plumbing license or sublicense.

c. Discipline education.

(1) Four hours of continuing education in the discipline in which the licensee holds a license if the licensee holds a single plumbing license or sublicense, or a single license or sublicense in a mechanical discipline.

(2) Eight hours of continuing education in the relevant disciplines if holding multiple licenses or sublicenses.

d. Private school or college maintenance specialty license. For the purposes of this subrule, a private school or college routine maintenance specialty license is considered to be a sublicense of whatever discipline(s) in which the licensee actually practices.

e. An individual possessing one or more inactive special restricted licenses under 641—subrule 23.8(3) does not have to complete any continuing education hours for the special restricted license so long as the person remains actively licensed as an apprentice.

30.2(3) For up to one-half of board-approved continuing education mandated by subrule 30.2(2), each continuing education compliance period may be obtained through completion of computer-based, including online, continuing education programs/activities approved by the board.

30.2(4) It is each licensee's responsibility to maintain a record of all continuing education courses attended and retain proof of compliance with the continuing education requirements. Licensees may attend a continuing education course more than once during a continuing education compliance period. However, licensees who attend a course more than once cannot count the approved hours for that course toward the applicable continuing education requirement more than once during the continuing education compliance period.

30.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

30.2(6) A licensee who is a presenter of a board-approved continuing education program may receive credit once per continuing education compliance period for the presentation of the program. The licensee may receive the same number of hours granted the attendees.

[**ARC 7996C**, IAB 5/15/24, effective 6/19/24]

641—30.3(105) Continuing education programs/activities.

30.3(1) *Standards for continuing education programs/activities.* A program/activity is appropriate for continuing education credit if the program/activity meets all of the following criteria:

a. Is board-approved;

b. Constitutes an organized program of learning that contributes directly to the professional competency of the licensee;

c. Pertains to subject matters that integrally relate to the practice of the discipline;

d. Is conducted by individuals who have obtained board approval as set forth in subrule 30.4(1). This criterion is not needed for computer-based continuing education programs/activities conducted pursuant to subrule 30.2(3);

e. Fulfills stated program goals, objectives, or both; and

f. Covers product knowledge, methods, and systems of one or more of the following:

(1) The theory and technique for a specific discipline;

(2) The current Iowa plumbing code, Iowa mechanical code, or both;

(3) The standards comprising the current Iowa occupational safety and health Act.

30.3(2) *Board approval.* Board approval for specific programs/activities under paragraph 30.3(1)*"a"* will be valid for three years.

30.3(3) *Procedure and standards for board approval of continuing education programs/activities.*

a. For non-computer-based continuing education programs/activities, an individual or entity seeking board approval shall:

(1) File an application in the form prescribed by the board without alteration at least 60 days prior to the first scheduled course date;

(2) Attach a copy of the course or activity outline or syllabus that, at a minimum, specifically identifies the course content and a breakdown of the student contact hours; and

(3) Attach a schedule of courses, if known, indicating the course's or activity's proposed scheduled locations, dates, and times.

b. For computer-based continuing education programs/activities, an individual or entity seeking board approval shall:

(1) File an application in the form prescribed by the board without alteration;

(2) Attach a copy of the course or activity outline or syllabus that, at a minimum, specifically identifies the course content and a breakdown of the student contact hours;

(3) Attach a schedule of courses, if known, indicating the course's or activity's proposed scheduled locations, dates, and times;

(4) Provide a brief summary of the training product;

(5) Provide a copy of the visual aids, or other materials included with the course or activity; and

(6) Provide the names, contact information, and qualifications or résumés of the training designers.

30.3(4) *Board member attendance.* With board approval, board members may attend any board-approved continuing education program/activity for purposes of determining whether the continuing education program/activity complies with these rules. In the event a board member attends a board-approved continuing education program/activity with the purpose of determining whether the continuing education program/activity complies with these rules, the board member cannot receive any continuing education credit for those hours in attendance.

[**ARC 7996C**, IAB 5/15/24, effective 6/19/24]

641—30.4(105) Course instructor(s).

30.4(1) *Procedure and standards for board approval of instructors.* An individual seeking board approval to instruct continuing education programs/activities will:

a. File an application in the form prescribed by the board without alteration;

b. Attach copies of documents, licenses, degrees, and other materials demonstrating compliance with the requirements for the type of continuing education program/activity as set forth below.

(1) If seeking approval to instruct in the content area of the Iowa occupational safety and health Act, an individual must either possess and maintain a current Iowa occupational safety and health Act 500, 501, 502, or 503 card or completion certificate, or both, or possess a current train-the-trainer or instructor card or other certification or safety-related degree or diploma issued by the American Heart Association, American Red Cross, Health and Safety Institute, National Safety Council, Board of Certified Safety Professionals, or board-approved equivalent.

(2) If seeking approval to instruct in the content area of the Iowa plumbing code or Iowa mechanical code, or both, an individual must:

1. Possess a current license issued by the board at the journey or master level in the applicable discipline under that code,
2. Possess a current license as a professional engineer under Iowa Code chapter 542B,
3. Present evidence of having taught at least eight contact hours in the applicable code within the last three years,
4. Possess a current inspector or plans examiner certificate issued by a code body in the discipline, or
5. Demonstrate equivalent specialized education or training.

(3) If seeking approval to instruct in the content area of a practice discipline, an individual must:

1. Possess a current license issued by the board at the journey or master level in the applicable discipline,
2. Possess a current license as a professional engineer under Iowa Code chapter 542B,
3. Provide evidence of employment as a product representative with manufacturer training,
4. Present evidence of having taught at least eight contact hours in the applicable discipline within the last year, or
5. Demonstrate equivalent specialized education or training.

30.4(2) *Board approval.* Board approval for an instructor under subrule 30.4(1) will be valid for three years.

[**ARC 7996C**, IAB 5/15/24, effective 6/19/24]

641—30.5(105) Compliance review of continuing education requirements. The board may conduct a review of a licensee's license renewal application to determine compliance with continuing education requirements.

30.5(1) Upon board request, the licensee must submit to the board an individual certificate of completion issued to the licensee or evidence of successful completion of the course from the course sponsor or course instructor containing the course title, date(s), contact hours, sponsor's name, and licensee's name. In some instances, licensees will be requested to provide to the board additional information including, but not limited to, program content, objectives, presenters, location, and schedule. An inclusive brochure may be acceptable.

30.5(2) A licensee must submit all information set forth in subrule 30.5(1) within 30 calendar days following the board's request. The board may grant extensions on an individual basis.

30.5(3) If the submitted materials are incomplete or unsatisfactory and the board determines that the deficiency was the result of good faith conduct on the part of the licensee, the licensee may be given the opportunity to submit make-up credit to cover the deficit found through the audit. A licensee must complete the continuing education hours and submit documentation establishing completion of the required make-up continuing education hours to the board within 120 calendar days from the date of the board's finding of good-faith conduct.

30.5(4) A licensee's failure to provide the board with an accurate mailing address is not an excuse for noncompliance with this rule.

[**ARC 7996C**, IAB 5/15/24, effective 6/19/24]

641—30.6(105) Continuing education exemptions.

30.6(1) *Automatic exemptions.* A licensee will be exempt from the continuing education requirement during the continuing education compliance period when that person:

a. Served honorably on active duty in the military service;

b. Resided in another state or district having continuing education requirements for the discipline and met all mandates of that state or district for practice therein;

c. Was a government employee working in the licensee's specialty and assigned to duty outside the United States;

d. Was absent from the state but engaged in active practice under circumstances that are approved by the board;

e. Obtained a journeyperson license by examination provided that the licensee maintains the same renewal date as the licensee's apprentice license. This automatic exemption only applies to the licensee's first renewal of the journeyperson license;

f. Obtained a specialty, journeyperson, or master license with less than one year remaining in the continuing education compliance period. This exemption applies only to the licensee's first renewal of that license and only to each license that was issued with less than one year remaining in the continuing education compliance period; or

g. Possesses an inactive specialty license under 641—subrule 23.8(3) and is also actively licensed as an apprentice.

30.6(2) *Permissive exemptions.* The board may, in cases involving exceptional hardship or extenuating circumstances, grant an exemption from some or all of the continuing education requirements.

a. A licensee seeking a permissive exemption will apply to the board, in such form as the board may prescribe.

b. A licensee seeking a permissive exemption will provide all such documentary evidence as the board may request to establish the exceptional hardship or extenuating circumstances.

c. In the event a licensee claims a physical or mental disability or illness, the board may request information from a licensed health care professional who can attest to the existence of any such disability or illness.

d. A licensee who applies for a permissive exemption will be notified in writing of the board's decision.

e. In granting an exemption, the board may impose any such additional conditions on the exemption including but not limited to the requirement that the licensee make up a portion of the continuing education requirements.

f. In lieu of granting a full or partial exemption, the board may grant the licensee an extension of time in which to complete the continuing education requirements.

g. The granting of an exemption will not keep a licensee from seeking, or the board from granting, an exemption in a subsequent biennial continuing education compliance period(s).

h. Permissive exemptions will only be granted in the most exceptional and extraordinary of circumstances.
[**ARC 7996C**, IAB 5/15/24, effective 6/19/24]

641—30.7(105) Continuing education extensions. The board may, in individual cases involving hardship or extenuating circumstances, grant an extension of time within which to fulfill the minimum continuing education requirements if the request for extension is made prior to the license expiration date. Hardship or extenuating circumstances include documented circumstances beyond the control of the licensee that prevent attendance at necessary activities.
[**ARC 7996C**, IAB 5/15/24, effective 6/19/24]

641—30.8(105) Continuing education reporting requirements.

30.8(1) *Non-computer-based continuing education programs/activities.* For non-computer-based continuing education programs/activities, at the conclusion of each continuing education course, the course instructor will:

a. Inform each attending licensee that a survey of the course and instructor may be completed and submitted by the licensee to the board through either a board-approved written or online evaluation form.

b. Provide a certificate of completion to each licensee who attends the course. The certificate of completion will include the following information:

(1) The licensee's full name and board-issued license number;
(2) The course name or title;
(3) The board-approved course identification number;
(4) The date of the course;
(5) The number of program contact hours;
(6) The instructor's full name and board-approved identification number; and
(7) The instructor's signature.

c. Submit to the board a typed or electronic course completion roster within 30 days following the completion of the course. The course completion roster will contain the following information:

(1) The full name and board-issued license number of each attending licensee;
(2) The course name or title;
(3) The board-approved course identification number;
(4) The date of the course;
(5) The location of the course;
(6) The number of program contact hours;
(7) The instructor's full name and board-approved identification number; and
(8) The instructor's signature.

30.8(2) *Computer-based continuing education programs/activities.* For computer-based continuing education programs/activities under subrule 30.2(3), at the conclusion of each computer-based continuing education course, the person authorized to monitor and verify attendance/course completion will:

a. Provide a certificate of completion to each licensee who completes the course. The certificate of completion will include the following information:

(1) The licensee's full name and board-issued license number;
(2) The course name or title;
(3) The board-approved course identification number;
(4) The date the course was completed; and
(5) The number of program contact hours.

b. Submit to the board a typed or electronic course completion roster within 30 days following a licensee's completion of a computer-based continuing education course. The course completion roster will contain the following information:

(1) The full name and board-issued license number of each attending licensee;
(2) The course name or title;
(3) The board-approved course identification number;

(4) The date of the course;
(5) The location of the course; and
(6) The number of program contact hours.

[**ARC 7996C**, IAB 5/15/24, effective 6/19/24]

These rules are intended to implement Iowa Code chapters 105 and 272C.

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CHAPTER 31
PLUMBING AND MECHANICAL SYSTEMS BOARD—WAIVERS FROM ADMINISTRATIVE RULES

Rescinded **ARC 7997C**, IAB 5/15/24, effective 6/19/24

CHAPTER 32
PLUMBING AND MECHANICAL SYSTEMS BOARD—LICENSEE DISCIPLINE

641—32.1(105,272C) Definitions. The definitions set forth in Iowa Code section 105.2 are incorporated herein by reference. For purposes of this chapter, the following definitions also apply:

"Conviction" means the same as defined in 641—Chapter 29.

"Directly relates" or *"directly related"* means the same as Iowa Code section 272C.1(8)*"a"* and *"b."*

"Discipline" means any sanction the board may impose upon licensees.

"Disqualifying conviction" or *"disqualifying offense"* means the same as in 641—Chapter 29.

"Lapsed license" means a license that has expired. A lapsed license is no longer valid for practice.

"Licensee" means any person licensed to practice pursuant to Iowa Code chapter 105.

[**ARC 7998C**, IAB 5/15/24, effective 6/19/24]

641—32.2(105,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 641—32.3(105,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

32.2(1) Fraud in procuring a license. Fraud in procuring a license includes but is not limited to an intentional perversion of the truth in making application for a license to practice in this state, which includes the following:

a. False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or

b. Attempting to file or filing with the board or the department of inspections, appeals, and licensing any false or forged diploma, certificate, affidavit, identification or qualification in making an application for a license in this state.

32.2(2) Professional incompetence. Professional incompetence includes but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of the applicable licensed trade.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by others licensed in the applicable trade in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care that is ordinarily exercised by the average licensee in the applicable trade acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of a licensee in the applicable trade in this state.

e. Inability to practice in the trade with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition.

f. Being adjudged mentally incompetent by a court of competent jurisdiction.

32.2(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

32.2(4) Habitual intoxication or addiction to the use of drugs.

32.2(5) Conviction of a disqualifying offense in the courts of this state or another state, territory, or country. A file-stamped copy of the final order or judgment or conviction or plea of guilty in this state or another state, territory, or country constitutes conclusive evidence of the conviction.

32.2(6) Fraud in representations as to skill or ability.

32.2(7) Use of untruthful or improbable statements in advertisements.

32.2(8) Willful or repeated violations of Iowa Code chapter 105 or 272C.

32.2(9) Violation of a board rule.

32.2(10) Nonpayment of a state debt as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 272D and 481—Chapter 8.

32.2(11) Permitting another person to use the licensee's wall certificate, wallet card, or license number for any purpose.

32.2(12) Failure to timely submit the requested materials in response to a compliance review conducted pursuant to 641—30.5(105).

32.2(13) Failure to meet the continuing education requirements for licensure.

32.2(14) Submission of a false report of continuing education.

32.2(15) Failure to pay any outstanding fees or costs owed to the board.

32.2(16) Acceptance of any fee by fraud or misrepresentation.

32.2(17) Negligence by the licensee in the practice of the trade. Negligence by the licensee in the practice of the trade includes a failure to exercise due care, including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice, or conditions that impair the ability to safely and skillfully practice the trade.

32.2(18) Violation of a law, ordinance, or regulation of this state, or a political subdivision therein, another state, or the United States, which relates to the practice of the profession.

32.2(19) Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure by the licensee to report in writing to the board revocation, suspension, or other disciplinary action taken by a licensing authority within 30 days of the final action. A stay by an appellate court does not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report will be expunged from the records of the board.

32.2(20) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the practice in the trade in another state, district, territory, or country.

32.2(21) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

32.2(22) Failure to notify the board within 30 days after the occurrence of any judgment entered on or settlement of a claim or action related to the profession.

32.2(23) Engaging in any conduct that subverts or attempts to subvert a board investigation.

32.2(24) Failure to comply with a subpoena issued by the board or otherwise fail to cooperate with an investigation of the board.

32.2(25) Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

32.2(26) Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

32.2(27) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice a trade included in Iowa Code chapter 105.

32.2(28) Failure to report a change in name or address within 30 days after it occurs.

32.2(29) Representing oneself as a licensed tradesperson when one's license has been suspended or revoked or when the license is on inactive status.

32.2(30) Permitting another person to use the licensee's license for any purpose.

32.2(31) Permitting an unlicensed employee or person under the licensee's control to perform activities necessitating a license.

32.2(32) Failure to apply and obtain a permit prior to performing work, if mandated by the state or a political subdivision therein.

32.2(33) Failure to pay all inspection fees, if required by the state or a political subdivision therein.

32.2(34) Failure to pay a permit fee, if required by the state or a political subdivision therein.

32.2(35) Practice outside the scope of the license, which includes but is not limited to:

a. Practicing as a journeyperson without the supervision of a master.

b. Practicing in a trade for which the licensee does not hold a board-issued license.

c. Contracting for plumbing or mechanical work in the state of Iowa without a board-issued contractor license.

32.2(36) Practicing on a lapsed license.

32.2(37) Practicing as a contractor without valid bonding or insurance, as mandated by Iowa Code section 105.19.
[**ARC 7998C**, IAB 5/15/24, effective 6/19/24]

641—32.3(105,272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.
2. Suspension of license until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board or for a specific period, the licensee's engaging in specified procedures, methods, or acts.
4. Probation.
5. Mandate additional education or training.
6. Mandate a reexamination.
7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
8. Impose civil penalties not to exceed $5,000.
9. Issue a citation and warning.
10. Such other sanctions allowed by law as may be appropriate.

[**ARC 7998C**, IAB 5/15/24, effective 6/19/24]

641—32.4(272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care to the citizens of this state;
2. The facts of the particular violation;
3. Any extenuating facts or other countervailing considerations;
4. The number of prior violations or complaints;
5. The seriousness of prior violations or complaints;
6. Whether remedial action has been taken; and
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

[**ARC 7998C**, IAB 5/15/24, effective 6/19/24]

641—32.5(105) Civil penalties—unlicensed penalties. The board may impose civil penalties by order against a person who is not licensed by the board based on the unlawful practices specified in Iowa Code section 105.27(1). In addition to the procedures set forth in Iowa Code chapters 105 and 272C, this chapter applies.

32.5(1) *Unlawful practices.* Practices by an unlicensed person which are subject to civil penalties include, but are not limited to:

a. Acts or practices by unlicensed persons which necessitate licensure to install or repair plumbing, mechanical, HVAC, refrigeration, sheet metal, or hydronic systems under Iowa Code chapter 105.

b. Acts or practices by unlicensed persons which necessitate certification to install or repair medical gas piping systems under Iowa Code chapter 105.

c. Engaging in the business of designing, installing, or repairing plumbing, mechanical, HVAC, refrigeration, sheet metal, or hydronic systems without employing a licensed master.

d. Providing plumbing, mechanical, HVAC, refrigeration, sheet metal, or hydronic systems services on a contractual basis.

e. Use or attempted use of a licensee's certificate or wallet card or use or attempted use of an expired, suspended, revoked, or nonexistent certificate.

f. Falsely impersonating a person licensed under Iowa Code chapter 105.

g. Providing false or forged evidence of any kind to the board in obtaining or attempting to obtain a license.

h. Other violations of Iowa Code chapter 105.

i. Knowingly aiding or abetting an unlicensed person or establishment in any activity identified in this rule.

32.5(2) *Investigations.* The board is authorized by Iowa Code section 17A.13(1) and chapters 105 and 272C to conduct such investigations as are needed to determine whether grounds exist to impose civil penalties against a nonlicensee. Complaint and investigatory files concerning nonlicensees are not confidential except as may be provided in Iowa Code chapter 22.

32.5(3) *Subpoenas.* Pursuant to Iowa Code section 17A.13(1) and chapter 105, the board is authorized in connection with an investigation of an unlicensed person to issue subpoenas to compel persons to testify and to compel persons to produce books, papers, records and any other real evidence, whether or not privileged or confidential under law, which the board deems necessary as evidence in connection with the civil penalty proceeding or relevant to the decision of whether to initiate a civil penalty proceeding. Board procedures concerning investigative subpoenas are set forth in rule 641—34.5(105).

32.5(4) *Notice of intent to impose civil penalties.* Notice of the board's intent to order compliance with Iowa Code chapter 105 and impose a civil penalty will be served upon the nonlicensee by restricted certified mail, return receipt requested, or by personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the nonlicensee may accept service personally or through authorized counsel. The notice will include the following:

a. A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.

b. Reference to the particular sections of the statutes and rules involved.

c. A short, plain statement of the alleged unlawful practices.

d. The dollar amount of the proposed civil penalty and the nature of the intended order.

e. Notice of the nonlicensee's right to a hearing and the time frame in which the hearing must be requested.

f. The address to which written request for hearing must be made.

32.5(5) *Requests for hearings.*

a. Nonlicensees must request a hearing within 30 days of the date the notice is received if served through restricted certified mail, or within 30 days of the date of service if service is accepted or made in accordance with Iowa Rule of Civil Procedure 1.305. A request for hearing must be in writing and is deemed made on the date of the nonmetered United States Postal Service postmark or the date of personal service.

b. If a request for hearing is not timely made, or if the nonlicensee waives in writing the right to hearing and agrees to pay the penalty, the board chairperson, the chairperson's designee, or the board executive may issue an order imposing the civil penalty and requiring compliance with Iowa Code chapter 105, as described in the notice. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose a civil penalty.

c. If a request for hearing is timely made, the board will issue a notice of hearing and conduct a hearing in the same manner as applicable to disciplinary cases against licensees.

d. Subsequent to the issuance of a notice of hearing under this subrule, the settlement agreement provisions of 641—33.23(272C) apply.

e. The notice of intent to issue an order and the order are public records pursuant to Iowa Code chapter 22. Copies may be published. Hearings are open to the public.

32.5(6) *Factors for board consideration.* The board may consider the following when determining the amount of civil penalty to impose, if any:

a. Whether the amount imposed will be a substantial economic deterrent to the violation.

b. The circumstances leading to or resulting in the violation.

c. The severity of the violation and the risk of harm to the public.

d. The economic benefits gained by the violator as a result of noncompliance.

e. The welfare or best interest of the public.

32.5(7) *Enforcement options.* In addition, or as an alternative, to the administrative process described in these rules, the board may seek an injunction in district court, refer the matter for criminal prosecution, or enter into a consent agreement.

32.5(8) *Judicial review.*

a. A person aggrieved by the imposition of a civil penalty under this rule may seek a judicial review in accordance with Iowa Code section 17A.19.

b. The board will notify the attorney general of the failure to pay a civil penalty within 30 days after entry of an order or within 10 days following final judgment in favor of the board if an order has been stayed pending appeal.

c. The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs.

d. An action to enforce an order under this rule may be joined with an action for an injunction pursuant to Iowa Code section 105.27(4).

[**ARC 7998C**, IAB 5/15/24, effective 6/19/24]

641—32.6(105,272C) Collection of delinquent civil penalties and discipline-related debts.

32.6(1) The board may participate in an income setoff program administered by the department of revenue in accordance with Iowa Code section 421.65 and rules promulgated thereunder.

32.6(2) Definitions. For purposes of this rule, the following definitions apply:

"Debtor" means any person who owes a debt to the board as a result of a proceeding in which notice and opportunity to be heard was afforded.

"Income offset program" means the program established in Iowa Code section 421.65 and any rules promulgated thereunder through which the department of revenue coordinates with state agencies to satisfy liabilities owed to those state agencies.

32.6(3) The board office may provide the department of administrative services a liability file containing pertinent information for the identification of the debtor and liability, including if the status of a debt changes due to payment of the debt, invalidation of the liability, alternate payment arrangements with the debtor, bankruptcy, or other factors.

32.6(4) Due diligence.

a. Before submitting debtor information to the outstanding liability file, the board office will make a good faith attempt to collect from the debtor. Such attempt will include at least all of the following:

(1) A telephone call requesting payment.

(2) An initial letter to the debtor's last discernible address requesting payment within 15 days.

(3) A second letter to the debtor's last discernible address requesting payment within ten days.

b. The board office will document due diligence and retain such documentation.

32.6(5) Notification of offset. Within ten calendar days of receiving notification from the department of revenue that the debtor is entitled to a payment subject to the setoff program, the board office will:

a. Send a preoffset notice to the debtor. The preoffset notice will inform the debtor of the amount the department intends to claim, including all of the following information:

(1) The board's right to the payment in question.

(2) The board's right to recover the payment through the setoff procedure.

(3) The basis of the board's case in regard to the debt.

(4) The right of the debtor to request, in accordance with subrule 32.6(6) and within 15 days of the mailing of the preoffset notice, a split of the payment between parties when the payment in question is jointly owned or otherwise owned by two or more persons.

(5) The debtor's right to appeal the offset, in accordance with subrule 32.6(7) and within 15 days of the mailing of the preoffset notice, and the procedure to follow in that appeal.

(6) The board office's contact information in case of questions.

b. Notify the department of revenue that the preoffset notice has been sent to the debtor, and supply a copy of the preoffset notice to the department of revenue.

32.6(6) Request to divide a jointly or commonly owned right to payment.

a. A debtor who receives a preoffset notice may request release of a joint or common owner's share, if the request is received by the board within 15 days of the date the preoffset notice is mailed.

b. In conjunction with such a request, the debtor shall provide to the board the full name and social security number of any joint or common owner.

c. Upon receipt of such a request, the board office will notify the department of revenue of the request.

32.6(7) Appeal process. A debtor who receives a preoffset notice may request an appeal of the underlying debt within 15 days of the date the preoffset notice is mailed. A contested case appeal will be conducted pursuant to 641—Chapter 33. The board will notify the department of revenue within 45 days of the notification of setoff. The board will hold a payment in abeyance until the final disposition of the contested liability or setoff.

32.6(8) Once any setoff has been completed, the board office will notify the debtor of the action taken and what balance, if any, remains owing to the board.

[**ARC 7998C**, IAB 5/15/24, effective 6/19/24]

These rules are intended to implement Iowa Code chapters 105 and 272C.

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CHAPTER 33
PLUMBING AND MECHANICAL SYSTEMS BOARD—CONTESTED CASES

641—33.1(17A,105,272C) Scope and applicability. This chapter applies to contested case proceedings conducted by the plumbing and mechanical systems board.
[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.2(17A,105,272C) Definitions. Except where otherwise specifically defined by law:

"Board" means the plumbing and mechanical systems board as established pursuant to Iowa Code section 105.3.

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

"Executive officer" means the executive officer for the plumbing and mechanical systems board.

"Issuance" means the date of mailing of a decision or order, or date of delivery if service is by other means, unless another date is specified by rule or in the order.

"License" means a license, registration, certificate, permit or other form of practice permission required by Iowa Code chapter 105.

"Party" means the state of Iowa, as represented by the assistant attorney general assigned to prosecute the case on behalf of the public interest, the respondent, or an intervenor.

"Presiding officer" means the board, a panel of board members, or a panel of nonboard member specialists as provided in Iowa Code section 272C.6(1) and 272C.6(2) in a disciplinary contested case.
[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.3(17A) Time requirements.

33.3(1) Time will be computed as provided in Iowa Code section 4.1(34).

33.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer will afford all parties an opportunity to be heard or to file written arguments.
[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.4(17A,272C) Probable cause. If the board finds there is probable cause for taking disciplinary action against a licensee, the board will order a contested case hearing commenced by the filing and service of a statement of charges and notice of hearing.
[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.5(17A,272C) Informal settlement. The board, its staff or agent, or a board committee may attempt to informally settle a disciplinary case before filing a statement of charges and notice of hearing. If the board and the licensee agree to a settlement of the case, a statement of charges will be filed simultaneously with a consent order, whether as separate or combined documents. By electing to sign a consent order, the licensee waives all rights to a hearing and all attendant rights. The consent order has the force and effect of a final disciplinary order entered in a contested case and is an open record. Matters not involving licensee discipline that culminate in a contested case may also be settled through consent order. Procedures governing settlement after notice of hearing is served are described in rule 641—33.23(272C).
[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.6(17A) Statement of charges.

33.6(1) *Legal review.* Every statement of charges and notice of hearing prepared by the board will be reviewed by the office of the attorney general before it is filed.

33.6(2) *Delivery.* Delivery of the statement of charges and notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by personal service or publication as provided in the Iowa Rules of Civil Procedure or by certified mail, return receipt requested.

33.6(3) *Contents.* The statement of charges and notice of hearing will contain the following information:

a. A statement by the board showing that there is probable cause to file the statement of charges;

b. A statement of the time, place, and nature of the hearing;

c. A statement of the legal authority and jurisdiction under which the hearing is to be held;

d. A reference to the particular sections of the statutes and rules involved;

e. A short and plain statement of the matters asserted containing sufficient detail to give the respondent fair notice of the allegations so the respondent may adequately respond to the charges, and to give the public notice of the matters at issue;

f. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the board or the state and of parties' counsel where known;

g. Reference to the procedural rules governing conduct of the contested case proceeding;

h. Reference to the procedural rules governing informal settlement;

i. Identification of the presiding officer as the board, a panel of board members, or a panel of nonboard member specialists as provided in Iowa Code section 272C.6(1) and 272C.6(2); and

j. A statement requiring the respondent to submit an answer pursuant to subrule 33.13(2) within 20 days after service of the statement of charges.

[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.7(17A) Requests for contested case proceeding. Any person seeking or claiming entitlement to a contested case hearing shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the board action in question.

33.7(1) *Contents of request.* The request for a contested case proceeding should:

a. State the name and address of the requester;

b. Identify the specific board action that is disputed;

c. Describe issues of material fact in dispute; and

d. Where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved.

33.7(2) *Board action on request.* If the board grants the request, the board will issue a notice of hearing. If the board denies the request, the board will issue a written order specifying the basis for the denial.

[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.8(105) Legal representation. Following the filing of a statement of charges and notice of hearing, the office of the attorney general is responsible for the legal representation of the public interest in all proceedings before the board. The assistant attorney general assigned to prosecute a contested case before the board will not represent the board in that case but will represent the public interest. Other parties to a proceeding before the board may have counsel at their own expense.

[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.9(17A,105,272C) Presiding officer in a disciplinary contested case. The presiding officer in a disciplinary contested case will be the board, a panel of not fewer than three board members who are licensed under Iowa Code chapter 105, or a panel of nonboard member specialists as provided in Iowa Code section 272C.6(1) and 272C.6(2). The board or a panel of board members when acting as presiding officer may request that an administrative law judge perform certain functions as an aid to the board or board panel, including ruling on prehearing motions, conducting the prehearing conference, ruling on evidentiary objections at hearing, assisting in deliberation, or drafting the written decision for review by the board or board panel. Decisions of the administrative law judge serving in this capacity are subject to the interlocutory appeal provisions of rule 641—33.29(17A).

[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.10(17A) Presiding officer in a nondisciplinary contested case.

33.10(1) A nondisciplinary contested case includes license denial proceedings. Any party in a nondisciplinary contested case may request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections, appeals, and licensing by filing a written request within 20 days after service of a notice of hearing identifying or describing the presiding officer as the board.

33.10(2) The board may only deny the request if:

a. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

b. An administrative law judge with the qualifications identified in subrule 33.10(4) is unavailable to hear the case within a reasonable time.

c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witnesses is not likely to be dispositive in resolving the disputed factual issues.

e. The request was not timely filed.

f. The request is not consistent with a specified statute.

33.10(3) The board will issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in subrule 33.10(4), the parties will be notified at least ten days prior to hearing if a qualified administrative law judge will not be available.

33.10(4) Except as otherwise provided by a provision or law, all rulings by an administrative law judge acting as presiding officer in a nondisciplinary contested case are subject to appeal to the board. Such appeals must be filed within ten days of the date of the issuance of the challenged ruling but no later than the time for compliance with the order or the date of the hearing, whichever occurs first.

33.10(5) Unless otherwise provided by law, when reviewing a proposed decision of an administrative law judge in a nondisciplinary contested case upon appeal, the board possesses the powers and complies with the provisions of this chapter applicable to presiding officers.

[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.11(17A) Disqualification.

33.11(1) A presiding officer or other person will withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted, or advocated, in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated, in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship who:

(1) Is a party to the case, or an officer, director or trustee of a party;

(2) Is a lawyer in the case;

(3) Is known to have an interest that could be substantially affected by the outcome of the case; or

(4) Is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation.

33.11(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include:

a. General direction and supervision of assigned investigators;

b. Unsolicited receipt of information that is relayed to assigned investigators;

c. Review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding; or

d. Exposure to factual information while performing other board functions, including fact gathering for purposes other than investigation of the matter that culminates in a contested case.

33.11(3) Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case will be disclosed if required by Iowa Code section 17A.17(3) and subrule 33.27(9).

33.11(4) By electing to participate in an appearance before the board pursuant to rule 641—34.7(17A), the licensee waives any objection to a board member's participating as a decision maker in a contested case proceeding on the grounds that the board member "personally investigated" the matter under this provision.

33.11(5) If a presiding officer or other person knows of information that might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person will submit the relevant information from the records by affidavit including a statement of the reasons for the determination that withdrawal is unnecessary.

[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.12(17A) Consolidation—severance.

33.12(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested cases where:

a. The matters involve common parties or common questions of fact or law;

b. Consolidation would expedite and simplify consideration of the issues involved; and

c. Consolidation would not adversely affect the rights of any of the parties to those proceedings.

33.12(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceeding or portions thereof severed.

[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.13(17A) Pleadings.

33.13(1) *Pleadings.* Pleadings may be required by rule, by the statement of charges, or by order of the presiding officer.

33.13(2) *Answer.*

a. An answer shall be filed within 20 days of service of the statement of charges and notice of hearing that:

(1) Identifies on whose behalf it is filed;

(2) Sets forth the name, address and telephone number of the person filing the answer, the person on whose behalf it is filed, and the attorney, if any, representing that person;

(3) Specifically admits, denies or otherwise answers all material allegations of the statement of charges; and

(4) Sets forth any facts deemed necessary to show an affirmative defense and contain as many additional defenses as the respondent may claim.

b. The presiding officer may refuse to consider any defense not raised in the answer that could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

33.13(3) *Amendments.* Any notice of hearing or statement of charges may be amended before a responsive pleading has been filed. Otherwise, a party may amend a pleading only with the consent of the other parties or at the discretion of the presiding officer who may impose terms or grant a continuance.

[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.14(17A) Service and filing.

33.14(1) *Service—when required.* Except where otherwise provided by law, every document filed in a contested case proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as prosecutor for the state, simultaneously with its filing. Except for the original statement of charges and notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

33.14(2) *Service—how made.* Service upon a party represented by an attorney will be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is completed upon mailing, except where otherwise specifically provided by statute, rule, or order.

33.14(3) *Filing—when required.* After the statement of charges and notice of hearing, all documents in a contested case proceeding will be filed with the board. All documents that are required to be served upon a party will be filed simultaneously with the board.

33.14(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board; delivered to an established courier service for immediate delivery to the board; or mailed by first-class or state interoffice mail to the board, so long as there is proof of mailing.

33.14(5) *Proof of mailing.* Proof of mailing includes:

a. A legible United States Postal Service postmark on the envelope, or

b. A certificate of service, or

c. A notarized affidavit, or

d. A certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the board and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

_____ _____

(Date) (Signature)

[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.15(17A) Discovery.

33.15(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules, by order of the presiding officer, or by agreement of the parties, time periods for compliance with discovery will be as provided in the Iowa Rules of Civil Procedure.

33.15(2) Any motion relating to discovery shall allege that the moving party has previously made a good faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery will be ruled upon by the presiding officer. Opposing parties will be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 33.15(1). The presiding officer may rule on the basis of the written motion and any response, or may order oral argument.

33.15(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.16(17A,272C) Subpoenas in a contested case.

33.16(1) Subpoenas issued in a contested case may compel the attendance of witnesses at deposition or hearing and may compel the production of books, papers, records, or other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing or may be issued separately. Subpoenas will be issued by the executive officer or designee upon written request. In the case of a request for a subpoena of mental health records, the request must confirm the conditions described in 641—subrule 34.5(1) prior to the issuance of the subpoena.

33.16(2) A request for a subpoena should include the following information, as applicable, unless the subpoena is requested in order to compel testimony or documents for rebuttal or impeachment purposes:

a. The name, address, and telephone number of the person requesting the subpoena;

b. The name and address of the person to whom the subpoena shall be directed;

c. The date, time, and location at which the person shall be commanded to attend and give testimony;

d. Whether the testimony is requested in connection with a deposition or hearing;

e. A description of the books, papers, records, or other real evidence requested;

f. The date, time, and location for production, or inspection and copying; and

g. In the case of a subpoena request for mental health records, confirmation that the conditions described in 641—subrule 34.5(1) have been satisfied.

33.16(3) Each subpoena shall contain, as applicable:

a. The caption of the case;

b. The name, address, and telephone number of the person who requested the subpoena;

c. The name and address of the person to whom the subpoena is directed;

d. The date, time, and location at which the person is commanded to appear;

e. Whether testimony is commanded in connection with a deposition or hearing;

f. A description of the books, papers, records, or other real evidence the person is commanded to produce;

g. The date, time, and location for production, or inspection and copying;

h. The time within which a motion to quash or modify the subpoena must be filed;

i. The signature, address, and telephone number of the board executive officer or designee;

j. The date of issuance; and

k. A return of service.

33.16(4) Unless a subpoena is requested in order to compel testimony or documents for rebuttal or impeachment purposes, the executive officer or designee will mail the subpoena to the requesting party, with a copy to the opposing party. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

33.16(5) Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the contested case, who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena describing the legal reasons why the subpoena should be quashed or modified. It may be accompanied by legal briefs or factual affidavits.

33.16(6) Upon receipt of a timely motion to quash or modify a subpoena, the presiding officer may hold a hearing and issue a decision. Oral argument may be scheduled at the discretion of the presiding officer. The presiding officer may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

33.16(7) A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the board by serving on the board's executive director, either in person or by certified mail, a notice of appeal within ten days after service of the decision.

33.16(8) If the person contesting the subpoena is not a party to the contested case, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is a party to the contested case, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.17(17A) Motions.

33.17(1) Prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

33.17(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on the motion.

33.17(3) The presiding officer may schedule oral argument on any motion. If the board requests that an administrative law judge issue a ruling on a prehearing motion, the ruling is subject to interlocutory appeal pursuant to rule 641—33.29(17A).

33.17(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least five days prior to the date of the hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

33.17(5) Motions for summary judgment shall comply with Iowa Rule of Civil Procedure 1.981 and will be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

a. Motions for summary judgment must be filed and served at least 20 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within ten days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served.

b. The time fixed for hearing or nonoral submission will be not less than 15 days after the filing of the motion, unless a shorter time is ordered by the presiding officer.

c. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 641—33.32(17A,272C) and appeal pursuant to rule 641—33.30(17A,272C).

[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing upon written notice filed with the board and served on all parties. Unless otherwise ordered by the board, a withdrawal is with prejudice.

[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.19(17A) Intervention.

33.19(1) *Motion.* A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

33.19(2) *When filed.* Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor will be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances that would delay the proceeding will ordinarily be denied.

33.19(3) *Grounds for intervention.* The movant shall demonstrate that:

a. Intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties;

b. The movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and

c. The interests of the movant are not adequately represented by existing parties.

33.19(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may limit the issues raised by the intervenor or otherwise condition the intervenor's participation.

[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.20(17A) Telephone proceedings. The presiding officer may, on the officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic

means in which all parties have an opportunity to participate. The presiding officer will determine the location of the parties and witnesses for telephone or other electronic hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. Disciplinary hearings will generally not be held by telephone or electronic means in the absence of consent by all parties, but the presiding officer may permit any witness to testify by telephone. Parties shall disclose at or before the prehearing conference if any witness will be testifying by telephone. Objections, if any, shall be filed with the board and served on all parties at least three business days in advance of hearing.
[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.21(17A) Prehearing conferences.

33.21(1) Any party may request a prehearing conference. Prehearing conferences will be conducted by the executive officer or designee, who may request the assistance of an administrative law judge. A written request for prehearing conference or an order for prehearing conference on the executive officer's own motion shall be filed not less than ten days prior to the hearing date. A prehearing conference will be scheduled not less than five business days prior to the hearing date. The executive officer shall set a prehearing conference in all licensee disciplinary cases and provide notice of the date and time in the notice of hearing. Written notice of the prehearing conference will be given by the executive officer to all parties. For good cause the executive officer may permit variances from this rule.

33.21(2) The parties at a prehearing conference will be prepared to discuss the following subjects, and the executive officer or administrative law judge may issue appropriate orders concerning:

a. The possibility of settlement.

b. The entry of a scheduling order to include deadlines for completion of discovery.

c. Stipulations of law or fact.

d. Stipulations on the admissibility of evidence.

e. Submission of expert or other witness lists. Witness lists may be amended subsequent to the prehearing conference within the time limits established by the executive officer or administrative law judge at the prehearing conference. Witnesses not listed on the final witness list may be excluded from testifying unless there was good cause for the failure to include their names.

f. Submission of exhibit lists. Exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the executive director or administrative law judge at the prehearing conference. Other than rebuttal exhibits, exhibits that are not listed on the final exhibit list may be excluded from admission into evidence unless there was good cause for the failure to include them.

g. Stipulations for waiver of any provision of law.

h. Identification of matters that the parties intend to request to be officially noticed.

i. Consideration of any additional matters that will expedite the hearing.

33.21(3) Prehearing conferences may be conducted by telephone unless otherwise ordered.
[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.22(17A) Continuances.

33.22(1) Unless otherwise provided, applications for continuance shall be filed with the board at least seven days before the date scheduled for hearing. If the application for continuance is not contested, the executive officer or designee will issue the appropriate order. If the application for continuance is contested, the matter will be heard by the board or delegated to an administrative law judge.

33.22(2) A written application for continuance will:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request for continuance; and

c. Be signed by the requesting party or the party's representative.

33.22(3) An oral application for continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance

must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer.

33.22(4) No application for continuance will be made or granted without notice to all parties except in an emergency where notice is not feasible. The board may waive notice of such requests for a particular case or an entire class of cases.

33.22(5) The presiding officer may require documentation of any grounds for continuance. In determining whether to grant a continuance, the presiding officer may consider any relevant factors, including prior continuances; the interests of all parties; the public interest; the likelihood of informal settlement; the existence of an emergency; any objection; any applicable time requirements; the existence of a conflict in the schedules of counsel, parties, or witnesses; and the timeliness of the request.
[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.23(272C) Settlement agreements.

33.23(1) Settlement negotiations after the notice of hearing may be initiated by the licensee or other respondent, the prosecuting attorney, the board's executive officer, or the board chair or chair's designee.

33.23(2) The board chair or chair's designee may negotiate on behalf of the board but does not have the authority to bind the board to a particular term of settlement.

33.23(3) The respondent is not obligated to participate in settlement negotiations. The respondent's initiation or consent to settlement negotiations constitutes a waiver of notice and opportunity to be heard during the settlement negotiation pursuant to Iowa Code section 17A.17 and rule 641—33.27(17A). Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the board chair or chair's designee, and the designated board member is not disqualified from participating in the adjudication of the contested case.

33.23(4) Unless designated to negotiate, no member of the board shall be involved in settlement negotiation until a written consent order is submitted to the full board for approval. No informal settlement will be submitted to the full board unless it is in final written form executed by the respondent. By signing the proposed consent order, the respondent authorizes the prosecuting attorney or executive officer to have ex parte communications with the board related to the terms of the settlement. If the board fails to approve the consent order, it shall be of no force and effect to either party and shall not be admissible at hearing. Upon rejecting a proposed consent order, the board may suggest alternative terms of settlement, which the respondent is free to accept or reject.

33.23(5) If the board and respondent agree to a consent order, the consent order constitutes the final decision of the board. By electing to resolve a contested case through consent order, the respondent waives all rights to a hearing and attendant rights. A consent order in a licensee disciplinary case has the force and effect of a final disciplinary order entered in a contested case and may be published as provided in subrule 33.30(1).
[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.24(17A) Hearing procedures. The presiding officer will be in control of the proceedings and will have the authority to administer oaths, admit or exclude testimony or other evidence, and rule on all motions and objections.

33.24(1) *Examination of witnesses.* All witnesses shall be sworn or affirmed by the presiding officer or the court reporter and be subject to cross-examination. Board members and the administrative law judge have the right to examine witnesses at any stage of a witness's testimony. The presiding officer may limit questioning in a manner consistent with law.

33.24(2) *Public hearing.* The hearing will be open to the public unless a licensee or licensee's attorney requests in writing that a licensee disciplinary hearing be closed to the public.

33.24(3) *Record of proceedings.* Oral proceedings will be recorded either by mechanical or electronic means or by certified shorthand reporters. Oral proceedings or any part thereof will be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription will be filed with and maintained by the board for at least five years from the date of decision.

33.24(4) *Order of proceedings.* Before testimony is presented, the record will show the identities of any board members present, the identity of the administrative law judge, the identities of the primary parties and their representatives, and the fact that all testimony is being recorded. In contested cases initiated by the board, such as licensee discipline, hearings will generally be conducted in the following order, subject to modification at the discretion of the board:

a. 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.

b. The assistant attorney general representing the state's interest before the board may make a brief opening statement, which may include a summary of charges and the names of any witnesses and documents to support such charges.

c. Each respondent shall be offered the opportunity to make an opening statement, including the names of any witnesses the respondent(s) desires to call in defense. A respondent may elect to make the opening statement just prior to the presentation of evidence by the respondent(s).

d. The presentation of evidence on behalf of the state.

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

f. Rebuttal evidence on behalf of the state, if any.

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

h. Closing arguments first on behalf of the state, then on behalf of the respondent(s), and then on behalf of the state, if any. The order of proceedings will be tailored to the nature of the contested case. In license reinstatement hearings, for example, the respondent will generally present evidence first because the respondent is obligated to present evidence in support of the respondent's application for reinstatement pursuant to rule 641—33.40(17A,272C). In license denial hearings, the state will generally first establish the basis for the board's denial of licensure, but thereafter the applicant has the burden of establishing the conditions for licensure pursuant to rule 641—33.36(17A,105,272C).

33.24(5) *Decorum.* The presiding officer will maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

33.24(6) *Immunity.* The presiding officer has authority to grant immunity from disciplinary action to a witness, as provided by Iowa Code section 272C.6(3), but only upon the unanimous vote of all members of the board hearing the case. The official record of the hearing shall include the reasons for granting the immunity.

33.24(7) *Sequestering witnesses.* The presiding officer, on the officer's own motion or upon the request of a party, may sequester witnesses.

[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.25(17A) Evidence.

33.25(1) The presiding officer will rule on the admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

33.25(2) Stipulation of facts is encouraged.

33.25(3) Evidence in the proceeding will be confined to the issues as to which the parties received notice prior to the hearing unless a party waives the party's right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer admits evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, will receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

33.25(4) The party seeking admission of an exhibit must provide the opposing party with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents shall be provided to opposing parties. All exhibits admitted into evidence will be appropriately marked and be made part of the record.

33.25(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection must be timely and will be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and

the reasons for the ruling will be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

33.25(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record by briefly summarizing the testimony or, with permission of the presiding officer, presenting the testimony. If the excluded evidence consists of a document or exhibit, it will be marked as part of an offer of proof and inserted in the record.

33.25(7) 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 relying for the conduct of their serious affairs, and may be based on hearsay or other types of evidence that may or would be inadmissible in a jury trial.

[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.26(17A) Default.

33.26(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

33.26(2) Where appropriate and not contrary to law, any party may move for default against a party who has failed to appear after proper service.

33.26(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by subrule 33.30(2). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

33.26(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

33.26(5) Properly substantiated and timely filed motions to vacate will be granted only for good cause shown, with burden of proof as to good cause on the moving party. Adverse parties will have ten days to respond to a motion to vacate. Adverse parties will be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

33.26(6) "Good cause" for purposes of this rule has the same meaning as "good cause" for setting aside a default judgment under the Iowa Rules of Civil Procedure.

33.26(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 641—33.29(17A).

33.26(8) If a motion to vacate is granted and no interlocutory appeal has been taken, the presiding officer will issue another statement of charges and notice of hearing and the contested case will proceed accordingly.

33.26(9) A default decision may provide either that the default is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 641—33.33(17A).

[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.27(17A) Ex parte communication.

33.27(1) Unless requested for the disposition of ex parte matters specifically authorized by statute, following issuance of the statement of charges and notice of hearing there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. Nothing in this provision

is intended to preclude board members from communicating with other board members or members of the board staff, other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 33.11(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties, as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

33.27(2) Prohibitions on ex parte communications commence with the issuance of the statement of charges and notice of hearing in a contested case and continue for as long as the case is pending before the board.

33.27(3) Written, oral, or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

33.27(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications will be provided in compliance with rule 641—33.14(17A) and may be supplemented by telephone, facsimile, electronic mail, or other means of notification. When permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

33.27(5) Persons who jointly act as a presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

33.27(6) The executive officer or other persons may be present during deliberations as long as the executive officer or other person is not disqualified from participating pursuant to rule 641—33.11(17A).

33.27(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 641—33.22(17A).

33.27(8) A presiding officer who receives a prohibited ex parte communication during the contested case process must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified.

a. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order.

b. If the presiding officer determines that disqualification is not warranted, such documents will be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

33.27(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment, unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

33.27(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the board. Violation of ex parte communications prohibitions by board personnel will be reported to the board and the board's executive officer for possible sanctions, including censure, suspension, dismissal, or other disciplinary action.

[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.28(17A) Recording costs. Upon request, the board will provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record will be paid by the requesting party.
[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.29(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the executive officer, administrative law judge, or hearing panel. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of the hearing, whichever is first. In determining whether to do so, the board will consider:

1. The extent to which granting the interlocutory appeal would expedite final resolution of the case; and

2. The extent to which review of that interlocutory order by the board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy.
[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.30(17A,272C) Decisions.

33.30(1) *Final decisions.* When a quorum of the board presides over the reception of the evidence at the hearing, its decision is a final decision. A majority of the members constitutes a quorum. Final decisions will be served on the parties in accordance with subrule 33.14(2). Final decisions of the board, including consent agreements and consent orders, are public documents pursuant to Iowa Code chapter 22.

33.30(2) *Proposed panel decisions.*

a. Panel of specialists. When a panel of three specialists presides over the hearing, the panel will issue a proposed decision that will include findings of fact but will not include conclusions of law or any recommendation for or against the licensee discipline. A proposed decision of a panel of specialists, together with a transcript of the proceedings and the exhibits presented, will be reviewed by the board within 30 days of the date the proposed decision was issued.

b. Panel of board members. When a panel of three or more board members presides over the hearing, the panel will issue a proposed decision that will include proposed findings of fact, conclusions of law, and the order. A proposed panel decision will be reviewed by the board within 30 days of the date the proposed panel decision was issued. A proposed panel decision becomes a final decision without further proceedings unless appealed in accordance with paragraph 33.30(2)*"c."*

c. Appeal of proposed panel decisions. A proposed panel decision pursuant to paragraph 33.30(2)*"a"* or 33.30(2)*"b"* may be appealed to the full board by either party by serving on the executive officer, either in person or by certified mail, a notice of appeal within 30 days after service of the proposed decision on the appealing party. The notice of appeal shall specify the party initiating the appeal, the proposed decision or order appealed from, the specific findings or conclusions to which exception is taken and any other exceptions to the decision or order, the relief sought, and the grounds for relief.

(1) Following receipt of a notice of appeal, the board will enter an order establishing a schedule for submission of briefs and oral argument. The parties shall serve their briefs on the board and shall furnish an additional copy to each party by first-class mail. Briefs will cite any applicable legal authority and specify relevant portions of the record in that proceeding.

(2) Oral argument will be heard by the board unless waived by both parties. The time granted each party for oral argument will be established by the board.

(3) The record on appeal will be the entire record made before the hearing panel or administrative law judge.

d. Confidentiality. At no time prior to the release of the final decision by the board shall a proposed decision be made public or distributed to any person other than the parties.

e. Requests to present additional evidence. A party may request the taking of additional evidence after the issuance of a proposed decision only by establishing that:

(1) The evidence is material; and

(2) The evidence arose after the completion of the original hearing; or

(3) Good cause exists for failure to present the evidence at the original hearing; and

(4) The party has not waived the right to present additional evidence.

A written request to present additional evidence must be filed with the notice of appeal or by a nonappealing party within 14 days of service of the notice of appeal. The board may remand a case to the hearing panel for further hearing or may itself preside at the taking of additional evidence.
[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.31(17A,272C) Client notification. Within 15 days (or such other time period specifically ordered by the board) of the licensee's receipt of the board's final decision, whether entered by consent or following hearing, which suspends or revokes a license or accepts a voluntary surrender of a license to resolve a disciplinary case, the licensee shall notify in writing all current clients of the fact that the license has been suspended, revoked or voluntarily surrendered. Such notice shall advise clients to obtain alternative professional services. Within 30 days of receipt of the board's final order, the licensee shall file with the board copies of the notices sent. Compliance with this requirement is a condition for an application for reinstatement.
[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.32(17A,272C) Application for rehearing.

33.32(1) Any party to a contested case proceeding may file an application for rehearing from a final order. The filing of an application for rehearing is not necessary to exhaust administrative remedies for purposes of judicial review.

33.32(2) The application for rehearing will state on whose behalf it is filed, the specific grounds for rehearing, the relief sought, whether the applicant desires reconsideration of all or part of the board decision on the existing record, and whether, on the basis of grounds enumerated in paragraph 33.30(2)*"e"* and rule 641—33.31(17A,272C), the applicant requests an opportunity to submit additional evidence.

33.32(3) The application shall be filed with the board within 20 days after issuance of the final decision.

33.32(4) A copy of the application shall be timely mailed by the applicant to all parties of record.

33.32(5) A request that additional evidence be considered on rehearing is governed by paragraph 33.30(2)*"e."*

33.32(6) Any application for rehearing is deemed denied unless the board grants the application within 20 days after its filing.

33.32(7) Application for rehearing is the only procedure by which a party may request that the board reconsider a final board decision.

33.32(8) If the board grants an application for rehearing, the board may set the application for oral argument or for hearing if additional evidence will be received. If additional evidence will not be received, the board may issue a ruling without oral argument or hearing. The board may, on the request of a party or on its own motion, order or permit the parties to provide written argument on one or more designated issues. The board may be assisted by an administrative law judge in all proceedings related to an application for rehearing.
[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.33(17A) Stays of board actions.

33.33(1) Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The board may rule on the stay or authorize the administrative law judge to do so. Any party to a contested case proceeding may petition the board for a stay or other temporary remedies, pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

33.33(2) In determining whether to grant a stay, the presiding officer or board will consider the factors listed in Iowa Code section 17A.19(5)*"c."*

33.33(3) A stay may be vacated by the issuing authority upon application of the board or any other party.

[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.34(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable.

[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.35(17A) Emergency adjudicative proceedings.

33.35(1) *Emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the board may issue a written order in compliance with Iowa Code section 17A.18A to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the board by emergency adjudicative order. Before issuing an emergency adjudicative order, the board will consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the board is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety, or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety, or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety, or welfare; and

e. Whether the specific action contemplated by the board is necessary to avoid the immediate danger.

33.35(2) *Issuance of order.*

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger and the board's decision to take immediate action. The order is an open record.

b. The written emergency adjudicative order will be immediately delivered to the person who is required to comply with the order, by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the board;

(3) Certified mail to the last address on file with the board;

(4) Facsimile, which may be used as the sole method of delivery if the person required to comply with the order has filed a written request that board orders be sent by facsimile and has provided a facsimile number for that purpose.

c. To the degree practicable, the board will select the procedure for providing written notice that best ensures prompt, reliable delivery.

33.35(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order is issued, the board will make reasonable immediate efforts to contact by telephone the person who is required to comply with the order.

33.35(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the board will proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

a. Issuance of a written emergency adjudicative order shall include notification of the date on which board proceedings are scheduled for hearing.

b. After issuance of an emergency adjudicative order, continuance of further board proceedings to a later date will be granted only in compelling circumstances upon written application unless the person required to comply with the order is the party requesting the continuance.
[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.36(17A,105,272C) License denial. If the board denies an application for a license, the board or its staff shall send written notice to the applicant by regular first-class mail identifying the factual and legal basis for denying the application. If the board denies an application to renew an existing license, the provisions of rule 641—33.37(17A,105,272C) shall apply.

33.36(1) An applicant who is aggrieved by the denial of an application for licensure and who desires to contest the denial must request a hearing before the board within 30 calendar days of the date the notice of denial is mailed. A request for hearing must be in writing and is deemed made on the date of the United States Postal Service nonmetered postmark or the date of personal service to the board office. The request for hearing shall specify the factual or legal errors that the applicant contends were made by the board, must identify any factual disputes upon which the applicant desires an evidentiary hearing, and may provide additional written information or documents in support of licensure. If a request for hearing is timely made, the board shall promptly issue a notice of hearing on the grounds asserted by the applicant.

33.36(2) Subject to subrule 33.10(1), the board may act as presiding officer at the contested case hearing, may hold the hearing before a panel of three board members, or may request that an administrative law judge act as the presiding officer and render a proposed decision. A proposed decision by a panel of board members or an administrative law judge is subject to appeal or review by the board pursuant to subrule 33.30(2).

33.36(3) License denial hearings are contested cases open to the public. Evidence supporting the denial of the license may be presented by an assistant attorney general. While each party shall have the burden of establishing the affirmative of matters asserted, the applicant shall have the ultimate burden of persuasion as to the applicant's qualification for licensure.

33.36(4) The presiding officer, after a hearing on the license denial, may grant or deny the application for licensure. If denied, the presiding officer shall state the reasons for denial of the license and may state conditions under which the application for licensure might be granted, if applicable.

33.36(5) The notice of license denial, request for hearing, notice of hearing, record at hearing, and order are open records and available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be provided to the media, collateral organizations, and other persons or entities.

33.36(6) Judicial review of a final order of the board denying licensure may be sought in accordance with the provisions of Iowa Code section 17A.19 that are applicable to judicial review of any agency's final decision in a contested case.
[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.37(17A,105,272C) Denial of application to renew license. If the board denies a timely and sufficient application to renew a license, a notice of hearing will be issued to commence a contested case proceeding.

33.37(1) Hearings on denial of an application to renew a license will be conducted according to the procedural rules applicable to contested cases. Evidence supporting the denial of the license may be presented by an assistant attorney general. The provisions of subrules 33.36(2) and 33.36(4) to 33.36(6) will generally apply, although license denial hearings that are in the nature of disciplinary actions will be subject to all laws and rules applicable to such hearings.

33.37(2) Pursuant to Iowa Code section 17A.18(2), an existing license does not terminate or expire if the licensee has made timely and sufficient application for renewal until the last day for seeking judicial review of the board's final order denying the application, or a later date fixed by order of the board or the reviewing court.

33.37(3) Within the meaning of Iowa Code section 17A.18(2), a timely and sufficient renewal application is:

a. Received by the board in paper or electronic form, or postmarked with a nonmetered United States Postal Service postmark on or before the date the license is set to expire or lapse;

b. Signed by the licensee if the application is submitted in paper form or certified as accurate if submitted electronically;

c. Fully completed; and

d. Accompanied with the required fee. The fee will be deemed unacceptable if the amount is incorrect, the fee was not included with the application, the credit card number provided by the applicant is incorrect, the date of expiration of a credit card is omitted or incorrect, the attempted credit card transaction is rejected, or the applicant's check is returned for insufficient funds.

33.37(4) The administrative processing of an application to renew an existing license will not prevent the board from subsequently commencing a contested case to challenge the licensee's qualifications for continued licensure if grounds exist to do so.

[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.38(105,272C) Recovery of hearing fees and expenses. The board may assess the licensee certain fees and expenses relating to a disciplinary hearing only if the board finds that the licensee has violated a statute or rule enforced by the board. Payment shall be made directly to the board.

33.38(1) The board may assess the following costs under this rule:

a. For conducting a disciplinary hearing, an amount not to exceed $75.

b. All applicable costs involved in the transcript of the hearing or other proceedings in the contested case including, but not limited to, the services of the court reporter at the hearing, transcription, duplication, and postage or delivery costs. In the event of an appeal to the full board from a proposed decision, the appealing party shall timely request and pay for the transcript necessary for use in the board appeal process. The board may assess the transcript cost against the licensee pursuant to Iowa Code section 272C.6(6) or against the requesting party pursuant to Iowa Code section 17A.12(7), as the board deems equitable under the circumstances.

c. All normally accepted witness expenses and fees for a hearing or the taking of depositions, as incurred by the state of Iowa. These costs include, but are not limited to, the cost of an expert witness and the cost involved in telephone testimony. The costs for lay witnesses are guided by Iowa Code section 622.69. The cost for expert witnesses is guided by Iowa Code section 622.72. Mileage costs are not guided by Iowa Code section 625.2. The provisions of Iowa Code section 622.74 regarding advance payment of witness fees and the consequences of failure to make such payment are applicable with regard to any witness who is subpoenaed by either party to testify at hearing. Additionally, the board may assess travel and lodging expenses for witnesses at a rate not to exceed the rate applicable to state employees on the date the expense is incurred.

d. All normally applicable costs incurred by the state of Iowa involved in depositions including, but not limited to, the service of the court reporter who records the deposition, transcription, duplication, and postage or delivery costs. When a deposition of an expert witness is taken, the deposition cost shall include a reasonable expert witness fee. The expert witness fee shall not exceed the expert's customary hourly or daily rate, and shall include the time spent in travel to and from the deposition but exclude time spent in preparation for the deposition.

33.38(2) When imposed at the board's discretion, hearing fees (not exceeding $75) will be assessed in the final disciplinary order. Costs and expenses assessed pursuant to this rule will be calculated and, when possible, entered into the final disciplinary order specifying the amount to be reimbursed and the time period in which the amount assessed must be paid by the licensee.

a. When it is impractical or not possible to include in the disciplinary order the exact amount of the assessment and time period in which to pay in a timely manner, or if the expenditures occur after the disciplinary order is issued, the board, by majority vote of the members present, may assess through separate order the amount to be reimbursed and the time period in which payment is to be made by the licensee.

b. If the assessment and the time period are not included in the disciplinary order, the board will have until the end of the sixth month after the date the state of Iowa paid the expenditures to assess

the licensee for such expenditures. In order for the board to rely on this provision, however, the final disciplinary order must notify the licensee that fees and expenses will be assessed once known.

33.38(3) Any party may object to the fees, costs, or expenses assessed by the board by filing a written objection within 20 days of the issuance of the final disciplinary decision, or within 10 days of any subsequent order establishing the amount of the assessment. A party's failure to timely object is deemed a failure to exhaust administrative remedies. Orders imposing fees, costs, or expenses will notify the licensee of the time frame in which objections must be filed in order to exhaust administrative remedies.

33.38(4) Fees, costs, and expenses assessed by the board pursuant to this rule are allocated to the expenditure category in which the disciplinary procedure or hearing was incurred. The fees, costs, and expenses are considered repayment of receipts as defined in Iowa Code section 8.2.

33.38(5) The failure to comply with payment of the assessed costs, fees, and expenses within the time specified by the board constitutes a violation of an order of the board, is grounds for discipline, and is considered prima facie evidence of a violation of Iowa Code section 272C.3(2)*"a."* However, no action may be taken against the licensee without the opportunity for hearing as provided in this chapter.
[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.39(17A) Judicial review. Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A.
[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

641—33.40(17A,272C) Reinstatement.

33.40(1) The term "reinstatement," as used in this rule, includes both the reinstatement of a suspended license and the issuance of a new license following the revocation or voluntary surrender of a license.

33.40(2) Any person whose license has been revoked or suspended by the board, or who voluntarily surrendered a license in a disciplinary proceeding, may apply to the board for reinstatement in accordance with the terms of the order of revocation or suspension, or order accepting the voluntary surrender, unless the order of revocation provides that the license is permanently revoked.

33.40(3) Unless otherwise provided by law, if the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application for reinstatement cannot be made until at least one year has elapsed from the date of the order or the date the board accepted the voluntary surrender of a license.

33.40(4) All proceedings for reinstatement will be initiated by the respondent, who will file with the board an application for reinstatement of the respondent's license. Such application will be docketed in the original case in which the license was revoked, suspended, or relinquished. All proceedings upon the application for reinstatement will be subject to the same rules of procedure as other cases before the board.

33.40(5) An application for reinstatement will allege facts which, if established, are sufficient to enable the board to determine that the basis of revocation, suspension or voluntary surrender of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. Compliance with rule 641—33.31(17A,272C) must also be established. The burden of proof to establish such facts is on the respondent.

33.40(6) An order of reinstatement will incorporate findings of fact and conclusions of law and be based upon the affirmative vote of no fewer than a majority of the board. This order will be published as provided for in subrule 33.30(1).
[**ARC 7999C**, IAB 5/15/24, effective 6/19/24]

These rules are intended to implement Iowa Code chapters 17A, 105 and 272C.

[Filed ARC 9057B (Notice ARC 8861B, IAB 6/16/10), IAB 9/8/10, effective 10/13/10]
[Filed ARC 1223C (Notice ARC 0931C, IAB 8/7/13), IAB 12/11/13, effective 1/15/14]
[Filed ARC 7999C (Notice ARC 7319C, IAB 1/10/24), IAB 5/15/24, effective 6/19/24]

CHAPTER 34
PLUMBING AND MECHANICAL SYSTEMS BOARD—COMPLAINTS AND INVESTIGATIONS

641—34.1(272C) Complaints.

34.1(1) Complaints can be submitted online, in writing, or verbally and should include the name and contact information of the complainant, the name of the licensee, and a concise statement of the allegations against the licensee. A complaint may also be initiated by the board.

34.1(2) A person is not civilly liable for filing a complaint in good faith with the board, or for cooperating with a board investigation per Iowa Code section 272C.8.

[**ARC 8000C**, IAB 5/15/24, effective 6/19/24]

641—34.2(272C) Report of malpractice claims or actions or disciplinary actions. The licensee will submit any judgment or settlement in a malpractice claim or any disciplinary action taken by another licensing authority in another state or jurisdiction to the board within 30 days of the date of occurrence.

[**ARC 8000C**, IAB 5/15/24, effective 6/19/24]

641—34.3(272C) Report of acts or omissions. A licensee having knowledge of rules violations committed by another licensee will file a report to the board. The report will include the name and contact information of the licensee and the date, time, and place of the incident.

[**ARC 8000C**, IAB 5/15/24, effective 6/19/24]

641—34.4(272C) Investigation of complaints or reports. Board staff may request additional information, solicit a response from the licensee, subpoena records, conduct interviews, gather evidence, and perform other investigatory duties as necessary to inform the board.

[**ARC 8000C**, IAB 5/15/24, effective 6/19/24]

641—34.5(17A,272C) Issuance of investigatory subpoenas.

34.5(1) The board executive officer or designee may, upon the written request of a board investigator or on the executive officer's own initiative, subpoena books, papers, records, and other real evidence that are necessary for the board to decide whether to initiate a contested case proceeding. In the case of a subpoena for mental health records, each of the following conditions shall be satisfied prior to the issuance of the subpoena:

a. The nature of the complaint reasonably justifies the issuance of a subpoena;

b. Adequate safeguards have been established to prevent unauthorized disclosure;

c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and

d. An attempt was made to notify the patient and to secure an authorization from the patient for release of the records at issue.

34.5(2) Each subpoena will contain:

a. The name and address of the person to whom the subpoena is directed;

b. A description of the books, papers, records or other real evidence requested;

c. The date, time and location for production or inspection and copying;

d. The deadline for filing a motion to quash or modify the subpoena;

e. The signature, address and telephone number of the board executive officer or designee;

f. The date of issuance;

g. A return of service.

34.5(3) A person can challenge the subpoena by filing a motion to quash describing the legal justification for the motion within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days.

34.5(4) Upon receipt of a timely motion to quash or modify a subpoena, an administrative law judge will issue a decision. The administrative law judge may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

34.5(5) A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the board by serving the board executive officer, either in

person, by email, or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

34.5(6) If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until either (1) the person is notified the investigation has been concluded with no formal action, or (2) there is a final decision in the contested case.

[**ARC 8000C**, IAB 5/15/24, effective 6/19/24]

641—34.6(272C) Peer review.

34.6(1) A complaint may be assigned to a peer reviewer for review and report to the board.

34.6(2) The board determines what complaints or other matters are referred to a peer reviewer.

34.6(3) Peer reviewers are not liable for acts, omissions, or decisions made in connection with service made in good faith.

34.6(4) The peer reviewer shall maintain confidentiality pursuant to Iowa Code section 272C.6.

[**ARC 8000C**, IAB 5/15/24, effective 6/19/24]

641—34.7(17A) Appearance. The board may request that a licensee appear before a committee of the board to discuss a pending investigation. By electing to participate in the committee appearance, the licensee waives any objection to a board member both participating in the appearance and later participating as a decision maker in a contested case proceeding. By electing to participate in the committee appearance, the licensee further waives any objection to the board executive officer assisting the board in the contested case proceeding.

[**ARC 8000C**, IAB 5/15/24, effective 6/19/24]

These rules are intended to implement Iowa Code chapters 17A, 105, and 272C.

[Filed Emergency After Notice ARC 8532B (Notice ARC 8364B, IAB 12/2/09), IAB 2/24/10, effective 1/26/10]

[Filed ARC 8000C (Notice ARC 7320C, IAB 1/10/24), IAB 5/15/24, effective 6/19/24]

CHAPTER 35
PLUMBING AND MECHANICAL SYSTEMS BOARD—ALTERNATIVE LICENSURE PATHWAYS

641—35.1(105) Definitions. For purposes of this chapter, the following definitions apply:

"Board" means the same as defined in Iowa Code section 105.2(2).

"Full time" means a minimum of 1,700 hours of work in a one-year period.

"Issuing jurisdiction" means the same as defined in Iowa Code section 272C.12(5).

"Transferring jurisdiction" means the specific issuing jurisdiction on which an applicant relies to seek licensure in Iowa by verification under this chapter.

[**ARC 8001C**, IAB 5/15/24, effective 6/19/24]

641—35.2(105) Reciprocity agreements. The board may enter into licensing reciprocity agreements with other states in accordance with Iowa Code section 105.21.

[**ARC 8001C**, IAB 5/15/24, effective 6/19/24]

641—35.3(105) Licensure by reciprocity. A nonresident of Iowa seeking a reciprocal license under Iowa Code chapter 105 applies on forms provided by the board.

35.3(1) *Reciprocity criteria.* The board may issue a reciprocal license if the following criteria are met:

a. The applicant is a nonresident of Iowa;

b. The applicant possesses a valid plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic license from an issuing jurisdiction with which the board has entered into a reciprocity agreement;

c. The applicant has paid the appropriate fee or fees set forth in 641—Chapter 28;

d. The applicant meets the minimum qualifications for licensure set forth in rule 641—29.4(105); and

e. The applicant agrees to comply with all provisions of Iowa law and applicable administrative rules.

35.3(2) *Denial of reciprocal license.* The board may refuse to issue a reciprocal license to an applicant otherwise qualified based upon a suspension, revocation, or other disciplinary action taken against the applicant by a licensing authority in this or another jurisdiction. For purposes of this subrule, a "disciplinary action" includes the voluntary surrender of a license to resolve a pending disciplinary investigation or proceeding.

[**ARC 8001C**, IAB 5/15/24, effective 6/19/24]

641—35.4(105) Licensure by verification. Licensure by verification is available under the following circumstances.

35.4(1) *Eligibility.* A person may seek licensure by verification if the criteria in Iowa Code section 272C.12(1) are satisfied.

35.4(2) *Board application.* The applicant submits all of the following:

a. A completed application for licensure by verification.

b. Payment of the appropriate fee or fees set forth in 641—Chapter 28.

c. A verification form completed by the transferring jurisdiction and sent directly from the transferring jurisdiction to the board, verifying that the applicant's license, certificate, or registration in that jurisdiction complies with the conditions set forth in Iowa Code section 272C.12.

d. Proof of residency in the state of Iowa or proof of military member's official permanent change of station. Proof of residency may include:

(1) A residential mortgage, lease, or rental agreement;

(2) A utility bill;

(3) A bank statement;

(4) A paycheck or pay stub;

(5) A property tax statement;

(6) A document issued by the federal or state government; or

(7) Any other board-approved document that reliably confirms Iowa residency.

e. Proof of passing the applicable Iowa licensing examination.

f. Documentation of the applicant's complete criminal record in accordance with 641—paragraph 29.5(4)*"c,"* including the applicant's personal statement regarding whether each offense directly relates to the practice of the profession.

g. Copies of any relevant disciplinary documents, if another issuing jurisdiction has taken disciplinary action against the applicant.

35.4(3) *Applicants with prior discipline.* If another issuing jurisdiction has taken disciplinary action against an applicant or if the applicant has a complaint, allegation, or investigation relating to unprofessional conduct pending before any regulating entity in another jurisdiction, the board will proceed according to Iowa Code section 272C.12(1)*"f"* and *"g."* A person whose license was revoked, or a person who voluntarily surrendered a license, in another issuing jurisdiction is ineligible for licensure by verification.

35.4(4) *Temporary licenses.* Applicants who satisfy all conditions for a license by verification under this rule, except for passing the applicable Iowa licensing examination, may be issued a temporary license in accordance with Iowa Code section 272C.12(3)*"c."* If the temporary license expires, the applicant may not practice until the applicant submits proof of passing the applicable Iowa licensing examination.
[**ARC 8001C**, IAB 5/15/24, effective 6/19/24]

641—35.5(105) Licensure by work experience in jurisdictions without licensure requirements.

35.5(1) *Work experience.*

a. An applicant for initial licensure who has relocated to Iowa from another jurisdiction that did not require a license to practice the profession may be eligible for an Iowa license if the applicant meets the conditions set forth in Iowa Code section 272C.13 and all other licensing criteria, including passing any necessary examinations. For each application submitted under this rule, the board will determine whether the applicant's prior work experience was substantially similar to the applicable apprenticeship training that is required for individuals licensed under 641—Chapter 29.

b. If the board determines an applicant's prior work experience was not substantially similar to the scope of practice in Iowa, the applicant may submit a subsequent application for licensure by work experience if all of the following criteria are satisfied:

(1) The applicant enrolls in an apprenticeship program approved by the United States Department of Labor;

(2) The applicant obtains a board-issued apprentice license; and

(3) The applicant successfully completes one year in the apprenticeship program.

35.5(2) *Necessary documentation.* An applicant seeking to substitute work experience in lieu of satisfying applicable education or training criteria bears the burden of providing all of the following by submitting relevant documents as part of a completed license application:

a. Proof of Iowa residency, which may include:

(1) A residential mortgage, lease, or rental agreement;

(2) A utility bill;

(3) A bank statement;

(4) A paycheck or pay stub;

(5) A property tax statement;

(6) A document issued by the federal or state government; or

(7) Any other board-approved document that reliably confirms Iowa residency.

b. Proof of three or more years of full-time work experience within the four years preceding the application for Iowa licensure, which demonstrates that the work experience was substantially similar to an applicable apprenticeship program approved by the United States Department of Labor. Proof of work experience may include, but is not limited to:

(1) A letter from the applicant's prior employer or employers documenting the applicant's dates of employment and scope of practice;

(2) A paycheck or pay stub; or

(3) If the applicant was self-employed, business documents filed with the secretary of state or other applicable business registry or regulatory agency in the other jurisdiction.

c. Proof that the applicant's work experience involved a substantially similar scope of practice to the practice in Iowa, which includes:

(1) A written statement by the applicant detailing the scope of practice and stating how the work experience correlates to an applicable apprenticeship program approved by the United States Department of Labor; and

(2) Business or marketing materials detailing the services provided.

d. Proof that the other jurisdiction did not require a license to practice the profession, which may include:

(1) Copies of applicable laws;

(2) Materials from a website operated by a governmental entity in that jurisdiction; or

(3) Materials from a nationally recognized professional association applicable to the profession.

[**ARC 8001C**, IAB 5/15/24, effective 6/19/24]

These rules are intended to implement Iowa Code sections 105.21 and 272C.12.

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[Filed ARC 8001C (Notice ARC 7322C, IAB 1/10/24), IAB 5/15/24, effective 6/19/24]

CHAPTER 36
PLUMBING AND MECHANICAL SYSTEMS BOARD—PETITIONS FOR RULE MAKING

Rescinded **ARC 8002C**, IAB 5/15/24, effective 6/19/24

CHAPTER 57
PLUMBING AND MECHANICAL SYSTEMS BOARD—
DECLARATORY ORDERS
Rescinded **ARC 8003C**, IAB 5/15/24, effective 6/19/24

CHAPTER 58
PLUMBING AND MECHANICAL SYSTEMS BOARD—
AGENCY PROCEDURE FOR RULE MAKING
Rescinded **ARC 8004C**, IAB 5/15/24, effective 6/19/24

CHAPTER 59
PLUMBING AND MECHANICAL SYSTEMS BOARD—FAIR INFORMATION
PRACTICES AND PUBLIC RECORDS
Rescinded **ARC 8005C**, IAB 5/15/24, effective 6/19/24

CHAPTER 60
PLUMBING AND MECHANICAL SYSTEMS BOARD—
NONCOMPLIANCE REGARDING CHILD SUPPORT, NONPAYMENT OF STATE DEBT,
AND NONCOMPLIANCE REGARDING STUDENT LOAN REPAYMENT
Rescinded **ARC 8006C**, IAB 5/15/24, effective 6/19/24

CHAPTER 62
PLUMBING AND MECHANICAL SYSTEMS BOARD—MILITARY SERVICE, VETERAN RECIPROCITY, AND SPOUSES OF ACTIVE DUTY SERVICE MEMBERS

Rescinded **ARC 8007C**, IAB 5/15/24, effective 6/19/24

CHAPTERS 63 to 66
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PROFESSIONAL LICENSURE DIVISION[645]

Created within the Department of Public Health[641] by 1986 Iowa Acts, chapter 1245.
Prior to 7/29/87, for Chs. 20 to 22 see Health Department[470] Chs. 152 to 154.

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Reserved

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BOARD ADMINISTRATIVE PROCESSES

CHAPTER 5
FEES

CHAPTER 6
PETITIONS FOR RULE MAKING

CHAPTER 7
AGENCY PROCEDURE FOR RULE MAKING

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CHAPTER 32
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DISCIPLINE FOR MARITAL AND FAMILY THERAPISTS, MENTAL HEALTH COUNSELORS, BEHAVIOR ANALYSTS, AND ASSISTANT BEHAVIOR ANALYSTS

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PRACTICE OF CHIROPRACTIC PHYSICIANS

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DISCIPLINE FOR CHIROPRACTIC PHYSICIANS

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COSMETOLOGISTS

CHAPTER 60
LICENSURE OF BARBERS AND COSMETOLOGISTS, ELECTROLOGISTS, ESTHETICIANS, NAIL TECHNOLOGISTS, AND INSTRUCTORS OF BARBERING AND COSMETOLOGY ARTS AND SCIENCES

CHAPTER 61
LICENSURE OF ESTABLISHMENTS AND SCHOOLS OF BARBERING AND COSMETOLOGY ARTS AND SCIENCES

CHAPTER 62
Reserved

CHAPTER 63
INFECTION CONTROL FOR ESTABLISHMENTS AND SCHOOLS OF BARBERING AND COSMETOLOGY ARTS AND SCIENCES

CHAPTER 64
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CHIROPRACTIC

CHAPTER 41
LICENSURE OF CHIROPRACTIC PHYSICIANS

[Prior to 7/24/02, see 645—40.10(151) to 645—40.13(151), 645—40.15(151) and 645—40.16(151)]

645—41.1(151) Definitions. The following definitions will be applicable to the rules of the Iowa board of chiropractic:

"Active license" means a license that is current and has not expired.

"Board" means the Iowa board of chiropractic.

"Council on Chiropractic Education" or *"CCE"* means the organization that establishes the Educational Standards of Chiropractic Colleges and Bylaws.

"Department" means the Iowa department of inspections, appeals, and licensing.

"Grace period" means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period. The category of "inactive license" may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

"License" means license to practice chiropractic in Iowa.

"Licensee" means any person licensed to practice as a chiropractic physician in Iowa.

"License expiration date" means June 30 of even-numbered years.

"Licensure by endorsement" means the issuance of an Iowa license to practice chiropractic to an applicant who is or has been licensed in another state and meets the criteria for licensure in this state.

"NBCE" means the National Board of Chiropractic Examiners.

"Reactivate" or *"reactivation"* means the process as outlined in rule 645—41.14(17A,147,272C) by which an inactive license is restored to active status.

"Reinstatement" means the process as outlined in rule 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

"SPEC" means Special Purposes Examination for Chiropractic, which is an examination provided by the NBCE that is designed specifically for utilization by state or foreign licensing agencies.

[**ARC 7966C**, IAB 5/15/24, effective 6/19/24]

645—41.2(151) Initial licensure.

41.2(1) To apply for a license, the applicant will complete an online application packet and pay the nonrefundable application fee.

a. If licensed in another jurisdiction, the applicant will complete the licensure by endorsement application and submit a license verification document that discloses if disciplinary action was taken in the jurisdiction where the applicant was most recently licensed.

b. A person who is licensed in another jurisdiction and cannot satisfy the requirements of licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

c. An application not completed according to guidelines will not be reviewed by the board.

d. The applicant will request the accredited chiropractic school submit official copies of the applicant's transcripts to the board office.

e. The applicant will submit an official certificate of completion of 120 hours of physiotherapy that includes a practicum component from a board-approved chiropractic college.

f. The applicant will pass all parts of the NBCE examination as outlined in rule 645—41.3(151).

g. The applicant will submit a copy of the chiropractic diploma.

41.2(2) Licensees who were issued their licenses within six months prior to the renewal date are not required to renew their licenses until the renewal date two years later.

41.2(3) Incomplete applications that have been on file in the board office for more than two years will be:

a. Considered invalid and destroyed; or

b. Maintained upon written request from the candidate.

41.2(4) A license will be publicly displayed in the licensee's primary place of practice.

41.2(5) Licensees are required to notify the board of chiropractic of changes in residence or place of practice within 30 days after the change of address occurs.

[**ARC 7966C**, IAB 5/15/24, effective 6/19/24]

645—41.3(151) Examination requirements.

41.3(1) Applicants will submit the application for the NBCE examination and the fee directly to the NBCE.

41.3(2) The following criteria will apply for the NBCE:

a. Prior to July 1, 1973, applicants will provide proof of being issued a basic science certificate.

b. After July 1, 1973, applicants will provide proof of successful completion of the required examination from the NBCE. The required examination will meet the following criteria:

(1) Examinations completed after July 1, 1973, will be defined as the successful completion of Parts I and II of the NBCE examination.

(2) Examinations completed after August 1, 1976, will be defined as the successful completion of Parts I, II and Physiotherapy of the NBCE examination.

(3) Examinations completed after January 1, 1987, will be defined as the successful completion of Parts I, II, III and Physiotherapy of the NBCE examination.

(4) Examinations completed after January 1, 1996, will be defined as satisfactory completion of Parts I, II, III, IV and Physiotherapy of the NBCE examination.

[**ARC 7966C**, IAB 5/15/24, effective 6/19/24]

645—41.4(151) Educational qualifications.

41.4(1) An applicant will present an official transcript verifying graduation from a CCE-accredited and board-approved college of chiropractic.

41.4(2) Foreign-trained chiropractic physicians will:

a. Provide an equivalency evaluation of their educational credentials processed by the International Education Research Foundation, Inc. The professional curriculum must be equivalent to that stated in these rules. The candidate will bear the expense of the curriculum evaluation.

b. Provide a copy of the certificate or diploma awarded to the applicant from a chiropractic program in the country in which the applicant was educated.

c. Receive a final determination from the board regarding the application for licensure.

[**ARC 7966C**, IAB 5/15/24, effective 6/19/24]

645—41.5(151) Temporary certificate.

41.5(1) The board may issue a temporary certificate to practice chiropractic at its discretion if the issuance is in the public interest and the applicant demonstrates a need for the temporary certificate and meets the professional qualifications for licensure.

41.5(2) Demonstrated need. An applicant must submit information explaining the demonstrated need, how the issuance would serve the public interest, the scope of practice requested, and why a temporary certificate should be granted. To meet the demonstrated need requirement, the applicant will show the need meets one of the following conditions:

a. The applicant will provide chiropractic services in connection with a special activity, event or program conducted in this state;

b. The applicant will provide chiropractic services in connection with a state emergency as proclaimed by the governor;

c. The applicant previously held an unrestricted license to practice chiropractic in this state and will provide gratuitous chiropractic services as a voluntary public service; or

d. The applicant will provide chiropractic services in connection with an urgent need.

41.5(3) Qualifications for licensure include the following:

a. Complete an online application packet on the Iowa board of chiropractic website and pay the nonrefundable application fee.

b. If licensed in another jurisdiction, submit a license verification document that discloses if disciplinary action was taken in the jurisdiction where the applicant was most recently licensed.

c. Provide a copy of a chiropractic diploma.

41.5(4) A temporary certificate will be issued for one year to fulfill the demonstrated need as described in subrule 41.5(2).

41.5(5) An applicant or temporary certificate holder who has been denied a temporary certificate may appeal the denial pursuant to rule 645—4.10(17A,147,272C). A temporary certificate holder is subject to discipline for any grounds for which licensee discipline may be imposed.

41.5(6) A temporary certificate holder who meets all licensure conditions as specified in rule 645—41.2(151) may obtain a permanent license in lieu of the temporary certificate. To obtain a permanent license, the applicant will submit any additional documentation required for permanent licensure that was not submitted as a part of the temporary certificate application. The applicant may receive fee credit toward the permanent licensure fee equivalent to the fee paid for the temporary certificate if the application for the permanent license and all required documentation are received by the board prior to the expiration of the temporary certificate.

[**ARC 7966C**, IAB 5/15/24, effective 6/19/24]

645—41.6(151) License renewal.

41.6(1) The license renewal period for a license to practice begins on July 1 of an even numbered year and ends on June 30 of the next even numbered year.

41.6(2) An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the subsequent renewal two years later.

41.6(3) A licensee applying for renewal will:

a. Meet the continuing education requirements of rule 645—44.2(272C) and the mandatory reporting requirements of subrule 41.8(4). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

b. Complete the online renewal application, pay the fee, and attach certificate of completing continuing education hours on the Iowa board of chiropractic website before the expiration date.

41.6(4) Mandatory reporter training requirements.

a. A licensee who examines, attends, counsels, or treats children, dependent adults or both in the scope of the licensee's professional practice will complete the applicable department of health and human services training for identifying and reporting child abuse, dependent adult abuse or both. A licensee will maintain written documentation of training completion for three years. The training is not required if the licensee is engaged in active duty military service or holds a waiver from the board demonstrating a hardship in complying with these training requirements.

b. The board may select licensees for audit of compliance with the requirements in paragraph 41.8(4)*"a."*

41.6(5) A two-year license will be issued after the requirements of rule are met. If the board receives adverse information on the renewal application, the board may refer the adverse information for further consideration or disciplinary investigation.

41.6(6) Late renewal. The licensee is responsible for renewing the license prior to expiration every two years. The licensee will complete the renewal requirements and pay the late fee within the 30-day grace period.

41.6(7) Inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice until the license is reactivated.
[**ARC 7966C**, IAB 5/15/24, effective 6/19/24]

645—41.7(17A,147,272C) Requirements for reactivation. To apply for reactivation, a licensee will:

41.7(1) Complete an online reactivation application on the Iowa board of chiropractic website and pay the nonrefundable reactivation fee.

41.7(2) Provide verification of current competence to practice as a chiropractic physician by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification. If licensed in another jurisdiction, submit a license verification document that discloses if disciplinary action was taken in the jurisdiction where the applicant was most recently licensed.

(2) Proof. Submit proof of completing 40 hours of continuing education within two years of application.

b. If the license has been on inactive status for more than five years, an applicant must:

(1) Send verification. Submit a license verification document that discloses if disciplinary action was taken against the applicant from every jurisdiction in which the applicant has been licensed.

(2) Submit proof of completing 40 hours of continuing education within two years of application.

(3) Send verification of passing the SPEC if the applicant does not have a current license and has not had an active license in the United States during three of the past five years.
[**ARC 7966C**, IAB 5/15/24, effective 6/19/24]

645—41.8(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive board-approved reinstatement of the license and must apply for and be granted reactivation prior to practicing in the state.
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These rules are intended to implement Iowa Code chapters 17A, 147, 151 and 272C.

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◊ Two or more ARCs

CHAPTER 42
COLLEGES FOR CHIROPRACTIC PHYSICIANS
[Prior to 7/24/02, see 645—40.9(151)]

645—42.1(151) Definitions. For the purposes of these rules, the following definitions will apply:

"Chiropractic intern" means a chiropractic student of an approved college of chiropractic in the student's last academic quarter, semester, or trimester of study, who is eligible for graduation from the college of chiropractic and is eligible to complete a preceptorship program, as authorized by these rules.

"Chiropractic preceptor" means a chiropractic physician licensed and practicing in Iowa pursuant to Iowa Code chapter 151, who accepts a chiropractic intern or resident into the practice for the purpose of providing the chiropractic student with a clinical experience of the practice of chiropractic, and who meets the requirements of these rules.

"Chiropractic resident" means a graduate chiropractic physician who has received a doctor of chiropractic degree from a college of chiropractic approved by the board, and who is not licensed in any state, but who is practicing under a chiropractic preceptorship authorized under these rules.

"Chiropractic student" means a student of an approved college of chiropractic.

"Council on Chiropractic Education" or *"CCE"* means the organization that establishes the Educational Standards of Chiropractic Colleges and Bylaws. A copy of the standards may be requested from CCE.

"Preceptorship practice" means the chiropractic practice of a single chiropractic physician or group of chiropractic physicians in a particular business or clinic, into which a licensed practicing chiropractic physician has accepted a chiropractic intern or chiropractic resident for the limited purpose of providing the intern or resident with a clinical experience in the practice of chiropractic.

"60-minute hour" means at least 50 minutes of resident attendance with no more than 10 minutes for note taking and breaks.

[**ARC 7967C**, IAB 5/15/24, effective 6/19/24]

645—42.2(151) Board-approved chiropractic colleges. Approval of a chiropractic college may be granted if the program submits proof to the board of chiropractic that the chiropractic program meets the following requirements:

42.2(1) The chiropractic college is fully accredited by the Commission on Accreditation of the Council on Chiropractic Education (CACCE), as recognized by the U.S. Department of Education.

42.2(2) The core curriculum meets the requirements of the CACCE standards and, in addition:

a. Covers a period of four academic years totaling not less than 4,000 60-minute hours in actual resident attendance;

b. Comprises a supervised course of study, including clinical practical instruction, in all of the subjects specified in Iowa Code section 151.1(3); and

c. Includes a minimum of 120 hours of physiotherapy coursework with a clinical practical component on the procedures covered in the course.

42.2(3) The chiropractic college publishes in a regularly issued catalog the requirements for graduation and degrees that are required by the Iowa board of chiropractic.

42.2(4) Transcripts include entries for all completed coursework.

[**ARC 7967C**, IAB 5/15/24, effective 6/19/24]

645—42.3(151) Practice by chiropractic interns and chiropractic residents. A student enrolled in a board-approved chiropractic preceptorship program in the state of Iowa may treat patients without obtaining an Iowa license, provided the requirements of these rules are met.

[**ARC 7967C**, IAB 5/15/24, effective 6/19/24]

645—42.4(151) Approved chiropractic preceptorship program. The board will approve a chiropractic college's preceptorship program if the program meets the following requirements:

42.4(1) The preceptorship program meets current CCE standards for consumer protection.

42.4(2) The preceptorship program is an established component of the curriculum offered by a board-approved chiropractic college.

42.4(3) Chiropractic interns who participate in the preceptorship program have met all requirements for graduation from the chiropractic college except for completion of the preceptorship period.

42.4(4) Chiropractic residents who participate in the postgraduate preceptorship program have graduated from a chiropractic college approved by the board.

42.4(5) All chiropractic physicians who serve as preceptors will be approved under rule 645—42.5(151).

42.4(6) The chiropractic college retains ultimate responsibility for student learning and evaluations during the preceptorship.

42.4(7) The chiropractic preceptor will supervise no more than one chiropractic intern or one chiropractic resident for the duration of a given preceptorship period.

If a preceptor agreement must be canceled for any reason, it is the responsibility of the chiropractic college to assign the intern or resident to another preceptor and notify the Iowa board of chiropractic of the preceptorship cancellation. The notice shall include reasons for cancellation of the preceptorship.
[**ARC 7967C**, IAB 5/15/24, effective 6/19/24]

645—42.5(151) Approved chiropractic physician preceptors.

42.5(1) A chiropractic physician will be approved to be a chiropractic physician preceptor if the following criteria are met:

a. The chiropractic physician holds a current Iowa chiropractic license and has continuously held licensure in the United States for the previous five years prior to preceptorship;

b. The chiropractic physician is currently fully credentialed by the sponsoring chiropractic college and approved by the board; and

c. The chiropractic physician has not had any formal disciplinary action.

42.5(2) The role of the chiropractic physician preceptor will include:

a. Responsibility for supervising the practice of the chiropractic intern or chiropractic resident who is accepted into a preceptorship practice.

b. Identifying the chiropractic intern or chiropractic resident to the patients of the preceptorship practice to ensure that no patient will misconstrue the status of the intern or resident. The intern or resident will wear a badge identifying that person as an intern or resident at all times in the presence of preceptorship patients.

c. Exercising direct, on-premises supervision of the chiropractic intern or chiropractic resident at all times that the intern or resident is engaged in any facet of patient care in the chiropractic physician preceptor's clinic.

d. Directing the chiropractic intern or chiropractic resident only in treatment care that is within the educational background and experience of the preceptor.

e. Notifying the preceptorship program within 30 days of either of the following actions:

(1) If the preceptor has any formal disciplinary action taken by any licensing entity; or

(2) If the preceptor is a party to any malpractice settlement or judgment.
[**ARC 7967C**, IAB 5/15/24, effective 6/19/24]

645—42.6(151) Termination of preceptorship. A preceptorship may terminate upon the occurrence of one of the following events:

42.6(1) Interns. The intern graduates from a board-approved college of chiropractic.

42.6(2) Residents. Twelve months have passed since the resident graduated from a board-approved college of chiropractic.

42.6(3) Formal disciplinary action is taken against the preceptor or the preceptor is a party to a final malpractice judgment or settlement agreement.
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These rules are intended to implement Iowa Code chapter 151.

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CHAPTER 43
PRACTICE OF CHIROPRACTIC PHYSICIANS

[Prior to 7/24/02, see 645—40.1(151) and 645—40.17(151) to 645—40.24(147,272C)]

645—43.1(151) Definitions. The following definitions will be applicable to the rules of the Iowa board of chiropractic.

"Active chiropractic physiotherapy" means therapeutic treatment performed by the patient, including but not limited to exercises and functional activities that promote strength, endurance, flexibility, and coordination.

"Acupuncture" means the same as defined in Iowa Code section 148E.1.

"Adjustment/manipulation of neuromusculoskeletal structures" means the use by a doctor of chiropractic of a skillful treatment based upon differential diagnosis of neuromusculoskeletal structures and procedures related thereto by the use of passive movements with the chiropractic physician's hands or instruments in a manipulation of a joint by thrust so the patient's volitional resistance cannot prevent the motion. The manipulation is directed toward the goal of restoring joints to their proper physiological relationship of motion and related function, or stimulation of joint receptors. Movement of the joint is by force beyond its active limit of motion, but within physiologic integrity. Adjustment or manipulation commences where mobilization ends and specifically begins when the elastic barrier of resistance is encountered by the doctor of chiropractic and ends at the limit of anatomical integrity. Adjustment or manipulation as described in this definition is directed to the goal of the restoration of joints to their proper physiological relationship and associated functions of motion and related function, release of adhesions or stimulation of joint receptors. Adjustment or manipulation as described in this definition is by hand or instrument. The primary emphasis of this adjustment or manipulation is upon specific joint element adjustment or manipulation and treatment of the articulation and adjacent tissues of the neuromusculoskeletal structures of the body and nervous system, using one or more of the following:

1. Impulse adjusting or the use of sudden, high velocity, short amplitude thrust of a nature that patient volitional resistance is overcome, commencing where the motion encounters the elastic barrier of resistance and ending at the limit of anatomical integrity.
2. Instrument adjusting, utilizing instruments specifically designed to deliver sudden, high velocity, short amplitude thrust.
3. Light force adjusting, utilizing sustained joint traction or applied directional pressure, or both, that may be combined with passive motion to restore joint mobility.
4. Long distance lever adjusting, utilizing forces delivered at some distance from the dysfunctional site and aimed at transmission through connected structures to accomplish joint mobility.

"Anatomic barrier" means the limit of motion imposed by anatomic structure, the limit of passive motion.

"CCCA" means the Certified Chiropractic Clinical Assistant program offered by the FCLB.

"Certified chiropractic assistant" means a person who has completed a certified chiropractic assistant training program to perform selected chiropractic health care services under the supervision of a chiropractic physician.

"Chiropractic insurance consultant" means an Iowa-licensed chiropractic physician registered with the board who serves as a liaison and advisor to an insurance company.

"Chiropractic manipulation" means care of an articular dysfunction or neuromusculoskeletal disorder by manual or mechanical adjustment of any skeletal articulation and contiguous articulations.

"Differential diagnosis" means to examine the body systems and structures of a human subject to determine the source, nature, kind or extent of a disease, vertebral subluxation, neuromusculoskeletal disorder or other physical condition, and to make a determination of the source, nature, kind, or extent of a disease or other physical condition.

"Elastic barrier" means the range between the physiologic and anatomic barrier of motion in which passive ligamentous stretching occurs before tissue disruption.

"Extremity manipulation" means a corrective thrust or maneuver by a doctor of chiropractic by hand or instrument based upon differential diagnosis of neuromusculoskeletal structures applied to a joint of the appendicular skeleton.

"FCLB" means the Federal Chiropractic Licensing Board.

"Malpractice" means any error or omission, unreasonable lack of skill, or failure to maintain a reasonable standard of care by a chiropractic physician in the practice of the profession.

"Mobilization" means movement applied singularly or repetitively within or at the physiological range of joint motion, without imparting a thrust or impulse, with the goal of restoring joint mobility.

"PACE" means Providers of Approved Continuing Education and is the signature program of the FCLB.

"Passive chiropractic physiotherapy" means therapeutic treatment administered and received by the patient, including but not limited to mechanical, electrical, thermal, or manual methods.

"Physiologic barrier" means the limit of active motion, which can be altered to increase range of active motion by warm-up activity.

"Practice of acupuncture" means the same as defined in Iowa Code section 148E.1.

"Supervising chiropractic physician" means the Iowa-licensed chiropractor responsible for supervision of services provided to a patient by a certified chiropractic assistant.

"Supervision" means the physical presence and direction of the supervising chiropractic physician at the location where services are rendered.

[**ARC 7968C**, IAB 5/15/24, effective 6/19/24]

645—43.2(147,272C) Principles of chiropractic ethics. The following principles of chiropractic ethics are adopted by the board for the practice of chiropractic in this state.

43.2(1) These principles are intended to aid chiropractic physicians individually and collectively in maintaining a high level of ethical conduct. These are standards by which a chiropractic physician may determine the propriety of the chiropractic physician's conduct in the chiropractic physician's relationship with patients, with colleagues, with members of allied professions, and with the public.

43.2(2) The principal objective of the chiropractic profession is to render service to humanity with full respect for the dignity of the person. Chiropractic physicians should merit the confidence of patients entrusted to their care, rendering to each a full measure of service and devotion.

43.2(3) Chiropractic physicians should strive continually to improve chiropractic knowledge and skill, and should make available to their patients and colleagues the benefits of their professional attainments.

43.2(4) A chiropractic physician should practice a method of healing founded on a scientific basis, and should not voluntarily associate professionally with anyone who violates this principle.

43.2(5) The chiropractic profession should safeguard the public and itself against chiropractic physicians deficient in moral character or professional competence. Chiropractic physicians should observe all laws, uphold the dignity and honor of the profession and accept its self-imposed disciplines. They should expose, without hesitation, illegal or unethical conduct of fellow members of the profession.

43.2(6) A chiropractic physician may choose whom to serve. In an emergency, however, services should be rendered to the best of the chiropractic physician's ability. Having undertaken the case of a patient, the chiropractic physician may not neglect the patient; and, unless the patient has been discharged, the chiropractic physician may discontinue services only after giving adequate notice.

43.2(7) A chiropractic physician should not dispose of services under terms or conditions that tend to interfere with or impair the free and complete exercise of professional judgment and skill or tend to cause a deterioration of the quality of chiropractic care.

43.2(8) A chiropractic physician should seek consultation upon request, in doubtful or difficult cases, or whenever it appears that the quality of chiropractic service may be enhanced thereby.

43.2(9) A chiropractic physician may not reveal the confidences entrusted in the course of chiropractic attendance, or the deficiencies observed in the character of patients, unless required to

do so by law or unless it becomes necessary in order to protect the welfare of the individual or of the community.

43.2(10) The honored ideals of the chiropractic profession imply that the responsibilities of the chiropractic physician extend not only to the individual, but also to society where these responsibilities deserve interest and participation in activities that have the purpose of improving both the health and well-being of the individual and the community.
[**ARC 7968C**, IAB 5/15/24, effective 6/19/24]

645—43.3 Reserved.

645—43.4(151) Chiropractic insurance consultant.

43.4(1) A chiropractic insurance consultant advises insurance companies, third-party administrators and other similar entities of Iowa standards of:

a. Recognized and accepted chiropractic services and procedures permitted by the Iowa Code and administrative rules, and

b. The propriety of chiropractic diagnosis and care.

43.4(2) All licensees who review chiropractic records for the purposes of determining the adequacy or sufficiency of chiropractic treatments, or the clinical indication for those treatments, will indicate on their licensure renewals that they are engaged in those activities and the location where those activities are performed.

43.4(3) Licensed chiropractic physicians will not hold themselves out as chiropractic insurance consultants unless they meet the following requirements:

a. Hold a current license in Iowa.

b. Have practiced chiropractic in the state of Iowa during the immediately preceding five years.

c. Are actively involved in a chiropractic practice during the term of appointment as a chiropractic insurance consultant. Active practice includes but is not limited to maintaining an office location and providing clinical care to patients.
[**ARC 7968C**, IAB 5/15/24, effective 6/19/24]

645—43.5(151) Acupuncture. A chiropractic physician who engages in the practice of acupuncture will maintain documentation that shows the chiropractic physician has successfully completed a course in acupuncture consisting of at least 100 hours of traditional, in-person classroom instruction with the instructor on site. The licensee will maintain a transcript or certification of completion showing the licensee's name, school or course sponsor's name, date of course completion or graduation, grade or other evidence of successful completion, and number of course hours. The licensee will provide the transcript or certification of completion to the board upon request.
[**ARC 7968C**, IAB 5/15/24, effective 6/19/24]

645—43.6(151) Adjunctive procedures.

43.6(1) Adjunctive procedures are defined as procedures related to differential diagnosis.

43.6(2) For any applicant for licensure to practice chiropractic in the state of Iowa who chooses to be tested in limited adjunctive procedures, those limited procedures must be adequate for the applicant to come to a differential diagnosis in order to pass the examination.

43.6(3) Applicants for licenses to practice chiropractic who refuse to utilize any of the adjunctive procedures that they have been taught in approved colleges of chiropractic must adequately show the board that they can come to an adequate differential diagnosis without the use of adjunctive procedures.
[**ARC 7968C**, IAB 5/15/24, effective 6/19/24]

645—43.7(151) Physical examination. The chiropractic physician is to perform physical examinations to determine human ailments, or the absence thereof, utilizing principles taught by chiropractic colleges. Physical examination procedures will not include prescription drugs or operative surgery.
[**ARC 7968C**, IAB 5/15/24, effective 6/19/24]

645—43.8(151) Recordkeeping.

43.8(1) Chiropractic physicians will maintain clinical records in a manner consistent with the protection of the welfare of the patient. Records will be timely, dated, chronological, accurate, signed or initialed, legible, and easily understandable. Recordkeeping rules apply to all patient records whether handwritten, typed or maintained electronically. Electronic signatures are acceptable when the record has been reviewed by the physician whose signature appears on the record.

43.8(2) Chiropractic physicians will maintain clinical records for each patient, which include all of the following:

a. Personal data.

(1) Name;

(2) Date of birth;

(3) Address; and

(4) Name of parent or guardian if a patient is a minor.

b. Health history. Records will include information from the patient or the patient's parent or guardian regarding the patient's health history.

c. Patient's reason for visit. When a patient presents with a chief complaint, clinical records will include the patient's stated health concerns.

d. Clinical examination progress notes. Records will include chronological dates and descriptions of the following:

(1) Clinical examination findings, tests conducted, a summary of all pertinent diagnoses, and updated health assessments;

(2) Plan of intended treatment, including description of treatment, frequency and duration;

(3) Services rendered and any treatment complications;

(4) All testing ordered or performed;

(5) Diagnostic imaging report if imaging procedure is ordered or performed;

(6) Sufficient data to support the recommended treatment plan.

e. Clinical record. Each page of the clinical record will include the patient's name, the date information was recorded and the doctor's name or facility's name.

43.8(3) Retention of records. A chiropractic physician will maintain a patient's record(s) for a minimum of six years after the date of last examination or treatment. Records for minors will be maintained for one year after the patient reaches the age of majority (18) or six years after the date of last examination or treatment, whichever is longer. Proper safeguards will be maintained to ensure the safety of records from destructive elements. This provision includes both clinical and fiscal records.

43.8(4) Electronic recordkeeping. When electronic records, which include both electronically created records and scanned paper records, are utilized, a chiropractic physician will maintain either a duplicate hard-copy record or a backup electronic record.

43.8(5) Correction of written records. Notations will be legible, written in ink, and contain no erasures or whiteouts. If incorrect information is placed in the record, it must be crossed out with a single nondeleting line. Entries recorded at a time other than the date of the patient encounter must include the date of the entry and the initials of the author.

43.8(6) Correction of electronic records. Any alterations made after the date of service will be visibly recorded. All alterations will include a notation setting forth the date of alteration and identification of the author. Entries recorded at a time other than the date of the patient encounter must include the date of the entry and the initials of the author.

43.8(7) Abbreviations will be standard and common to all health care disciplines. Nonstandard abbreviations will be referenced with a key that is included in the record when the record is requested.

43.8(8) Confidentiality and transfer of records. Chiropractic physicians will preserve the confidentiality of patient records. Upon signed request of the patient, the chiropractic physician will furnish such records or copies of the records as directed by the patient within 30 days. A notation indicating the items transferred, date of transfer and method of transfer will be maintained in the patient record. The chiropractic physician may charge a reasonable fee for duplication of records but may not refuse to transfer records for nonpayment of any fees. A written request may be required before the transfer of the record(s), including, for example, compliance with HIPAA regulations. In certain

instances, a summary of the record may be more beneficial for the future treatment of the patient; however, if a third party requests copies of the original documentation, that request must be honored.

43.8(9) Retirement or discontinuance of practice. A licensee, upon retirement, discontinuation of the practice of chiropractic, leaving a practice, or moving from a community, will:

a. Notify all active patients, in writing one month prior to discontinuation of practice. The notification will include the following information:

(1) That the licensee intends to discontinue the practice of chiropractic in the community and that patients are encouraged to seek the services of another licensee; and

(2) How patients can obtain their records, including the name and contact information of the records custodian.

b. Make reasonable arrangements with active patients for the transfer of patient records, or copies of those records, to the succeeding licensee.

For the purposes of this subrule, "active patient" means a person whom the licensee has examined, treated, cared for, or otherwise consulted with during the one-year period prior to retirement, discontinuation of the practice of chiropractic, leaving a practice, or moving from a community.

43.8(10) Recordkeeping procedures and standards will be utilized for all individuals who receive treatment from a chiropractic physician in all sites where care is provided.

43.8(11) A chiropractic physician who offers a prepayment plan for chiropractic services will:

a. Have a written prepayment policy statement that is maintained in the office and available to patients upon request. The policy statement, at a minimum, will include provisions that:

(1) Prepaid funds will not be expended until services are provided; and

(2) The patient will receive a prompt refund of any unused funds upon request. The refund will be calculated based on a defined method, which will be clearly set forth in the written prepayment policy statement.

b. Require the patient to sign and date a prepayment document that incorporates the conditions and descriptions of the written prepayment policy statement.

c. Maintain the signed and dated written prepayment policy statement in the patient's record.

[**ARC 7968C**, IAB 5/15/24, effective 6/19/24]

645—43.9(151) Billing procedures.

43.9(1) Chiropractic physicians will maintain accurate billing records for each patient. Records may be stored on paper or electronically. The records will contain all of the following:

a. Name, date of birth and address.

b. Diagnosis indicated with description or ICD code.

c. Services provided with description or CPT code.

d. Dates of services provided.

e. Charges for each service provided.

f. Payments made for each service and indication of the party providing payment.

g. Dates payments are made.

h. Balance due for any outstanding charges.

43.9(2) Chiropractic physicians will preserve the confidentiality of billing records.

43.9(3) Upon signed request of the patient, the chiropractic physician will furnish billing records or copies of the records as directed by the patient within 30 days. The chiropractic physician may charge a reasonable fee for duplication of records, but may not refuse to transfer records for nonpayment of any outstanding balance.

43.9(4) Each chiropractic physician is responsible for the accuracy and validity of billings submitted under the chiropractic physician's name.

43.9(5) Chiropractic physicians:

a. Who are owners, operators, members, partners, shareholders, officers, directors, or managers of a chiropractic clinic will be responsible for the policies, procedures and billings generated by the clinic.

b. Who provide clinical services are required to familiarize themselves with the clinic's billing practices to ensure that the services rendered are accurately reflected in the billings generated. In the

event an error occurs that results in an overbilling, the licensee must promptly make reimbursement of the overbilling whether or not the licensee is in any way compensated for such reimbursement by an employer, agent or any other individual or business entity responsible for such error.

43.9(6) A chiropractic physician has a right to review and correct all billings submitted under the chiropractic physician's name or identifying number(s). Signature stamps or electronically generated signatures will be utilized only with the authorization of the chiropractic physician whose name or signature is designated. Such authorization may be revoked at any time in writing by the chiropractic physician.

43.9(7) Chiropractic physicians will not knowingly:

a. Increase charges when a patient utilizes a third-party payment program.

b. Report incorrect dates or types of service on any billing documents.

c. Submit charges for services not rendered.

d. Submit charges for services rendered that are not documented in a patient's record.

e. Bill patients or make claims under a third-party payer contract for chiropractic services that have not been performed.

f. Bill patients or make claims under a third-party payer contract in a manner that misrepresents the nature of the chiropractic services that have been performed.

43.9(8) For cases not involving third-party payers, nothing in this rule will prevent a chiropractic physician from providing a fee reduction for reasonable time of service or substantiated hardship cases. The chiropractic physician will document time of service or hardship case fee reduction provisions in the patient record.

43.9(9) The chiropractic physician will not enter into an agreement to waive, abrogate, or rebate the deductible or copayment amounts of any third-party payer contract by forgiving any or all of any patient's obligation for payment thereunder, except in substantiated hardship cases, unless the third-party payer is notified in writing of the fact of such waiver, abrogation, rebate, or forgiveness in accordance with the third-party payer contract. The chiropractic physician will document any hardship case fee reduction provisions in the patient record.

[**ARC 7968C**, IAB 5/15/24, effective 6/19/24]

645—43.10(151) Certified chiropractic assistants.

43.10(1) *Supervisory responsibilities of the chiropractic physician.*

a. The supervising chiropractic physician will ensure at all times that the certified chiropractic assistant has the necessary training and skills as required by these rules to competently perform the delegated services.

b. The supervising chiropractic physician may delegate services to a certified chiropractic assistant that are within the scope of practice of the chiropractic physician in a manner consistent with these rules. Violation of these rules will be grounds for discipline under 645—Chapter 45.

c. A chiropractic physician will not delegate to the certified chiropractic assistant the following:

(1) Services outside the chiropractic physician's scope of practice;

(2) Initiation, alteration, or termination of chiropractic treatment programs;

(3) Chiropractic manipulation and adjustments;

(4) Diagnosis of a condition.

d. A supervising chiropractic physician will ensure that a certified chiropractic assistant is informed of the supervisor and certified chiropractic assistant relationship and is responsible for all services performed by the certified chiropractic assistant.

43.10(2) *Education requirements for certified chiropractic assistants.*

a. The supervising chiropractic physician will ensure that a certified chiropractic assistant has completed a professional certification program. A certified chiropractic assistant training program will include training and instruction on the use of chiropractic physiotherapy procedures related to services to be provided by the certified chiropractic assistant. Any certified chiropractic assistant training program will be provided by an approved CCE-accredited chiropractic college, FCLB, PACE, CCCA, or a chiropractic state association.

b. Certified chiropractic assistants performing active chiropractic physiotherapy procedures are required to complete 12 hours of instruction, of which 6 hours will be clinical experience under the supervision of the chiropractic physician.

c. Certified chiropractic assistants performing passive chiropractic physiotherapy procedures are required to complete 12 hours of instruction, of which 6 hours will be clinical experience under the supervision of the chiropractic physician.

d. If both paragraphs *"b"* and *"c"* of this subrule apply, then 12 hours of instruction for active chiropractic physiotherapy procedures and 12 hours of instruction for passive chiropractic physiotherapy procedures will be required for a total of 24 hours of instruction.

e. The supervising chiropractic physician will provide a written attestation to the chiropractic college that the certified chiropractic assistant has completed the clinical experience. The college will issue a separate certificate of completion for the active or passive chiropractic training program as defined in paragraphs *"b," "c,"* and *"d"* of this subrule.

f. The chiropractic physician will maintain in the chiropractic physician's primary place of business proof of the certified chiropractic assistant's completion of the training program. Copies of such documents will be provided to the board upon request.

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CHAPTER 44
CONTINUING EDUCATION FOR CHIROPRACTIC PHYSICIANS
[Prior to 7/24/02, see 645—Ch 43]

645—44.1(151) Definitions. For the purpose of these rules, the following definitions will apply:

"Active license" means a license that is current and has not expired.

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period.

"Board" means the Iowa board of chiropractic.

"Clinical case management" means coursework pertaining to diagnosis, treatment, and appropriate referral or coordination of care.

"Continuing education" means planned, organized learning acts meeting the standards set forth in these rules, acquired during licensure, and designed to maintain, improve, or expand a licensee's knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of chiropractic practice, education, or theory development to improve the safety and welfare of the public.

"Hour of continuing education" means at least 50 minutes spent by a licensee in actual attendance at and completion of an approved continuing education activity.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period. The category of "inactive license" may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

"Independent study" means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest and certificate of completion.

"License" means license to practice chiropractic in Iowa.

"Licensee" means any person licensed to practice as a chiropractic physician in Iowa.

[**ARC 7969C**, IAB 5/15/24, effective 6/19/24]

645—44.2(272C) Continuing education requirements.

44.2(1) The biennial continuing education compliance period extends for a two-year period beginning on July 1 of each even-numbered year and ending on June 30 of each even-numbered year two years later.

44.2(2) Requirements of new licensees. Continuing education is not required in the first renewal period with the exception of two hours in the content areas of 645—Chapters 41 through 45 and Iowa Code chapter 151. Continuing education hours acquired any time from the initial licensing until the second license renewal, with the exception of two hours in the content areas of 645—Chapters 41 through 45 and Iowa Code chapter 151, may be used after the first renewal period. The new licensee will be required to complete a minimum of 40 hours of continuing education per biennium for each subsequent license renewal.

44.2(3) Hours of continuing education credit will be obtained by attending and participating in a continuing education activity as stipulated in rule.

44.2(4) No hours of continuing education will be carried over into the next biennium except as stated in subrule 44.2(2) and subparagraph 44.3(2)*"a"*(3). A licensee whose license is reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

44.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

[**ARC 7969C**, IAB 5/15/24, effective 6/19/24]

645—44.3(151,272C) Standards.

44.3(1) *General criteria.* A continuing education activity must meet the following criteria:

a. Constitute an organized program of learning that contributes directly to the professional competency of the licensee;

b. Pertain to subject matters that integrally relate to the practice of the profession;

c. Be conducted by individuals who have specialized education, training and experience concerning the subject matter of the program. At the time of audit, the board may request the qualifications of presenters;

d. Fulfill stated program goals, objectives, or both; and

e. Provide proof of attendance to licensees in attendance including:

(1) Date(s), location, course title, presenter(s);

(2) Number of program clock hours; and

(3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

44.3(2) *Specific criteria.*

a. Continuing education hours of credit will be obtained by completing:

(1) At least 36 hours of continuing education credit obtained from a program that directly relates to clinical case management of chiropractic patients. At least 20 of these hours will be earned by completing a program in which an instructor conducts the class by employing a traditional in-person, classroom-type presentation and the licensee is in attendance in the same room as that instructor. The remaining 16 hours of continuing education credit relating to clinical case management of chiropractic patients may be obtained by independent study, including any online instruction, that complies with conditions specified in subrule 44.3(1).

(2) A minimum of two hours per biennium in professional boundaries regarding ethical issues related to professional conduct that may include but are not limited to sexual harassment, sensitivity training and ethics.

(3) A minimum of 12 hours per biennium of continuing education in the field of acupuncture is required for licensees certified in acupuncture and may be used toward clinical case management if the chiropractic physician is actively engaged in the practice of acupuncture. Chiropractic physicians not engaged in the active practice of acupuncture may take continuing education hours in the field of acupuncture for continuing education credit.

(4) Classes on child abuse and dependent adult abuse that meet the criteria in 645—subrules 41.8(4) and 44.3(1).

(5) Two hours of continuing education credit is required in the first biennial renewal period and one hour every biennial renewal period after that in the content areas of the administrative rules related to chiropractic physicians in Iowa, found at 645—Chapters 41 through 45 and the statutory provisions specific to the practice of chiropractic in Iowa Code chapter 151.

b. Continuing education hours of credit may be obtained by:

(1) Teaching at a Council on Chiropractic Education (CCE)-approved program or board of chiropractic-approved institution. A maximum of 15 hours per biennium may be obtained for each course taught.

(2) Completing electronically transmitted programs/activities or independent study programs/activities that have a certificate of completion.

(3) Presenting a continuing education program once per biennium for the initial presentation of the program.

(4) Completing a program provided by a CCE-accredited chiropractic college in the United States, the Iowa Chiropractic Society, American Chiropractic Association or International Chiropractors Association.

(5) Completing continuing education courses/programs that are certified by the Providers of Approved Continuing Education (PACE) through the Federation of Chiropractic Licensing Boards (FCLB).

(6) Proctoring at the NBCE examination. Fifteen hours of continuing education hours per NBCE examination event may be claimed up to a maximum of 30 hours of continuing education credit per biennium. The proctoring hours may apply toward the clinical requirement.

c. Continuing education may not be obtained by completing or teaching classes in basic anatomy and physiology or undergraduate level coursework.

44.3(3) *Specific criteria for presenters.* All instructors/presenters of a continuing education activity must include, as part of the continuing education activity, verbal and written statements to the participants regarding any affiliations or employment relationships with any entity promoting, developing or marketing products, services, procedures or treatment methods.

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◊ Two or more ARCs

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CHAPTER 45
DISCIPLINE FOR CHIROPRACTIC PHYSICIANS
[Prior to 7/24/02, see 645—Ch 44]

645—45.1(151,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—45.1(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses or those listed in 645—Chapter 13:

45.1(1) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. This includes representations utilizing the term "physical therapy" when informing the public of the services offered by the chiropractic physician unless a licensed physical therapist is performing such services. Nothing herein will be construed as prohibiting a chiropractic physician from making representations regarding physiotherapy that may be the same as, or similar to, physical therapy or physical medicine as long as treatment is appropriate as authorized in Iowa Code chapter 151. Proof of actual injury need not be established.

45.1(2) Use of untruthful or improbable statements in advertisements and marketing. Use of untruthful or improbable statements in advertisements includes but is not limited to an action by a licensee in making information or intention known to the public that is false, deceptive, misleading or promoted through fraud or misrepresentation, or representations that are likely to cause the average person to misunderstand. The term "advertisements" includes oral, written, electronic, and other types of communication disseminated by or at the direction of a licensee for the purpose of encouraging or soliciting the use of the licensee's services.

45.1(3) Violate the provisions of direct health care agreements pursuant to Iowa Code section 135N.1.

45.1(4) Failure to maintain a patient's record(s) for a minimum of six years after the date of last examination or treatment. Records for minors shall be maintained for one year after the patient reaches the age of majority (18) or six years after the date of last examination or treatment, whichever is longer. Proper safeguards shall be maintained to ensure the safety of records from destructive elements. This provision includes both clinical and fiscal records.

This rule is intended to implement Iowa Code chapters 147, 151, and 272C.

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◊ Two or more ARCs

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NURSING HOME ADMINISTRATORS

CHAPTER 141
LICENSURE OF NURSING HOME ADMINISTRATORS

[Prior to 8/24/88, see Nursing Home Administrators Board of Examiners[600], Ch 2]

645—141.1(155) Definitions. For purposes of these rules, the following definitions shall apply:

"Active license" means a license that is current and has not expired.

"Administrator" means a licensed nursing home administrator.

"Board" means the board of nursing home administrators.

"Grace period" means the 30-day period following expiration of a license when the license is still considered to be active.

"HSE" means a Health Services Executive as designated by the National Association of Boards of Examiners of Long Term Care Administrators.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period.

"Licensee" means any person licensed to practice as a nursing home administrator in the state of Iowa.

"License expiration date" means December 31 of odd-numbered years.

"Licensure by endorsement" means the issuance of an Iowa license to practice nursing home administration to an applicant who is or has been licensed in another state.

"NAB" means National Association of Boards of Examiners of Long Term Care Administrators.

"Preceptor" means a person who is currently licensed as a nursing home administrator and is approved by the department to supervise a person in a mentoring or administrator training program.

"Provisional license" means a license issued to an administrator appointed on a temporary basis to perform the duties of a nursing home administrator.

"Reactivate" or *"reactivation"* means the process as outlined in rule 645—141.15(17A,147,272C) by which an inactive license is restored to active status.

"Reinstatement" means the process as outlined in rule 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions.

[**ARC 7971C**, IAB 5/15/24, effective 6/19/24]

645—141.2(155) Requirements for licensure. The following criteria shall apply to licensure:

141.2(1) Submit a completed online application and pay the nonrefundable licensure fee specified in rule 645—5.10(147,155);

141.2(2) Provide verification of certification as an HSE through NAB; or

141.2(3) Provide verification of the following:

a. Transcripts verifying a baccalaureate or postbaccalaureate degree sent directly from an accredited college or university;

b. Passing score on all required national NAB examinations and meeting all other licensure requirements to be approved to take all required national NAB examinations;

c. Completion of one of the following:

(1) Administrator training program;

(2) Practicum in long-term health care completed through an accredited college or university; or

(3) 2,080 hours of long-term health care administration or health-care-related experience in a nursing home may be approved by the board.

141.2(4) An applicant who has been licensed in another state will provide verification of license from the jurisdiction in which the applicant has most recently been licensed, sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction. Web-based verification may be substituted for verification direct from the jurisdiction's board office if it provides:

a. Licensee's name;

b. Date of initial licensure;

c. Current licensure status; and

d. Any disciplinary action taken against the licensee.

[**ARC 7971C**, IAB 5/15/24, effective 6/19/24]

645—141.3(147,155) Foreign-trained applicants. Foreign-trained nursing home administrators will:

141.3(1) Provide an equivalency evaluation of their educational credentials by International Educational Research Foundation, Inc., Credentials Evaluation Service. A candidate will be responsible for the expense of the curriculum evaluation.

141.3(2) Provide a copy of the certificate or diploma awarded to the applicant from a nursing home administration program in the country in which the applicant was educated.

141.3(3) Provide satisfactory evidence of completion of administrator training program, practicum or 2,080 hours of work experience in long-term health care administration.

[**ARC 7971C**, IAB 5/15/24, effective 6/19/24]

645—141.4(155) Preceptor qualifications. Preceptor qualifications are as follows:

141.4(1) Current licensure and at least two years of experience as a nursing home administrator.

141.4(2) Completion of a preceptor training course prior to the preceptorship.

141.4(3) Preceptor has not had the preceptor's nursing home administrator license disciplined, limited, suspended, or placed on probation during the one year immediately prior to the approval to act as a preceptor.

141.4(4) Is not related to the training administrator.

[**ARC 7971C**, IAB 5/15/24, effective 6/19/24]

645—141.5(155) Provisional license. A provisional license may be issued to an administrator appointed on a temporary basis to perform the duties of a nursing home administrator. A provisional license is considered a temporary appointment, and the person appointed may serve as an administrator for a period of time not to exceed 12 months in an entire career. The 12 months in service are not required to be consecutive; however, a new application is required for each appointment period. It is the responsibility of the approved provisional administrator to maintain documentation of the actual dates the administrator serves in that capacity.

141.5(1) The limited circumstances under which the request for a provisional appointment will be granted include the inability of the licensed administrator to perform the administrator's duties, the death of the licensed administrator, or circumstances that prevent the immediate transfer of the licensed administrator's duties to another licensed administrator. A provisional license will not be issued to a licensed nursing home administrator.

141.5(2) Application for a provisional license shall be in writing on forms prescribed by the board. Applicants will meet the following minimum qualifications:

a. Be at least 18 years of age.

b. Be employed on a full-time basis of no less than 40 hours per week to perform the duties of the nursing home administrator.

c. Be knowledgeable about the nursing home administrator's domains of practice, including resident care, human resources, finance, physical environment, and leadership and management.

d. Be without a history of unprofessional conduct or denial of or disciplinary action against a license to practice nursing home administration or any other profession by any lawful licensing authority for reasons outlined in 645—Chapter 144.

e. Provide evidence to establish that the provisional appointment will not exceed the lifetime maximum period of 12 calendar months in duration. For any period in which the applicant previously served as a provisional administrator, written employment verification or a written attestation of the facility owner, chief operating officer, or board officer will satisfy this requirement.

f. Provide evidence that the provisional appointment complies with the requirements in 481—subrule 58.8(4). A written attestation of the facility owner, chief operating officer, or board officer will satisfy this requirement.

141.5(3) Applications for an extension of the time period for the provisional appointment within the same facility do not require the payment of an additional fee, as long as all other requirements stated in this rule are met.

141.5(4) The board expressly reserves the right to withdraw approval of a provisional appointment. Withdrawal of approval will be based on information or circumstances warranting such action. The provisional administrator will be notified of the withdrawal of approval in writing by certified mail.

[**ARC 7971C**, IAB 5/15/24, effective 6/19/24]

645—141.6(155) Licensure by endorsement.

141.6(1) An applicant who has been a licensed nursing home administrator under the laws of another jurisdiction will file an application for licensure by endorsement with the board office. The board may receive by endorsement any applicant from the District of Columbia or another state, territory, province or foreign country who:

a. Meets the requirements of rule 645—141.2(155).

b. Provides evidence of an active license as a nursing home administrator for at least two years just prior to application, or meets the qualifications outlined in rule 645—141.4(155).

141.6(2) Licensure by verification. A person who is licensed in another jurisdiction but who is unable to satisfy the requirements for licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

[**ARC 7971C**, IAB 5/15/24, effective 6/19/24]

645—141.7(147,155) License renewal.

141.7(1) The biennial license renewal period for a license to practice nursing home administration will begin on January 1 of each even-numbered year and end on December 31 of the next odd-numbered year. All licensees will renew on a biennial basis. The licensee is responsible for renewing the license prior to its expiration.

141.7(2) An individual who was issued a license within six months of the license renewal date does not need to renew the license until the subsequent renewal two years later.

141.7(3) A licensee applying for renewal shall:

a. Meet the continuing education requirements of rule 645—143.2(272C) and the mandatory reporting requirements of subrule 141.9(8). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

b. Submit the completed renewal application and renewal fee before the license expiration date.

141.7(4) A two-year license will be issued after the requirements of this rule are met. If the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

141.7(5) Late renewal. The license will become late when the license has not been renewed by the expiration date on the renewal. The licensee will be assessed a late fee as specified in 645—subrule 5.10(3). To renew a late license, the licensee will complete the renewal requirements and submit the late fee within the grace period.

141.7(6) Inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a nursing home administrator in Iowa until the license is reactivated.

141.7(7) Licensees will display their license certificate and proof of active licensure will be in a conspicuous public place at the primary site of practice.

141.7(8) Mandatory reporter training requirements.

a. A licensee who examines, attends, counsels, or treats children, dependent adults, or both in the scope of the licensee's professional practice will complete the applicable department of health and human services training relating to the identification and reporting of child abuse, dependent adult abuse, or both. Written documentation of training completion should be maintained for three years. The training is not required if the licensee is engaged in active duty military service or holds a waiver demonstrating a hardship in complying with these training requirements.

b. The board may select licensees for audit of compliance with the requirements in subrule 141.7(8).

[**ARC 7971C**, IAB 5/15/24, effective 6/19/24]

645—141.8(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

141.8(1) Submit a completed online reactivation application and pay the nonrefundable application fee.

141.8(2) Provide verification of current competence to practice as a nursing home administrator by satisfying the following criteria:

a. Verification of the license from the jurisdiction in which the applicant has most recently been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

(1) Licensee's name;

(2) Date of initial licensure;

(3) Current licensure status; and

(4) Any disciplinary action taken against the license; and

b. Verification of completion of 40 hours of continuing education within two years of the application for reactivation or verification of active practice, consisting of a minimum of 2,080 hours, in another state or jurisdiction during the two years preceding an application for reactivation.

[**ARC 7971C**, IAB 5/15/24, effective 6/19/24]

645—141.9(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive board-approved reinstatement of the license and must apply for and be granted reactivation of the license prior to practicing as a nursing home administrator in this state.

[**ARC 7971C**, IAB 5/15/24, effective 6/19/24]

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2 Effective date of 645—subrule 141.3(2), delayed until adjournment of the 1996 General Assembly by the Administrative Rules Review Committee at its meeting held October 10, 1995.

3 March 28, 2012, effective date of 141.9(1) delayed 70 days by the Administrative Rules Review Committee at its meeting held March 12, 2012.

CHAPTER 143
CONTINUING EDUCATION FOR NURSING HOME ADMINISTRATION

[Prior to 8/24/88, see Nursing Home Administrators Board of Examiners [600], Ch 3]
[Prior to 9/13/95, see 645—Chapter 142]

645—143.1(272C) Definitions. For the purpose of these rules, the following definitions will apply:

"Active license" means the license is current and has not expired.

"Approved program/activity" means a continuing education program/activity meeting the standards set forth in these rules.

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period.

"Continuing education" means planned, organized learning acts designed to maintain, improve, or expand a licensee's knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

"Hour of continuing education" means at least 50 minutes spent by a licensee in actual attendance at and completion of an approved continuing education activity.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period.

"Independent study" means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

"License" means license to practice.

"Licensee" means any person licensed to practice as a nursing home administrator in the state of Iowa.

"National Continuing Education Review Service (NCERS)" means the continuing education review service operated by the National Association of Boards of Examiners for Nursing Home Administrators.
[**ARC 7972C**, IAB 5/15/24, effective 6/19/24]

645—143.2(272C) Continuing education requirements.

143.2(1) The biennial continuing education compliance period will extend for a two-year period beginning on January 1 of each even-numbered year and ending on December 31 of the next odd-numbered year. Each biennium, each person who is licensed to practice as a licensee in this state will be required to complete a minimum of 40 hours of continuing education. Continuing education hours do not carry over.

143.2(2) Requirements of new licensees. Those persons licensed for the first time will not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used.

143.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity.

143.2(4) The licensee is responsible for the cost of continuing education.
[**ARC 7972C**, IAB 5/15/24, effective 6/19/24]

645—143.3(155,272C) Standards.

143.3(1) *General criteria.* A continuing education activity that meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

a. Is an organized program of learning fundamental to the practice of the profession that contributes directly to the professional competency of the licensee;

b. Is conducted by individuals who have specialized education, training and experience in the subject matter of the program;

c. Fulfills stated program goals, objectives, or both; and

d. Provides proof of attendance including:

(1) Date(s), location, course title, presenter(s);

(2) Number of program contact hours; and

(3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

143.3(2) *Specific criteria.* Licensees may obtain continuing education hours of credit by:

a. Participating in the continuing education programs approved by the National Continuing Education Review Service (NCERS).

b. Academic coursework that meets the criteria set forth in these rules. Continuing education credit equivalents are as follows:

1 academic semester hour = 15 continuing education hours

1 academic quarter hour = 10 continuing education hours

c. Attendance at or participation in a program or course that meets the requirements in subrule 143.3(1).

d. Making presentations; conducting research; producing publications; preparing new courses; participating in home study courses; attending electronically transmitted courses; and attending workshops, conferences, or symposiums.

e. Self-study coursework that meets the criteria set forth in these rules. Continuing education credit equivalent for self-study is as follows:

180 minutes of self-study work = 1 continuing education hour

The maximum number of hours for self-study, including television viewing, video or sound-recorded programs, correspondence work, or research, or by other similar means that is not directly sponsored by and supervised by an accredited postsecondary college or university or NCERS, is eight hours.

[**ARC 7972C**, IAB 5/15/24, effective 6/19/24]

645—143.4(155,272C) Exemptions. A licensee is exempt from the continuing education requirement when that person:

1. Served honorably on active duty in the military service;
2. Resided in another state with continuing education requirements that the applicant met;
3. Was a government employee working in the licensee's specialty and assigned to duty outside the United States; or
4. Has a disability, illness, or primary caregiver status requiring an extension of time or exemption upon approval by the board office.

[**ARC 7972C**, IAB 5/15/24, effective 6/19/24]

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CHAPTER 144
DISCIPLINE FOR NURSING HOME ADMINISTRATORS
[Prior to 5/30/01, see 645—Chapter 141]

645—144.1(155,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—13.3(155,272C) when the board determines that the licensee is guilty of any of the following acts or offenses or those listed in 645—Chapter 13.

144.1(1) Any falsification or misrepresentation contained in any report or document attesting to the facts, conditions and activities of the internship or work experience and submitted by the applicant, administrator/preceptor or other participants may be grounds for denial of license or for suspension or revocation of the nursing home administrator license in addition to the imposition of fines and any other penalties provided by law.

144.1(2) Any misappropriation of resident funds or facility funds may be grounds for denial of license or for suspension or revocation of the nursing home administrator license in addition to the imposition of fines and any other penalties provided by law.

This rule is intended to implement Iowa Code chapters 147, 155 and 272C.

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OPTOMETRISTS

CHAPTER 180
LICENSURE OF OPTOMETRISTS

[Prior to 6/13/01, see 645—Chapter 180]

645—180.1(154) Definitions. For purposes of these rules, the following definitions will apply:

"Active license" means a license that is current and has not expired.

"Board" means the board of optometry.

"CELMO" means the Council on Endorsed Licensure Mobility for Optometrists.

"Grace period" means the 30-day period following expiration of a license when the license is still considered to be active.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period.

"Licensee" means any person licensed to practice as an optometrist in the state of Iowa.

"Licensure by endorsement" means the issuance of an Iowa license to practice optometry to an applicant who is or has been licensed in another state.

"Mandatory training" means training on identifying and reporting child abuse or dependent adult abuse required of optometrists who are mandatory reporters. The full requirements on mandatory reporting of child abuse and the training requirements are found in Iowa Code section 232.69. The full requirements on mandatory reporting of dependent adult abuse and the training requirements are found in Iowa Code section 235B.16.

"NBEO" means the National Board of Examiners in Optometry.

"Optometrist" means an optometrist who is licensed to practice optometry in Iowa and who is certified by the board of optometry to employ all diagnostic and therapeutic pharmaceutical agents for the purpose of diagnosis and treatment of the conditions of the human eye and adnexa, excluding the use of injections other than to counteract an anaphylactic reaction, and notwithstanding Iowa Code section 147.107, may without charge supply any of the above pharmaceuticals to commence a course of therapy, with the exclusions cited in Iowa Code chapter 154.

"Reactivate" or *"reactivation"* means the process as outlined in rule 645—180.5(17A,147,272C) by which an inactive license is restored to active status.

"Reinstatement" means the process as outlined in rule 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions.

"TPA" means therapeutic pharmaceutical agents.

[**ARC 7974C**, IAB 5/15/24, effective 6/19/24]

645—180.2(154) Requirements for licensure.

180.2(1) The following criteria applies to licensure:

a. Submit a completed online application and pay the non-refundable licensure fee specified in rule 645—5.12(147,154).

b. Applicants will submit proof of satisfactory completion of all educational requirements contained in Iowa Code chapter 154 including official copies of academic transcripts sent directly to the board from an accredited school or college of optometry.

c. Applicants will submit proof of passing all current NBEO examinations.

d. An applicant who has been licensed in another state will provide verification of license from the jurisdiction in which the applicant has most recently been licensed, sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant

in any other jurisdiction. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

(1) Licensee's name;

(2) Date of initial licensure;

(3) Current licensure status; and

(4) Any disciplinary action taken against the license.

180.2(2) Reserved.

[**ARC 7974C**, IAB 5/15/24, effective 6/19/24]

645—180.3(154) Licensure by endorsement.

180.3(1) Applicants who have been licensed as an optometrist in another state may apply for licensure by endorsement by submitting the following:

a. Verification the applicant meets the requirements of rule 645—180.2(154); and

b. Verification of current competence to practice as an optometrist by satisfying one of the following criteria:

(1) Current CELMO certification;

(2) Practice as an optometrist for a minimum of 2,080 hours during the preceding two-year period;

(3) Employment as a faculty member teaching optometry in an accredited school of optometry for at least one academic year during the preceding two-year period;

(4) Completion of a minimum of 50 hours of continuing education during the preceding two-year period; or

(5) Passing the NBEO examination during the preceding two-year period.

180.3(2) Licensure by verification. A person who is licensed in another jurisdiction but who is unable to satisfy the requirements for licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

[**ARC 7974C**, IAB 5/15/24, effective 6/19/24]

645—180.4(154) License renewal.

180.4(1) The biennial license renewal period for a license to practice optometry will begin on July 1 of an even-numbered year and end on June 30 two years later. The licensee is responsible for renewing the license prior to its expiration.

180.4(2) An individual who was issued a license within six months of the license renewal date does not need to renew the license until the subsequent renewal two years later.

180.4(3) A licensee applying for renewal will:

a. Meet the continuing education requirements of rule 645—181.2(154) and the mandatory reporting requirements of subrule 180.5(4). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

b. Submit the completed renewal application and renewal fee before the license expiration date.

180.4(4) Mandatory reporter training requirements.

a. A licensee who examines, attends, counsels, or treats children, dependent adults, or both in the scope of the licensee's professional practice will complete the applicable department of health and human services training relating to the identification reporting of child abuse, dependent adult abuse, or both. Written documentation of training completion should be maintained for three years. The training is not required if the licensee is engaged in active duty military service or holds a waiver demonstrating a hardship in complying with these training requirements.

b. The board may select licensees for audit of compliance with the requirements in 645—Chapter 181.

180.4(5) A two-year license will be issued after the requirements of the rule are met. If the board receives adverse information on the renewal application, the board will issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

180.4(6) The license certificate and proof of active licensure will be displayed in a conspicuous public place at the primary site of practice.

180.4(7) Late renewal. The license will become late when the license has not been renewed by the expiration date on the renewal. The licensee will be assessed a late fee as specified in 645—subrule 5.12(3). To renew a late license, the licensee will complete the renewal requirements and submit the late fee within the grace period.

180.4(8) Inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice until the license is reactivated.

[**ARC 7974C**, IAB 5/15/24, effective 6/19/24]

645—180.5(17A,147,272C) License reactivation. To apply for reactivation of an inactive license:

180.5(1) Submit a completed online reactivation application and payment of the non-refundable application fee.

180.5(2) If licensed in another jurisdiction, provide verification from the jurisdiction in which the licensee has most recently been licensed showing the licensee's name, date of initial licensure, current licensure status, and any disciplinary action taken against the licensee.

180.5(3) Verification of current competence to practice as an optometrist by satisfying one of the following criteria:

a. Practice as an optometrist for a minimum of 2,080 hours during the preceding two-year period;

b. Employment as a faculty member teaching optometry in an accredited school of optometry for at least one academic year during the preceding two-year period;

c. Completion of a minimum of 50 hours of continuing education during the preceding two-year period; or

d. Passing the NBEO examination during the preceding two-year period.

[**ARC 7974C**, IAB 5/15/24, effective 6/19/24]

645—180.6(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive board-approved reinstatement of the license and must apply for and be granted reactivation of the license prior to practicing as an optometrist in this state.

[**ARC 7974C**, IAB 5/15/24, effective 6/19/24]

These rules are intended to implement Iowa Code chapters 17A, 147, 154 and 272C.

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◊ Two or more ARCs

CHAPTER 181
CONTINUING EDUCATION FOR OPTOMETRISTS

645—181.1(154) Definitions. For the purpose of these rules, the following definitions shall apply:

"Active license" means a license that is current and has not expired.

"Approved program/activity" means a continuing education program/activity meeting the standards set forth in these rules.

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period.

"Board" means the board of optometry.

"CELMO" means the Council on Endorsed Licensure Mobility for Optometrists.

"Continuing education" means planned, organized learning acts designed to maintain, improve, or expand a licensee's knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

"Distance learning" means a format that provides one-way content to the licensee without immediate interaction with the instructor, including but not limited to correspondence courses, online courses and local study group programs.

"Hour of continuing education" means at least 50 minutes spent by a licensee in actual attendance at and completion of an approved continuing education activity.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period.

"Independent study" means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

"Interactive online CE" means the format allows for immediate interaction and feedback between the audience and the instructor.

"License" means license to practice.

"Licensee" means any person licensed to practice as an optometrist in the state of Iowa.

[**ARC 7975C**, IAB 5/15/24, effective 6/19/24]

645—181.2(154) Continuing education requirements.

181.2(1) The biennial continuing education compliance period will extend for a two-year period beginning on July 1 and ending on June 30 of each even-numbered year. Each biennium, each person who is licensed to practice as an optometrist in this state will be required to complete a minimum of 50 hours of continuing education that meets the standards in this chapter. Continuing education hours cannot be carried over to the next biennium.

181.2(2) Requirements of new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used.

181.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity.

181.2(4) The licensee is responsible for the cost of continuing education.

[**ARC 7975C**, IAB 5/15/24, effective 6/19/24]

645—181.3(154,272C) Standards.

181.3(1) *General criteria.* A continuing education activity that meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

a. Is an organized program of learning fundamental to the practice of the profession that contributes directly to the professional competency of the licensee;

b. Is conducted by individuals who have specialized education and training in the subject matter of the program. At the time of audit, the board may request the qualifications of presenters;

c. Fulfills stated program goals, objectives, or both; and

d. Provides proof of attendance, including:

(1) Date, location, course title, presenter(s);

(2) Numbers of program contact hours; and

(3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

181.3(2) *Specific criteria.*

a. Continuing education hours of credit may be obtained by attending:

(1) The continuing education programs of the Iowa Optometric Association, the American Optometric Association, the American Academy of Optometry, and national regional optometric congresses, schools of optometry, all state optometric associations, and any accredited department of ophthalmology.

(2) Postgraduate study through an accredited school or college of optometry.

(3) Meetings or seminars that are approved and certified for optometric continuing education by the Association of Regulatory Boards of Optometry's Council on Optometric Practitioner Education (COPE) committee.

b. The maximum number of hours in each category in each biennium is as follows:

(1) Five hours of credit for distance learning.

(2) Fifteen hours of credit for interactive online CE.

(3) Twenty hours of credit for postgraduate study courses as referenced in subparagraph 181.3(2)*"a"*(2).

c. Required continuing education hours. Licensees shall provide proof of continuing education in all of the following areas:

(1) Current certification in CPR offered in person by the American Heart Association, the American Red Cross or an equivalent organization. At least two hours per biennium is required, but credit will be granted for four hours.

(2) Training on child abuse and dependent adult abuse identification and reporting through the department of health and human services for all licensees who examine, attend, counsel or treat children or dependent adults in the scope of the professional practice. Initial two-hour courses need to be taken with six months of employment. One-hour recertification training needs to be done every three years.

(3) A minimum of one hour of continuing education per renewal period regarding guidelines for prescribing opioids, including recommendations on limitations on dosages and the length of prescriptions, risk factors for abuse, and nonopioid and nonpharmacologic therapy options. Credit will be granted for up to two hours per renewal period. If the continuing education did not cover the United States Centers for Disease Control and Prevention guideline for prescribing opioids for chronic pain, the licensee shall read the guideline prior to license renewal. "Opioid" means any drug that produces an agonist effect on opioid receptors and is indicated or used for the treatment of pain.

d. Current CELMO certification meets the continuing education requirements for licensees.

[**ARC 7975C**, IAB 5/15/24, effective 6/19/24]

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◊ Two or more ARCs

CHAPTER 182
PRACTICE OF OPTOMETRISTS

[Prior to 8/7/02, see 645—179.4(154), 179.5(154,272C), 179.7(154) and 179.8(155A)]

645—182.1(154) Code of ethics. The board hereby adopts by reference the Code of Ethics of the American Optometric Association as published by the American Optometric Association, 243 North Lindbergh Boulevard, St. Louis, Missouri 63141, modified June 2007.

[**ARC 7976C**, IAB 5/15/24, effective 6/19/24]

645—182.2(154,272C) Recordkeeping. Optometrists will maintain patient records in a manner consistent with the protection of the welfare of the patient. Records will be permanent, timely, accurate, legible, and easily understandable.

182.2(1) Optometrists will maintain optometry records for each patient. The records will contain all of the following:

a. Personal data.

(1) Name, date of birth, address and, if a minor, name of parent or guardian; and

(2) Name and telephone number of emergency contact.

b. Optometry and medical history. Optometry records will include information from the patient or the patient's parent or guardian regarding the patient's optometric and medical history. The information will include sufficient data to support the recommended treatment plan.

c. Patient's reason for visit. Optometric records will include the patient's stated visual health care reasons for visiting the optometrist.

d. Clinical examination progress notes. Optometric records will include chronological dates and descriptions of the following:

(1) Clinical examination findings, tests conducted, and a summary of all pertinent diagnoses;

(2) Plan of intended treatment and treatment sequence;

(3) Services rendered and any treatment complications;

(4) All ancillary testing, if applicable;

(5) Vision tests completed and visual acuity;

(6) Name, quantity, and strength of all drugs dispensed, administered, or prescribed; and

(7) Name of optometrist who performs any treatment or service or who may have contact with a patient regarding the patient's optometric health.

e. Informed consent. Optometric records will include documentation of informed consent for procedure(s) and treatment that have potential serious complications and known risks.

182.2(2) Retention of records. An optometrist will maintain a patient's record(s) for a minimum of five years after the date of last examination, prescription, or treatment. Records for minors will be maintained for, at minimum, one year after the patient reaches the age of majority (18) or five years after the date of last examination, prescription, or treatment, whichever is longer.

Proper safeguards will be maintained to ensure the safety of records from destructive elements.

182.2(3) Electronic recordkeeping. The requirements of this rule apply to electronic records as well as to records kept by any other means. When electronic records are kept, an optometrist will keep either a duplicate hard-copy record or a back-up unalterable electronic record.

182.2(4) Correction of records. Notations will be legible, written in ink, and contain no erasures or white-outs. If incorrect information is placed in the record, it must be crossed out with a single nondeleting line and be initialed by an optometric health care worker.

182.2(5) Confidentiality and transfer of records. Optometrists will preserve the confidentiality of patient records in a manner consistent with the protection of the welfare of the patient. Upon request of the patient or the patient's new optometrist, the optometrist will furnish such optometry records or copies of the records as will be beneficial for the future treatment of that patient. The optometrist may include a summary of the record(s) with the record(s) or copy of the record(s). The optometrist may charge a nominal fee for duplication of records, but may not refuse to transfer records for nonpayment of any fees. The optometrist may ask for a written request for the record(s).

182.2(6) Retirement or discontinuance of practice. A licensee, upon retirement, or upon discontinuation of the practice of optometry, or upon leaving a practice or moving from a community, will notify all active patients in writing, or by publication once a week for three consecutive weeks in a newspaper of general circulation in the community, that the licensee intends to discontinue the practice of optometry in the community, and will encourage patients to seek the services of another licensee. The licensee will make reasonable arrangements with active patients for the transfer of patient records, or copies of those records, to the succeeding licensee. "Active patient" means a person whom the licensee has examined, treated, cared for, or otherwise consulted with during the two-year period prior to retirement, discontinuation of the practice of optometry, or leaving a practice or moving from a community.

182.2(7) Nothing stated in these rules will prohibit a licensee from conveying or transferring the licensee's patient records to another licensed optometrist who is assuming a practice, provided that written notice is furnished to all patients.

[**ARC 7976C**, IAB 5/15/24, effective 6/19/24]

645—182.3(154) Furnishing prescriptions. Before a licensed optometrist provides a spectacle or contact lens prescription to a patient, the eye examination record will include best-corrected visual acuity with ophthalmic lenses or contact lenses in the lens powers determined by refraction. Each contact lens or ophthalmic spectacle lens/eyeglass prescription by a licensed optometrist must meet the requirements as listed below:

182.3(1) A contact lens prescription will contain the following information:

a. Date of issuance;

b. Name and date of birth of patient for whom the contact lens or lenses are prescribed;

c. Name, address, and signature of the practitioner;

d. All parameters required to duplicate properly the original contact lens;

e. A specific date of expiration, not to exceed 18 months, the quantity of lenses allowed and the number of refills allowed; and

f. At the option of the prescribing practitioner, the prescription may contain fitting and material guidelines and specific instructions for use by the patient.

182.3(2) Release of contact lens prescription.

a. After the contact lenses have been adequately adapted and the patient released from initial follow-up care by the prescribing practitioner, the prescribing practitioner will provide a copy of the contact lens prescription, at no cost, for the duplication of the original contact lens. A licensed optometrist may refuse to provide a copy of the contact lens prescription if the patient has not paid the fees associated with the examination from which the prescription was generated including applicable contact lens fitting fees.

b. A practitioner choosing to issue an oral prescription will furnish the same information required for the written prescription except for the written signature and address of the practitioner. An oral prescription may be released by an O.D. to any dispensing person who is a licensed professional with the O.D., M.D., D.O., or R.Ph. degree or a person under direct supervision of those licensed under Iowa Code chapter 148, 154 or 155A.

c. The issuing of an oral prescription will be followed by a written copy to be kept by the dispenser of the contact lenses until the date of expiration.

182.3(3) An ophthalmic spectacle lens prescription will contain the following information:

a. Date of issuance;

b. Name and date of birth of the patient for whom the ophthalmic lens or lenses are prescribed;

c. Name, address, and signature of the practitioner issuing the prescription;

d. All parameters necessary to duplicate properly the ophthalmic lens prescription; and

e. A specific date of expiration not to exceed two years.

A dispenser of ophthalmic materials, in spectacle or eyeglass form, must keep a valid copy of the prescription on file for two years.

182.3(4) Release of ophthalmic lens prescription.

a. The ophthalmic lens prescription will be furnished upon request at no additional charge to the patient. A licensed optometrist may refuse to provide a copy of the ophthalmic lens prescription if the patient has not paid the fees associated with the examination from which the prescription was generated.

b. The prescription, at the option of the prescriber, may contain adapting and material guidelines and may also contain specific instructions for use by the patient.

c. Spectacle lens prescriptions will be in written format, according to Iowa Code section 147.109(1).

[**ARC 7976C**, IAB 5/15/24, effective 6/19/24]

645—182.4(155A) Prescription drug orders. Each prescription drug order furnished by an optometrist in this state will meet the following requirements:

182.4(1) Written prescription drug orders will contain:

a. The date of issuance;

b. The name and date of birth of the patient for whom the drug is dispensed;

c. The name, strength, and quantity of the drug, medicine, or device prescribed;

d. The directions for use of the drug, medicine, or device prescribed;

e. The name, address, and written signature of the practitioner issuing the prescription; and

f. The federal drug enforcement administration number, if required under Iowa Code chapter 124.

182.4(2) The practitioner issuing oral prescription drug orders will furnish the same information required for a written prescription, except for the written signature and address of the practitioner.

182.4(3) Prior to prescribing any controlled substance, an optometrist will review the patient's information contained in the prescription monitoring program database, unless the patient is receiving inpatient hospice care or long-term residential facility care.

182.4(4) Beginning January 1, 2020, every prescription issued for a prescription drug will be transmitted electronically unless exempted pursuant to Iowa Code section 124.308 or 155A.27. Beginning January 1, 2020, a licensee who fails to comply with the electronic prescription mandate may be subject to a nondisciplinary administrative penalty of $250 per violation, up to a maximum of $5,000 per calendar year.

[**ARC 7976C**, IAB 5/15/24, effective 6/19/24]

645—182.5(154) Use of injectables. A licensed optometrist shall not administer any injection prior to receiving approval from the board. A licensed optometrist may administer only the following injections:

182.5(1) Subconjunctival injections for the medical treatment of the eye.

182.5(2) Intralesional injections for the treatment of chalazia.

182.5(3) Botulinum toxin to the muscles of facial expression innervated by the facial nerve, including for cosmetic purposes.

182.5(4) Injections to counteract an anaphylactic reaction.

182.5(5) Local anesthetics prior to a minor surgical procedure authorized by this chapter.

[**ARC 7976C**, IAB 5/15/24, effective 6/19/24]

645—182.6(154) Education and training approval.

182.6(1) The board will not approve the use of injections other than to counteract an anaphylactic reaction unless the licensed optometrist demonstrates to the board sufficient educational or clinical training from a college or university accredited by a regional or professional accreditation organization that is recognized or approved by the Council for Higher Education Accreditation or by the United States Department of Education, or clinical training equivalent to clinical training offered by such an institution.

182.6(2) A licensed optometrist who completes the requirements of rule 645—182.7(154) is deemed approved by the board for use of injectables as outlined in this chapter.

[**ARC 7976C**, IAB 5/15/24, effective 6/19/24]

645—182.7(154) Education and training. In order to use injections, a licensed optometrist will be able to show proof of completion of the following requirements for board approval:

182.7(1) Be fully licensed and in good standing within the state of Iowa as a licensed optometrist.

182.7(2) Have completed a total of 24 hours of approved educational training pertaining to injections.

a. At least 4 hours of the 24 hours must be clinical training.

b. At least 5 hours of the 24 hours must pertain to the administration and side effects of injection treatment for botulinum toxin and chalazia.

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CHAPTER 183
DISCIPLINE FOR OPTOMETRISTS

[Prior to 6/13/01, see 645—Ch 180]
[Prior to 8/7/02, see 645—Ch 182]

645—183.1(154,272C) Grounds for discipline.

183.1(1) The board may impose any of the disciplinary sanctions provided in rule 645—13.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses or those listed in rule 645—Chapter 13.

183.1(2) The licensee prescribes any controlled substance in dosage amounts that exceed what would be prescribed by a reasonably prudent licensee.

This rule is intended to implement Iowa Code chapters 147, 154 and 272C.

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PHYSICAL AND OCCUPATIONAL THERAPISTS

CHAPTER 200
LICENSURE OF PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS

[Prior to 3/6/02, see 645—200.3(147) to 645—200.8(147), 645—200.11(272C), and 645—202.3(147) to 645—202.7(147)]
[Prior to 12/24/03, see 645—ch 201]

645—200.1(147) Definitions. For purposes of these rules, the following definitions shall apply:

"Active license" means a license that is current and has not expired.

"Assistive personnel" means any person who carries out physical therapy and is not licensed as a physical therapist or physical therapist assistant. This definition does not include students as defined in Iowa Code section 148A.3(2).

"Board" means the board of physical and occupational therapy.

"Department" means the department of health and human services.

"Grace period" means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.

"Impairment" means a mechanical, physiological or developmental loss or abnormality, a functional limitation, or a disability or other health- or movement-related condition.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period.

"Licensee" means any person licensed to practice as a physical therapist or physical therapist assistant in the state of Iowa.

"License expiration date" means the fifteenth day of the birth month every two years after initial licensure.

"Licensure by endorsement" means the issuance of an Iowa license to practice physical therapy to an applicant who is or has been licensed in another state.

"Mandatory reporter training" means the training on identifying and reporting child abuse or dependent adult abuse as required in Iowa Code sections 232.69 and 235B.16.

"On site" means:

1. To be continuously on site and present in the department or facility where assistive personnel are performing services;
2. To be immediately available to assist the person being supervised in the services being performed; and
3. To provide continued direction of appropriate aspects of each treatment session in which a component of treatment is delegated to assistive personnel.

"Physical therapist" means a person licensed under this chapter to practice physical therapy.

"Physical therapist assistant" means a person licensed under this chapter to assist in the practice of physical therapy.

"Physical therapy" means the same as defined in Iowa Code section 148A.1, including:

1. Evaluation of individuals with impairments in order to determine a diagnosis, prognosis, and plan of therapeutic treatment and intervention, and to assess the ongoing effects of treatment and intervention;

2. Use of the effective properties of physical agents and modalities, including but not limited to mechanical and electrotherapeutic devices, heat, cold, air, light, water, electricity, and sound, to prevent, correct, minimize, or alleviate an impairment;

3. Use of therapeutic exercises to prevent, correct, minimize, or alleviate an impairment;

4. Use of rehabilitative procedures to prevent, correct, minimize, or alleviate an impairment, including but not limited to the following procedures:

- Manual therapy, including soft-tissue and joint mobilization and manipulation;
- Therapeutic massage;
- Dry needling;
- Prescription, application, and fabrication of assistive, adaptive, orthotic, prosthetic, and supportive devices and equipment;
- Airway clearance techniques;
- Integumentary protection and repair techniques; and
- Debridement and wound care;

5. Interpretation of performances, tests, and measurements;

6. The establishment and modification of physical therapy programs;

7. The establishment and modification of treatment planning;

8. The establishment and modification of consultive services;

9. The establishment and modification of instructions to the patient, including but not limited to functional training relating to movement and mobility; and

10. Participation, administration, and supervision attendant to physical therapy and educational programs and facilities.

"PT" means physical therapist.

"PTA" means physical therapist assistant.

"Reactivate" or *"reactivation"* means the process as outlined in rule 645—200.7(17A,147,272C) by which an inactive license is restored to active status.

"Reciprocal license" means the issuance of an Iowa license to practice physical therapy to an applicant who is currently licensed in another state that has a mutual agreement with the Iowa board of physical and occupational therapy to license persons who have the same or similar qualifications to those required in Iowa.

"Reinstatement" means the process as outlined in rule 645—11.31(272C). Once the license is reinstated, the licensee may apply for active status.

[**ARC 7978C**, IAB 5/15/24, effective 7/1/24]

645—200.2(147) Initial licensure.

200.2(1) The applicant shall submit a complete online application and pay the nonrefundable fee specified in rule 645—5.13(147,148A).

200.2(2) If the application is not completed according to the instructions, the application will not be reviewed by the board.

200.2(3) Submit official copies of academic transcripts directly from the school to the board. An applicant shall demonstrate successful completion of a physical therapy education program accredited by a national accreditation agency approved by the board. No application will be considered by the board until official copies of academic transcripts have been received.

200.2(4) Submit a completed fingerprint card and a signed waiver form to facilitate a national criminal history background check by the Iowa division of criminal investigation (DCI) and the Federal

Bureau of Investigation (FBI). The cost of the criminal history background check by the DCI and the FBI shall be assessed to the applicant.

200.2(5) Have the testing service send the examination score directly to the board.

200.2(6) Provide verification of license from the jurisdiction in which the applicant has most recently been licensed, sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

a. Licensee's name;

b. Date of initial licensure;

c. Current licensure status; and

d. Any disciplinary action taken against the license.

200.2(7) A physical therapist or physical therapist assistant applicant who holds a license in another state shall have completed one of the following:

a. Completed board-approved continuing education during the immediately preceding two-year period: 40 hours required for the physical therapist license holder and 20 hours required for a physical therapist assistant license holder; or

b. Practiced for a minimum of 2,080 hours during the immediately preceding two-year period; or

c. Served the equivalent of one year as a full-time faculty member teaching in an accredited school of physical therapy for at least one of the immediately preceding two years; or

d. Successfully passed the examination within a period of two years from the date of examination to the time application is completed for licensure.

200.2(8) Submitting complete application materials. An application for a physical therapist or physical therapist assistant license will be considered active for two years from the date the application is received. If the applicant does not submit all materials within this time period or if the applicant does not meet the requirements for the license, the application shall be considered incomplete. An applicant whose application is filed incomplete must submit a new application, supporting materials, and the application fee. The board shall destroy incomplete applications after two years.

200.2(9) A person who is licensed in another jurisdiction but who is unable to satisfy the requirements for licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

[**ARC 7978C**, IAB 5/15/24, effective 7/1/24]

645—200.3(147) Physical therapy compact. The rules of the Physical Therapy Compact Commission are incorporated by reference. A physical therapist or physical therapist assistant may engage in the practice of physical therapy in Iowa without a license issued by the board if the individual has a current compact privilege to practice in Iowa issued by the Physical Therapy Compact Commission. The state fee for issuance of a compact privilege to practice in Iowa shall be $60, which will be collected by the Physical Therapy Compact Commission. The state fee for issuance of a compact privilege to practice in Iowa shall be waived for an active duty military member or spouse of an individual who is an active duty military member. A physical therapist or physical therapist assistant who practices physical therapy in Iowa using a compact privilege is subject to the rules governing licensees in rule 645—201.4(147) and in 645—Chapters 201 and 202. Complaints, investigations, and disciplinary proceedings involving a compact privilege shall be handled in accordance with Iowa Code chapters 17A and 272C; 2018 Iowa Acts, House File 2425; and the rules in 645—Chapters 9, 11, and 13.

[**ARC 7978C**, IAB 5/15/24, effective 7/1/24]

645—200.4(147) Examination requirements for physical therapists and physical therapist assistants. The following criteria shall apply to the written examination(s):

200.4(1) Evidence of having passed the National Physical Therapy Examination (NPTE) or other nationally recognized equivalent examination as defined by the board.

200.4(2) The applicant shall abide by the following criteria:

a. For examinations taken prior to July 1, 1994, satisfactory completion shall be defined as receiving an overall examination score exceeding 1.5 standard deviations below the national average.

b. For examinations completed after July 1, 1994, satisfactory completion shall be defined as receiving an overall examination score equal to or greater than the criterion-referenced passing point recommended by the Federation of State Boards of Physical Therapy.

200.4(3) The Federation of State Boards of Physical Therapy (FSBPT) determines the total number of times an applicant may take the examination in a lifetime. The board will not approve an applicant for testing when the applicant has exhausted the applicant's lifetime opportunities for taking the examination, as determined by FSBPT.

200.4(4) Special accommodations. To eliminate discrimination and guarantee fairness under Title II of the Americans with Disabilities Act (ADA), an individual who has a qualifying disability may request an examination accommodation. The applicant must submit appropriate documentation to FSBPT.

[**ARC 7978C**, IAB 5/15/24, effective 7/1/24]

645—200.5(147) Educational qualifications.

200.5(1) The applicant must present proof of meeting the following requirements for licensure as a physical therapist or physical therapist assistant:

a. Educational requirements—physical therapists. Physical therapists shall graduate from a physical therapy program accredited by a national accreditation agency approved by the board.

b. Educational requirements—physical therapist assistants. Physical therapist assistants shall graduate from a PTA program accredited by a national accreditation agency approved by the board.

200.5(2) Foreign-trained applicants.

a. Foreign-trained applicants who do not hold a license in another state or U.S. territory shall:

(1) Submit an English translation and an equivalency evaluation of their educational credentials through the following organization: Foreign Credentialing Commission on Physical Therapy, Inc., 124 West Street South, Third Floor, Alexandria, VA 22314; telephone 703.684.8406; website www.fccpt.org. The credentials of a foreign-educated physical therapist or foreign-educated physical therapist assistant licensure applicant who does not hold a license in another state or territory of the United States and is applying for licensure by taking the examination should be evaluated using the most current version of the FSBPT Coursework Tool (CWT). The professional curriculum must be equivalent to the Commission on Accreditation in Physical Therapy Education standards. An applicant shall bear the expense of the curriculum evaluation.

(2) Submit certified proof of proficiency in the English language by achieving on the Test of English as a Foreign Language Internet-based test (TOEFL iBT test) a total score of at least 89 as well as accompanying minimum scores in the four test components as follows: 24 in writing; 26 in speaking; 21 in reading; and 18 in listening. This test is administered by Educational Testing Services, Inc., P.O. Box 6157, Princeton, NJ 08541-6157. An applicant shall bear the expense of the TOEFL iBT test. Applicants may be exempt from the TOEFL iBT test when physical therapy education was completed in a school where the language of instruction in physical therapy was English, the language of the textbooks was English, and the applicant's transcript was in English.

b. Foreign-trained applicants who hold a license in another state or U.S. territory may apply for licensure by endorsement.

[**ARC 7978C**, IAB 5/15/24, effective 7/1/24]

645—200.6(147) License renewal.

200.6(1) The biennial license renewal period for a license to practice as a physical therapist or physical therapist assistant shall begin on the sixteenth day of the birth month and end on the fifteenth day of the birth month two years later. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice from the board does not relieve the licensee of the responsibility for renewing the license.

200.6(2) An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the subsequent renewal two years later.

200.6(3) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—203.2(148A) and the mandatory reporting requirements of subrule 200.6(4). A licensee whose license was reactivated during the current

renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

b. Submit the completed renewal application and renewal fee before the license expiration date.

200.6(4) Mandatory reporter training requirements.

a. A licensee who is required by Iowa Code section 232.69 to report child abuse shall indicate on the renewal application completion of training in child abuse identification and reporting as required by Iowa Code section 232.69(3)*"b"* in the previous three years or condition(s) for waiver of this requirement as identified in paragraph *"e."*

b. A licensee who is required by Iowa Code section 235B.3 or 235E.2 to report dependent adult abuse shall indicate on the renewal application completion of training in dependent adult abuse identification and reporting as required by Iowa Code section 235B.16(5)*"b"* in the previous three years or condition(s) for waiver of this requirement as identified in paragraph *"e."*

c. The course(s) shall be the curriculum provided by the Iowa department of health and human services.

d. The licensee shall maintain written documentation for three years after mandatory training as identified in paragraphs *"a"* to *"c,"* including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 4.

f. The board may select licensees for audit of compliance with the requirements in paragraphs *"a"* to *"e."*

200.6(5) Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

200.6(6) Persons licensed to practice as physical therapists or physical therapist assistants shall keep their renewal licenses displayed in a conspicuous public place at the primary site of practice.

200.6(7) Late renewal. The license shall become a late license when the license has not been renewed by the expiration date on the renewal. The licensee shall be assessed a late fee as specified in 645—subrule 5.13(4). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

200.6(8) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a physical therapist or a physical therapist assistant in Iowa until the license is reactivated. A licensee who practices as a physical therapist or a physical therapist assistant in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

[**ARC 7978C**, IAB 5/15/24, effective 7/1/24]

645—200.7(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

200.7(1) Submit a reactivation application on a form provided by the board.

200.7(2) Pay the reactivation fee that is due as specified in 645—subrule 5.13(5).

200.7(3) Provide verification of current competence to practice physical therapy by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license from the jurisdiction in which the applicant has most recently been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 20 hours of continuing education for a physical therapist assistant and 40 hours of continuing education for a physical therapist within two years of application for reactivation; or verification of active practice, consisting of a minimum of 2,080 hours, in another state or jurisdiction during the two years preceding an application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license from the jurisdiction in which the applicant has most recently been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 40 hours of continuing education for a physical therapist assistant and 80 hours of continuing education for a physical therapist within two years of application for reactivation; verification of active practice, consisting of a minimum of 2,080 hours, in another state or jurisdiction during the two years preceding an application for reactivation; or evidence of successful completion of the professional examination required for initial licensure completed within one year prior to the submission of an application for reactivation.

[**ARC 7978C**, IAB 5/15/24, effective 7/1/24]

645—200.8(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with rule 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with rule 645—200.7(17A,147,272C) prior to practicing physical therapy in this state.

[**ARC 7978C**, IAB 5/15/24, effective 7/1/24]

These rules are intended to implement Iowa Code chapters 17A, 147, 148A and 272C.

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◊ Two or more ARCs

CHAPTER 201
PRACTICE OF PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS

645—201.1(148A,272C) Code of ethics for physical therapists and physical therapist assistants.

201.1(1) Physical therapy. The practice of physical therapy shall minimally consist of:

a. Interpreting all referrals;

b. Evaluating each patient;

c. Identifying and documenting individual patient's problems and goals;

d. Establishing and documenting a plan of care;

e. Providing appropriate treatment;

f. Determining the appropriate portions of the treatment program to be delegated to assistive personnel;

g. Appropriately supervising individuals as described in rule 645—201.4(272C);

h. Providing timely patient reevaluation;

i. Maintaining timely and adequate patient records of all physical therapy activity and patient responses consistent with the standards found in rule 645—201.2(147).

201.1(2) A physical therapist shall:

a. Not practice outside the scope of the license;

b. Inform a referring practitioner when any requested treatment procedure is inadvisable or contraindicated and shall refuse to carry out such orders;

c. Not continue treatment beyond the point of possible benefit to the patient or treat a patient more frequently than necessary to obtain maximum therapeutic effect;

d. Not directly or indirectly request, receive, or participate in the dividing, transferring, assigning, rebating, or refunding of an unearned fee;

e. Not profit by means of credit or other valuable consideration as an unearned commission, discount, or gratuity in connection with the furnishing of physical therapy services;

f. Not obtain third-party payment through fraudulent means. Third-party payers include, but are not limited to, insurance companies and government reimbursement programs. Obtaining payment through fraudulent means includes but is not limited to:

(1) Reporting incorrect treatment dates for the purpose of obtaining payment;

(2) Reporting charges for services not rendered;

(3) Incorrectly reporting services rendered for the purpose of obtaining payment that is greater than that to which the licensee is entitled; or

(4) Aiding a patient in fraudulently obtaining payment from a third-party payer;

g. Not exercise undue influence on patients to purchase equipment, products, or supplies from a company in which the physical therapist owns stock or has any other direct or indirect financial interest;

h. Not permit another person to use the therapist's license for any purpose;

i. Not verbally or physically abuse a patient or client;

j. Not engage in sexual misconduct. Sexual misconduct includes the following:

(1) Engaging in or soliciting a sexual relationship, whether consensual or nonconsensual, with a patient or client;

(2) Making sexual advances, requesting sexual favors, or engaging in other verbal conduct or physical contact of a sexual nature with a patient or client;

k. Adequately supervise personnel in accordance with the standards for supervision found in rule 645—201.4(272C);

l. Assist in identifying a professionally qualified licensed practitioner to perform the service, in the event that the physical therapist does not possess the skill to evaluate a patient, plan the treatment program, or carry out the treatment.

201.1(3) Physical therapist assistants. A physical therapist assistant shall:

a. Not practice outside the scope of the license;

b. Not obtain third-party payment through fraudulent means. Third-party payers include but are not limited to insurance companies and government reimbursement programs. Obtaining payment through fraudulent means includes but is not limited to:

(1) Reporting incorrect treatment dates for the purpose of obtaining payment;

(2) Reporting charges for services not rendered;

(3) Incorrectly reporting services rendered for the purpose of obtaining payment that is greater than that to which the licensee is entitled; or

(4) Aiding a patient in fraudulently obtaining payment from a third-party payer;

c. Not exercise undue influence on patients to purchase equipment, products, or supplies from a company in which the physical therapist assistant owns stock or has any other direct or indirect financial interest;

d. Not permit another person to use the physical therapist's or physical therapist assistant's license for any purpose;

e. Not verbally or physically abuse a patient or client;

f. Not engage in sexual misconduct. Sexual misconduct includes the following:

(1) Engaging in or soliciting a sexual relationship, whether consensual or nonconsensual, with a patient or client; and

(2) Making sexual advances, requesting sexual favors, or engaging in other verbal conduct or physical contact of a sexual nature with a patient or client;

g. Work only when supervised by a physical therapist and in accordance with rule 645—201.4(272C). If the available supervision does not meet the standards in rule 645—201.4(272C), the physical therapist assistant shall refuse to administer treatment;

h. Inform the delegating physical therapist when the physical therapist assistant does not possess the skills or knowledge to perform the delegated tasks, and refuse to perform the delegated tasks;

i. Sign the physical therapy treatment record to indicate that the physical therapy services were provided in accordance with the rules and regulations for practicing as a physical therapist or physical therapist assistant.

[**ARC 7979C**, IAB 5/15/24, effective 7/1/24]

645—201.2(147) Recordkeeping.

201.2(1) A licensee shall maintain sufficient, timely, and accurate documentation in patient records. A licensee's records shall reflect the services provided, facilitate the delivery of services, and ensure continuity of services in the future.

201.2(2) A licensee who provides clinical services shall store records in accordance with state and federal statutes and regulations governing record retention and with the guidelines of the licensee's employer or agency, if applicable. If no other legal provisions govern record retention, a licensee shall store all patient records for a minimum of five years after the date of the patient's discharge, or, in the case of a minor, three years after the patient reaches the age of majority under state law or five years after the date of discharge, whichever is longer.

201.2(3) Electronic recordkeeping. The requirements of this rule apply to electronic records as well as to records kept by any other means. When electronic records are kept, the licensee shall ensure that a duplicate hard-copy record or a backup, unalterable electronic record is maintained.

201.2(4) Correction of records.

a. Hard-copy records. Notations shall be legible, written in ink, and contain no erasures or whiteouts. If incorrect information is placed in the record, it must be crossed out with a single nondeleting line and be initialed by the licensee.

b. Electronic records. If a record is stored in an electronic format, the record may be amended with a signed addendum attached to the record.

201.2(5) Confidentiality and transfer of records. Physical therapists and physical therapist assistants shall preserve the confidentiality of patient records. Upon receipt of a written release or authorization signed by the patient, the licensee shall furnish such physical therapy records, or copies of the records, as will be beneficial for the future treatment of that patient. A fee may be charged for duplication of

records, but a licensee may not refuse to transfer records for nonpayment of any fees. A written request may be required before transferring the record(s).

201.2(6) Retirement or discontinuance of practice. If a licensee is the owner of a practice, the licensee shall notify in writing all active patients and shall make reasonable arrangements with those patients to transfer patient records, or copies of those records, to the succeeding licensee upon knowledge and agreement of the patient.

201.2(7) Nothing stated in these rules shall prohibit a licensee from conveying or transferring the licensee's patient records to another licensed individual who is assuming a practice, provided that written notice is furnished to all patients.

[**ARC 7979C**, IAB 5/15/24, effective 7/1/24]

645—201.3(147) Telehealth visits. A licensee may provide physical therapy services to a patient utilizing a telehealth visit if the physical therapy services are provided in accordance with all requirements of this chapter.

201.3(1) "Telehealth visit" means the provision of physical therapy services by a licensee to a patient using technology where the licensee and the patient are not at the same physical location for the physical therapy session.

201.3(2) A licensee engaged in a telehealth visit shall utilize technology that is secure and HIPAA-compliant pursuant to the Health Insurance Portability and Accountability Act of 1996, PL 104–191, August 21, 1996, 110 Stat. 1936, and any amendments as of December 8, 2023, and that includes, at a minimum, audio or video equipment or both, that allows two-way real-time interactive communication between the licensee and the patient. A licensee may use non-real-time technologies to prepare for a physical therapy session or to communicate with a patient between physical therapy sessions.

201.3(3) A licensee engaged in a telehealth visit shall be held to the same standard of care as a licensee who provides in-person physical therapy. A licensee shall not utilize a telehealth visit if the standard of care for the particular physical therapy services cannot be met using technology.

201.3(4) Any physical therapist or physical therapist assistant who provides a physical therapy telehealth visit to a patient located in Iowa shall be licensed in Iowa or have a compact privilege issued by the physical therapy compact commission.

201.3(5) Prior to the first telehealth visit, a licensee shall obtain informed consent from the patient specific to the physical therapy services that will be provided in a telehealth visit. At a minimum, the informed consent shall specifically inform the patient of the following:

a. The risks and limitations of the use of technology to provide physical therapy services;

b. The potential for unauthorized access to protected health information; and

c. The potential for disruption of technology during a telehealth visit.

201.3(6) A licensee shall only provide physical therapy services using a telehealth visit in the areas of competence wherein proficiency in providing the particular service using technology has been gained through education, training, and experience.

201.3(7) A licensee shall identify in the clinical record when physical therapy services are provided utilizing a telehealth visit.

[**ARC 7979C**, IAB 5/15/24, effective 7/1/24]

645—201.4(147) Delegation by a supervising physical therapist. A supervising physical therapist may delegate the performance of physical therapy services to a physical therapist assistant only if done in accordance with the statutes and rules governing the practice of physical therapy. A physical therapist assistant may assist in the practice of physical therapy only to the extent allowed by the supervising physical therapist. The supervisory requirements stated in this rule are minimal. It is the professional responsibility and duty of the supervising physical therapist to provide the physical therapist assistant with more supervision if deemed necessary in the supervising physical therapist's professional judgment.

201.4(1) *Supervision requirements.* A supervising physical therapist who delegates the performance of physical therapy services to a physical therapist assistant shall provide supervision to the physical therapist assistant at all times when the physical therapist assistant is providing delegated physical

therapy services. Supervision means that the physical therapist shall be readily available on site or telephonically any time the physical therapist assistant is providing physical therapy services so that the physical therapist assistant may contact the physical therapist for advice, assistance, or instruction.

201.4(2) *Functions that cannot be delegated.* The following are functions that only a physical therapist may provide and that cannot be delegated to a physical therapist assistant:

a. Interpretation of referrals;

b. Initial physical therapy evaluation and reevaluations;

c. Identification, determination, or modification of patient problems, goals, and plans of care;

d. Final discharge evaluation and establishment of a discharge plan;

e. Delegation of and instruction in the physical therapy services to be rendered by a physical therapist assistant or unlicensed assistive personnel, including but not limited to specific tasks or procedures, precautions, special problems, and contraindicated procedures; and

f. Timely review of documentation, reexamination of the patient, and revision of the plan of care when indicated.

201.4(3) *Physical therapist responsibilities.* At all times, the supervising physical therapist shall be responsible for the physical therapy plan of care and for all physical therapy services provided, including all physical therapy services delegated to a physical therapist assistant. In addition, the supervising physical therapist shall:

a. Be responsible for the evaluation and development of a plan of care for use by the physical therapist assistant; and

b. Not delegate a physical therapy service that exceeds the competency or skill set of the physical therapist assistant; and

c. Ensure that a physical therapist assistant holds an active physical therapist assistant license issued by the board or a compact privilege; and

d. Ensure that a physical therapist assistant is aware of how the supervising physical therapist can be contacted telephonically or by virtual means when the physical therapist is not providing on-site supervision; and

e. Arrange for an alternate physical therapist to provide supervision when the physical therapist has scheduled or unscheduled absences during time periods in which a physical therapist assistant will be providing delegated physical therapy services; and

f. Ensure that a physical therapist assistant is informed when a patient's plan of care is transferred to a different supervising physical therapist; and

g. Directly participate in physical therapy services upon the physical therapist assistant's request for a reexamination, when a change in the plan of care is needed, prior to any planned discharge, and in response to a change in the patient's medical status; and

h. Hold regularly scheduled meetings with the physical therapist assistant to evaluate the physical therapist assistant's performance, assess the progress of a patient, and make changes to the plan of care as needed. The frequency of meetings should be determined by the supervising physical therapist based on the needs of the patient, the supervisory needs of the physical therapist assistant, and any planned discharge. The supervising physical therapist shall provide direction and instruction to the physical therapist assistant that are adequate to ensure the safety and welfare of the patient.

201.4(4) *Physical therapist assistant responsibilities.* A physical therapist assistant shall only provide physical therapy services under the supervision of a physical therapist. In addition, the physical therapist assistant shall:

a. Only provide physical therapy services that have been delegated by the supervising physical therapist; and

b. Only provide physical therapy services that are within the competency and skill set of the physical therapist assistant; and

c. Consult the supervising physical therapist if the physical therapist assistant believes that any procedure is not in the best interest of the patient; and

d. Contact the supervising physical therapist regarding any change or lack of change in a patient's condition that may require assessment by the supervising physical therapist; and

e. Refer inquiries that require interpretation to the supervising physical therapist; and

f. Ensure that the identification of the supervising physical therapist is included in the documentation for any visit when physical therapy services were provided by the physical therapist assistant; and

g. Only sign a treatment record if the provision of physical therapy services was done in accordance with the statutes and rules governing the practice of a physical therapist assistant.

201.4(5) *Ratio.* A physical therapist shall determine the number of physical therapist assistants who can be supervised safely and competently and shall not exceed that number; but in no case shall a physical therapist supervise more than four physical therapist assistants per calendar day. A physical therapist assistant who performs any delegated physical therapy services on behalf of the supervising physical therapist on a particular day shall be counted in determining the maximum ratio, regardless of the location of the physical therapist assistant or the number of patients treated.

201.4(6) *Minimum frequency of direct participation by a supervising physical therapist.* A supervising physical therapist shall use professional judgment to determine how frequently the physical therapist needs to directly participate in physical therapy services when delegating to a physical therapist assistant, the frequency of which shall be based on the needs of the patient. Direct participation can occur through an in-person or telehealth visit. The supervising physical therapist shall ensure that the patient record clearly indicates which visits included direct participation by the supervising physical therapist. The following are the minimum standards, which are expected to be exceeded when dictated by the supervising physical therapist's professional judgment, for the required frequency of direct participation by the supervising physical therapist when physical therapy services involve delegation to a physical therapist assistant:

a. Hospital inpatient and skilled nursing. For hospital inpatients and skilled nursing patients, a supervising physical therapist must directly participate in physical therapy services a minimum of once per calendar week. A calendar week is defined as Sunday through Saturday.

b. All other settings. In all other settings, a supervising physical therapist must directly participate in the provision of physical therapy services at least every eighth visit or every 30 calendar days, whichever comes first.

201.4(7) *Unlicensed assistive personnel.* A physical therapist is responsible for patient care provided by unlicensed assistive personnel under the physical therapist's supervision. A physical therapist is responsible for ensuring the qualifications of any unlicensed assistive personnel and shall maintain written documentation of their education or training. Unlicensed assistive personnel may assist a physical therapist assistant in the delivery of physical therapy services only if the physical therapist assistant maintains in-sight supervision of the unlicensed assistive personnel and the physical therapist assistant is primarily and significantly involved in the patient's care. Unlicensed assistive personnel shall not provide independent patient care unless each of the following standards is satisfied:

a. The physical therapist has direct participation in the patient's treatment or evaluation, or both, each treatment day;

b. Unlicensed assistive personnel may provide independent patient care only while under the on-site supervision of the physical therapist;

c. Documentation made in a physical therapy record by unlicensed assistive personnel shall be cosigned by the physical therapist; and

d. The physical therapist provides periodic reevaluation of any unlicensed assistive personnel's performance in relation to the patient.

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These rules are intended to implement Iowa Code chapters 147, 148A and 272C.

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CHAPTER 202
DISCIPLINE FOR PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS

[Prior to 3/6/02, see 645—200.10(272C) and 645—202.8(272C)]

645—202.1(148A) Definitions.

"Board" means the board of physical and occupational therapy.

"Discipline" means any sanction the board may impose upon licensees.

"Licensee" means a person licensed to practice in Iowa pursuant to Iowa Code chapter 148A and 645—Chapters 200 to 203.

[**ARC 7980C**, IAB 5/15/24, effective 7/1/24]

645—202.2(272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in 645—Chapter 13 when the board determines that any of the acts or offenses listed in such rule or in Iowa Code section 147.55 have occurred:

202.2(1) Professional incompetency. Professional incompetency includes but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other physical therapists or physical therapist assistants in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care that is ordinarily exercised by the average physical therapist or physical therapist assistant acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of the licensed physical therapist or licensed physical therapist assistant in this state.

e. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

f. Being adjudged mentally incompetent by a court of competent jurisdiction.

202.2(2) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of physical therapy or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

202.2(3) Violation of a regulation, rule or law of this state, another state, or the United States that relates to the practice of physical therapy, including but not limited to the code of ethics found in rule 645—201.1(148A,272C).

202.2(4) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the individual's practice of physical therapy in another state, district, territory or country.

202.2(5) Knowingly aiding, assisting or advising a person to unlawfully practice physical therapy.

202.2(6) Representing oneself as a licensed physical therapist or physical therapist assistant when one's license has been suspended or revoked, or when the license is on inactive status.

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CHAPTER 203
CONTINUING EDUCATION FOR PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS

645—203.1(272C) Definitions. For the purpose of these rules, the following definitions shall apply:

"Active license" means a license that is current and has not expired.

"Audit" means the selection of licensees for verification of continuing education requirements.

"Board" means the board of physical and occupational therapy.

"Continuing education" means the same as defined in Iowa Code section 272C.1.

"Hour of continuing education" means at least 50 minutes spent by a licensee completing an approved continuing education activity through live, virtual, online or prerecorded means where the instructor provides proof of completion by the licensee as set forth in these rules.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period. The category of "inactive license" may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

"Independent study" means a subject/program/activity that a person pursues autonomously and that meets standards for approval criteria in the rules and includes a posttest.

"License" means license to practice.

"Licensee" means any person licensed to practice as a physical therapist or physical therapist assistant in the state of Iowa.

[**ARC 7981C**, IAB 5/15/24, effective 7/1/24]

645—203.2(148A) Continuing education requirements.

203.2(1) The biennial continuing education compliance period shall extend for a two-year period that begins on the sixteenth day of the birth month and ends two years later on the fifteenth day of the birth month.

a. Requirements for physical therapist licensees. Each biennium, each person who is licensed to practice as a physical therapist in this state will be required to complete a minimum of 40 hours of continuing education approved by the board.

b. Requirements for physical therapist assistant licensees. Each biennium, each person who is licensed to practice as a physical therapist assistant in this state will be required to complete a minimum of 20 hours of continuing education approved by the board.

203.2(2) Requirements of new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired any time from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of 40 hours of continuing education per biennium for physical therapists and a minimum of 20 hours for physical therapist assistants each subsequent license renewal.

203.2(3) No hours of continuing education shall be carried over into the next biennium except for a new licensee. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

[**ARC 7981C**, IAB 5/15/24, effective 7/1/24]

645—203.3(148A,272C) Standards.

203.3(1) *General criteria.* Appropriate continuing education activity for purposes of license renewal will support each of the following:

a. Constitutes an organized program of learning that contributes directly to the professional competency of the licensee;

b. Pertains to subject matters that integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. At the time of audit, the board may request the qualifications of presenters;

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees including:

(1) Date, location, course title, presenter(s);

(2) Number of program contact hours; and

(3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

203.3(2) *Specific criteria.*

a. Licensees may obtain continuing education hours of credit by:

(1) Attending workshops, conferences, or symposiums.

(2) Accessing online training, such as viewing interactive conferences, attending webinars, or completing online training courses.

(3) Completing an American Physical Therapy Association-approved postprofessional clinical residency or fellowship. A licensee will receive 1 hour of credit for every 2 hours spent in clinical residency, up to a maximum of 20 hours. Clinical residency hours may not be used for credit if the licensee is also seeking credit hours earned for postprofessional academic coursework in the same renewal period.

(4) Directly supervising students for clinical education if the students being supervised are from an accredited physical therapist or physical therapist assistant program and are participating in a full-time clinical experience (defined as approximately 40 hours per week, ranging from 1 to 18 weeks). One hour will be awarded for every 160 contact hours of supervision. A maximum of 8 hours for a physical therapist and 4 hours for a physical therapist assistant may be awarded per biennium. The physical therapist or physical therapist assistant must have documentation from the accredited educational program indicating the number of hours spent supervising a student.

(5) Presenting professional programs that meet the criteria listed in this rule. Two hours of credit will be awarded for each hour of presentation for the first offering of the course. A course schedule or brochure must be maintained for audit.

(6) Completing academic courses that directly relate to the professional competency of the licensee. Official transcripts indicating successful completion of academic courses that apply to the field of physical therapy will be necessary in order for the licensee to receive the following continuing education credits:

1 academic semester hour = 15 continuing education hours of credit

1 academic trimester hour = 12 continuing education hours of credit

1 academic quarter hour = 10 continuing education hours of credit

(7) Teaching in an approved college, university, or graduate school. The licensee may receive the following continuing education credits on a one-time basis for the first offering of a course:

1 academic semester hour = 15 continuing education hours of credit

1 academic trimester hour = 12 continuing education hours of credit

1 academic quarter hour = 10 continuing education hours of credit

(8) Authoring research or other activities, the results of which are published in a recognized professional publication. The licensee shall receive five hours of credit per page.

(9) Participating in professional organizations related to the practice of physical therapy, with one credit hour received for each six months of active service as an officer, delegate, or committee member, for a maximum of four hours of credit per biennium. Verification of participation must be provided by the professional organization to document the continuing education credit.

b. Continuing education hours of credit in the following topics are not considered to be directly and primarily related to the clinical application of physical therapy and therefore must not exceed a maximum combined total of ten hours of credit for a physical therapist licensee and five hours of credit for a physical therapist assistant licensee:

(1) Business-related topics, such as marketing, time management, government regulations, and other like topics.

(2) Personal skills topics, such as career burnout, communication skills, human relations, and other like topics.

(3) General health topics, such as clinical research, CPR, mandatory reporter training, and other like topics.

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◊ Two or more ARCs

CHAPTER 206
LICENSURE OF OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS

[Prior to 3/6/02, see 645—201.3(147,148B,272C) to 645—201.7(147) and 645—201.9(272C)]

645—206.1(147) Definitions. For purposes of these rules, the following definitions shall apply:

"Active license" means a license that is current and has not expired.

"Board" means the board of physical and occupational therapy.

"Department" means the department of health and human services.

"Endorsement" means the issuance of an Iowa license to practice occupational therapy to an applicant who is currently licensed in another state who has the same or similar qualifications to those required in Iowa.

"Grace period" means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period. The category of "inactive license" may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

"Licensee" means any person licensed to practice as an occupational therapist or occupational therapy assistant in the state of Iowa.

"License expiration date" means the fifteenth day of the birth month every two years after initial licensure.

"Licensure by endorsement" means the issuance of an Iowa license to practice occupational therapy to an applicant who is or has been licensed in another state.

"Licensure examination" means the examination administered by the National Board for Certification in Occupational Therapy.

"Mandatory training" means training on identifying and reporting child abuse or dependent adult abuse as required in Iowa Code sections 232.69 and 235B.16.

"NBCOT" means the National Board for Certification in Occupational Therapy.

"Occupational therapist" means a person licensed under this chapter to practice occupational therapy.

"Occupational therapy assistant" means a person licensed under this chapter to assist in the practice of occupational therapy.

"Occupational therapy practice" means the therapeutic use of occupations, including everyday life activities with individuals, groups, populations, or organizations, to support participation, performance, and function in roles and situations in home, school, workplace, community, and other settings. Occupational therapy services are provided for habilitation, rehabilitation, and the promotion of health and wellness to those who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction. Occupational therapy addresses the physical, cognitive, psychosocial, sensory-perceptual, and other aspects of performance in a variety of contexts and environments to support engagement in occupations that affect physical and mental health, well-being, and quality of life. The practice of occupational therapy includes:

1. Evaluation of factors affecting activities of daily living (ADL), instrumental activities of daily living (IADL), rest and sleep, education, work, play, leisure, and social participation, including:

- Client factors, including body functions (such as neuromusculoskeletal, sensory-perceptual, visual, mental, cognitive, and pain factors) and body structures (such as cardiovascular, digestive, nervous, integumentary, genitourinary systems, and structures related to movement) and values, beliefs, and spirituality.
- Habits, routines, roles, rituals, and behavior patterns.
- Physical and social environments; cultural, personal, temporal and virtual contexts; and activity demands that affect performance.

- Performance skills, including motor and praxis, sensory-perceptual, emotional regulation, cognitive, communication and social skills.

2. Methods or approaches selected to direct the process of interventions, including:

- Establishment of a skill or ability that has not yet developed or remediation or restoration of a skill or ability that is impaired or is in decline.
- Compensation, modification, or adaptation of activity or environment to enhance performance or to prevent injuries, disorders, or other conditions.
- Retention and enhancement of skills or abilities without which performance in everyday life activities would decline.
- Promotion of health and wellness, including the use of self-management strategies, to enable or enhance performance in everyday life activities.
- Prevention of barriers to performance and participation, including injury and disability prevention.

3. Interventions and procedures to promote or enhance safety and performance in ADL, IADL, rest and sleep, education, work, play, leisure, and social participation, including:

- Therapeutic use of occupations, exercises, and activities.
- Training in self-care, self-management, health management and maintenance, home management, community/work reintegration, and school activities and work performance.
- Development, remediation, or compensation of neuromusculoskeletal, sensory-perceptual, visual, mental, and cognitive functions, pain tolerance and management, and behavioral skills.
- Therapeutic use of self, including one's personality, insights, perceptions, and judgments, as part of the therapeutic process.
- Education and training of individuals, including family members, caregivers, groups, populations, and others.
- Care coordination, case management, and transition services.
- Consultative services to groups, programs, organizations, or communities.
- Modification of environments (home, work, school, or community) and adaptation of processes, including the application of ergonomic principles.
- Assessment, design, fabrication, application, fitting, and training in seating and positioning, assistive technology, adaptive devices, and orthotic devices, and training in the use of prosthetic devices.
- Assessment, recommendation, and training in techniques to enhance functional mobility, including management of wheelchairs and other mobility devices.
- Low vision rehabilitation.
- Driver rehabilitation and community mobility.
- Management of feeding, eating, and swallowing to enable eating and feeding performance.
- Application of physical agent modalities and use of a range of specific therapeutic procedures (such as wound care management, interventions to enhance sensory-perceptual and cognitive processing, and manual therapy) to enhance performance skills.
- Facilitating the occupational performance of groups, populations, or organizations through the modification of environments and the adaptation of processes.

"Occupational therapy screening" means a brief process that is directed by an occupational therapist in order for the occupational therapist to render a decision as to whether the individual warrants further, in-depth evaluation and that includes:

1. Assessment of the medical and social history of an individual;
2. Observations related by that individual's caregivers; or
3. Observations or nonstandardized tests, or both, administered to an individual by the occupational therapist or an occupational therapy assistant under the direction of the occupational therapist.

Nothing in this definition shall be construed to prohibit licensed occupational therapists and occupational therapy assistants who work in preschools or school settings from providing short-term interventions to children prior to an evaluation, not to exceed 16 sessions per concern per school year, in accordance with state and federal educational policy.

"On site" means:

1. To be continuously on site and present in the department or facility where the assistive personnel are performing services;

2. To be immediately available to assist the person being supervised in the services being performed; and

3. To provide continued direction of appropriate aspects of each treatment session in which a component of treatment is delegated to assistive personnel.

"OT" means occupational therapist.

"OTA" means occupational therapy assistant.

"Reactivate" or *"reactivation"* means the process as outlined in rule 645—206.8(17A,147,272C) by which an inactive license is restored to active status.

"Reciprocal license" means the issuance of an Iowa license to practice occupational therapy to an applicant who is currently licensed in another state that has a mutual agreement with the Iowa board of physical and occupational therapy to license persons who have the same or similar qualifications to those required in Iowa.

"Reinstatement" means the process as outlined in rule 645—11.31(272C). Once the license is reinstated, the licensee may apply for active status.

[**ARC 7982C**, IAB 5/15/24, effective 7/1/24]

645—206.2(147) Initial licensure. The following criteria shall apply to licensure. The applicant shall:

206.2(1) Submit a complete online application and pay the nonrefundable fee specified in rule 645—5.11(147,148B).

206.2(2) Submit an official copy of academic transcripts directly from the school to the board. No application will be considered by the board until official copies of academic transcripts have been received.

206.2(3) Direct the examination service to submit examination scores directly to the board.

206.2(4) Provide verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if it provides:

a. Licensee's name;

b. Date of initial licensure;

c. Current licensure status; and

d. Any disciplinary action taken against the license.

[**ARC 7982C**, IAB 5/15/24, effective 7/1/24]

645—206.3(147) Licensure by endorsement. An occupational therapist or occupational therapy assistant applicant who holds a license in another state shall complete requirements in rule 645—206.2(147) and have completed one of the following: :

206.3(1) Completed board-approved continuing education during the immediately preceding two-year period: 30 hours for an occupational therapist and 15 hours for an occupational therapy assistant; or

206.3(2) Practiced for a minimum of 2,080 hours during the immediately preceding two-year period; or

206.3(3) Served the equivalent of one year as a full-time faculty member teaching in an accredited school of occupational therapy for at least one of the immediately preceding two years; or

206.3(4) Successfully passing the examination within a period of two years from the date of examination to the time application is completed for licensure.

[**ARC 7982C**, IAB 5/15/24, effective 7/1/24]

645—206.4(147) Limited permit to practice pending licensure. A limited permit holder who is applying for licensure in Iowa by taking the licensure examination for the first time and has never been licensed as an occupational therapist or occupational therapy assistant in any state, the District of

Columbia, or another country must have completed the educational and experience requirements for licensure as an occupational therapist or occupational therapy assistant. The limited permit holder shall:

1. Make arrangements to take the examination and have the official results of the examination sent directly from the examination service to the board;

2. Apply for licensure on forms provided by the board. The applicant must include on the application form the name of the Iowa-licensed occupational therapist(s) who will provide supervision of the limited permit holder until the limited permit holder is licensed;

3. Practice only under the supervision of an Iowa-licensed OT for a period not to exceed six months from the date the application was received in the board office;

4. Submit to the board the name of the OT providing supervision within seven days after a change in supervision occurs; and

5. If the applicant fails the national examination, cease practicing immediately.

[**ARC 7982C**, IAB 5/15/24, effective 7/1/24]

645—206.5(147) Examination requirements. The following criteria shall apply to the written examination(s):

206.5(1) The applicant for licensure as an occupational therapist shall have received a passing score on the licensure examination for occupational therapists. It is the responsibility of the applicant to make arrangements to take the examination and have the official results submitted directly from the examination service to the board of physical and occupational therapy.

206.5(2) The applicant for licensure as an occupational therapy assistant shall have received a passing score on the licensure examination for occupational therapy assistants. It is the responsibility of the applicant to make arrangements to take the examination and have the official results submitted directly from the examination service to the board of physical and occupational therapy.

[**ARC 7982C**, IAB 5/15/24, effective 7/1/24]

645—206.6(147) Educational qualifications.

206.6(1) The applicant must present proof of meeting the following requirements for licensure as an occupational therapist or occupational therapy assistant:

a. Occupational therapist. The applicant for licensure as an occupational therapist shall have completed the requirements for a degree in occupational therapy in an occupational therapy program accredited by the Accreditation Council for Occupational Therapy Education of the American Occupational Therapy Association. The transcript shall show completion of a supervised fieldwork experience.

b. Occupational therapy assistant. The applicant for licensure as an occupational therapy assistant shall be a graduate of an educational program approved by the Accreditation Council for Occupational Therapy Education of the American Occupational Therapy Association. The transcript shall show completion of a supervised fieldwork experience.

206.6(2) Foreign-trained occupational therapists and occupational therapy assistants. To become eligible to take the licensure examination, internationally educated occupational therapists must meet NBCOT eligibility requirements and undergo prescreening based on the status of their occupational therapy educational programs.

[**ARC 7982C**, IAB 5/15/24, effective 7/1/24]

645—206.7(147) License renewal.

206.7(1) The biennial license renewal period for a license to practice as an occupational therapist or occupational therapy assistant shall begin on the sixteenth day of the birth month and end on the fifteenth day of the birth month two years later. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice from the board does not relieve the licensee of the responsibility for renewing the license.

206.7(2) An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the subsequent renewal two years later.

206.7(3) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—207.2(272C) and the mandatory reporting requirements of rule 645—206.9(17A,147,272C). A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation; and

b. Submit the completed renewal application and renewal fee before the license expiration date.

206.7(4) Mandatory reporter training requirements.

a. A licensee who is required by Iowa Code section 232.69 to report child abuse shall indicate on the renewal application completion of training in child abuse identification and reporting as required by Iowa Code section 232.69(3)*"b"* in the previous three years or condition(s) for waiver of this requirement as identified in paragraph *"e."*

b. A licensee who is required by Iowa Code section 235B.3 or 235E.2 to report dependent adult abuse shall indicate on the renewal application completion of training in dependent adult abuse identification and reporting as required by Iowa Code section 235B.16(5)*"b"* in the previous three years or condition(s) for waiver of this requirement as identified in paragraph *"e."*

c. The course(s) shall be the curriculum provided by the Iowa department of health and human services.

d. The licensee shall maintain written documentation for three years after mandatory training as identified in paragraphs *"a"* to *"c,"* including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to an occupational or mental disability or illness as identified in 645—Chapter 4.

f. The board may select licensees for audit of compliance with the requirements in paragraphs *"a"* to *"e."*

206.7(5) Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

206.7(6) Persons licensed to practice as occupational therapists or occupational therapy assistants shall keep their renewal licenses displayed in a conspicuous public place at the primary site of practice.

206.7(7) Late renewal. The license shall become a late license when the license has not been renewed by the expiration date on the renewal. The licensee shall be assessed a late fee as specified in 645—subrule 5.11(4). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

206.7(8) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as an occupational therapist or occupational therapy assistant in Iowa until the license is reactivated. A licensee who practices as an occupational therapist or occupational therapy assistant in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

[**ARC 7982C**, IAB 5/15/24, effective 7/1/24]

645—206.8(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

206.8(1) Submit a reactivation application on a form provided by the board.

206.8(2) Pay the reactivation fee that is due as specified in 645—subrule 5.11(5).

206.8(3) Provide verification of current competence to practice occupational therapy by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license from the jurisdiction in which the applicant has most recently been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 15 hours of continuing education for an occupational therapy assistant and 30 hours of continuing education for an occupational therapist within two years of application for reactivation; or verification of active practice, consisting of a minimum of 2,080 hours, in another state or jurisdiction during the two years preceding an application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license from the jurisdiction in which the applicant has most recently been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 30 hours of continuing education for an occupational therapy assistant and 60 hours of continuing education for an occupational therapist within two years of application for reactivation; verification of active practice, consisting of a minimum of 2,080 hours, in another state or jurisdiction during the two years preceding an application for reactivation; or evidence of successful completion of the professional examination required for initial licensure completed within one year prior to the submission of an application for reactivation.

[**ARC 7982C**, IAB 5/15/24, effective 7/1/24]

645—206.9(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with rule 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with rule 645—206.8(17A,147,272C) prior to practicing occupational therapy in this state.

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These rules are intended to implement Iowa Code chapters 17A, 147, 148B and 272C.

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◊ Two or more ARCs

CHAPTER 207
CONTINUING EDUCATION FOR OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS

645—207.1(148B) Definitions. For the purpose of these rules, the following definitions shall apply:

"Active license" means a license that is current and has not expired.

"Audit" means the selection of licensees for verification of compliance with continuing education requirements.

"Board" means the board of physical and occupational therapy.

"Continuing education" means the same as defined in Iowa Code section 272C.1.

"Hour of continuing education" means at least 50 minutes spent by a licensee completing an approved continuing education activity through live, virtual, online or prerecorded means where the instructor provides proof of completion by the licensee as set forth in these rules.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period. The category of "inactive license" may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

"Independent study" means a subject/program/activity that a person pursues autonomously and that meets standards for approval criteria in the rules and includes a posttest.

"License" means license to practice.

"Licensee" means any person licensed to practice as an occupational therapist or occupational therapy assistant in the state of Iowa.

[**ARC 7983C**, IAB 5/15/24, effective 7/1/24]

645—207.2(272C) Continuing education requirements.

207.2(1) The biennial continuing education compliance period shall extend for a two-year period that begins on the sixteenth day of the licensee's birth month and ends two years later on the fifteenth day of the birth month.

a. Requirements for occupational therapist licensees. Each biennium, each person who is licensed to practice as an occupational therapist in this state will have the responsibility to finance the cost and be required to complete a minimum of 30 hours of continuing education approved by the board.

b. Requirements for occupational therapy assistant licensees. Each biennium, each person who is licensed to practice as an occupational therapy assistant in this state will be required to complete a minimum of 15 hours of continuing education approved by the board.

207.2(2) Requirements of new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired any time from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of 30 hours of continuing education per biennium for occupational therapists and 15 hours for occupational therapy assistants each subsequent license renewal.

207.2(3) With the exception of continuing education hours obtained by new licensees, no hours of continuing education shall be carried over into the next biennium. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

[**ARC 7983C**, IAB 5/15/24, effective 7/1/24]

645—207.3(148B,272C) Standards.

207.3(1) *General criteria.* Appropriate continuing education activity for purposes of license renewal will support each of the following:

a. Constitutes an organized program of learning that contributes directly to the professional competency of the licensee;

b. Pertains to subject matters that integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. At the time of audit, the board may request the qualifications of presenters;

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance including:

(1) Date, location, course title, presenter(s);

(2) Number of program contact hours; and

(3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

207.3(2) *Specific criteria.*

a. Licensees may obtain continuing education hours of credit by:

(1) Attending workshops, conferences, or symposiums.

(2) Accessing online training, such as viewing interactive conferences, attending webinars, or completing online training courses.

(3) Directly supervising students for clinical education if the student being supervised is from an accredited occupational therapy or occupational therapy assistant program and is participating in a full-time clinical experience (defined as approximately 40 hours per week, ranging from 1 to 18 weeks). One hour will be awarded for every 160 contact hours of supervision. A maximum of 8 hours for an occupational therapist and 4 hours for an occupational therapy assistant may be awarded per biennium. The occupational therapist or occupational therapy assistant must have documentation from the accredited educational program indicating the number of hours spent supervising a student.

(4) Presenting professional programs that meet the criteria listed in this rule. Two hours of credit will be awarded for each hour of presentation for the first offering of the course. A course schedule or brochure must be maintained for audit.

(5) Completing academic courses that directly relate to the professional competency of the licensee. Official transcripts indicating successful completion of academic courses that apply to the field of occupational therapy will be necessary in order for the licensee to receive the following continuing education credits:

1 academic semester hour = 15 continuing education hours of credit

1 academic trimester hour = 12 continuing education hours of credit

1 academic quarter hour = 10 continuing education hours of credit

(6) Teaching in an approved college, university, or graduate school. The licensee may receive the following continuing education credits on a one-time basis for the first offering of a course:

1 academic semester hour = 15 continuing education hours of credit

1 academic trimester hour = 12 continuing education hours of credit

1 academic quarter hour = 10 continuing education hours of credit

(7) Authoring research or other activities, the results of which are published in a recognized professional publication. The licensee shall receive five hours of credit per page.

(8) Participating in professional organizations related to the practice of occupational therapy, with one credit hour received for each six months of active service as an officer, delegate, or committee member, for a maximum of four hours of credit per biennium. Verification of participation must be provided by the professional organization to document the continuing education credit.

b. Continuing education hours of credit in the following topics are not considered to be directly and primarily related to the clinical application of occupational therapy and therefore must not exceed a maximum combined total of eight hours of credit for an occupational therapist licensee and four hours of credit for an occupational therapy assistant licensee:

(1) Business-related topics, such as marketing, time management, government regulations, and other like topics.

(2) Personal skills topics, such as career burnout, communication skills, human relations, and other like topics.

(3) General health topics, such as clinical research, CPR, mandatory reporter training, and other like topics.

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◊ Two or more ARCs

CHAPTER 208
PRACTICE OF OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS

645—208.1(148B,272C) Code of ethics for occupational therapists and occupational therapy assistants.

208.1(1) Occupational therapy. The practice of occupational therapy minimally consists of:

a. Interpreting referrals;

b. Evaluating patients;

c. Identifying and documenting patient problems and goals;

d. Establishing and documenting a plan of care;

e. Providing treatment;

f. Determining the appropriate portions of the treatment program to be delegated to assistive personnel;

g. Supervising individuals as described in rule 645—208.5(272C);

h. Providing timely patient reevaluation;

i. Maintaining timely and adequate patient records consistent with the standards found in rule 645—208.2(147).

208.1(2) An occupational therapist or occupational therapy assistant should:

a. Not practice outside the scope of the license;

b. Not perform a treatment procedure that is inadvisable or contraindicated;

c. Not continue treatment beyond the point of possible benefit to the patient or treat a patient more frequently than necessary to obtain maximum therapeutic effect;

d. Not directly or indirectly request, receive, or participate in the dividing, transferring, assigning, rebating, or refunding of an unearned fee;

e. Not profit by means of credit or other valuable consideration as an unearned commission, discount, or gratuity in connection with the furnishing of occupational therapy services;

f. Not obtain payment through fraudulent means. Obtaining payment through fraudulent means includes but is not limited to:

(1) Reporting incorrect treatment dates for the purpose of obtaining payment;

(2) Reporting charges for services not rendered;

(3) Incorrectly reporting services rendered for the purpose of obtaining payment that is greater than that to which the licensee is entitled; or

(4) Aiding a patient in fraudulently obtaining payment;

g. Not exercise undue influence on patients to purchase equipment, products, or supplies from a company in which the occupational therapist owns stock or has any other direct or indirect financial interest;

h. Not permit another person to use the therapist's license for any purpose;

i. Not verbally or physically abuse a patient or client;

j. Not engage in sexual misconduct. Sexual misconduct includes the following:

(1) Engaging in or soliciting a sexual relationship, whether consensual or nonconsensual, with a patient or client;

(2) Making sexual advances, requesting sexual favors, or engaging in other verbal conduct or physical contact of a sexual nature with a patient or client;

k. Follow the standards for supervision found in rule 645—208.4(272C);

l. Not perform a task or service for which the therapist lacks the skill, knowledge or competence. In such a case, the therapist should either refuse to perform the task or service and/or arrange for a professionally qualified licensed practitioner to perform the task or service;

m. Sign the occupational therapy treatment record to indicate that the occupational therapy services were provided in accordance with the rules and regulations for practicing as an occupational therapist or occupational therapy assistant.

[**ARC 7984C**, IAB 5/15/24, effective 7/1/24]

645—208.2(147) Recordkeeping.

208.2(1) A licensee should maintain sufficient, timely, and accurate documentation in patient records to reflect the services provided, facilitate the delivery of services, and ensure continuity of services in the future.

208.2(2) A licensee should store records in accordance with state and federal statutes and regulations governing record retention and with the guidelines of the licensee's employer or agency, if applicable. If no other legal provisions govern record retention, a licensee should store patient records for a minimum of five years after the date of the patient's discharge, or in the case of a minor, three years after the patient reaches the age of majority under state law or five years after the date of discharge, whichever is longer.

208.2(3) Electronic recordkeeping. The requirements of this rule apply to electronic records as well as to records kept by any other means. When electronic records are kept, the licensee shall ensure that a duplicate hard-copy record or a backup, unalterable electronic record is maintained.

208.2(4) Correction of records.

a. Hard-copy records. Notations should be legible, written in ink, and contain no erasures or whiteouts. If incorrect information is placed in the record, it must be crossed out with a single nondeleting line and be initialed by the licensee.

b. Electronic records. If a record is stored in an electronic format, the record may be amended with a signed addendum attached to the record.

208.2(5) Confidentiality and transfer of records. Occupational therapists and occupational therapy assistants shall preserve the confidentiality of patient records consistent with federal and state law.

208.2(6) Retirement or discontinuance of practice. If a licensee is the owner of a practice, the licensee shall notify in writing all active patients and shall make reasonable arrangements with those patients to transfer patient records, or copies of those records, to the succeeding licensee upon knowledge and agreement of the patient.

208.2(7) Nothing stated in these rules shall prohibit a licensee from conveying or transferring the licensee's patient records to another licensed individual who is assuming a practice, provided that written notice is furnished to all patients.

[**ARC 7984C**, IAB 5/15/24, effective 7/1/24]

645—208.3(147) Telehealth visits. A licensee may provide occupational therapy services to a patient utilizing a telehealth visit if the occupational therapy services are provided in accordance with all requirements of this chapter.

208.3(1) "Telehealth visit" means the provision of occupational therapy services by a licensee to a patient using technology where the licensee and the patient are not at the same physical location for the occupational therapy session.

208.3(2) A licensee engaged in a telehealth visit shall utilize technology that is secure and HIPAA-compliant, pursuant to the Health Insurance Portability and Accountability Act of 1996, PL 104–191, August 21, 1996, 110 Stat. 1936, and any amendments as of December 8, 2023, and that includes, at a minimum, audio or video equipment or both, that allows two-way real-time interactive communication between the licensee and the patient. A licensee may use non-real-time technologies to prepare for an occupational therapy session or to communicate with a patient between occupational therapy sessions.

208.3(3) A licensee engaged in a telehealth visit shall be held to the same standard of care as a licensee who provides in-person occupational therapy. A licensee shall not utilize a telehealth visit if the standard of care for the particular occupational therapy services cannot be met using technology.

208.3(4) Any occupational therapist or occupational therapy assistant who provides an occupational therapy telehealth visit to a patient located in Iowa shall be licensed in Iowa.

208.3(5) Prior to the first telehealth visit, a licensee shall obtain informed consent from the patient specific to the occupational therapy services that will be provided in a telehealth visit. At a minimum, the informed consent shall specifically inform the patient of the following:

a. The risks and limitations of the use of technology to provide occupational therapy services;

b. The potential for unauthorized access to protected health information; and

c. The potential for disruption of technology during a telehealth visit.

208.3(6) A licensee shall only provide occupational therapy services using a telehealth visit in the areas of competence wherein proficiency in providing the particular service using technology has been gained through education, training, and experience.

208.3(7) A licensee shall identify in the clinical record when occupational therapy services are provided utilizing a telehealth visit.

[**ARC 7984C**, IAB 5/15/24, effective 7/1/24]

645—208.4(147) Practice of occupational therapy limited permit holders.

208.4(1) Occupational therapist limited permit holders may:

a. Evaluate clients, plan treatment programs, and provide periodic reevaluations only under supervision of a licensed OT who shall bear full responsibility for care provided under the OT's supervision; and

b. Perform the duties of the occupational therapist under the supervision of an Iowa-licensed occupational therapist, except for providing supervision to an occupational therapy assistant.

208.4(2) Occupational therapy assistants and limited permit holders shall:

a. Follow the treatment plan written by the supervising OT outlining the elements that have been delegated; and

b. Perform occupational therapy procedures delegated by the supervising OT as required in rule 645—208.5(148B).

[**ARC 7984C**, IAB 5/15/24, effective 7/1/24]

645—208.5(148B) Supervision requirements.

208.5(1) Care rendered by unlicensed assistive personnel shall not be documented or charged as occupational therapy unless direct on-site supervision is provided by an OT or in-sight supervision is provided by an OTA.

208.5(2) Occupational therapist supervisor responsibilities. The supervisor shall:

a. Provide supervision to a licensed OTA, OT limited permit holder and OTA limited permit holder any time occupational therapy services are rendered. Supervision may be provided on site or through the use of telecommunication or other technology.

b. Ensure that every licensed OTA, OT limited permit holder and OTA limited permit holder being supervised is aware of who the supervisor is and how the supervisor can be contacted any time occupational therapy services are rendered.

c. Assume responsibility for all delegated tasks and shall not delegate a service that exceeds the expertise of the OTA or OTA limited permit holder.

d. Provide evaluation and development of a treatment plan for use by the OTA.

e. Ensure that the OTA, OT limited permit holder and OTA limited permit holder under the OT's supervision have current licenses to practice.

f. Ensure that the signature of an OTA on an occupational therapy treatment record indicates that the occupational therapy services were provided in accordance with the rules and regulations for practicing as an OTA.

208.5(3) The following are functions that only an occupational therapist may provide and that shall not be delegated to an OTA:

a. Interpretation of referrals;

b. Initial occupational therapy evaluation and reevaluations;

c. Identification, determination or modification of patient problems, goals, and care plans;

d. Final discharge evaluation and establishment of the discharge plan;

e. Assurance of the qualifications of all assistive personnel to perform assigned tasks through written documentation of their education or training that is maintained and available at all times;

f. Delegation of and instruction in the services to be rendered by the OTA, including but not limited to specific tasks or procedures, precautions, special problems, and contraindicated procedures; and

g. Timely review of documentation, reexamination of the patient and revision of the plan when indicated.

208.5(4) Supervision of unlicensed assistive personnel. OTs are responsible for patient care provided by unlicensed assistive personnel under the OT's supervision. Unlicensed assistive personnel shall not provide independent patient care unless each of the following standards is satisfied:

a. The supervising OT shall physically participate in the patient's treatment or evaluation, or both, each treatment day;

b. The unlicensed assistive personnel shall provide independent patient care only while under the on-site supervision of the supervising OT;

c. Documentation made in occupational therapy records by unlicensed assistive personnel shall be cosigned by the supervising OT; and

d. The supervising OT shall provide periodic reevaluation of the performance of unlicensed assistive personnel in relation to the patient.

208.5(5) Minimum frequency of OT interaction. At a minimum, an OT must directly participate in treatment, either in person or through a telehealth visit, every twelfth visit for all patients and must document each visit. The occupational therapist shall participate at a higher frequency when the standard of care dictates.

208.5(6) Occupational therapy assistant responsibilities.

a. The occupational therapy assistant shall:

(1) Provide only those services for which the OTA has the necessary skills and shall consult the supervising occupational therapist if the procedures are believed not to be in the best interest of the patient;

(2) Gather data relating to the patient's disability during screening, but shall not interpret the patient information as it pertains to the plan of care;

(3) Communicate any change, or lack of change, that occurs in the patient's condition and that may need the assessment of the OT;

(4) Provide occupational therapy services only under the supervision of the occupational therapist;

(5) Provide treatment only after evaluation and development of a treatment plan by the occupational therapist;

(6) Refer inquiries that require interpretation of patient information to the occupational therapist;

(7) Be supervised by an occupational therapist, either on site or through the use of telecommunication or other technology, at all times when occupational therapy services are being rendered;

(8) Receive supervision from any number of at least one occupational therapist; and

(9) Record on every patient chart the name of the OTA's supervisor for each treatment session.

b. The signature of an OTA on the occupational therapy treatment record indicates that occupational therapy services were provided in accordance with the rules and regulations for practicing as an OTA.

208.5(7) Unlicensed assistive personnel. Unlicensed assistive personnel may assist an OTA in providing patient care in the absence of an OT only if the OTA maintains in-sight supervision of the unlicensed assistive personnel and the OTA is primarily and significantly involved in that patient's care.

208.5(8) The occupational therapy limited permit holder may evaluate clients, plan treatment programs, and provide periodic reevaluations under supervision of a licensed occupational therapist who shall bear full responsibility for care provided under the occupational therapist's supervision.

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CHAPTER 209
DISCIPLINE FOR OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS

[Prior to 3/6/02, see 645—201.10(272C)]
[Prior to 12/24/03, see 645—Ch 208]

645—209.1(148B) Definitions.

"Board" means the board of physical and occupational therapy.

"Discipline" means any sanction the board may impose upon licensees.

"Licensee" means a person licensed to practice in Iowa pursuant to Iowa Code chapter 148A and 645—Chapters 206 to 209.

[**ARC 7985C**, IAB 5/15/24, effective 7/1/24]

645—209.2(272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in 645—Chapter 13 when the board determines that any of the acts or offenses listed in that chapter or in Iowa Code section 147.55 have occurred:

209.2(1) Professional incompetency. Professional incompetency includes but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other occupational therapists or occupational therapy assistants in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care that is ordinarily exercised by the average occupational therapist or occupational therapy assistant acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of the licensed occupational therapist or licensed occupational therapy assistant in this state.

e. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

f. Being adjudged mentally incompetent by a court of competent jurisdiction.

209.2(2) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of occupational therapy or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

209.2(3) Violation of a regulation, rule or law of this state, another state, or the United States that relates to the practice of occupational therapy, including but not limited to the code of ethics found in rule 645—208.1(148B,272C).

209.2(4) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the individual's practice of occupational therapy in another state, district, territory or country.

209.2(5) Knowingly aiding, assisting or advising a person to unlawfully practice occupational therapy.

209.2(6) Failure to report a change of name or address within 30 days after it occurs.

209.2(7) Representing oneself as a licensed occupational therapist or occupational therapy assistant when one's license has been suspended or revoked, or when the license is on inactive status.

209.2(8) Repeated failure to comply with standard precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

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These rules are intended to implement Iowa Code chapters 147, 148B and 272C.

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PODIATRISTS

CHAPTER 220
LICENSURE OF PODIATRISTS

645—220.1(149) Definitions.

"Active license" means a license that is current and has not expired.

"Board" means the board of podiatry.

"Grace period" means the 30-day period following expiration of a license when the license is still considered to be active.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period.

"Licensee" means any person licensed to practice as a podiatrist in the state of Iowa.

"License expiration date" means June 30 of even-numbered years.

"Licensure by endorsement" means the issuance of an Iowa license to practice podiatry to an applicant who is or has been licensed in another state.

"NBPME" means National Board of Podiatric Medical Examiners.

"Reactivate" or *"reactivation"* means the process as outlined in rule 645—220.15(17A,147,272C) by which an inactive license is restored to active status.

"Reciprocal license" means the issuance of an Iowa license to practice podiatry to an applicant who is currently licensed in another state that has a mutual agreement with the Iowa board of podiatry to license persons who have the same or similar qualifications to those required in Iowa.

"Reinstatement" means the process as outlined in rule 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

[**ARC 7986C**, IAB 5/15/24, effective 6/19/24]

645—220.2(149) Requirements for licensure.

220.2(1) The applicant will submit a completed online application for licensure and pay the nonrefundable licensure fee specified in rule 645—5.15(147,148F,149).

220.2(2) No application will be considered complete until official copies of academic transcripts are received, verifying graduation from a college of podiatric medicine approved by the Council on Podiatric Medical Education (CPME) of the American Podiatric Medical Association. Transcripts must be sent directly from the college to the board.

220.2(3) Licensees who were issued their licenses within six months prior to the renewal date do not need to renew their licenses until the renewal date two years later.

220.2(4) Incomplete applications that have been on file in the board office for more than two years will be:

a. Considered invalid and destroyed; or

b. Retained upon written request of the applicant. The applicant is responsible for requesting that the file be retained.

220.2(5) An applicant who graduated from a podiatric college in 1961 or earlier, is currently licensed in another state and has practiced for the 24 months immediately prior to application may be exempted from passing Part I and Part II of the NBPME examination based on the applicant's credentials and the discretion of the board.

220.2(6) An applicant who graduated from a podiatric college on or after January 1, 1995, but before January 1, 2013, shall present documentation of successful completion of a residency approved by the CPME of the American Podiatric Medical Association.

220.2(7) An applicant who graduated from a podiatric college on or after January 1, 2013, shall present documentation of successful completion of two years of a residency approved by the CPME of the American Podiatric Medical Association.

220.2(8) Passing score reports for Part I, Part II, and Part III of the NBPME examination shall be sent directly from the examination service to the board.

[**ARC 7986C**, IAB 5/15/24, effective 6/19/24]

645—220.3(149) Written examinations.

220.3(1) The examinations required by the board shall be Part I, Part II, and Part III of the NBPME.

220.3(2) The applicant has responsibility for:

a. Making arrangements to take the examinations; and

b. Arranging to have the examination score reports sent directly to the board from the NBPME.

220.3(3) A passing score as recommended by the administrators of the NBPME examinations shall be required.

[**ARC 7986C**, IAB 5/15/24, effective 6/19/24]

645—220.4(149) Educational qualifications.

220.4(1) A new applicant for permanent or temporary licensure to practice as a podiatrist shall present official copies of academic transcripts, verifying graduation from a college of podiatric medicine approved by the CPME of the American Podiatric Medical Association. Transcripts must be sent directly from the college to the board of podiatry.

220.4(2) Foreign-trained podiatrists shall:

a. Provide an equivalency evaluation of their educational credentials by one of the following: International Education Research Foundation, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City, CA 90231-3665, telephone 310.258.9451, website www.ierf.org, or email at info@ierf.org; or International Credentialing Associates, Inc., 7245 Bryan Dairy Road, Bryan Dairy Business Park II, Largo, FL 33777, telephone 727.549.8555. The professional curriculum must be equivalent to that stated in these rules. The candidate shall bear the expense of the curriculum evaluation.

b. Provide a notarized copy of the certificate or diploma awarded to the applicant from a podiatry program in the country in which the applicant was educated.

c. Receive a final determination from the board regarding the application for licensure.

[**ARC 7986C**, IAB 5/15/24, effective 6/19/24]

645—220.5(149) Title designations. A podiatrist may use the prefix "Doctor" but shall add after the person's name the word "Podiatrist" or "DPM."

[**ARC 7986C**, IAB 5/15/24, effective 6/19/24]

645—220.6(147,149) Temporary license.

220.6(1) A temporary license may be issued for up to one year and may be annually renewed at the discretion of the board. Temporary licenses will expire on June 30.

220.6(2) Each applicant shall:

a. Submit a completed online application for licensure and pay the nonrefundable licensure fee specified in rule 645—5.15(147,148F,149);

b. Have official copies of academic transcripts sent directly to the board of podiatry from a college of podiatric medicine approved by the CPME of the American Podiatric Medical Association;

c. Request that passing score reports of the NBPME examination Part I and Part II be sent directly to the board of podiatry from the National Board of Podiatric Medical Examiners;

d. Furnish an affidavit by the institution director or dean of an approved podiatric college attesting that the applicant has been accepted into a residency program in this state that is approved by the CPME of the American Podiatric Medical Association;

e. Request verification of license from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

(1) Licensee's name;

(2) Date of initial licensure;

(3) Current licensure status; and

(4) Any disciplinary action taken against the license.

220.6(3) An applicant who graduated from a podiatric college in 1961 or earlier, is currently licensed in another state, and has practiced for the 24 months immediately prior to application may be exempted from passing Part I and Part II of the NBPME examination based on the applicant's credentials and the discretion of the board.

220.6(4) The ultimate decision to issue a temporary license resides with the board, and a temporary license shall be surrendered if the reason for issuance ceases to exist.

[**ARC 7986C**, IAB 5/15/24, effective 6/19/24]

645—220.7(149) Licensure by endorsement. An applicant who has been a licensed podiatrist under the laws of another jurisdiction may file an application for licensure by endorsement with the board office.

220.7(1) The board may receive by endorsement any applicant from the District of Columbia, another state, territory, province or foreign country who:

a. Submits a completed online application for licensure and pays the nonrefundable licensure fee specified in rule 645—5.15(147,148F,149);

b. Shows evidence of licensure requirements that are similar to those required in Iowa;

c. Provides the board with official copies of academic transcripts, verifying graduation from a college of podiatric medicine approved by the CPME of the American Podiatric Medical Association. Transcripts must be sent directly from the school to the board of podiatry; and

d. Provides verification of license from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

(1) Licensee's name;

(2) Date of initial licensure;

(3) Current licensure status; and

(4) Any disciplinary action taken against the license.

220.7(2) An applicant shall submit the passing score reports for Part I and Part II of the NBPME examination. An applicant who graduated from a podiatric college in 1961 or earlier, is currently licensed in another state, and has practiced for the 24 months immediately prior to application may be exempted from passing Part I and Part II of the NBPME examination based on the applicant's credentials and the discretion of the board.

220.7(3) An applicant shall submit passing score reports for Part III of the NBPME examination. An applicant who passed the Part III NBPME examination more than three years prior to the date of application in Iowa must submit proof of podiatry practice for one of the last three years.

220.7(4) An applicant who graduated from a podiatric college on or after January 1, 1995, must present documentation of successful completion of a residency approved by the CPME of the American Podiatric Medical Association.

220.7(5) A person who is licensed in another jurisdiction but who is unable to satisfy the requirements for licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

[**ARC 7986C**, IAB 5/15/24, effective 6/19/24]

645—220.8(149) License renewal.

220.8(1) The biennial license renewal period for a license to practice podiatry begins on July 1 of an even-numbered year and ends on June 30 of the next even-numbered year. The licensee is responsible for renewing the license prior to its expiration.

220.8(2) An individual who was issued a license within six months of the license renewal date does not need to renew the individual's license until the subsequent renewal two years later.

220.8(3) An applicant who graduated from a podiatric college on or after January 1, 2013, and who is seeking renewal for the first time shall present documentation of successful completion of a residency program approved by the CPME of the American Podiatric Medical Association.

220.8(4) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—222.2(149,272C) and the mandatory reporting requirements of subrule 220.9(4). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

b. Submit the completed renewal application and renewal fee before the license expiration date.

220.8(5) Mandatory reporter training requirements.

a. A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats children and dependent adults in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph 220.8(5)*"e."*

b. A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall complete the applicable department of health and human services training related to the identification and reporting of child and dependent adult abuse as required by Iowa Code section 232.69(3)*"b."* The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 4.

c. The board may select licensees for audit of compliance with the requirements in paragraphs 220.8(5)*"a"* and *"b."*

220.8(6) Upon receiving the information required by this rule and the required fee, board staff will administratively issue a two-year license. In the event the board receives adverse information on the renewal application, the board will issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

220.8(7) The license certificate and proof of active licensure will be displayed in a conspicuous public place at the primary site of practice.

220.8(8) Late renewal. A license not renewed by the expiration date will be assessed a late fee as specified in 645—subrule 5.15(3). Completion of renewal requirements and submission of the late fee within the grace period are needed to renew the license.

220.8(9) Inactive license. A license not renewed by the end of the grace period is inactive. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a podiatrist in Iowa until the license is reactivated. A licensee who practices as a podiatrist in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

[**ARC 7986C**, IAB 5/15/24, effective 6/19/24]

645—220.9(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, an applicant will:

220.9(1) Submit a completed online application for licensure and pay the nonrefundable licensure fee specified in rule 645—5.15(147,148F,149).

220.9(2) Provide verification of current competence to practice as a podiatrist by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, provide the following:

(1) Verification of the license from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 40 hours of continuing education within two years of application for reactivation.

b. If the license has been on inactive status for more than five years, provide the following:

(1) Verification of the license from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 80 hours of continuing education within two years of application for reactivation.

[**ARC 7986C**, IAB 5/15/24, effective 6/19/24]

645—220.10(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with rule 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with rule 645—220.15(17A,147,272C) prior to practicing as a podiatrist in this state.

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◊ Two or more ARCs

CHAPTER 221
LICENSURE OF ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS

645—221.1(148F) Definitions.

"Active license" means a license that is current and has not expired.

"Board" means the board of podiatry.

"Grace period" means the 30-day period following expiration of a license when the license is still considered to be active.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period.

"Licensee" means any person licensed to practice as an orthotist, prosthetist, or pedorthist in the state of Iowa.

"License expiration date" means June 30 of even-numbered years.

"Licensure by endorsement" means the issuance of an Iowa license to practice orthotics, prosthetics, or pedorthics to an applicant who is or has been licensed in another state.

"Reactivate" or *"reactivation"* means the process as outlined in rule 645—221.8(17A,147,272C) by which an inactive license is restored to active status.

"Reciprocal license" means the issuance of an Iowa license to practice orthotics, prosthetics, or pedorthics to an applicant who is currently licensed in another state that has a mutual agreement with the Iowa board of podiatry to license persons who have the same or similar qualifications to those required in Iowa.

"Reinstatement" means the process as outlined in rule 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

[**ARC 7987C**, IAB 5/15/24, effective 6/19/24]

645—221.2(148F) Requirements for licensure.

221.2(1) The applicant will submit a completed online application for licensure and pay the nonrefundable licensure fee specified in rule 645—5.15(147,148F,149).

221.2(2) No application will be considered complete until official copies of academic transcripts are received.

a. Applicants for licensure in orthotics or prosthetics must submit proof of graduation from an educational program approved by the Commission on Accreditation of Allied Health Education Programs.

b. Applicants for licensure in pedorthics must submit proof of graduation from an educational program approved by the National Commission on Orthotic and Prosthetic Education.

221.2(3) Transcripts must be sent directly from the program to the board.

221.2(4) Licensees who were issued their licenses within six months prior to the renewal date do not need to renew their licenses until the renewal date two years later.

221.2(5) Incomplete applications that have been on file in the board office for more than two years will be:

a. Considered invalid and destroyed; or

b. Retained upon written request of the applicant. The applicant is responsible for requesting that the file be retained.

221.2(6) The applicant shall ensure that the passing score from the appropriate professional examination is sent directly to the board from the examination service.

221.2(7) Applicants for licensure in orthotics or prosthetics must provide documentation of successful completion of a residency program accredited by the National Commission on Orthotic and Prosthetic Education.

221.2(8) Applicants for licensure in pedorthics must provide documentation of successful completion of a qualified clinical experience program.

[**ARC 7987C**, IAB 5/15/24, effective 6/19/24]

645—221.3(148F) Written examinations.

221.3(1) Prosthetists must have completed and passed the Board of Certification/Accreditation, International (BOC), or American Board for Certification in Orthotics, Prosthetics and Pedorthics, Incorporated (ABC), examination for prosthetists.

221.3(2) Orthotists must have completed and passed the BOC or ABC examination for orthotists.

221.3(3) Pedorthists must have completed and passed the BOC or ABC examination for pedorthists.

221.3(4) The applicant has responsibility for:

a. Making arrangements to take the examination; and

b. Arranging to have the examination score reports sent directly to the board from the ABC or BOC.

221.3(5) A passing score as recommended by the administrators of the ABC or BOC examination shall be required.

[**ARC 7987C**, IAB 5/15/24, effective 6/19/24]

645—221.4(148F) Educational qualifications.

221.4(1) An applicant for licensure to practice as an orthotist or prosthetist shall present official copies of academic transcripts, verifying completion of the following requirements:

a. A baccalaureate or higher degree from a regionally accredited college or university. Transcripts must be sent directly from the college or university to the board of podiatry; and

b. Verification of completion of an academic program in orthotics or prosthetics accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP). Transcripts must be sent directly from the program to the board of podiatry.

221.4(2) An applicant for licensure to practice as a pedorthist shall present official copies of academic transcripts, verifying completion of the following requirements:

a. A high school diploma or its equivalent; and

b. Verification of completion of an academic program in pedorthics accredited by the National Commission on Orthotic and Prosthetic Education. Verification must be sent directly from the program to the board of podiatry.

221.4(3) An applicant who has relocated to Iowa from a state that did not require licensure to practice the profession may submit proof of work experience in lieu of educational and training requirements, if eligible, in accordance with rule 645—19.2(272C).

[**ARC 7987C**, IAB 5/15/24, effective 6/19/24]

645—221.5(148F) Licensure by endorsement.

221.5(1) An applicant who has been a licensed orthotist, prosthetist, or pedorthist under the laws of another jurisdiction may file an application for licensure by endorsement with the board office. The board may receive by endorsement any applicant from the District of Columbia, or another state, territory, province or foreign country who:

a. Submits a completed online application for licensure and pays the nonrefundable licensure fee specified in rule 645—5.15(147,148F,149);

b. Shows evidence of licensure requirements that are similar to those required in Iowa;

c. For prosthetic or orthotic licensure, provides:

(1) A baccalaureate or higher degree from a regionally accredited college or university. Transcripts must be sent directly from the college or university to the board of podiatry; and

(2) Verification of completion of an academic program in orthotics or prosthetics accredited by CAAHEP. Transcripts must be sent directly from the program to the board of podiatry;

d. For pedorthic licensure, provides:

(1) A high school diploma or its equivalent; and

(2) Verification of completion of an academic program in pedorthics accredited by the National Commission on Orthotic and Prosthetic Education. Verification must be sent directly from the program to the board of podiatry;

e. Provides verification of license from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

(1) Licensee's name;

(2) Date of initial licensure;

(3) Current licensure status; and

(4) Any disciplinary action taken against the license;

f. Submits a copy of the scores from the appropriate professional examination to be sent directly from the examination service to the board.

221.5(2) Individuals who were issued their licenses by endorsement within six months of the license renewal date do not need to renew their licenses until the next renewal date two years later.

221.5(3) Licensure by verification. A person who is licensed in another jurisdiction but who is unable to satisfy the requirements for licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

[**ARC 7987C**, IAB 5/15/24, effective 6/19/24]

645—221.6(148F) License renewal.

221.6(1) The biennial license renewal period for a license to practice orthotics, prosthetics, or pedorthics begins on July 1 of an even-numbered year and ends on June 30 of the next even-numbered year. The licensee is responsible for renewing the license prior to its expiration.

221.6(2) An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the subsequent renewal date two years later.

221.6(3) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—225.2(148F,272C). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

b. Submit the completed renewal application and renewal fee before the license expiration date.

221.6(4) Upon receipt of the information required by this rule and the required fee, board staff shall administratively issue a two-year license. In the event the board receives adverse information on the renewal application, the board will issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

221.6(5) The license certificate and proof of active licensure will be displayed in a conspicuous public place at the primary site of practice.

221.6(6) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the renewal. The licensee shall be assessed a late fee as specified in 645—subrule 5.15(7). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

221.6(7) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa but may not practice as an orthotist, prosthetist, or pedorthist in Iowa until the license is reactivated. A licensee who practices as an orthotist, prosthetist, or pedorthist in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

[**ARC 7987C**, IAB 5/15/24, effective 6/19/24]

645—221.7(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

221.7(1) Submit a completed online application for licensure and pay the nonrefundable licensure fee specified in rule 645—5.15(147,148F,149).

221.7(2) Provide verification of current competence to practice by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of:

1. For orthotists or prosthetists, 30 hours of continuing education within two years of application for reactivation.

2. For pedorthists, 20 hours of continuing education within two years of application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of:

1. For orthotists or prosthetists, 60 hours of continuing education within two years of application for reactivation.

2. For pedorthists, 40 hours of continuing education within two years of application for reactivation.

[**ARC 7987C**, IAB 5/15/24, effective 6/19/24]

645—221.8(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with rule 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with rule 645—221.8(17A,147,272C) prior to practicing as an orthotist, a prosthetist, or a pedorthist in this state.

[**ARC 7987C**, IAB 5/15/24, effective 6/19/24]

These rules are intended to implement Iowa Code chapters 17A, 147, 148F, and 272C.

[Filed ARC 1192C (Notice ARC 0942C, IAB 8/7/13), IAB 11/27/13, effective 1/1/14]
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[Filed ARC 7987C (Notice ARC 7176C, IAB 12/13/23), IAB 5/15/24, effective 6/19/24]

CHAPTER 222
CONTINUING EDUCATION FOR PODIATRISTS

645—222.1(149,272C) Definitions.

"Active license" means a license that is current and has not expired.

"Approved program/activity" means a continuing education program/activity meeting the standards set forth in these rules.

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period.

"Board" means the board of podiatry.

"Continuing education" means planned, organized learning acts acquired during licensure designed to maintain, improve, or expand a licensee's knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

"Hour of continuing education" means at least 50 minutes spent by a licensee in actual attendance at and completion of an approved continuing education activity.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period.

"Independent study" means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

"License" means license to practice.

"Licensee" means any person licensed to practice as a podiatrist in the state of Iowa.

[**ARC 7988C**, IAB 5/15/24, effective 6/19/24]

645—222.2(149,272C) Continuing education requirements.

222.2(1) The biennial continuing education compliance period extends for a two-year period beginning on July 1 of each even-numbered year and ending on June 30 of the next even-numbered year. Each biennium, each person who is licensed to practice as a podiatrist in this state shall be required to complete a minimum of 40 hours of continuing education.

222.2(2) Requirements for new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of 40 hours of continuing education per biennium for each subsequent license renewal.

222.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be in accordance with these rules.

222.2(4) No hours of continuing education will be carried over into the next biennium.

222.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

[**ARC 7988C**, IAB 5/15/24, effective 6/19/24]

645—222.3(149,272C) Standards.

222.3(1) *General criteria.* A continuing education activity that meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

a. Constitutes an organized program of learning that contributes directly to the professional competency of the licensee;

b. Pertains to subject matters that integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. At the time of audit, the board may request the qualifications of presenters;

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance including:

(1) Date, location, course title, presenter(s);

(2) Number of program contact hours; and

(3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

222.3(2) *Specific criteria.*

a. Licensees may obtain continuing education hours of credit by teaching in a college, university, or graduate school that is recognized by the U.S. Department of Education. The licensee may receive credit on a one-time basis for the first offering of a course.

b. Continuing education hours of credit may be obtained by completing the following programs/activities of a podiatric scientific nature and sponsored by an accredited college of podiatric medicine or the American Podiatric Medical Association or a regional or state affiliate or nonprofit hospital that are:

(1) Educational activities in which participants and faculty are present at the same time and attendance can be verified. Such activities include lectures, conferences, focused seminars, clinical and practical workshops, simultaneous live satellite broadcasts and teleconferences; and

(2) Scientifically oriented material or risk management activities.

c. If the podiatrist utilizes conscious sedation, the podiatrist shall obtain a minimum of one hour of continuing education in the area of conscious sedation or other related topics.

d. A licensee who has prescribed opioids to a patient during a renewal cycle shall have obtained a minimum of one hour of continuing education regarding the United States Centers for Disease Control and Prevention guideline for prescribing opioids for chronic pain, including recommendations on limitations on dosages and the length of prescriptions, risk factors for abuse, and nonopioid and nonpharmacologic therapy options.

e. Combined maximum per biennium of 20 hours for the following continuing education source areas will not exceed:

(1) Presenting professional programs that meet the criteria listed in this subrule. Two hours of credit will be awarded for each hour of presentation. A course schedule or brochure must be maintained for audit.

(2) Ten hours of credit for viewing videotaped presentations if the following criteria are met:

1. There is an approved sponsoring group or agency;
2. There is a facilitator or program official present;
3. The program official is not the only attendee; and
4. The program meets all the criteria in rule 645—222.3(149,272C).

(3) Ten hours of credit for computer-assisted instructional courses or programs pertaining to patient care and the practice of podiatric medicine and surgery. These courses and programs must be approved by the American Podiatric Medical Association or its affiliates and have a certificate of completion that includes the following information:

1. Date course/program was completed;
2. Title of course/program;
3. Number of course/program contact hours; and
4. Official signature or verification of course/program sponsor.

(4) Five hours of credit for reading journal articles pertaining to patient care and the practice of podiatric medicine and surgery. The licensee must pass a required posttest and be provided with a certificate of completion.

f. No office management courses will be accepted by the board.

g. Continuing education hours of credit equivalents for academic coursework per biennium are as follows:

1 academic semester hour = 15 continuing education hours

1 academic quarter hour = 10 continuing education hours

h. Credit is given only for actual hours attended.

[**ARC 7988C**, IAB 5/15/24, effective 6/19/24]

These rules are intended to implement Iowa Code section 272C.2 and chapter 149.

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◊ Two or more ARCs

CHAPTER 223
PRACTICE OF PODIATRY
[Prior to 8/7/02, see rules 645—219.3(514F), 645—219.4(139A)]

645—223.1(149) Definitions.

"Ambulatory surgical center" or *"ASC"* means an ambulatory surgical center that has in effect an agreement with the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services, in accordance with 42 CFR Part 416 as amended to November 22, 2023.

"Conscious sedation" means a depressed level of consciousness produced by the administration of pharmacological substances that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command.

[**ARC 7989C**, IAB 5/15/24, effective 6/19/24]

645—223.2(149) Requirements for administering conscious sedation. A licensed podiatrist who holds a permanent license in good standing may use conscious sedation for podiatric patients on an outpatient basis in a hospital or ASC after the podiatrist has submitted to the board office an attestation on a form approved by the board.

223.2(1) The attestation shall include:

a. Evidence of successful completion within the past five years of a formal anesthesiology rotation in a residency program approved by the Council on Podiatric Medical Education (CPME); or

b. For a podiatrist who does not meet the requirements of paragraph 223.2(1)*"a,"* an attestation with evidence that the podiatrist is authorized by the governing body of a hospital or ASC to use conscious sedation. This attestation must be received by the board prior to January 1, 2005.

223.2(2) The podiatrist will provide verification of current certification in Basic Cardiac Life Support (BCLS) or Advanced Cardiac Life Support (ACLS).

223.2(3) A podiatrist who has an attestation on file and continues to use conscious sedation will meet the requirements of 645—Chapter 222 at the time of license renewal. A minimum of one hour of continuing education in the area of conscious sedation or related topics is required beginning with the renewal cycle of July 1, 2004, to June 30, 2006. Continuing education credit in the area of conscious sedation may be applied toward the 40 hours of continuing education required for renewal of the license. In addition, the podiatrist will maintain current certification in BCLS or ACLS.

223.2(4) A podiatrist will only utilize conscious sedation in a hospital or ASC when the podiatrist has been granted clinical privileges by the governing body of the hospital or ASC in accordance with approved policies and procedures of the hospital or ASC.

223.2(5) It is a violation of the standard of care for a podiatrist to use conscious sedation agents that result in a deep sedation or general anesthetic state.

223.2(6) Reporting of adverse occurrences related to conscious sedation. A licensed podiatrist who has an attestation on file with the board must submit a report to the board within 30 days of any mortality or other incident which results in temporary or permanent physical or mental injury requiring hospitalization of the patient during or as a result of conscious sedation. Included in the report will be the following:

a. Description of podiatric procedures;

b. Description of preoperative physical condition of patient;

c. List of drugs and dosage administered;

d. Description, in detail, of techniques utilized in administering the drugs;

e. Description of adverse occurrence, including:

(1) Symptoms of any complications including, but not limited to, onset and type of symptoms;

(2) Treatment instituted;

(3) Response of the patient to treatment;

f. Description of the patient's condition on termination of any procedures undertaken;

g. If a patient is transferred, a statement providing where and to whom; and

h. Name of the registered nurse who is trained to administer conscious sedation and who assisted in the procedure.

223.2(7) Failure to report. Failure to comply with subrule 223.2(6) when the adverse occurrence is related to the use of conscious sedation may result in the podiatrist's loss of authorization to administer conscious sedation or in other sanctions provided by law.

223.2(8) Recordkeeping. The patient's chart must include:

a. Preoperative and postoperative vital signs;

b. Drugs administered;

c. Dosage administered;

d. Anesthesia time in minutes;

e. Monitors used;

f. Intermittent vital signs recorded during procedures and until the patient is fully alert and oriented with stable vital signs;

g. Name of the person to whom the patient was discharged; and

h. Name of the registered nurse who is trained to administer conscious sedation and who assisted in the procedure.

223.2(9) Failure to comply with these rules is grounds for discipline.

[**ARC 7989C**, IAB 5/15/24, effective 6/19/24]

645—223.3(139A) Preventing HIV and HBV transmission. Podiatrists will comply with the recommendations for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures, issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services, or with the recommendations of the expert review panel established pursuant to Iowa Code section 139A.22(3) and applicable hospital protocols established pursuant to Iowa Code section 139A.22(1). Failure to comply will be grounds for disciplinary action.

[**ARC 7989C**, IAB 5/15/24, effective 6/19/24]

645—223.4(149) Unlicensed graduate of a podiatric college. An unlicensed graduate of a podiatric college may function in the licensed podiatrist's office only as a podiatric assistant. The licensed podiatrist has full responsibility and liability for the unlicensed person.

223.4(1) Treatments, charting, and notations completed by the unlicensed graduate must be initialed by that person and countersigned by the licensed podiatrist.

223.4(2) An unlicensed graduate will not:

a. Be referred to as "doctor" during professional contact with patients.

b. Treat patients in the office without a licensed podiatrist present.

c. Perform surgical work without direct supervision of a licensed podiatrist.

d. Diagnose or prescribe medicine.

e. Take independent actions regarding diagnosis, treatment or prescriptions.

f. Visit nursing homes or make house calls without the presence of the licensed podiatrist.

g. Bill for any services.

[**ARC 7989C**, IAB 5/15/24, effective 6/19/24]

645—223.5(149) Prescribing opioids. Podiatrists will review a patient's information contained in the prescription monitoring program database for each opioid prescription prior to prescribing, unless the patient is receiving inpatient hospice care or long-term residential facility care.

[**ARC 7989C**, IAB 5/15/24, effective 6/19/24]

These rules are intended to implement Iowa Code chapters 139A, 149 and 514F.

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CHAPTER 224
DISCIPLINE FOR PODIATRISTS, ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS

[Prior to 2/6/02, see 645—Chapter 220]

645—224.1(148F,149,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in Iowa Code section 272C.3 when the board determines that the licensee is guilty of any of the following acts or offenses or those listed in 645—Chapter 13:

224.1(1) Prescribing opioids in dosage amounts exceeding what would be prescribed by a reasonably prudent prescribing practitioner engaged in the same practice.

224.1(2) Reserved.

[**ARC 7990C**, IAB 5/15/24, effective 6/19/24]

645—224.2(148F,149,272C) Indiscriminately prescribing, administering or dispensing any drug for other than a lawful purpose. The board may impose any of the disciplinary sanctions provided in 645—Chapter 13 when the board determines that the licensee is guilty of any of the following acts or offenses:

224.2(1) Self-prescribing or self-dispensing controlled substances.

224.2(2) Prescribing or dispensing controlled substances to members of the licensee's immediate family for an extended period of time.

a. Prescribing or dispensing controlled substances to members of the licensee's immediate family is allowable for an acute condition or on an emergency basis when the physician conducts an examination, establishes a medical record, and maintains proper documentation.

b. Immediate family includes spouse or life partner, natural or adopted children, grandparent, parent, sibling, or grandchild of the physician; and natural or adopted children, grandparent, parent, sibling, or grandchild of the physician's spouse or life partner.

224.2(3) Prescribing or dispensing controlled substances outside the scope of the practice of podiatry.

[**ARC 7990C**, IAB 5/15/24, effective 6/19/24]

These rules are intended to implement Iowa Code chapters 147, 148F, 149, and 272C.

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CHAPTER 225
CONTINUING EDUCATION FOR ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS

645—225.1(148F) Definitions.

"ABC" means the American Board for Certification in Orthotics, Prosthetics and Pedorthics, Incorporated.

"Active license" means a license that is current and has not expired.

"Approved program/activity" means a continuing education program/activity meeting the standards set forth in these rules.

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period.

"Board" means the board of podiatry.

"BOC" means the Board of Certification/Accreditation, International.

"Continuing education" means planned, organized learning acts acquired during licensure designed to maintain, improve, or expand a licensee's knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

"Hour of continuing education" means at least 50 minutes spent by a licensee in actual attendance at and completion of an approved continuing education activity.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period.

"Independent study" means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

"License" means license to practice.

"Licensee" means any person licensed to practice as an orthotist, prosthetist, or pedorthist in the state of Iowa.

[**ARC 7991C**, IAB 5/15/24, effective 6/19/24]

645—225.2(148F,272C) Continuing education requirements.

225.2(1) The biennial continuing education compliance period extends for a two-year period beginning on July 1 of each even-numbered year and ending on June 30 of the next even-numbered year.

a. Each biennium, each person who is licensed to practice as an orthotist in this state shall be required to complete a minimum of 30 hours of continuing education.

b. Each biennium, each person who is licensed to practice as a prosthetist in this state shall be required to complete a minimum of 30 hours of continuing education.

c. Each biennium, each person who is licensed to practice as a pedorthist in this state shall be required to complete a minimum of 20 hours of continuing education.

225.2(2) Requirements for new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used.

a. The new orthotic licensee will be required to complete a minimum of 30 hours of continuing education per biennium for each subsequent license renewal.

b. The new prosthetic licensee will be required to complete a minimum of 30 hours of continuing education per biennium for each subsequent license renewal.

c. The new pedorthic licensee will be required to complete a minimum of 20 hours of continuing education per biennium for each subsequent license renewal.

225.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be in accordance with these rules.

225.2(4) No hours of continuing education will be carried over into the next biennium.

225.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

[**ARC 7991C**, IAB 5/15/24, effective 6/19/24]

645—225.3(148F,272C) Standards.

225.3(1) *General criteria.* A continuing education activity that meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

a. Constitutes an organized program of learning that contributes directly to the professional competency of the licensee;

b. Pertains to subject matters that integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of that said individuals should be considered qualified concerning the subject matter of the program. At the time of audit, the board may request the qualifications of presenters;

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance including:

(1) Date, location, course title, and presenter(s);

(2) Number of program contact hours; and

(3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

225.3(2) *Specific criteria for licensees.*

a. Licensees may obtain continuing education hours of credit by attending workshops, conferences, symposiums, electronically transmitted courses, live interactive conferences, and academic courses that relate directly to the professional competency of the licensee. Official transcripts indicating successful completion of academic courses that apply to the field of orthotics, prosthetics, or pedorthics will be necessary in order to receive the following continuing education credits:

1 academic semester hour = 15 continuing education hours of credit

1 academic trimester hour = 12 continuing education hours of credit

1 academic quarter hour = 10 continuing education hours of credit

b. Licensees may obtain continuing education hours of credit by teaching in an approved college, university, or graduate school. The licensee may receive credit on a one-time basis for the first offering of a course.

c. Continuing education hours of credit may be granted for any of the following activities not to exceed a maximum combined total of 15 hours for orthotists and prosthetists and 10 hours for pedorthists:

(1) Presenting professional programs that meet the criteria listed in this rule. Two hours of credit will be awarded for each hour of presentation. A course schedule or brochure must be maintained for audit.

(2) Authoring research or other activities, the results of which are published in a recognized professional publication. The licensee will receive five hours of credit per page.

(3) Viewing videotaped presentations and electronically transmitted material that have a postcourse test if the following criteria are met:

1. There is a sponsoring group or agency;
2. There is a facilitator or program official present;
3. The program official is not the only attendee; and
4. The program meets all the criteria specified in this rule.

(4) Participating in home study courses that have a certificate of completion and a postcourse test.

(5) Participating in courses that have business-related topics: marketing, time management, government regulations, and other like topics.

(6) Participating in courses that have personal skills topics: career burnout, communication skills, human relations, and other like topics.

(7) Participating in courses that have general health topics: clinical research, CPR, child abuse reporting, and other like topics.

[**ARC 7991C**, IAB 5/15/24, effective 6/19/24]

645—225.4(148F,272C) Audit of continuing education report. In addition to the requirements of 645—4.11(272C), proof of current BOC or ABC certification as an orthotist, prosthetist, or pedorthist will be accepted in lieu of individual certificates of completion for an audit.
[**ARC 7991C**, IAB 5/15/24, effective 6/19/24]

These rules are intended to implement Iowa Code section 272C.2 and chapter 148F.

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CHAPTER 22
REGULATIONS APPLICABLE TO CARRIERS

[Prior to 6/3/87, Transportation Department[820]—(07,F) Ch 8]
[Prior to 7/26/23, see Transportation Department[761] Ch 520]

661—22.1(321) Safety and hazardous materials regulations.

22.1(1) *Regulations.*

a. Motor carrier safety regulations. The Iowa department of public safety adopts the Federal Motor Carrier Safety Regulations, 49 CFR Parts 385, 386 and 390-399 (October 1, 2023).

b. Hazardous materials regulations. The Iowa department of public safety adopts the Federal Hazardous Materials Regulations, 49 CFR Parts 107, 171-173, 177, 178, and 180 (October 1, 2023).

c. Copies of regulations. Copies of the federal regulations may be reviewed at the state law library or through the Internet at www.fmcsa.dot.gov.

22.1(2) *Carriers subject to regulations.*

a. Operators of commercial vehicles, as defined in Iowa Code section 321.1, are subject to the Federal Motor Carrier Safety Regulations adopted in this rule unless exempted under Iowa Code section 321.449.

b. Operators of vehicles transporting hazardous materials in commerce are subject to the Federal Hazardous Materials Regulations adopted in this rule unless exempted under Iowa Code section 321.450.

c. Operators of vehicles for hire, designed to transport 7 or more persons, but fewer than 16, including the driver, must comply with 49 CFR Part 395 of the Federal Motor Carrier Safety Regulations. In addition, operators of vehicles for hire designed to transport 7 or more persons, but fewer than 16, including the driver, are not exempt from logbook requirements afforded the 150-air-mile radius driver under 49 CFR 395.1(e). However, the provisions of 49 CFR Part 395 shall not apply to vehicles offered to the public for hire that are used principally in intracity operation and are regulated by local authorities.

22.1(3) *Declaration of knowledge of regulations.* Operators of commercial vehicles who are subject to the regulations adopted in this rule shall at the time of application for authority to operate in Iowa or upon receipt of their Iowa registration declare knowledge of the Federal Motor Carrier Safety Regulations and Federal Hazardous Materials Regulations adopted in this rule.

This rule is intended to implement Iowa Code sections 321.1, 321.449 and 321.450.

[**ARC 7750B**, IAB 5/6/09, effective 6/10/09; **ARC 8720B**, IAB 5/5/10, effective 6/9/10; **ARC 9493B**, IAB 5/4/11, effective 6/8/11; **ARC 0034C**, IAB 3/7/12, effective 4/11/12; **ARC 0660C**, IAB 4/3/13, effective 5/8/13; **ARC 2019C**, IAB 6/10/15, effective 7/15/15; **ARC 2525C**, IAB 5/11/16, effective 6/15/16; **ARC 2986C**, IAB 3/15/17, effective 4/19/17; **ARC 3840C**, IAB 6/6/18, effective 7/11/18; **ARC 4401C**, IAB 4/10/19, effective 5/15/19; **ARC 5018C**, IAB 4/8/20, effective 5/13/20; **ARC 5547C**, IAB 4/7/21, effective 5/12/21; **ARC 6307C**, IAB 5/4/22, effective 6/8/22; **ARC 6970C**, IAB 4/5/23, effective 5/10/23; Editorial change: IAC Supplement 7/26/23; **ARC 8008C**, IAB 5/15/24, effective 6/19/24]

661—22.2(321) Definitions. The following definitions apply to the regulations adopted in rule 761—520.1(321):

"Any requirements which impose any restrictions upon a person" as used in Iowa Code section 321.449(6) means the requirements in 49 CFR Parts 391 and 395.

"Driver age qualifications" as used in Iowa Code section 321.449(3) means the age qualifications in 49 CFR 391.11(b)(1).

"Driver qualifications" as used in Iowa Code section 321.449(2) means the driver qualifications in 49 CFR Part 391.

"Farm customer" as used in Iowa Code section 321.450(3) means a retail consumer residing on a farm or in a rural area or city with a population of 3000 or less.

"Hours of service" as used in Iowa Code section 321.449(2) means the hours of service requirements in 49 CFR Part 395.

"Record-keeping requirements" as used in Iowa Code section 321.449(2) means the record-keeping requirements in 49 CFR Part 395.

"Rules adopted under this section concerning physical and medical qualifications" as used in Iowa Code sections 321.449(5) and 321.450(2) means the regulations in 49 CFR 391.11(b)(4) and 49 CFR Part 391, Subpart E.

"Rules adopted under this section for a driver of a commercial vehicle" as used in Iowa Code section 321.449(4) means the regulations in 49 CFR Parts 391 and 395.

This rule is intended to implement Iowa Code sections 321.449 and 321.450.

[**ARC 2019C**, IAB 6/10/15, effective 7/15/15; Editorial change: IAC Supplement 7/26/23]

661—22.3(321) Motor carrier safety regulations exemptions.

22.3(1) The following intrastate vehicle operations are exempt from the motor carrier safety regulations concerning inspection in 49 CFR Part 396.17 as adopted in rule 761—520.1(321):

a. Implements of husbandry including nurse tanks as defined in Iowa Code section 321.1.

b. Special mobile equipment (SME) as defined in Iowa Code section 321.1.

c. Unregistered farm trailers as defined in rule 761—400.1(321), pursuant to Iowa Code section 321.123.

d. Motor vehicles registered for a gross weight of five tons or less when used by retail dealers or their employees to deliver hazardous materials, fertilizers, petroleum products and pesticides to farm customers.

22.3(2) Reserved.

This rule is intended to implement Iowa Code sections 321.1, 321.123, 321.449 and 321.450.

[**ARC 2019C**, IAB 6/10/15, effective 7/15/15; Editorial change: IAC Supplement 7/26/23]

661—22.4(321) Hazardous materials exemptions. These exemptions apply to the regulations adopted in rule 761—520.1(321):

22.4(1) Pursuant to Iowa Code section 321.450(3), "retail dealers of fertilizers, petroleum products, and pesticides and their employees while delivering fertilizers, petroleum products, and pesticides to farm customers within a one-hundred-mile radius of their retail place of business" are exempt from 49 CFR 177.804; and, pursuant to Iowa Code section 321.449(4), they are exempt from 49 CFR Parts 391 and 395. However, pursuant to Iowa Code section 321.449, the retail dealers and their employees under the specified conditions are subject to the regulations in 49 CFR Parts 390, 392, 393, 396 and 397.

22.4(2) Rescinded IAB 3/10/99, effective 4/14/99.

This rule is intended to implement Iowa Code section 321.450.

[**ARC 2019C**, IAB 6/10/15, effective 7/15/15; Editorial change: IAC Supplement 7/26/23]

661—22.5(321) Safety fitness.

22.5(1) *New motor carrier safety audits.* Peace officers in the commercial motor vehicle unit of the Iowa department of public safety shall perform safety audits of new motor carriers and shall have the authority to enter a motor carrier's place of business for the purpose of performing these audits. These audits shall be performed in compliance with 49 CFR Part 385 and shall be completed within 18 months from the day the motor carrier commences business.

22.5(2) *Motor carrier compliance reviews.* Peace officers in the commercial motor vehicle unit of the Iowa department of public safety shall perform compliance reviews of motor carriers and shall have the authority to enter a motor carrier's place of business for the purpose of performing these compliance reviews. These compliance reviews shall be performed in compliance with 49 CFR Part 385.

This rule is intended to implement Iowa Code sections 321.449 and 321.450.

[**ARC 5018C**, IAB 4/8/20, effective 5/13/20; Editorial change: IAC Supplement 7/26/23]

661—22.6(321) Out-of-service order. A person shall not operate a commercial vehicle or transport hazardous material in violation of an out-of-service order issued by an Iowa peace officer. An out-of-service order for noncompliance shall be issued when either the vehicle operator is not qualified to operate the vehicle or the vehicle is unsafe to be operated until required repairs are made. The out-of-service order shall be consistent with the North American Uniform Out-of-Service Criteria.

This rule is intended to implement Iowa Code sections 321.3, 321.208A, 321.449, and 321.450.

[Editorial change: IAC Supplement 7/26/23]

661—22.7(321) Driver's statement. A "driver" as used in Iowa Code sections 321.449(5) and 321.450(2) shall carry at all times a notarized statement of employment. The statement shall include the following:

1. The driver's name, address and social security number;
2. The name, address and telephone number of the driver's pre-July 29, 1996, employer;
3. A statement, signed by the pre-July 29, 1996, employer or the employer's authorized representative, that the driver was employed to operate a commercial vehicle only in Iowa; and
4. A statement showing the driver's physical or medical condition existed prior to July 29, 1996.

This rule is intended to implement Iowa Code sections 321.449 and 321.450.

[**ARC 2019C**, IAB 6/10/15, effective 7/15/15; Editorial change: IAC Supplement 7/26/23]

661—22.8(321) Planting and harvesting period. In accordance with the provisions of 49 CFR 395.1(k), the planting and harvesting period pertaining to agricultural operations is January 1 through December 31.

This rule is intended to implement Iowa Code sections 321.449 and 321.450.

[**ARC 2019C**, IAB 6/10/15, effective 7/15/15; **ARC 3483C**, IAB 12/6/17, effective 12/18/17; **ARC 3609C**, IAB 1/31/18, effective 3/7/18; Editorial change: IAC Supplement 7/26/23]

661—22.9(325A) Marking of motor vehicles. "Motor vehicle" is defined in Iowa Code chapter 325A. Before placing any motor vehicle in service, the motor vehicle shall be clearly marked with letters and figures large enough to be easily read at a distance of 50 feet and in a color in contrast to the background. These markings shall be painted on each side of the motor vehicle or may consist of a removable device that meets identification and legibility requirements and is securely placed on each side of the motor vehicle.

22.9(1) Motor carriers operating intrastate only shall display:

a. Name of motor carrier under whose authority the motor vehicle is being operated.

b. U.S. DOT number followed by the letters "IA" if the motor carrier has been issued a number by the Federal Motor Carrier Safety Administration.

22.9(2) Motor carriers operating both interstate and intrastate shall display markings in accordance with 49 CFR Part 390.21.

[**ARC 4346C**, IAB 3/13/19, effective 4/17/19; Editorial change: IAC Supplement 7/26/23]

661—22.10(325A) Bills of lading or freight receipts.

22.10(1) *Requirements.* Every motor carrier operating under a motor carrier permit, except for those motor carriers transporting unprocessed agricultural and horticultural products and livestock, shall issue a bill of lading or receipt on the date freight is received for shipment. The bill of lading or receipt shall show the following:

a. Name of motor carrier.
b. Date and place received.
c. Name of consignor.
d. Name of consignee.
e. Destination.
f. Description of shipment.
g. Signature of motor carrier or agent issuing the bill of lading or receipt.
h. Freight described in apparent good order unless an exception is noted.

22.10(2) *Retention.* There shall be one copy of the bill of lading or receipt for the consignor, one for the consignee and one to be kept by the motor carrier. The copy may be either paper or electronic except that a bill of lading or receipt of freight consisting of hazardous materials must be a paper copy as required in accordance with 49 CFR Part 172. The motor carrier shall carry a copy of the bill of lading or receipt with the cargo and shall show the total of all charges made for the movement of freight. The motor carrier shall keep the bill of lading or receipt for a period of not less than one year. At any reasonable time, the bill of lading or receipt is subject to inspection by the department's representatives and any peace officer.

[**ARC 5047C**, IAB 6/3/20, effective 7/8/20; Editorial change: IAC Supplement 7/26/23]

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[1] Effective date of 520.1(1)*"a"* and *"b";* rescission of 520.1(2)*"b";* and 520.3 delayed until adjournment of the 1993 Regular Session of the General Assembly by the Administrative Rules Review Committee at its meeting held October 14, 1992; delay lifted by the Committee November 10, 1992.

VETERINARY MEDICINE BOARD [811]

Rules renumbered and transferred from agency number[842] to [811] to conform with the reorganization numbering scheme in general.

CHAPTER 11
CONTINUING EDUCATION

CHAPTER 12
STANDARDS OF PRACTICE

CHAPTER 13
COLLECTION PROCEDURES

CHAPTER 14
WAIVER OF RULES

CHAPTER 15
MILITARY SERVICE AND VETERAN RECIPROCITY

CHAPTER 16
CONTESTED CASES

16.12(17A)	Service and filing of pleadings and other papers
16.15(17A)	Motions
16.17(17A)	Continuances
16.19(17A)	Intervention
16.22(17A)	Default
16.23(17A)	Ex parte communication
16.24(17A)	Recording costs
16.25(17A)	Interlocutory appeals
16.26(17A)	Final decision
16.27(17A)	Appeals
16.28(17A)	Applications for rehearing
16.29(17A)	Stays of agency actions
16.30(17A)	No factual dispute contested cases
16.31(272C)	Disciplinary hearing—fees and costs

CHAPTER 1
DESCRIPTION OF ORGANIZATION AND DEFINITIONS

[Prior to 2/8/89, Veterinary Medicine, Board of[842] Ch 1]

811—1.1(17A,169) Organization and duties. The board of veterinary medicine has a membership as established in Iowa Code section 169.5(1)*"a."* One public member may be a graduate of an accredited veterinary technology program and hold a certificate of registration. The state veterinarian serves as secretary. The board may administer examinations to applicants for a license or temporary permit to practice veterinary medicine and to applicants for licenses or certificates for auxiliary personnel. The board investigates and disciplines, as necessary, persons for whom credentials have been issued or who are engaged in an activity regulated by the board.

[**ARC 8010C**, IAB 5/15/24, effective 7/1/24]

811—1.2(17A,169) Headquarters of the board. The official mailing address of the board is: Iowa Board of Veterinary Medicine, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0053.

[**ARC 8010C**, IAB 5/15/24, effective 7/1/24]

811—1.3(17A,169) Meetings. The board meets once a year at its headquarters and may hold additional meetings as necessary for the purpose of administering examinations and conducting its duties. The organizational meeting is the first board meeting of the fiscal year. The fiscal year begins July 1. Three members constitute a quorum authorized to act in the name of the board.

[**ARC 8010C**, IAB 5/15/24, effective 7/1/24]

811—1.4(17A,169) Definitions. As used in the rules of the board, unless the context otherwise entails:

"AAVSB" means the American Association of Veterinary State Boards.

"AVMA" means the American Veterinary Medical Association.

"AVMA-accredited" means colleges in the United States and foreign colleges evaluated by the AVMA Council on Education and found to meet accreditation standards as published.

"AVMA-listed" means a foreign college recognized by the World Health Organization or the government of its own country whose graduates are eligible to practice veterinary medicine in that country and whose graduates may qualify for entrance in the ECFVG certification program.

"Board" means the same as defined in Iowa Code section 169.3(4).

"Certificate of registration" means a certificate issued by the board to a veterinary technician who has met the requirements of Iowa Code section 169.34 and rule 811—8.1(169) to perform authorized veterinary medical services to an animal patient under the supervision of a supervising veterinarian.

"Classroom" means any location where veterinary students are present and educational or research activities are being provided.

"Client" means the patient's owner, owner's designee, or other person responsible for the patient.

"Client consent" means that the licensed veterinarian has informed the client of the reasonable and usual diagnostic and treatment options available and provides an assessment of the risks and benefits of such choices, the prognosis and an estimate of the fees expected for the provision of services. The consent of the client shall be provided in verbal or written form prior to initiation of diagnostic and treatment procedures and documented in the medical record by the licensed veterinarian or veterinary auxiliary personnel. Consent is valid if it indicates that the client's questions have been answered to the client's satisfaction and that the client consents to the recommended treatments or procedures.

"Credential" means, as applicable, a certificate, license, or permit issued by the board.

"Credential holder" means a person who holds a certificate, license, or permit issued by the board.

"Department" means the Iowa department of agriculture and land stewardship.

"ECFVG" means the Educational Commission for Foreign Veterinary Graduates.

"Emergency" means that an animal has been placed in a life-threatening condition and immediate treatment is necessary to sustain life or that death is imminent and action is necessary to relieve extreme pain or suffering.

"ICVA" means the International Council for Veterinary Assessment.

"License" means a credential issued by the board that permits a person to practice veterinary medicine.

"Licensee" means a person holding a license issued by the board.

"NAVLE" means the North American Veterinary Licensing Examination.

"Patient" means an animal or group of animals examined or treated by a licensed veterinarian.

"PAVE" means the Program for the Assessment of Veterinary Education Equivalence.

"Permit" means a temporary educational permit or a temporary in-state practice permit issued by the board pursuant to rule 811—9.1(169).

"Permit holder" means a person holding a permit issued by the board.

"Physical examination" means a veterinarian is physically proximate, hands-on to the patient and subjectively and objectively evaluates the patient's health status through the use of observation, auscultation, palpation, percussion or manipulations, or, for a group of patients, the veterinarian is physically proximate to the group of patients and has subjectively and objectively assessed a representative sample of the patients.

"Premises" means the land, buildings, enclosures, and facilities operated or owned by the client where the patient or representative patients are housed, kept, located, or grazed.

"Qualifying military service personnel" means a person, or the spouse of that person, who is currently or who has been during the past 12 months on federal active duty, state active duty, or national guard duty and has provided sufficient documentation to the board concerning the service and, if applicable, marriage.

"RACE" means the Registry of Approved Continuing Education, which is the national clearinghouse for approval of continuing education providers and their programs. All RACE-approved continuing education providers and programs are listed on the American Association of Veterinary State Boards website.

"Veterinarian" means the same as defined in Iowa Code section 169.3(11).

"Veterinary student certificate" means a certificate issued by the board to a veterinary student to practice on an animal pursuant to 811—subrule 6.7(3).

"VTNE" means the Veterinary Technician National Examination.

"VTSE" means the veterinary technician state examination.

[**ARC 8010C**, IAB 5/15/24, effective 7/1/24]

These rules are intended to implement Iowa Code section 17A.3 and chapters 169 and 272C.

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[Filed ARC 8010C (Notice ARC 7556C, IAB 1/24/24), IAB 5/15/24, effective 7/1/24]

CHAPTER 2
PETITIONS FOR RULEMAKING

[Prior to 2/8/89, Veterinary Medicine, Board of[842] 1.4]

The board of veterinary medicine hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to petitions for rulemaking, which are published at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf on the general assembly's website, with the addition of new rule 811—2.5(17A).

[**ARC 8011C**, IAB 5/15/24, effective 7/1/24]

811—2.1(17A) Petition for rulemaking. In lieu of "(designate office)", insert "Board of Veterinary Medicine at the Iowa Department of Agriculture and Land Stewardship, State Veterinarian, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0053". In lieu of "(AGENCY NAME)", insert "BOARD OF VETERINARY MEDICINE".

[**ARC 8011C**, IAB 5/15/24, effective 7/1/24]

811—2.3(17A) Inquiries. In lieu of "(designate official by full title and address)", insert "the State Veterinarian, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0053".

[**ARC 8011C**, IAB 5/15/24, effective 7/1/24]

811—2.5(17A) Petitions received by the department. If, pursuant to rule 21—3.5(17A), the secretary of agriculture receives and forwards a petition for rulemaking that is not within the rulemaking power of the secretary but that is within the rulemaking power of the board, the petition will be accepted for action by the board.

[**ARC 8011C**, IAB 5/15/24, effective 7/1/24]

These rules are intended to implement Iowa Code chapter 17A.

[Filed 3/2/78, Notice 9/21/77—published 3/22/78, effective 4/26/78]
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[Filed ARC 8011C (Notice ARC 7557C, IAB 1/24/24), IAB 5/15/24, effective 7/1/24]

CHAPTER 3
DECLARATORY ORDERS

[Prior to 2/8/89, Veterinary Medicine, Board of[842] 1.5]

The veterinary medicine board hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to declaratory orders, which are published at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf on the general assembly's website.
[**ARC 8012C**, IAB 5/15/24, effective 7/1/24]

811—3.1(17A,169,272C) Petition for declaratory order. In lieu of "(designate agency)", insert "board of veterinary medicine (hereinafter referred to as 'the board')". In lieu of "(designate agency)" the subsequent times the words are used, insert "board". In lieu of "(designate office)", insert "State Veterinarian's Office, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0053". In lieu of "(AGENCY NAME)", insert "BOARD OF VETERINARY MEDICINE".
[**ARC 8012C**, IAB 5/15/24, effective 7/1/24]

811—3.2(17A,169,272C) Notice of petition. In lieu of "_____days (15 or less)", insert "15 days". In lieu of "(designate agency)", insert "board".
[**ARC 8012C**, IAB 5/15/24, effective 7/1/24]

811—3.3(17A,169,272C) Intervention.

3.3(1) In lieu of "_____ days", insert "20 days".

3.3(2) In lieu of "(designate agency)", insert "the board".

3.3(3) In lieu of "(designate office)", insert "the state veterinarian's office at the department of agriculture and land stewardship in the Wallace State Office Building". In lieu of the words "(designate agency)", insert "board". In lieu of "(AGENCY NAME)", insert "BOARD OF VETERINARY MEDICINE".

Delete paragraph 6 and insert in lieu thereof the following:

"6. A statement that the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding."
[**ARC 8012C**, IAB 5/15/24, effective 7/1/24]

811—3.4(17A,169,272C) Briefs. In lieu of "(designate agency)", insert "board".
[**ARC 8012C**, IAB 5/15/24, effective 7/1/24]

811—3.5(17A,169,272C) Inquiries. In lieu of "(designate official by full title and address)", insert "the State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0053".
[**ARC 8012C**, IAB 5/15/24, effective 7/1/24]

811—3.6(17A,169,272C) Service and filing of petitions and other papers.

3.6(2) In lieu of "(specify office and address)", insert "the State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0053". In lieu of the words "(agency name)", insert "board".

3.6(3) In lieu of the words "(uniform rule on contested cases X.12(17A))", insert "rule 811—10.23(17A,169,272C)".
[**ARC 8012C**, IAB 5/15/24, effective 7/1/24]

811—3.7(17A,169,272C) Consideration. In lieu of "(designate agency)", insert "board".
[**ARC 8012C**, IAB 5/15/24, effective 7/1/24]

811—3.8(17A,169,272C) Action on petition.

3.8(1) In lieu of "(designate agency head)", insert "the chairperson of the board".

3.8(2) In lieu of "(contested case uniform rule X.2(17A))", insert "rule 811—10.14(17A,169,272C)".
[**ARC 8012C**, IAB 5/15/24, effective 7/1/24]

811—3.9(17A,169,272C) Refusal to issue order.

3.9(1) In lieu of "(designate agency)", insert "board".

[**ARC 8012C**, IAB 5/15/24, effective 7/1/24]

811—3.12(17A,169,272C) Effect of a declaratory order. In lieu of "(designate agency)", insert "board". Delete the words "(who consent to be bound)".

[**ARC 8012C**, IAB 5/15/24, effective 7/1/24]

These rules are intended to implement Iowa Code chapters 17A, 169, and 272C.

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[Filed ARC 8012C (Notice ARC 7558C, IAB 1/24/24), IAB 5/15/24, effective 7/1/24]

CHAPTER 4
AGENCY PROCEDURE FOR RULEMAKING

[Prior to 2/8/89, Veterinary Medicine, Board of[842] 1.4]

The veterinary medicine board hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to agency procedure for rulemaking, which are published at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf on the general assembly's website.
[**ARC 8013C**, IAB 5/15/24, effective 7/1/24]

811—4.1(17A,169,272C) Applicability. In lieu of "agency", insert "the board of veterinary medicine (hereinafter referred to as 'the board')".
[**ARC 8013C**, IAB 5/15/24, effective 7/1/24]

811—4.3(17A,169,272C) Public rulemaking docket.

4.3(2) In lieu of "(commission, board, council, director)", insert "board".
[**ARC 8013C**, IAB 5/15/24, effective 7/1/24]

811—4.4(17A,169,272C) Notice of proposed rulemaking.

4.4(3) In lieu of "(specify time period)", insert "one year".
[**ARC 8013C**, IAB 5/15/24, effective 7/1/24]

811—4.5(17A,169,272C) Public participation.

4.5(1) In lieu of "(identify office and address)", insert "the State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0053".

4.5(5) In lieu of "(designate office and telephone number)", insert "the state veterinarian office at 515.281.8617".
[**ARC 8013C**, IAB 5/15/24, effective 7/1/24]

811—4.6(17A,169,272C) Regulatory analysis.

4.6(2) In lieu of "(designate office)", insert "state veterinarian's office".
[**ARC 8013C**, IAB 5/15/24, effective 7/1/24]

811—4.10(17A,169,272C) Exemptions from public rulemaking procedures.

4.10(2) This subrule is not adopted.
[**ARC 8013C**, IAB 5/15/24, effective 7/1/24]

811—4.11(17A,169,272C) Concise statement of reasons.

4.11(1) In lieu of "(specify the office and address)", insert "the State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0053".
[**ARC 8013C**, IAB 5/15/24, effective 7/1/24]

811—4.13(17A,169,272C) Agency rulemaking record.

4.13(2) In lieu of "(agency head)", insert "chairperson of the board".
[**ARC 8013C**, IAB 5/15/24, effective 7/1/24]

These rules are intended to implement Iowa Code chapters 17A, 169, and 272C.

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[Filed ARC 8013C (Notice ARC 7559C, IAB 1/24/24), IAB 5/15/24, effective 7/1/24]

CHAPTER 5
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The board of veterinary medicine hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to fair information practices, which are published at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf on the general assembly's website, with the addition of new rules 811—5.9(17A,22) through 811—5.16(17A,22).
[**ARC 8014C**, IAB 5/15/24, effective 7/1/24]

811—5.1(17A,22) Definitions. In lieu of "(official or body issuing these rules)", insert "board of veterinary medicine".
[**ARC 8014C**, IAB 5/15/24, effective 7/1/24]

811—5.3(17A,22) Requests for access to records.

5.3(1) *Location of record.* In lieu of "(insert agency head)", insert "state veterinarian as secretary of the board of veterinary medicine". In lieu of "(insert agency name and address)", insert "Board of Veterinary Medicine, State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0053".

5.3(2) *Office hours.* In lieu of the parenthetical statement, insert "8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays".

5.3(7) *Fees.*

a. When charged. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

c. Supervisory fee. In lieu of "(specify time period)", insert "one-half hour".
[**ARC 8014C**, IAB 5/15/24, effective 7/1/24]

811—5.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of "(designate office)", insert "the board of veterinary medicine".
[**ARC 8014C**, IAB 5/15/24, effective 7/1/24]

811—5.9(17A,22) Disclosures without the consent of the subject.

5.9(1) Open records are routinely disclosed without the consent of the subject.

5.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. The following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 811—5.10(17A,22) or in any notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject.

e. To the legislative services agency under Iowa Code section 2A.3.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.
[**ARC 8014C**, IAB 5/15/24, effective 7/1/24]

811—5.10(17A,22) Routine use.

5.10(1) "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose that is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

5.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections, appeals, and licensing for matters in which it is performing services or functions on behalf of the agency.

d. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

[**ARC 8014C**, IAB 5/15/24, effective 7/1/24]

811—5.11(17A,22) Consensual disclosure of confidential records.

5.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 811—5.7(17A,22).

5.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official that seeks the official's intervention on behalf of the subject in a matter that involves the agency may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

[**ARC 8014C**, IAB 5/15/24, effective 7/1/24]

811—5.12(17A,22) Release to subject.

5.12(1) A written request to review confidential records may be filed by the subject of the record as provided in rule 811—5.6(17A,22). The agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by Iowa Code section 22.7(5).

d. Any others authorized by law.

5.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

[**ARC 8014C**, IAB 5/15/24, effective 7/1/24]

811—5.13(17A,22) Availability of records.

5.13(1) *Open records.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

5.13(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection:

a. Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)

b. Tax records made available to the agency. (Iowa Code sections 422.20 and 422.72)

c. Records that are exempt from disclosure under Iowa Code section 22.7.

d. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))

e. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)*"d."*

f. Those portions of agency staff manuals, instructions or other statements issued that set forth criteria or guidelines to be used by agency staff in circumstances authorized by Iowa Code sections 17A.2 and 17A.3.

g. Records that constitute attorney work product, constitute attorney-client communications, or are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

h. Any other records considered confidential by law.

5.13(3) *Authority to release confidential records.* The agency may have discretion to disclose some confidential records that are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute that authorizes limited or discretionary disclosure as provided in rule 811—5.4(17A,22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 5.4(3).

[**ARC 8014C**, IAB 5/15/24, effective 7/1/24]

811—5.14(17A,22) Personally identifiable information. The agency maintains systems of records that contain personally identifiable information. Unless otherwise stated, the authority for this agency to maintain the record is provided by Iowa Code chapter 169. The record systems maintained by the agency are:

5.14(1) *Personnel files.* Employees of the agency are employed through the department of agriculture and land stewardship. Through the department of agriculture and land stewardship, the agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

5.14(2) *Litigation files.* These files or records contain information regarding litigation or anticipated litigation, which include judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorneys' notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain materials that are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons seeking copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court that maintains the official copy.

5.14(3) *Contested case matters.* These records are collected and maintained pursuant to Iowa Code sections 17A.3(1)*"d,"*17A.3(2), and 17A.12, and the Iowa Code sections noted in subrule 5.14(4). Contested case matters include all pleadings, motions, briefs, orders, transcripts, exhibits, and physical evidence utilized in the resolution of the matter, and may, unless released by the credential holder, be confidential as stated in subrule 5.14(4). These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system.

5.14(4) *Credential records.* Under Iowa Code chapter 169, the board regulates by license veterinarians; regulates by certificate veterinary technicians, assistants and veterinary students; and regulates by temporary permit veterinarians credentialed under Iowa Code section 169.11 and rule 811—9.1(169). Credential records include, but are not limited to, information identifying the credential holder by name or code, location, and form of business entity, including the names of

corporate principals. These records may include examinations, complaints, compliance activities and investigatory reports that are confidential. These records may include confidential information protected from disclosure under Iowa Code sections 22.7, 169.6 and 272.6. These records are maintained jointly with the department of agriculture and land stewardship. These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system.

5.14(5) *Laboratory reports.* In furtherance of licensure and certification regulation under subrule 5.14(4), the board may procure laboratory reports consisting of analytical results of samples. These records may include confidential information protected from disclosure under Iowa Code section 22.7(3), 22.7(6), or 22.7(18), as well as those provisions stated in subrule 5.14(4). These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system. These records are identified by the name or code of the subject of the investigation.
[**ARC 8014C**, IAB 5/15/24, effective 7/1/24]

811—5.15(17A,22) Other groups of records. Other groups of records are maintained by the agency other than the records defined in rule 811—5.1(17A,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in rule 811—5.13(17A,22). The records listed may contain information about individuals.

5.15(1) *Administrative records.* This includes documents concerning budget, property inventory, purchasing, yearly reports, office policies for employees, time sheets, printing and supply requisitions.

5.15(2) *Publications.* The office receives a number of books, periodicals, newsletters, government documents, etc. These materials would generally be open to the public but may be protected by copyright law. Most publications of general interest are available in the state law library.

5.15(3) *Rulemaking records.* Rulemaking records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is available for public inspection.

5.15(4) *Board records.* Agendas, minutes, and materials prepared or maintained by the board are available from the office, except those records concerning closed sessions that are exempt from disclosure under Iowa Code section 21.5 or that are otherwise confidential by law. Board records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not stored on an automated data processing system.

5.15(5) *Other records.* All other records that are not exempted from disclosure by law.
[**ARC 8014C**, IAB 5/15/24, effective 7/1/24]

811—5.16(17A,22) Data processing systems. None of the data processing systems used by the agency permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.
[**ARC 8014C**, IAB 5/15/24, effective 7/1/24]

811—5.17(169,252J,272D) Release of confidential licensing information for collection purposes. Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit or with the centralized collection unit of the department of revenue through manual or automated means for the sole purpose of identifying applicants or credential holders subject to enforcement under Iowa Code chapter 252J, 598 or 272D.
[**ARC 8014C**, IAB 5/15/24, effective 7/1/24]

These rules are intended to implement Iowa Code chapters 17A, 22, 169 and 252J.

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[Filed ARC 8014C (Notice ARC 7560C, IAB 1/24/24), IAB 5/15/24, effective 7/1/24]

CHAPTER 6
APPLICATION FOR VETERINARY LICENSURE

[Prior to 2/8/89, Veterinary Medicine, Board of[842] Ch 2]
Chapter 6, Suspension or Revocation of License, rescinded IAC 2/8/89; see 811—Ch 10.

811—6.1(169) Procedure.

6.1(1) *Application to take examination.* Any person desiring to take the NAVLE in Iowa for a license to practice veterinary medicine applies to the board in accordance with the guidelines and timelines established by the ICVA. The applicant will submit proof of completing the application process with ICVA along with the administrative fee by sending the proof and fee to:

Iowa Board of Veterinary Medicine
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 E. 9th Street
Des Moines, Iowa 50319-0053

Proof of NAVLE application is to be submitted on forms provided by the board in accordance with the guidelines and timelines established by the ICVA. The completed form is to be notarized and includes one current passport size and quality photograph of the applicant. Incomplete applications will be returned to the applicant along with the tendered fee and a written statement setting forth the reasons for such rejections.

A completed form is to be accompanied by satisfactory evidence of the applicant having graduated from an AVMA-accredited school of veterinary medicine or satisfactory evidence that the applicant is expected to graduate within six months of the date of the examination.

Applications to take the NAVLE will not be accepted from any person who has previously taken and passed that examination in any jurisdiction, except on case-by-case petition to the board for good cause shown or other order of the board.

6.1(2) *License requirements.* Prior to the board's issuance of a license, the applicant will:

a. Successfully complete the NAVLE as provided in rule 811—7.1(169);

b. Remit the proper application fee for licensure;

c. Graduate from:

(1) An AVMA-accredited school of veterinary medicine; or

(2) An AVMA-listed school of veterinary medicine and have received a certificate from either ECFVG or PAVE;

d. Provide a statement indicating all jurisdictions in which the applicant is or has ever been licensed to practice veterinary medicine and consent to release to the board license information from jurisdictions in which the applicant is or has ever been licensed;

e. Provide information or consent to the release of information pertinent to the character and education of the applicant as the board may deem necessary in order to evaluate the applicant's qualifications; and

f. Submit evidence of having completed at least 60 hours of approved continuing education within the last three licensing years. New graduates and applicants within one year after the date of graduation are exempt from continuing education requirements for initial licensing. Applicants who apply more than one year but less than two years after the date of graduation need to complete at least 20 hours of approved continuing education. Applicants who apply more than two years but less than three years after the date of graduation need to complete at least 40 hours of approved continuing education. As used in this paragraph, "date of graduation" also includes the date of PAVE or ECFVG certification.

A license issued during a triennium, upon the applicant's completion of these requirements and payment of the prorated triennial license fee, is issued for the balance of the triennium. A license expires on June 30 of the third year of the triennium.

[**ARC 8015C**, IAB 5/15/24, effective 7/1/24]

811—6.2(169) Fee schedule for veterinarians. The following fees are collected by the board and will not be refunded except by board action in unusual instances such as documented illness of the applicant,

death of the applicant, inability of the applicant to comply with the rules of the board, or withdrawal of an examination application provided withdrawal is received in writing 45 days prior to the examination date. However, the state fees may be waived for qualifying military service personnel upon request. Examination fees are not transferable from one examination to another.

The fee for the NAVLE, which is utilized by the board as a part of the licensure process, is the fee charged that year by ICVA, plus an administrative fee payable to the board.

Based on the board's anticipated financial requirements, the following fees are hereby adopted:

License—application fee	$50
NAVLE examination fee	set by ICVA
Board administrative fee for NAVLE	$25
Triennial license	$60
Late renewal penalty	$100
License by endorsement—application fee	$50
License by verification—application fee	$50
Reactivation fee for lapsed or inactive license	$100
Reinstatement fee	$100
Duplicate license	$15
Temporary permit	$35
Temporary permit application fee	$15
Official licensure verification	$15
Charge for insufficient funds or returned checks	$25

This rule is intended to implement Iowa Code sections 169.5 and 169.12.
[**ARC 8015C**, IAB 5/15/24, effective 7/1/24]

811—6.3(169) Reactivation fee. All applications for reactivation of a lapsed or inactive license to practice veterinary medicine are filed with the secretary of the board, together with the then-current license fee, the current reactivation fee, and all applicable penalties for a lapsed or inactive license.
[**ARC 8015C**, IAB 5/15/24, effective 7/1/24]

811—6.4(169) Graduates of foreign schools. Graduates of foreign veterinary schools may become eligible for examination and licensure by either of the following methods:

6.4(1) *Examination eligibility through ECFVG.* Graduates of foreign veterinary schools that, pursuant to the AVMA criteria, are not AVMA-accredited but are AVMA-listed may make application to take the NAVLE in this state provided that the application includes a copy of the applicant's diploma or certificate indicating the award of a degree in veterinary medicine from an AVMA-listed college and a letter from the ECFVG verifying that the applicant is or will be participating in an ECFVG certification program.

6.4(2) *Licensure eligibility through ECFVG.* Graduates of foreign veterinary schools that are not AVMA-accredited but are AVMA-listed will not be considered for licensing until they have received the certificate granted by the ECFVG. A license will not be issued to an applicant until the applicant submits a certified copy of the applicant's ECFVG certificate.

6.4(3) *Examination eligibility through PAVE.* Graduates of foreign veterinary schools may make application to take the NAVLE in this state provided that the application includes a certified copy of the applicant's diploma or certificate indicating the award of a degree in veterinary medicine from a foreign veterinary school and a letter from the AAVSB on behalf of PAVE verifying that the applicant is participating in the PAVE certification program administered by the AAVSB, and has met the requirements for taking the NAVLE.

6.4(4) *Licensure eligibility through PAVE.* Graduates of foreign veterinary schools will not be considered for licensing until they have received the certificate granted by PAVE. A license will not be issued to an applicant until the applicant submits a copy of the applicant's PAVE certificate.
[**ARC 8015C**, IAB 5/15/24, effective 7/1/24]

811—6.5(169) License by endorsement.

6.5(1) A license by endorsement may be granted by the board pursuant to either Iowa Code section 169.10(1) or 169.10(2). An applicant may apply for a license by endorsement on a form provided by the board and pay the application fee and triennial license fee. In addition to the information specified in Iowa Code section 169.10, the applicant will supply the items referenced in paragraphs 6.1(2)*"d"* through *"f."*

6.5(2) For an applicant with a non-Iowa license seeking licensure under Iowa Code section 169.10(1), the following applies:

a. If the applicant's non-Iowa license was issued between December 31, 1964, and December 31, 1979, the applicant successfully completed the National Board Examination (NBE).

b. If the applicant's non-Iowa license was issued between January 1, 1980, and December 31, 2000, the applicant successfully completed the NBE and the Clinical Competency Test (CCT).

c. If the applicant's non-Iowa license was issued on or after January 1, 2001, the applicant successfully completed the NAVLE in accordance with rule 811—7.1(169).

6.5(3) An applicant who is a diplomate under Iowa Code section 169.10(2) will also include a copy of the applicant's board or college specialty certificate. For the purpose of this rule, a specialty board or college means a specialty board or college that has been officially recognized by the AVMA. Changes of specialty status shall be reported to the board within 30 days of the action.
[**ARC 8015C**, IAB 5/15/24, effective 7/1/24]

811—6.6(272C) Licensure by verification. Licensure by verification is available in accordance with the following:

6.6(1) *Eligibility.* A person may seek licensure by verification if the person is licensed in at least one other jurisdiction.

6.6(2) *Board application.* The applicant will submit the following:

a. A completed application for licensure by verification.

b. Payment of the application fee.

c. A verification form, completed by the licensing authority in the jurisdiction that issued the applicant's license, verifying that the applicant's license in that jurisdiction complies with the requirements of Iowa Code section 272C.12. The completed verification form is sent directly from the licensing authority to the board. This form is available on the board's website.

d. A copy of the relevant disciplinary documents if another jurisdiction has taken disciplinary action against the applicant.

6.6(3) *Applicants with prior discipline or pending licensing complaints or investigations.* If another jurisdiction has taken disciplinary action against an applicant or if the applicant has a complaint, allegation, or investigation relating to unprofessional conduct pending before any regulating entity in another jurisdiction, the board will proceed according to Iowa Code section 272C.12(1)*"f."*
[**ARC 8015C**, IAB 5/15/24, effective 7/1/24]

811—6.7(169) Issuance of limited license; specialization.

6.7(1) The board may grant a license to practice veterinary medicine within a limited and specified scope:

a. As an option for board discipline under 811—Chapter 10.

b. To a qualified member of the faculty of the Iowa State University College of Veterinary Medicine.

c. To an applicant requesting limited or specialized status.

6.7(2) A licensed veterinarian will not claim or imply specialization unless the veterinarian is a diplomate in good standing of the respective specialty board or college recognized by the AVMA.

6.7(3) Veterinary student certificate.

a. The board may issue a veterinary student certificate to a veterinary student who is attending an AVMA-accredited college of veterinary medicine and in good academic standing, upon endorsement by the college that the student is competent to perform veterinary duties under the direction of an instructor of veterinary medicine or under the supervision of a supervising veterinarian. The college shall update the board if the veterinary student is no longer attending or in good academic standing with the school.

b. Unless extended by the board, the certificates are valid for no more than one year and expire each year on May 31. The board may grant an extension of the certificate for up to one year under extenuating circumstances.

c. Veterinary student certificate holders are barred from administering rabies vaccine to dogs as described in Iowa Code section 351.35 and signing a certificate of veterinary inspection as described in Iowa Code section 163.12.

6.7(4) Limited licensure for faculty. Faculty, not including residents or interns, at Iowa State University College of Veterinary Medicine may be issued a limited license to practice veterinary medicine. The applicant for a limited license for faculty has graduated from an AVMA-accredited or AVMA-listed school of veterinary medicine or has received a PAVE or ECFVG certificate and submitted a completed application and the necessary fees. Holders of limited licenses for faculty are limited to duties performed in the classroom during periods of employment at the college.

[**ARC 8015C**, IAB 5/15/24, effective 7/1/24]

811—6.8(169) License renewal.

6.8(1) A license to practice veterinary medicine, including a limited or specialized license, is issued for a three-year period, except that new licenses issued during a triennium are issued for the balance of that triennium. A license expires on June 30 of the third year of the triennium.

6.8(2) At least two months before the end of a triennium, a renewal notice will be sent to each licensee at the last address in the board's file. Failure to receive the notice does not relieve the licensee of the obligation to pay triennium renewal fees on or before June 30.

6.8(3) The license renewal application will include a statement that certifies the jurisdictions in which the licensee is currently or has in the past been licensed to practice veterinary medicine.

6.8(4) Renewal fees shall be received by the board on or before the end of the triennium on June 30. Whenever renewal fees are not received as specified, the license lapses and the practice of veterinary medicine ceases until all renewal fees and penalty fees are received by the board.

6.8(5) If the renewal fee has not been received by the board before the license has lapsed, an application for renewal filed with the board needs to include a renewal fee in addition to the reactivation fee and the late renewal penalty fee.

[**ARC 8015C**, IAB 5/15/24, effective 7/1/24]

811—6.9(169) Renewal, lapsed or inactive license. A veterinarian whose license has lapsed may renew an expired license in circumstances authorized by Iowa Code section 169.12(2). A veterinarian whose license has lapsed or has been placed on inactive status, prior to receiving active status licensure in the practice of veterinary medicine in the state of Iowa, satisfies the requirements in either subrule 6.9(1) or 6.9(2) for renewal of a lapsed or inactive license as follows:

6.9(1) *Renewal of a lapsed or inactive license.* An applicant for renewal of a lapsed or inactive license needs to do the following:

a. Submit written application for renewal of a lapsed or inactive license to the board upon forms provided by the board; and

b. Furnish evidence of compliance with continuing education requirements specified in rule 811—11.3(169).

6.9(2) *Renewal by endorsement.* An applicant for renewal by endorsement may submit an application for renewal by endorsement by following the procedures set out in rule 811—6.5(169).

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These rules are intended to implement Iowa Code chapters 17A, 169 and 272C.

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CHAPTER 7
VETERINARY EXAMINATIONS

[Prior to 2/8/89, Veterinary Medicine, Board of[842] Ch 3]

811—7.1(169) Examination procedure. In order to successfully complete the NAVLE, an applicant will achieve the minimum passing score as determined by the ICVA. The NAVLE is prepared by the ICVA for use by the board.

7.1(1) The dates for the examination are set by the ICVA. Examinations are held at a site to be determined by the ICVA.

7.1(2) Upon request, the ICVA will attempt to provide adequate individualized testing arrangements for applicants who establish the existence of a verified disability, including a verified learning disability, consistent with the provisions of the Americans with Disabilities Act of 1990 and regulations promulgated thereunder. Verification may be provided by a testing or evaluation agency approved by the ICVA or by a physician approved by the ICVA.

[**ARC 8016C**, IAB 5/15/24, effective 7/1/24]

811—7.2(169) Conduct. An examinee who violates any of the ICVA rules or instructions applicable to them may be declared by the board to have failed the examination.

7.2(1) The ability of an examinee to read and interpret instructions will be evaluated and considered by the board as part of the examination.

7.2(2) Any examinee who gives or receives unauthorized assistance in any portion of the examination may be dismissed from the examination.

7.2(3) If the examinee fails the examination and desires to take a subsequent examination, the examinee will notify the board at least 60 days prior to the first day of the next examination, will certify that the material statements contained in the original applications are currently true and correct, will supplement that information as necessary, and will pay the requisite fee.

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CHAPTER 8
AUXILIARY PERSONNEL
[Prior to 2/8/89, Veterinary Medicine, Board of[842] Ch 4]

811—8.1(169) Registered veterinary technician—certificate of registration.

8.1(1) In addition to the requirements set forth in Iowa Code section 169.34(1), prior to issuance of a certificate of registration, the applicant will:

a. Successfully pass the VTSE as approved by the board;

b. Provide a statement indicating all jurisdictions in which the applicant is or has ever been certified, licensed, permitted, or otherwise credentialed to perform authorized medical services to an animal patient as a veterinary technician, and consent to release to the board such information from jurisdictions in which the applicant is or has ever been certified, licensed, permitted, or otherwise credentialed;

c. Provide information or consent to the release of information pertinent to the character and education of the applicant as the board may deem necessary in order to evaluate the applicant's qualifications; and

d. Submit evidence of having completed at least 30 hours of approved continuing education within the last three calendar years from the date of the application, unless the applicant recently passed the VTNE within the last three calendar years. New graduates and applicants within one year after the date of graduation are exempt from continuing education requirements for initial certification. Applicants who apply more than one year but less than two years after the date of graduation need to complete at least ten hours of approved continuing education. Applicants who apply more than two years but less than three years after the date of graduation need to complete at least 20 hours of approved continuing education. A maximum of ten hours of continuing education may be achieved by the completion of approved distance education courses.

8.1(2) A certificate of registration issued during a triennium, upon the applicant's completion of these requirements and payment of the prorated triennial certificate of registration fee, is issued for the balance of the triennium. A certificate of registration expires on December 31 of the third year of the triennium.

[**ARC 8017C**, IAB 5/15/24, effective 7/1/24]

811—8.2(169) Fee schedule for registered veterinary technicians.

8.2(1) The following fees are collected by the board and will not be refunded except by board action in unusual circumstances, such as documented illness of the applicant, death of the applicant, inability of the applicant to comply with the rules of the board, or withdrawal of an examination application provided withdrawal is received in writing 45 days prior to the examination date. However, the fees may be waived for qualifying military service personnel upon request. Examination fees are not transferable from one examination to another.

8.2(2) Based on the board's anticipated financial requirements, the following fees are hereby adopted:

Certificate of registration application fee	$45
VTNE	set by AAVSB
VTSE	set by AAVSB
Triennial certificate of registration	$30
Late renewal penalty	$50
License by endorsement—application fee	$45
License by verification—application fee	$45
Reactivation fee for lapsed or inactive certificate of registration	$100
Official certificate or registration verification	$15
Charge for insufficient funds or returned checks	$25

[**ARC 8017C**, IAB 5/15/24, effective 7/1/24]

811—8.3(169) Veterinary technician state examination. The VTSE is given at least once annually at a site or sites to be designated by the board at least 60 days before the date of the examination. The board may provide for additional veterinary technician state examinations as deemed appropriate. In the event the board provides for additional examinations, the site or sites of the examination are designated by the board at least 60 days prior to the date of the examination.

8.3(1) In order for an applicant to sit for the VTSE, the application and fee will need to be received by the board at least 30 days before the date of the examination. The fee for the VTSE may be waived for qualifying military service personnel upon request.

8.3(2) An applicant who fails to earn a passing score on the VTSE is entitled to retake the examination not earlier than 90 days since the applicant last took the examination. The applicant will submit a new application and the application fee in accordance with subrule 8.3(1) to retake the VTSE. An applicant is limited to five total attempts at the VTSE; any additional applications to retake the examination beyond the five allowable attempts may be considered by the board and may be granted at the board's discretion.

[**ARC 8017C**, IAB 5/15/24, effective 7/1/24]

811—8.4(272C) Registration as veterinary technician by verification. Registration by verification for a veterinary technician is available in accordance with the following:

8.4(1) *Eligibility.* A person may seek registration by verification if the person is registered or licensed in at least one other jurisdiction and in circumstances set forth by Iowa Code section 272C.12(1).

8.4(2) *Board application.* The applicant will submit the following:

a. A completed application for registration by verification.

b. Payment of the application fee.

c. A verification form, completed by the licensing/registration authority in the jurisdiction that issued the applicant's license or registration, verifying that the applicant's license or registration in that jurisdiction complies with the requirements of Iowa Code section 272C.12. The completed verification form is sent directly from the licensing/registration authority to the board. This form is available on the board's website.

d. Proof of passing the VTSE.

e. A copy of the relevant disciplinary documents if another jurisdiction has taken disciplinary action against the applicant.

The board can waive these requirements pursuant to Iowa Code section 169.34(1)*"e."*

8.4(3) *Applicants with prior discipline or pending licensing complaints or investigations.* If another jurisdiction has taken disciplinary action against an applicant or if the applicant has a complaint, allegation, or investigation relating to unprofessional conduct pending before any regulating entity in another jurisdiction, the board will proceed according to Iowa Code section 272C.12(1)*"f."*

8.4(4) *Limitations.* A person who has had a license/registration revoked, or who has voluntarily surrendered a license/registration while under investigation for unprofessional conduct in another jurisdiction, is ineligible for registration by verification.
[**ARC 8017C**, IAB 5/15/24, effective 7/1/24]

811—8.5(272C) Applicants with work experience in jurisdictions without licensure requirements.

8.5(1) *Work experience.* An applicant for initial registration who has relocated to Iowa from another jurisdiction that did not need a professional license or registration to practice in the profession may be considered to have met any educational and training requirements if the person meets the requirements detailed in Iowa Code section 272C.13(1). The applicant will satisfy all other requirements, including passing any necessary examinations, to receive a license.

8.5(2) *Board application.* The applicant will submit the following:

a. A completed application for registration through work experience.

b. Payment of the application fee.

c. Proof of passing both the VTNE and VTSE.

8.5(3) *Mandatory documentation.* An applicant who wishes to substitute work experience in lieu of satisfying applicable education or training requirements carries the burden of providing all of the following by submitting relevant documents as part of a completed registration application:

a. Proof of Iowa residency, which may include one or more of the following:

(1) A residential mortgage, lease, or rental agreement;

(2) A utility bill;

(3) A bank statement;

(4) A paycheck or pay stub;

(5) A property tax statement;

(6) A document issued by the federal or state government;

(7) Any other board-approved document that reliably confirms Iowa residency.

b. Proof of three or more years of work experience within the four years preceding the application for registration, which may include one or more of the following:

(1) A letter from the applicant's prior employer documenting the dates of employment;

(2) Paychecks or pay stubs; or

(3) Any other board-approved evidence of sufficient work experience.

c. Proof that the work experience was in a practice with a scope of practice substantially similar to that for the registration sought in Iowa, which includes:

(1) A written statement by the applicant detailing the scope of practice; and

(2) Business or marketing materials detailing the services provided.

d. Proof that a professional license/registration was not mandatory in the other state, which may include:

(1) Copies of applicable laws;

(2) Materials from a website operated by a governmental entity; or

(3) Materials from a national professional association.
[**ARC 8017C**, IAB 5/15/24, effective 7/1/24]

811—8.6(169,272C) Endorsed certificate of registration.

8.6(1) The board may issue an endorsed certificate of registration to an individual who satisfies the requirements set forth in Iowa Code section 169.34(2) and who satisfies the following:

a. Successfully pass the VTSE as approved by the board;

b. Provide a statement indicating all jurisdictions in which the applicant is or has ever been certified, licensed, permitted, or otherwise credentialed to perform authorized medical services to an animal patient as a veterinary technician, and consent to release to the board such information from jurisdictions in which the applicant is or has ever been certified, licensed, permitted, or otherwise credentialed;

c. Provide information or consent to the release of information pertinent to the character and education of the applicant as the board may deem necessary in order to evaluate the applicant's qualifications; and

d. Submit evidence of having completed at least 30 hours of approved continuing education within the last three calendar years from the date of the application. New graduates and applicants within one year after the date of graduation are exempt from continuing education requirements for initial certification. Applicants who apply more than one year but less than two years after the date of graduation need to complete at least ten hours of approved continuing education. Applicants who apply more than two years but less than three years after the date of graduation need to complete at least 40 hours of approved continuing education.

8.6(2) The board can waive these requirements pursuant to Iowa Code section 169.34(2)*"e."*

[**ARC 8017C**, IAB 5/15/24, effective 7/1/24]

811—8.7(169) Supervision of veterinary auxiliary personnel.

8.7(1) *Emergencies.* Under conditions of an emergency, veterinarian auxiliary personnel may render without supervision such lifesaving aid and treatment under previously established protocols or real time oral instruction via telephone or other means of immediate communication with a veterinarian. Even under conditions of emergency, a veterinary assistant or veterinary technician student may not render additional lifesaving aid and treatment as follows: the administration of emergency pharmaceuticals. Emergency aid and treatment, if rendered to an animal not in the presence of a licensed veterinarian, may only be continued under the supervision of a licensed veterinarian, which in the case of emergency may include telephone or other means of immediate communication with a veterinarian en route to the site, until the veterinarian arrives in a timely manner.

8.7(2) *Veterinary assistants.* The following delegated tasks may be performed by a veterinary assistant under the indicated level of supervision if the supervising veterinarian has delegated the task.

a. Tasks that require direct supervision:

(1) Take patient's medical history.
(2) Take patient temperature, pulse, and respiratory rate (TPR).
(3) Oscillometric measurement of blood pressure.
(4) Record client/patient complaint(s).
(5) Administer subcutaneous (SQ) and intramuscular (IM) injections.
(6) Administer SQ fluid.
(7) Maintain intravenous (IV) fluids.
(8) Implant growth-promoting implants.
(9) Manage a nasogastric (NG) tube, not including insertion or placement.
(10) Administer and monitor light/moderate sedation.
(11) Apply government-required identification.
(12) Administer internal and external parasite treatments.
(13) Vaccinate livestock.
(14) Vaccinate companion animals (excluding canine rabies, pursuant to Iowa Code section 351.33).
(15) Radiograph and ultrasound imaging and positioning.
(16) Ocular tonometry, fluorescein stain, and Schirmer Tear Testing to monitor animal eye health.
(17) Remove sutures, staples, or drains.
(18) Venipuncture for the purposes of IV injections and blood withdrawal for sampling.
(19) IV catheter placement.
(20) Draining and lancing abscesses.
(21) Laser therapy treatments.
(22) Take ear swabs and skin impression (needleless) cytology samples.
(23) Conduct livestock necropsy for sample collection purposes.
(24) Administer medication(s) prescribed by a veterinarian other than medications administered while boarding the animal.
(25) Rectal palpation for pregnancy testing of a bovine.

b. Tasks that require immediate supervision:

(1) Monitor heavy sedation.

(2) Surgical assistance (including but not limited to passing instruments, tissue retraction, assisting in hemostasis—utilizing sponges and clamps).

(3) Measure blood pressure via doppler.

(4) Nonsurgical castration.

(5) Nonsurgical dehorning.

(6) Place an endotracheal tube (ET) tube.

(7) Administer, maintain, and monitor general anesthesia and recovery from general anesthesia.

(8) Administer an enema.

(9) Animal dynamic rehabilitation therapies.

(10) Dental prophylaxis (teeth cleaning).

c. Tasks that veterinary assistants are not permitted to perform:

(1) Reading ear and skin cytology.

(2) Equine floating teeth services.

(3) Gingival resection.

(4) Prohibitions contained in Iowa Code sections 351.33 and 169.32(2).

(5) Expression of urinary bladder.

8.7(3) *Veterinary technician student.* A veterinary technician student may perform tasks as allowed in subrule 8.7(4) for registered veterinary technicians except that the tasks must be performed under the indicated level of supervision if the supervising veterinarian has delegated the task.

a. Tasks that require direct supervision include all tasks requiring indirect supervision if they were performed by a registered veterinary technician.

b. Tasks that require immediate supervision include all tasks requiring immediate or direct supervision if they were performed by a registered veterinary technician.

c. Tasks that are not allowed include all tasks that are not allowed to be performed by a registered veterinary technician.

8.7(4) *Registered veterinary technician.* The following delegated tasks may be performed by a registered veterinary technician under the indicated level of supervision if the supervising veterinarian has delegated the task. Unless a different level of supervision is otherwise provided for in subrule 8.7(4), registered veterinary technicians may perform those tasks listed in subrule 8.7(2) for veterinary assistants under the same level of supervision applicable to veterinary assistants.

a. Tasks that require indirect supervision:

(1) Administration, preparation, and application of treatments, including but not limited to drugs, medications, controlled substances, biological and immunological agents in livestock and previously established biologic and immunologic protocols in companion animals, unless prohibited by government regulation.

(2) Intravenous catheterizations and maintenance of intra-arterial catheterizations.

(3) Collection, preparation, and recording of cellular or microbiological samples impressions or other nonsurgical methods (including skin scrapings), except when in conflict with government regulations.

(4) Collection of urine by bladder expression, catheterization (unobstructed) and insertion of an indwelling urinary catheter.

(5) Monitoring, including but not limited to electrocardiogram (ECG), blood pressure, carbon dioxide (CO2) and blood oxygen saturation.

(6) Radiography and ultrasonography imaging.

(7) Clinical laboratory test procedures.

(8) Laser therapy.

(9) Staple removal.

(10) Application of splints and slings for the temporary immobilization of fractures.

(11) Euthanasia of livestock as defined in Iowa Code section 717.1(4), excluding equine species.

(12) Measuring blood pressure.

(13) Rectal palpation for pregnancy testing of a bovine.

b. Tasks that require direct supervision:

(1) General anesthesia and sedation, maintenance and recovery.

(2) Administer general anesthesia.

(3) Nonemergency endotracheal intubation.

(4) Regional anesthesia, including paravertebral blocks and local blocks.

(5) Dental procedures, limited to polishing and the removal of calculus, soft deposits, plaque, and stains.

(6) Blood or blood component collection, preparation, and administration for transfusion or blood banking purposes.

(7) Placement of tubes, including but not limited to gastric, nasogastric, and nasoesophageal.

(8) Ear flushing with pressure or suction.

(9) Application of casts, splints, and slings for the immobilization of fractures.

(10) Fluid aspiration from a body cavity or organ (i.e., cystocentesis, thoracocentesis, abdominocentesis).

(11) Stapling, suturing, and gluing of an existing surgical skin incision.

(12) Placement of intraosseous and nasal catheters.

(13) Performing enemas.

(14) Performing fluorescein stain ocular tonometry or the Schirmer tear test.

(15) Imaging, including but not limited to diagnostic radiography, diagnostic ultrasonography, computed tomography, magnetic resonance imaging, and fluoroscopy and the administration of radio-opaque agents or materials.

(16) Collection of blood, except when in conflict with government regulations.

(17) Administration of new/initial biological and immunological treatment protocols on companion animals.

(18) Animal dynamic rehabilitation therapies.

c. Tasks that require immediate supervision:

(1) Placing an epidural.

(2) Assisting with surgical procedures.

(3) Placing abdominal, thoracic, or percutaneous endoscopic gastrostomy (PEG) tubes.

(4) Extractions of the incisors that do not require sectioning of the tooth or sectioning of the bone.

(5) Euthanizing any animal, including the equine species, that is not livestock as defined in Iowa Code section 717.1(4).

(6) Shockwave therapy for pain treatment.

8.7(5) *Veterinary student.*

a. Unless otherwise prohibited by law, a veterinary student may perform surgery or diagnosis under direct or immediate supervision and may perform any other task delegated by the supervising veterinarian under indirect supervision.

b. A veterinary student may not prescribe any drug, medicine or biologic; administer rabies vaccine to dogs as described in Iowa Code section 351.35; sign a certificate of veterinary inspection as described in Iowa Code section 163.12; perform any task requiring USDA accreditation; or perform any task otherwise prohibited by law.

8.7(6) *Foreign graduate.*

a. Unless otherwise prohibited by law, a graduate of a foreign college of veterinary medicine or a person who has received an Educational Commission for Foreign Veterinary Graduates (ECFVG) or PAVE certificate, either of whom is not a licensed veterinarian, may perform surgery or diagnosis under direct or immediate supervision and may perform any other task delegated by the supervising veterinarian under indirect supervision.

b. A graduate of a foreign college of veterinary medicine or a person who has received an ECFVG or PAVE certificate, either of whom is not a licensed veterinarian, may not prescribe any drug, medicine or biologic; administer rabies vaccine to dogs as described in Iowa Code section 351.35; sign a certificate

of veterinary inspection as described in Iowa Code section 163.12; perform any task requiring USDA accreditation; or perform any task otherwise prohibited by law.
[**ARC 8017C**, IAB 5/15/24, effective 7/1/24]

811—8.8(169,272C) Continuing education.

8.8(1) In order to renew a certificate of registration, each credentialed veterinary technician completes, triennially, at least 30 hours of continuing education in courses approved by the board. The credentialed veterinary technician has the responsibility for financing continuing education. These credit hours may be obtained by attending approved scientific seminars and meetings on the basis of one credit hour for each hour of attendance. Attendance at any board-approved national, state or regional meeting will be acceptable. Credit for qualified graduate college courses may be approved on the basis of multiplying each college credit hour by 10, to a maximum of 15 hours during any one triennial. A maximum of 15 hours during any one triennial may be achieved by the completion of approved distance education courses. A maximum of ten hours of continuing education during any one triennial license period may be achieved by completion of approved practice management courses.

8.8(2) Each credentialed veterinary technician obtains the 30 credit hours between January 1 of the first year of the triennium and December 31 of third year of the triennium. Continuing education credits in excess of 30 hours for the triennium may be carried over to the next triennial period, but the total number of credits carried over cannot exceed 10 hours.

If a recent graduate is credentialed during the first year of the triennium, the person will complete 20 hours of continuing education for the first certificate of registration renewal. If a recent graduate is credentialed during the second year of the triennium, the person will complete ten hours of continuing education for the first certificate of registration renewal. If a recent graduate is credentialed during the third year of the triennium, the person is exempt from meeting continuing education requirements for the first certificate of registration renewal. For the purpose of this rule, "recent graduate" means a person who has graduated from an accredited or approved veterinary technology program no more than three years prior to application for certification of registration.

8.8(3) Completion of the continuing education will be reported to the secretary of the board of veterinary medicine on forms provided by the board by December 31 of the third year of the triennium.

8.8(4) Upon request, the board may waive continuing education requirements for qualifying military service personnel or spouse as defined in 811—Chapter 15.
[**ARC 8017C**, IAB 5/15/24, effective 7/1/24]

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◊ Two or more ARCs

CHAPTER 9
TEMPORARY VETERINARY PERMITS

811—9.1(169) Eligibility for a temporary permit.

9.1(1) *Temporary educational permit.* For the purpose of this subrule, "qualified applicant" means a person who is undertaking internship or residency training at Iowa State University College of Veterinary Medicine. A temporary educational permit may be issued upon application to a qualified applicant who does not also seek an Iowa veterinary license. A temporary educational permit allows the permit holder to act as a licensed veterinarian, including for privately owned animals, but only within the scope of the permit holder's internship or residency program at Iowa State University College of Veterinary Medicine. Verification of internship or residency consists of an endorsement signed by the dean of the school and submitted directly to the board by the school. A temporary educational permit expires upon termination of the permit holder's internship or residency program, as reported by the dean of the school of veterinary medicine. An initial temporary educational permit may be issued by the board for a term of up to two years. An initial temporary educational permit may be renewed by the board for a term of up to one year. No more than two renewals will be granted to the same person.

9.1(2) *Temporary in-state practice permit.*

a. A temporary in-state practice permit may be issued upon application to a qualified applicant who does not also seek an Iowa license. For the purpose of this subrule, "qualified applicant" means a person who:

(1) Has graduated from an AVMA-accredited or AVMA-listed school of veterinary medicine or has received an ECFVG or PAVE certificate.

(2) Is licensed in good standing in another jurisdiction.

(3) Has, in the case of an applicant with a non-Iowa license seeking licensure under Iowa Code section 169.10(1):

1. Successfully completed the National Board Examination (NBE) if the applicant's non-Iowa license was issued between December 31, 1964, and December 31, 1979.

2. Successfully completed the NBE and the Clinical Competency Test (CCT) if the applicant's non-Iowa license was issued between January 1, 1980, and December 31, 2000.

3. Successfully completed the NAVLE in accordance with rule 811—7.1(169) if the applicant's non-Iowa license was issued on or after January 1, 2001.

b. The temporary permit is issued in accordance with Iowa Code section 169.11(2). The temporary in-state practice permit allows the permit holder to act as a licensed veterinarian in this state. A person cannot obtain more than three temporary permits.

[**ARC 8018C**, IAB 5/15/24, effective 7/1/24]

811—9.2(169) Application.

9.2(1) An application for a temporary permit is to be made on a form provided by the board. The application will state whether the applicant is applying for a temporary educational permit or a temporary in-state practice permit. The applicant will provide a statement indicating all jurisdictions in which the applicant is or has ever been licensed to practice veterinary medicine and consent to the release of information to the board from jurisdictions in which the applicant is or has ever been licensed.

9.2(2) The board may require from an applicant or obtain from other sources such other information pertinent to character and education of the applicant as it may deem necessary in order to pass upon the applicant's qualifications.

9.2(3) In the case of an applicant under subrule 9.1(2), the applicant will provide evidence of approved continuing education totaling at least 60 hours obtained in the previous three years.

9.2(4) The temporary permit fee and the application fee will accompany the application.

[**ARC 8018C**, IAB 5/15/24, effective 7/1/24]

811—9.3(169) Practice without benefit of temporary permit or Iowa license. An applicant for a temporary permit or an Iowa license cannot engage in the practice of veterinary medicine unless and until a temporary permit or Iowa license is granted by the board. Prior to the issuance of the temporary

permit or Iowa license, an applicant who is otherwise qualified under rule 811—9.1(169) may perform within the same scope of authority as a licensed veterinary technician as provided in 811—Chapter 8.
[**ARC 8018C**, IAB 5/15/24, effective 7/1/24]

811—9.4(169) Grounds for discipline and disciplinary procedures. A disciplinary action against a permit holder, including grounds for disciplinary action, is governed by 811—Chapter 10. In addition to the applicable grounds set forth in 811—Chapter 10, an applicant for a temporary permit or an Iowa license who engages in the practice of veterinary medicine prior to the issuance of the temporary permit or Iowa license is subject to denial or revocation of the temporary permit, denial or revocation of the Iowa license, and referral for civil or criminal prosecution, at the board's discretion.
[**ARC 8018C**, IAB 5/15/24, effective 7/1/24]

These rules are intended to implement Iowa Code chapter 169.

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CHAPTER 10
DISCIPLINE

[Prior to 2/8/89, see Veterinary Medicine, Board of[842] Ch 6]

811—10.1(17A,169,272C) Board authority. The board may discipline any credential holder for any grounds stated in Iowa Code chapters 169 and 272C or rules promulgated thereunder.
[**ARC 8019C**, IAB 5/15/24, effective 7/1/24]

811—10.2(17A,169,272C) Complaints and investigations.

10.2(1) Complaints are allegations of wrongful acts or omissions relating to the ethical or professional conduct of a credential holder.

10.2(2) The executive secretary or authorized designee investigates complaints in order to determine the probability that a violation of law or rule has occurred.
[**ARC 8019C**, IAB 5/15/24, effective 7/1/24]

811—10.3(17A,169,272C) Investigatory subpoena powers. The board has the authority to issue an investigatory subpoena in accordance with the provisions of Iowa Code section 17A.13.

10.3(1) A subpoena which requires production of real evidence that is necessary to an investigation may be issued upon the authority of the executive secretary or a designee.

10.3(2) Any person who is aggrieved or adversely affected by compliance with the subpoena and who desires to challenge the subpoena has 14 days after the service of the subpoena, or before the time specified for compliance if such time is less than 14 days, to file with the board a motion to quash or modify the subpoena. The motion will describe legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

10.3(3) Iowa Code section 272C.6(3)*"a"*(3) contains information regarding what happens in the event obedience to a subpoena is refused.
[**ARC 8019C**, IAB 5/15/24, effective 7/1/24]

811—10.4(17A,169,272C) Board action. The board will review investigative conclusions and take one of the following actions:

1. Close the investigative case without action.
2. Request further inquiry.
3. Appoint a peer review committee to assist with the investigation.
4. Determine the existence of sufficient probable cause and order a disciplinary hearing to be held in compliance with Iowa Code section 272C.6.

[**ARC 8019C**, IAB 5/15/24, effective 7/1/24]

811—10.5(17A,169,272C) Peer review committee. The board may establish a peer review committee to assist with the investigative process when deemed necessary.

10.5(1) The committee will determine if the conduct of the credential holder conforms to minimum standards of acceptable and prevailing practice of veterinary medicine or other applicable standards and submit a report of its findings to the board.

10.5(2) The board will review the committee's findings and proceed with action available under rule 811—10.4(17A,169,272C).

10.5(3) The confidentiality requirements imposed by Iowa Code section 272C.6 apply to the peer review committee.
[**ARC 8019C**, IAB 5/15/24, effective 7/1/24]

811—10.6(17A,169,272C) Grounds for discipline and principles of veterinary medical ethics. The provisions of Iowa Code sections 272C.10 and 169.13 are incorporated by reference. The board has established grounds for discipline and principles of ethics for veterinary medicine. Without regard as to whether the board has determined that an injury has occurred, the board may impose any of the disciplinary sanctions set forth in rule 811—10.7(17A,169,272C), including civil penalties in an

amount not to exceed $1,000, when the board determines that the credential holder is guilty of any of the following acts or offenses:

10.6(1) *Grounds applicable to all credential holders.*

a. Fraud in procuring a credential, which includes but is not limited to an intentional perversion of the truth in making application for a credential to practice any of the professions or activities regulated by the board in this state and includes false representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a credential in this state, or attempting to file or filing with the board or the Iowa department of agriculture and land stewardship any false or forged diploma, certificate, affidavit, identification, or qualification in making an application for a credential in this state.

b. Professional incompetency of a credential holder may be established by:

(1) A substantial lack of knowledge or ability to discharge professional obligations within the scope of the credential holder's practice.

(2) A substantial deviation by the credential holder from the standards of learning or skill ordinarily possessed and applied by other credential holders acting in the same or similar circumstances.

(3) A willful or repeated departure from or the failure to conform to the minimal standards of acceptable and prevailing practice of credential holders.

(4) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public.

1. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession includes, but is not limited to, an intentional perversion of the truth, either orally or in writing, and includes any representation contrary to legal or equitable duty, trust or confidence and is deemed by the board to be contrary to good conscience, prejudicial to the public welfare or may operate to the injury of another.

2. Practice harmful or detrimental to the public includes, but is not limited to, the failure of a credential holder to possess and exercise that degree of skill, learning and care expected of a reasonable, prudent credential holder acting in the same or similar circumstances, including for a veterinarian a violation of the standards of practice as set out in 811—Chapter 12, or when a credential holder is unable to practice with reasonable skill and safety on a client's animals as a result of a mental or physical impairment or chemical abuse.

c. Habitual intoxication or addiction to the use of drugs means the same as Iowa Code section 169.13(1)*"h."* The board may mandate a credential holder's completion of a treatment program as a condition of probation or suspension and will consider the credential holder's willingness to complete a treatment program when determining the appropriate degree of disciplinary sanction.

d. Conviction of a felony or misdemeanor, which includes, but is not limited to, the conviction of a public offense in the practice of the credential holder's profession and is defined or classified as a felony under state or federal law, or violation of a statute or law designated as a felony in this state, another state, or the United States, which statute or law directly relates to the credential holder's profession or ability to practice within the profession.

e. Fraud in representations as to skill or ability, which includes but is not limited to a credential holder's having made misleading, deceptive or untrue representations as to the credential holder's competency to perform professional services for which the credential holder is not qualified to perform by training or experience.

f. Use of untruthful or improbable statements in advertisements, which includes but is not limited to an action by a credential holder in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation and includes statements which may consist of, but not be limited to:

(1) Inflated or unjustified expectations of favorable results;

(2) Self-laudatory claims that imply that the credential holder engaged in a field or specialty of practice for which the credential holder is not qualified. A veterinarian is not qualified to claim or imply specialization unless the veterinarian is a member in good standing of the respective specialty board or college recognized by the AVMA;

(3) Representations that are likely to cause the average person to misunderstand; or

(4) Extravagant claims or claims of extraordinary skills not recognized by the credential holder's profession.

g. Willful or repeated violations of the provisions of Iowa Code chapters 169 and 272C and rules promulgated thereunder by the board.

h. Failure to report a license, certificate, permit, or other credential revocation, suspension or other disciplinary action taken by a licensing or regulating authority of another state, territory or country within 30 days of the final action by such licensing or regulating authority. A stay by an appellate court cannot negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report is expunged from the records of the board.

i. Failure of a credential holder or an applicant for a credential in this state to report, within 30 days, any settlement agreement or voluntary agreement to limit the practice of veterinary medicine or other applicable activities entered into in another state, district, territory or country or those included in Iowa Code section 272C.9 or 169.13.

j. Knowingly submitting a false report of continuing education or failure to submit the triennial report of continuing education.

k. Failure to comply with a subpoena issued by the board.

l. Willful or gross negligence.

m. Obtaining any fee by fraud or misrepresentation.

n. Violating any of the grounds for the revocation or suspension of a credential as listed in Iowa Code section 169.13 or these rules.

o. A violation of Iowa Code section 169.13(1)*"d"*; having the person's certificate, license, permit, or other credential revoked or suspended by the United States Department of Agriculture (USDA); or having the veterinarian's USDA accreditation revoked, suspended or other disciplinary action taken against the accreditation.

p. Failing to comply with a lawful child support order as provided in 811—Chapter 13.

q. Failing to pay any hearing fees and costs within the time specified in the board's decision.

r. Failure to satisfy the continuing education requirements of rule 811—8.10(169,272C).

The board cannot suspend or revoke a license issued by the board to a person who is in circumstances outlined by Iowa Code section 272C.4(10).

10.6(2) *Grounds applicable to licensed veterinarians only.* In addition to the grounds set out in subrule 10.6(1), without regard as to whether the board has determined that injury has occurred, a licensed veterinarian is subject to disciplinary action for the violation of any of the following:

a. Engaging in unethical conduct which includes, but is not limited to, a violation of the standards of practice as set out in 811—Chapter 12, and which may include acts or offenses in violation of Iowa's principles of veterinary medical ethics, as adopted in subrule 10.6(3).

b. Engaging in practice harmful or detrimental to the public which includes, but is not limited to, either of the following:

(1) The use of a rubber stamp to affix a signature to a prescription. A licensee who is unable, due to a physical disability, to make a written signature or mark may substitute in lieu of a signature a rubber stamp which is adopted by the disabled person for all purposes requiring a signature and which is affixed by the disabled person or affixed by another person upon the request of the disabled person and in the licensee's presence.

(2) The practice of maintaining any presigned prescription which is intended to be completed and issued at a later time.

c. Iowa Code section 169.13(1)*"g."*

d. Indiscriminately or promiscuously prescribing, administering or dispensing any drug; or prescribing, administering or dispensing any drug for other than a lawful purpose.

e. Permitting or directing any veterinary auxiliary personnel or any other person who does not hold the proper credentials to perform veterinary duties involving diagnosis, prescription or surgery, except as allowed pursuant to subrule 8.7(4).

f. Permitting or directing any veterinary auxiliary personnel or any other person to perform any act that would be a legal or ethical violation if committed by a veterinarian.

g. Negligently failing to exercise due care in the delegation of veterinary services to or in supervision of veterinary auxiliary personnel, whether or not injury results.

10.6(3) *Principles of veterinary medical ethics.* All Iowa-licensed veterinarians are expected to adhere to these principles of veterinary medical ethics listed below and adopted by the board.

a. General ethics principles.

(1) A veterinarian may only be influenced by the welfare of the patient, the needs of the client, the safety of the public, and the need to uphold the public trust vested in the veterinary profession and shall avoid conflicts of interest or the appearance thereof.

(2) A veterinarian shall provide competent veterinary medical care under the terms of a veterinarian-client-patient relationship (VCPR), with compassion and respect for animal welfare and human health.

(3) A veterinarian shall uphold the standards of professionalism, be honest in all professional interactions, and report veterinarians who are deficient in character or competence to the appropriate entities.

(4) A veterinarian shall not willfully violate the provisions of Iowa Code chapters 169 and 272C and rules promulgated thereunder by the board, or other law of this state, another state, or the United States, which relates to the practice of veterinary medicine.

(5) A veterinarian shall respect the rights of clients, colleagues, and other health professionals and safeguard medical information within the confines of the law.

(6) A veterinarian shall continue to study, apply, and advance scientific knowledge; maintain a commitment to veterinary medical education; make relevant information available to clients, colleagues, and the public; and obtain consultation or referral when indicated.

(7) A veterinarian shall, in the provision of appropriate patient care, be free to choose whom to serve, with whom to associate, and the environment in which to provide veterinary medical care.

(8) A veterinarian shall not advertise a specialty or claim to be a specialist when not a diplomate of a veterinary specialty organization recognized by the AVMA.

b. Veterinarian-client-patient relationship ethics. A veterinarian shall not engage in the practice of veterinary medicine without a valid VCPR as defined in these rules.

c. Veterinarian-client communication; documentation of informed consent.

(1) A veterinarian shall explain to clients how any diagnostic tests offered would help diagnose a patient's medical condition.

(2) A veterinarian is responsible for professional communication directly with the client regarding diagnosis, options for treatment(s), expected cost of treatment(s), expected outcome of treatment(s), and the potential risks associated with each treatment regimen, as well as the client's ability to decline treatment(s). Client consent for the treatment(s) shall be documented in the patient's medical records. Veterinary auxiliary personnel may communicate the information listed in this subparagraph to the client under the supervision of an Iowa-licensed veterinarian.

(3) If a veterinarian does not have the expertise or the necessary equipment and facilities to adequately diagnose or treat a patient, the veterinarian shall offer a referral to another veterinarian where the diagnosis or treatment can be performed.

d. Veterinary medical records.

(1) Complete, accurate and legible medical records that are considered to meet the prevailing standard of the practice of veterinary medicine are set by the board.

(2) Any controlled substances administered to a patient must be written into the patient's medical record, which shall include the drug name, the date the drug was administered, the amount of drug administered, the frequency of drug administration, and the prescribing (and administering, if different) veterinarian's name, pursuant to rules 811—12.2(169) to 811—12.4(169). This requirement is in addition to regulations and requirements promulgated by the Iowa board of pharmacy, U.S. Drug Enforcement Administration, and any other applicable governmental agency. Violating or failing

to comply with a state or federal law or regulation relating to the storing, labeling, prescribing, or dispensing of controlled substances is unethical.

(3) Humane euthanasia of animals is an ethical veterinary procedure. A veterinarian can refuse to perform euthanasia.

e. Client and patient privacy rights.

(1) A veterinarian shall protect and respect the privacy rights of clients, colleagues, and other health professionals. A veterinarian shall not reveal confidential medical records or other medical information unless authorized to do so by law.

(2) It is unethical to place photographs or information regarding a patient, a client, or a client's premises on social media or other public platforms without the consent of the owner, unless the patient, client, or client's premises cannot be identified by its marking and unless all personally identifying information has been removed from the photograph. Use of photographs and information for didactic purposes is permitted with client consent or after removal of any information that would identify the client or patient.

f. Professional behavior.

(1) A veterinarian shall be honest in all professional interactions while respecting the rights of clients, colleagues, and other health professionals. A veterinarian must be honest and fair in relations with others, and a veterinarian shall not engage in fraud, misrepresentation, or deceit, including by material omission, in accordance with Iowa Code section 169.13(1)*"a."*

(2) A veterinarian must not defame or injure the professional standing or reputation of another veterinarian in a false or misleading manner. Any complaints about behavior of a veterinarian that may violate the principles of veterinary medical ethics should be addressed through the board in an appropriate and timely manner.

(3) A veterinarian who is impaired due to substance abuse or mental health or physical conditions as set forth in Iowa Code section 169.13(1)*"h"* must not act in the capacity of a veterinarian and shall seek medical treatment from qualified organizations or individuals.

10.6(4) *Recommended practices for veterinarians.*

a. A veterinarian is encouraged to participate in activities contributing to the improvement of the community and the betterment of public health. The responsibilities of the veterinary profession extend beyond individual patients and clients to society in general.

b. A veterinarian is encouraged to participate in the political process to seek changes to laws and regulations that are contrary to the best interests of the patient, the client and public health.

c. A veterinarian is encouraged to make the veterinarian's knowledge available to the community and to provide the veterinarian's services for activities that protect public health.

d. A veterinarian is encouraged to view, evaluate, and treat all individual persons in any professional activity or circumstance in which the veterinarian may be involved solely as individuals on the basis of the person's personal abilities, qualifications and character.

[**ARC 8019C**, IAB 5/15/24, effective 7/1/24]

811—10.7(17A,169,272C) Sanctions. The board has the authority to impose disciplinary sanctions in circumstances allowed by Iowa Code section 272C.3(2)*"a"* through *"f."*

[**ARC 8019C**, IAB 5/15/24, effective 7/1/24]

811—10.8(17A,169,272C) Panel of specialists. The board may appoint a panel of veterinarians who are specialists to ascertain the facts of a case pursuant to Iowa Code section 272C.6(2). The board chairperson or designee appoints the presiding officer.

10.8(1) The executive secretary sets the date, time, and location of the hearing and makes proper notification to all parties.

10.8(2) The panel of specialists shall:

a. Enter into the record the names of the presiding officer, members of the panel, the parties and their representatives.

b. Enter into the record the notice and evidence of service, order for hearing, statement of charges, answer, if available, and any other pleadings, motions or orders.

c. Receive opening statements from the parties.

d. Receive evidence, in accordance with Iowa Code section 17A.14, on behalf of the state of Iowa and on behalf of the credential holder.

e. Question the witnesses.

f. Receive closing statements from the parties.

g. Determine the findings of fact by a majority vote and make a written report of its findings to the board within a reasonable period.

[**ARC 8019C**, IAB 5/15/24, effective 7/1/24]

811—10.9(17A,169,272C) Informal settlement. Pursuant to the provisions of Iowa Code sections 17A.12 and 272C.3, the board may consider resolution of disciplinary matters through informal settlement prior to commencement of contested case proceedings. The secretary or designee may negotiate with the credential holder regarding a proposed disposition of the controversy. Upon consent of both parties, the board will review the proposal for action.

[**ARC 8019C**, IAB 5/15/24, effective 7/1/24]

811—10.10(17A,169,272C) Voluntary surrender. A voluntary surrender of credentials may be submitted to the board as resolution of a contested case or in lieu of continued compliance with a disciplinary decision of the board.

[**ARC 8019C**, IAB 5/15/24, effective 7/1/24]

811—10.11(17A,169,272C) Application for reinstatement. A person whose credential has been suspended, revoked, or voluntarily surrendered may apply to the board for reinstatement in accordance with the terms and conditions of the order.

10.11(1) If the credential was voluntarily surrendered, or if the order for suspension or revocation did not establish terms and conditions for reinstatement, an initial application cannot be made until one year has elapsed from the date of the order.

10.11(2) The application alleges facts and circumstances which will enable the board to determine that the basis for the sanction or voluntary surrender no longer exists and that it is in the public interest to reinstate the credential. The burden of proof to establish these facts rests with the petitioner.

10.11(3) The hearing in an application for reinstatement is a contested case within the meaning of Iowa Code section 17A.12.

10.11(4) The order to grant or deny reinstatement incorporates findings of fact and conclusions of law. If reinstatement is granted, terms and conditions for reinstating the credential may be imposed.

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CHAPTER 11
CONTINUING EDUCATION
[Prior to 2/8/89, Veterinary Medicine, Board of(842) Ch 8]

811—11.1(169) Continuing education necessary for a veterinary licensee.

11.1(1) Within the last three licensing years, each licensee is to complete at least 60 hours of continuing education in courses approved by the board as a condition for license renewal. The licensee has financial responsibility for the cost of continuing education. These credit hours may be obtained by attending board-approved scientific or practice management seminars and meetings on the basis of one credit hour for each hour of attendance. Attendance at any approved national, state or regional meeting or RACE-approved meeting will be acceptable. One hour of credit may be approved for local meetings where a scientific paper is presented. Credit for qualified graduate college courses may be approved on the basis of multiplying each college credit hour by 10, to a maximum of 30 hours during any one triennial license period. A maximum of 30 hours during any one triennial license period of continuing education may be achieved by completion of approved distance education courses. A maximum of 20 hours of continuing education during any one triennial license period may be achieved by completion of approved practice management courses.

11.1(2) To qualify for license renewal, each licensee is to obtain the 60 credit hours between July 1 of the year the license was issued and June 30 of the following third year. Continuing education credits in excess of 60 hours for any three-year license period may be carried over to the next triennial license period, but the total number of credit hours carried over cannot exceed 20 hours.

11.1(3) A recent graduate is exempt from meeting continuing education requirements at the time of original licensure and for the first year of practice. For the purpose of this rule, "recent graduate" means a person who has graduated from an accredited or approved school of veterinary medicine, or received a certificate from the ECFVG or PAVE no more than three years prior to application for licensure. If a recent graduate is licensed during the first year of the triennial license period, the licensee needs to complete 40 hours of continuing education for the first license renewal. If a recent graduate is licensed during the second year of the triennial license period, the licensee needs to complete 20 hours of continuing education for the first license renewal. If a recent graduate is licensed during the third year of the triennial license period, the licensee is exempt from meeting continuing education requirements for the first license renewal.

11.1(4) Completion of the continuing education requirement will be reported to the secretary of the board, on a form provided by the board, at the time of license renewal. The form is to be signed by the licensee and be accompanied by renewal application and the proper renewal fee.

11.1(5) The board may waive continuing education requirements for qualifying military service personnel upon request.

[**ARC 8020C**, IAB 5/15/24, effective 7/1/24]

811—11.2(169) Exemptions for an inactive veterinary licensee. A licensee residing within or outside Iowa who is not engaged in practice in the state of Iowa may be granted a waiver of compliance and obtain a certificate of exemption upon paying the annual license renewal fee. The licensee is to provide a written application to the board that includes a statement that the applicant will not engage in the practice of veterinary medicine in Iowa without first complying with all the rules governing reactivation after exemption. The application for a certificate of exemption is to be submitted on a form provided by the board.

[**ARC 8020C**, IAB 5/15/24, effective 7/1/24]

811—11.3(169) Reactivation of license. A veterinarian whose license has lapsed or been placed on inactive status is to provide evidence of completion of a total number of hours of accredited continuing education computed by multiplying 20 by the number of years since the date of the last issuance of the license for which reactivation is sought.

[**ARC 8020C**, IAB 5/15/24, effective 7/1/24]

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CHAPTER 12
STANDARDS OF PRACTICE
[Prior to 2/8/89, Veterinary Medicine, Board of[842] Ch 9]

811—12.1(169) Veterinarian/client/patient relationships.

12.1(1) The board shall determine, on a case-by-case basis, whether a valid veterinarian/client/patient relationship exists. This relationship is deemed to exist when all of the following criteria have been met:

a. The licensed veterinarian has assumed the responsibility for making medical judgments regarding the health of the patient and the need for medical treatment, and the client has agreed to follow the instructions of the licensed veterinarian;

b. The licensed veterinarian has sufficient knowledge of the patient to initiate at least a general or preliminary diagnosis of the medical condition of the patient. Sufficient knowledge means that the licensed veterinarian has recently seen or is personally acquainted with the keeping and care of the patient by virtue of any of the following:

(1) A physical examination of the patient within the past 12 months;

(2) A professional visit within the past 12 months to the premises where the patient or representative patients are housed, kept, located or grazed; or

(3) The licensed veterinarian has been temporarily designated by a licensed veterinarian, who has a prior veterinarian/client/patient relationship, to provide reasonable and appropriate medical care. The veterinarian making the designation must meet the requirements of either subparagraph 12.1(1)*"b"*(1) or 12.1(1)*"b"*(2), and the designated veterinarian must have access to the patient's medical records.

The 12-month time period in paragraph 12.1(1)*"b"* does not apply until June 14, 2023;

c. The licensed veterinarian is readily available or provides for follow-up care in case of adverse reactions or failure of the regimen of therapy, or, if unavailable, has designated another available licensed veterinarian who has access to the patient's records to provide reasonable and appropriate medical care.

12.1(2) A valid veterinarian/client/patient relationship cannot be established by contact solely based on a telephonic or electronic communication.

12.1(3) In the absence of a veterinarian/client/patient relationship:

a. Advice that is provided through electronic means can only be general and not specific to a particular animal or its diagnosis or treatment.

b. Advice and recommendations may be provided via veterinary telephonic or electronic communication in an emergency, but only until the animal can be examined in person by a licensed veterinarian.

12.1(4) Both the licensed veterinarian and the client have the right to establish or decline a valid veterinarian/client/patient relationship. Once the licensed veterinarian and the client have agreed and entered into a relationship, and the licensed veterinarian has begun patient care, the licensed veterinarian cannot neglect the patient and must continue to provide professional services related to the patient's injury or illness within the previously agreed limits. As subsequent needs and costs for patient care are identified, the licensed veterinarian and the client must confer and reach agreement on the continued care and responsibility for fees. If the informed client declines future care or declines to assume responsibility for the fees, the relationship may be terminated by either party.

12.1(5) If no ongoing medical condition exists, a licensed veterinarian may terminate a valid veterinarian/client/patient relationship by notifying the client that the licensed veterinarian no longer wishes to serve that patient and client. However, if an ongoing medical or surgical condition exists, the patient should be referred to another licensed veterinarian for diagnosis, care and treatment and the former attending licensed veterinarian should continue to provide care as needed during the transition.

12.1(6) Concerns about licensed veterinarian or staff safety may result in immediate termination of the veterinarian/client/patient relationship.

12.1(7) In emergencies, a veterinarian has an ethical responsibility to provide essential services for an animal when necessary to save the animal's life or relieve extreme suffering, subsequent to a client agreement (or until such agreement can be obtained when a client is not present or cannot be reached).

Such emergency care may be limited to relieve extreme pain or suffering, or to stabilization of the patient for transport to another source of animal care or euthanasia when deemed necessary by the veterinarian. When a veterinarian cannot be available to provide services, the veterinarian should provide readily accessible information to assist a client in obtaining emergency services, consistent with the needs of the locality. In an emergency, if a veterinarian does not have the expertise or the necessary equipment and facilities to adequately diagnose or treat a patient, the veterinarian should advise the client that more qualified or specialized services are available elsewhere and offer to expedite referral to those services.

12.1(8) A licensed veterinarian who in good faith engages in the practice of veterinary medicine by rendering or attempting to render emergency or urgent care to a patient when a client cannot be identified, and a veterinarian/client/patient relationship is not established, is not subject to discipline based solely on the veterinarian's inability to establish a veterinarian/client/patient relationship.
[**ARC 8021C**, IAB 5/15/24, effective 7/1/24]

811—12.2(169) Controlled substances, drugs, prescription medications and specific restricted immunization products. When state or federal law restricts a drug, medication or immunization product intended for use by or on the order of a licensed veterinarian, the licensed veterinarian can only sell, distribute or order the drug or medication in the course of the licensed veterinarian's professional practice. A prescription veterinary drug, medication or immunization product shall not be deemed to be used "in the course of the licensed veterinarian's professional practice" unless a valid veterinarian/client/patient relationship exists.

12.2(1) *Prescriptions.* Orders for all such drugs, medications or immunization products shall be accompanied by the licensed veterinarian's original prescription that shows the following:

a. Licensed veterinarian's name, address and telephone number;
b. Client's name;
c. Patient's name or identification;
d. Date issued;
e. Drug, medication or product name, strength and quantity;
f. Directions for use;
g. Number of times the prescription may be refilled;
h. Expiration date of the drug, medication or product; and
i. Applicable withdrawal period (paragraph 12.2(2)*"d"*) for livestock and poultry.

12.2(2) *Extra-label use of veterinary drugs, medications and immunization products.* Any extra-label use of veterinary drugs, medications or immunization products can only be administered by or under the order of a licensed veterinarian and is subject to the following criteria:

a. There is a valid veterinarian/client/patient relationship as defined in subrule 12.1(1).
b. For drugs or medications used in patients not intended for food, one of the following applies:
(1) There are no marketed drugs, medications or immunization products specifically labeled for the condition(s) diagnosed;
(2) The approved product is clinically ineffective; or
(3) In the licensed veterinarian's clinical judgment, the labeled dosage is inappropriate for the condition or the extra-label use should result in a better outcome for the patient.
c. The health of the treated patient is immediately threatened, or suffering or death would result from a failure to treat the affected patient.
d. The appropriate withdrawal period is specified when the drugs, medications or immunization products are used in animals intended as food. Extra-label drug use in food-producing animals must follow Food and Drug Administration—Animal Medicinal Drug Use Clarification Act regulations (21 CFR Part 530 as amended through December 21, 2023). Licensed veterinarians are encouraged to consult the Food Animal Residue Avoidance Databank (FARAD) or public peer-reviewed documents when determining appropriate withdrawal period.
[**ARC 8021C**, IAB 5/15/24, effective 7/1/24]

811—12.3(169) Prescription drug or medication labeling and packaging. A licensed veterinarian shall comply with all of the following requirements for the storage, handling, dispensing and administering of a drug or medication.

12.3(1) All prescription drugs, medications and controlled substances shall be purchased, maintained, handled, prescribed and dispensed in compliance with state and federal requirements including but not limited to the requirements of the Iowa board of pharmacy, the U.S. Occupational Safety and Health Administration, the U.S. Department of Agriculture, the U.S. Food and Drug Administration, the U.S. Environmental Protection Agency and the U.S. Drug Enforcement Administration.

a. A valid veterinarian/client/patient relationship shall be established before prescription drugs or medications may be dispensed or a prescription released. All drugs or medications administered, prescribed or dispensed shall be documented in the patient's medical record. The sale of veterinary prescription drugs or medications or the extra-label use of any drug, medication or product by a licensed veterinarian without a valid veterinarian/client/patient relationship is not permissible.

b. If a veterinarian prescribes a drug for the client's animal, the veterinarian shall, upon request, provide the prescription to the client, unless barred by state or federal law or to prevent inappropriate use. The veterinarian may charge a fee for issuing the prescription. This paragraph does not apply to livestock as defined in Iowa Code section 717.1(4).

12.3(2) All drugs or medications dispensed shall be labeled with the following information:

a. Name, telephone number and address of the veterinary clinic, hospital or service facility.

b. Name of the prescribing licensed veterinarian.

c. Date on which the prescription is dispensed.

d. Directions for use, including any cautionary statements and withdrawal times when appropriate.

e. Species of the patient.

f. Name, or identification, or location of the patient.

g. Name of the owner.

h. Name, strength and dosage form of the drug or medication. If the drug or medication is a compounded product, all active ingredients must be listed on the label, with corresponding strengths or concentrations of each ingredient.

i. Number of units dispensed.

j. Expiration date. If the drug or medication is a compounded product with no assigned expiration date, the licensed veterinarian shall determine a beyond-use date as supported by the literature or by the licensed veterinarian's professional judgment when no such supportive information exists.

k. Appropriate withdrawal period for livestock or poultry, when the patient or its product is intended as food.

12.3(3) All drugs or medications dispensed in the original container shall retain the original label and be labeled with the same information identified in subrule 12.3(2).

12.3(4) All drugs or medications that are dispensed in a container other than the original container shall be placed in a tamper-resistant container unless otherwise requested by the owner or unless the drug or medication is in a form or size that cannot be easily dispensed in a tamper-resistant container.

12.3(5) Drugs or medications that have expired shall be removed from current inventory and cannot be dispensed or sold. Expired drugs or medications shall be disposed of in accordance with local, state and federal regulations.

12.3(6) Drugs or medications shall be dispensed only for specific animals and for specific veterinary medical therapies with the exception of groups of similar animals and other groups such as pet fish, kennels and catteries for which dispensing shall be done judiciously within a valid veterinarian/client/patient relationship.

[**ARC 8021C**, IAB 5/15/24, effective 7/1/24]

811—12.4(169) Veterinary medical records.

12.4(1) *Controlled substances records.* The licensed veterinarian must maintain a controlled substance log that contains complete, accurate and readily retrievable records of all controlled substances possessed, administered or dispensed.

a. Each record of a controlled substance that is dispensed must meet all U.S. Drug Enforcement Administration and Iowa board of pharmacy regulations for the controlled substances log.

b. Each log record must include the following information:

(1) Name or identification of the patient.

(2) Client's name and address, if not readily available from the licensed veterinarian's records.

(3) Name, strength and quantity of the controlled substance dispensed.

(4) Date on which the controlled substance was dispensed.

(5) Initials of the dispensing licensed veterinarian or authorized auxiliary.

(6) Name of the prescribing licensed veterinarian.

c. All controlled substances must be kept in a locked storage area, and access to the storage area must be limited pursuant to state and federal laws and regulations.

d. Each package or container in which a controlled substance is stored or dispensed must be clearly labeled pursuant to the requirements set forth in state and federal laws and regulations.

e. Each package or container in which a controlled substance is stored or dispensed must comply with all state and federal packaging requirements and with rule 811—12.2(169).

12.4(2) *Patient records.* Patient records are the property of the veterinary practice. Each licensed veterinarian shall maintain for at least five years an easily retrievable record for each patient that receives veterinary services. The record must be available for inspection by the client during normal business hours. The information within patient records is privileged and confidential and cannot be released except by court order, a public health emergency, consent of the client or as otherwise authorized by law. The licensed veterinarian in charge shall provide a copy of the complete record to the client not later than two business days after the licensed veterinarian or practice receives from the client a request for the record. A licensed veterinarian or veterinary practice may have an additional three business days to provide a copy of nondigital diagnostic images. The licensed veterinarian may charge reasonable and customary fees for the copying of records.

a. Records required for patients defined as "livestock" in Iowa Code section 717.1(4) include the following:

(1) Name, address and telephone number of the client.

(2) Name or identity of the patient, pen, herd, flock or group, including the identification number, if any.

(3) Date of service.

(4) Documentation of client consent.

(5) Diagnosis or condition at the beginning of treatment of the patient, including results of tests.

(6) Procedures/indications.

(7) Name of drug or medication and treatment administered indicating dosage, frequency and route of administration.

(8) Withdrawal period.

(9) Record of diagnostic images taken.

(10) Name of attending licensed veterinarian.

b. Records required for other patients include the following:

(1) Name, address and telephone number of the client.

(2) Name and identity of the patient, including the identification number, if any.

(3) Date of birth (or estimated age), sex, species and breed of patient.

(4) Dates of care, custody or treatment of the patient.

(5) A history of the patient's condition as it pertains to the patient's medical status.

(6) Documentation of client consent.

(7) Diagnosis or condition at the beginning of treatment of the patient, including results of tests and body weight.

(8) Surgery record, including preanesthesia medication, anesthesia and the procedure performed.

(9) Name of drug or medication and treatment administered indicating dosage, frequency and route of administration.

(10) Progress and disposition of the case.

(11) Record of diagnostic images taken.

(12) Name of attending licensed veterinarian.

12.4(3) *Stored diagnostic images.*

a. Each stored diagnostic image must be identified with the following information:

(1) The name of the licensed veterinarian or facility that took the diagnostic image.

(2) The name or identifying number, or both, of the patient.

(3) The name of the client.

(4) The date on which the diagnostic image was taken.

(5) The anatomical orientation depicted by the diagnostic image.

b. Stored diagnostic images must be retained for at least five years.

c. A stored diagnostic image of the patient or a copy must be released, upon the written or verbal request, to another licensed veterinarian who has the authorization of the client. Original diagnostic images shall be returned in a reasonable time.

12.4(4) *General anesthesia.* General anesthesia is a condition caused by the administration of a drug or combination of drugs sufficient to produce a state of unconsciousness or dissociation and blocked response to a given pain or alarming stimulus. The following standards relating to general anesthesia apply:

a. Within 12 hours prior to the administration of a general anesthetic, the patient must receive a physical examination, with the results noted in the patient's medical records.

b. The patient under general anesthesia must be under observation for a length of time appropriate to the species for the patient's safe recovery.

c. The licensed veterinarian must provide a method of respiratory monitoring that may include observing the patient's chest movements, observing the rebreathing bag or using a respirometer.

d. The licensed veterinarian must provide a method of cardiac monitoring, which may include the use of a stethoscope or electrocardiograph monitor.

[**ARC 8021C**, IAB 5/15/24, effective 7/1/24]

811—12.5(169) Veterinary facilities.

12.5(1) *Facility standards.* The following standards apply to all facilities used by a licensed veterinarian to provide veterinary services.

a. Facilities for treatment or hospitalization. In a facility where patients are examined and retained for treatment or hospitalization, the following must be provided:

(1) An examination room, separate from the reception room or office, with sufficient size to accommodate the licensed veterinarian, assistant, patient and client.

(2) Nonporous tabletops, countertops and floor coverings that can be adequately cleaned and disinfected.

(3) The ability to house patients separately and maintain sanitary conditions.

(4) Appropriate separation of patients with known or suspected infectious and contagious diseases from patients not known to have such diseases in a manner that reasonably guards against transmission of disease.

(5) Provision for daily exercise of patients unless the primary enclosure is of sufficient size to provide exercise.

(6) Exercise areas that are cleaned a minimum of once in each 24-hour period and more frequently as may be necessary to reduce disease hazards and odors.

(7) A sanitary area for performing surgeries under sterile conditions. If sterile surgical procedures are performed on the premises, the licensed veterinarian must maintain the following at all times:

1. Appropriate sterile surgical packs including drapes, sponges and instrumentation for use in each procedure.

2. For each sterile surgical procedure, equipment sterilized and surgical packs properly prepared for sterilization sufficient to kill microorganisms.

3. Clean attire, masks and gloves for use in any sterile procedure.

(8) Oxygen and equipment necessary to administer oxygen to the types of patients treated in the facility.

(9) Capability to provide diagnostic radiological images in the facility or through an outside facility.

(10) Provision for laboratory and pharmaceutical services in the facility or through another commercial facility.

b. Facilities for services. Veterinary service facilities where patients are only examined or provided vaccinations must provide the following:

(1) An examination room, separate from the reception room or office, with sufficient size to accommodate the licensed veterinarian, assistant, patient and client.

(2) Nonporous tabletops, countertops and floor coverings that can be adequately cleaned and disinfected.

(3) A secure and sanitary area for the storage of instruments, drugs and medications.

(4) Cooling/heating equipment for the storage of drugs, medications and immunization products.

(5) Capability to provide diagnostic radiological images in the facility or through an outside facility.

(6) Provision for laboratory and pharmaceutical services in the facility or through another commercial facility.

c. Mobile clinics. Mobile clinics are self-contained units for small animal, nonlivestock or nonpoultry patients and shall be equipped with the following:

(1) Hot and cold water.

(2) Nonporous tabletops, countertops and floor coverings that can be adequately cleaned and disinfected.

(3) An adequate power source for diagnostic equipment.

(4) A collecting tank for disposal of waste materials.

(5) Adequate lighting.

(6) Adequate heating, cooling and ventilation.

(7) Sterile instrumentation that meets the requirements of the level of surgery to be performed.

(8) Separate compartments for the transportation or holding of patients.

(9) A secure and sanitary area for the storage of instruments, drugs and medications.

(10) Cooling/heating equipment for the storage of drugs, medications and immunization products.

d. House/farm call units. House/farm call units are not self-contained units and must be equipped with or have access to all of the following:

(1) Water.

(2) Cooling/heating equipment for the storage of drugs, medications and immunization products.

(3) A secure and sanitary area for the storage of instruments, drugs and medications.

e. Emergency veterinary hospitals. "Emergency veterinary hospital" means an animal hospital that provides emergency treatment to an ill or injured patient. Any facility advertising as an emergency facility shall have a licensed veterinarian and auxiliary personnel on the premises during the hours of operation. Any facility that advertises using phrases similar or identical to "24-hour emergency veterinary hospital," "Emergency," "Open 24 hours" or "Day or night care" must have treatment services continuously available.

12.5(2) *Safety and sanitation standards.* A veterinary facility must have a safe and sanitary environment that:

a. Protects the health of the patients and guards against the transmission of infection.

b. Provides for proper routine disposal of waste materials in compliance with all applicable local, state, and federal laws and regulations and for proper disposal of hypodermic devices, sharps and biomedical waste. Hypodermic devices, sharps and biomedical waste shall be disposed of in accordance with applicable local, state and federal regulations.

c. Provides for proper sterilization or sanitation of all equipment used in diagnosis, treatment or surgery.

d. Ensures the maintenance of proper temperature and ventilation of the indoor facility.

e. Provides adequate lighting appropriate for the task being performed.

f. Includes legal and sanitary methods for the disposal or storage of deceased patients.

g. Meets the standards for radiological procedures as set by the Iowa department of health and human services.

12.5(3) *Resources.* A library of current journals or textbooks, or Internet access that provides readily accessible reference materials, shall be available.

[**ARC 8021C**, IAB 5/15/24, effective 7/1/24]

These rules are intended to implement Iowa Code chapter 169.

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[1] April 1, 2022, effective date of amendment to 12.1(1)"b"**[ARC 6171C]** delayed 70 days by the Administrative Rules Review Committee at its meeting held March 7, 2022.

CHAPTER 13
COLLECTION PROCEDURES

811—13.1(169,252J,272D) Licensing actions. In addition to other reasons specified by statute or rule, the board will refuse to issue a credential or may revoke, suspend, or not renew any credential for which it has jurisdiction if the board is in receipt of a certificate of noncompliance from the child support recovery unit pursuant to the procedures set forth in Iowa Code chapter 252J or from the centralized collection unit of the department of revenue pursuant to the procedures set forth in Iowa Code chapter 272D.

An applicant or credential holder whose application is denied or whose credential is denied, suspended, or revoked because of receipt by the board of a certificate of noncompliance issued by the child support recovery unit or by the centralized collection unit of the department of revenue is subject to the provisions of rule 811—13.1(169,252J,272D). Procedures specified in 811—Chapter 10 for contesting board actions do not apply.

[**ARC 8022C**, IAB 5/15/24, effective 7/1/24]

811—13.2(169,252J,272D) Collection procedures. The following procedures apply to actions taken by the board on a certificate of noncompliance pursuant to Iowa Code chapter 252J or 272D:

13.2(1) The notice mandated by Iowa Code section 252J.8 or 272D.8 will be served upon the applicant or credential holder by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the applicant or credential holder may accept service personally or through authorized counsel.

13.2(2) The effective date of revocation or suspension of a credential or the denial of the issuance or renewal of a credential, as specified in the notice mandated by Iowa Code section 252J.8 or 272D.8, is 60 days following service of the notice upon the credential holder or applicant.

13.2(3) Applicants and credential holders shall keep the board informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J or the centralized collection unit actions taken in connection with Iowa Code chapter 272D. Applicants and credential holders shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9 or 272D.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit or by the centralized collection unit of the department of revenue.

13.2(4) All board fees for applications, credential renewals or reinstatements will be paid by the applicant or credential holder before a credential will be issued, renewed or reinstated after the board has denied the issuance or renewal of a credential or has suspended or revoked a credential pursuant to Iowa Code chapter 252J or 272D.

13.2(5) If an applicant or credential holder timely files a district court action following service of a board notice pursuant to Iowa Code sections 252J.8 and 252J.9 or Iowa Code sections 272D.8 and 272D.9, the board will continue with the intended action described in the notice upon receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For the purpose of determining the effective date of revocation or suspension, or denial of the issuance or renewal of a credential, the board will count the number of days before the action was filed and the number of days after the action was disposed of by the court.

[**ARC 8022C**, IAB 5/15/24, effective 7/1/24]

These rules are intended to implement Iowa Code chapters 169, 252J and 272D.

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CHAPTER 14
WAIVER OF RULES

811—14.1(17A,169) Definition. For purposes of this chapter, "waiver" means action by the board that suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.
[**ARC 8023C**, IAB 5/15/24, effective 7/1/24]

811—14.2(17A,169) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision supersedes this chapter with respect to any waiver from that rule.
[**ARC 8023C**, IAB 5/15/24, effective 7/1/24]

811—14.3(17A,169) Applicability. The board may grant a waiver from a rule only if the board is authorized to do so by Iowa Code section 17A.9A(1).
[**ARC 8023C**, IAB 5/15/24, effective 7/1/24]

811—14.4(17A,169) Criteria for waiver. In response to a petition completed pursuant to rule 811—14.6(17A,169), the board may issue an order waiving in whole or in part the requirements of a rule in accordance with Iowa Code section 17A.9A(2)*"a"* through *"d."*
[**ARC 8023C**, IAB 5/15/24, effective 7/1/24]

811—14.5(17A,169) Filing of petition. A petition for a waiver will only be considered by the board if it is submitted in writing to the board as follows:

14.5(1) *Credential application.* If the petition relates to a credential application, the petition is made in accordance with the filing requirements for the credential in question.

14.5(2) *Contested cases.* If the petition relates to a pending contested case, the petition is filed in the contested case proceeding using the caption of the contested case.

14.5(3) *Other.* If the petition does not relate to a credential application or a pending contested case, the petition is submitted to the board's secretary.
[**ARC 8023C**, IAB 5/15/24, effective 7/1/24]

811—14.6(17A,169) Content of petition. A petition for waiver will only be considered by the board if it includes the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver is being requested and the case number of any related contested case.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration.
4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 811—14.4(17A,169), a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver.
5. A history of any prior contacts between the board and the petitioner relating to the regulated activity or credential affected by the proposed waiver, including a description of each affected credential held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or credential within the last five years.
6. Any information known to the requester regarding the board's treatment of similar cases.
7. The name, address, and telephone number of any public agency or political subdivision that also regulates the activity in question or that might be affected by the granting of a waiver.
8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver.

[**ARC 8023C**, IAB 5/15/24, effective 7/1/24]

811—14.7(17A,169) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board's executive secretary, a committee of the board, or a quorum of the board.

[**ARC 8023C**, IAB 5/15/24, effective 7/1/24]

811—14.8(17A,169) Notice. The board will acknowledge a petition upon receipt. The board will ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is necessary by any provision of law and provide a written statement to the board attesting that notice has been provided.

[**ARC 8023C**, IAB 5/15/24, effective 7/1/24]

811—14.9(17A,169) Hearing procedures. The provisions of Iowa Code sections 17A.10 through 17A.18A regarding contested case hearings apply to any petition for a waiver filed within a contested case and otherwise apply to agency proceedings for a waiver only when the board so provides by rule or order or is mandated to do so by statute.

[**ARC 8023C**, IAB 5/15/24, effective 7/1/24]

811—14.10(17A,169) Ruling. An order granting or denying a waiver will be in writing and contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

14.10(1) *Time for ruling.* The board will grant or deny a petition for a waiver as soon as practicable but, in any event, within 120 days of its receipt unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board will grant or deny the petition no later than the time at which the final decision in that contested case is issued.

14.10(2) *When deemed denied.* Failure of the board to grant or deny a petition within the applicable time period is deemed a denial of that petition by the board. However, the board remains responsible for issuing an order denying a waiver.

14.10(3) *Service of order.* Within seven days of its issuance, any order issued under this chapter will be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

[**ARC 8023C**, IAB 5/15/24, effective 7/1/24]

811—14.11(17A,169) Public availability. All orders granting or denying a waiver petition will be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the board is authorized or needs to keep confidential. The board may accordingly redact confidential information from petitions or orders prior to public inspection.

[**ARC 8023C**, IAB 5/15/24, effective 7/1/24]

811—14.12(17A,169) Submission of waiver information. Within 60 days of granting or denying a waiver, the board will make a submission on the Internet site established pursuant to Iowa Code section 17A.9A(4) for the submission of waiver information.

[**ARC 8023C**, IAB 5/15/24, effective 7/1/24]

811—14.13(17A,169) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver;
2. The alternative means for ensuring that the public health, safety, and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with all conditions contained in the order.

[**ARC 8023C**, IAB 5/15/24, effective 7/1/24]

811—14.14(17A,169) Violations. Violation of a condition in a waiver order is treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

[**ARC 8023C**, IAB 5/15/24, effective 7/1/24]

811—14.15(17A,169) Defense. After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

[**ARC 8023C**, IAB 5/15/24, effective 7/1/24]

811—14.16(17A,169) Judicial review. Judicial review of a board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

[**ARC 8023C**, IAB 5/15/24, effective 7/1/24]

These rules are intended to implement Iowa Code section 17A.9A and chapter 169.

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CHAPTER 16
CONTESTED CASES

[Prior to 5/15/24, see Veterinary Medicine Board[811] Ch 10]

The board of veterinary medicine adopts, with the following exceptions and amendments, Uniform Rules on Agency Procedure relating to contested cases, which are published at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf on the general assembly's website.
[**ARC 8011C**, IAB 5/15/24, effective 7/1/24]

811—16.1(17A) Scope and applicability. In lieu of "(agency name)" insert "board of veterinary medicine".
[**ARC 8024C**, IAB 5/15/24, effective 7/1/24]

811—16.2(17A) Definitions. In lieu of "(agency name)" insert "board of veterinary medicine".

"Contested case" means the same as defined in Iowa Code section 17A.2(5).

"Presiding officer" means the chairperson of the board or designee.
[**ARC 8024C**, IAB 5/15/24, effective 7/1/24]

811—16.3(17A) Time requirements.

16.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer will afford all parties an opportunity to be heard or to file written arguments.
[**ARC 8024C**, IAB 5/15/24, effective 7/1/24]

811—16.5(17A) Notice of hearing. The board will issue an order, notice of hearing, and statement of charges following its determination of probable cause pursuant to Iowa Code section 17A.12(2). Delivery of the notice of hearing constitutes the commencement of the contested case proceeding.

16.5(1) *Notice.*

a. The date, time, and location of the hearing will be set by the board. The credential holder will be notified at least 30 days prior to the scheduled hearing.

b. Notification will be in writing delivered either by personal service as in civil actions or by certified mail with return receipt requested. When the credential holder cannot be located:

(1) An affidavit will be prepared outlining the measures taken to attempt service and will become a part of the record when a notice cannot be delivered by personal service or certified mail, return receipt requested.

(2) Notice of hearing will be published once each week for three consecutive weeks in a newspaper of general circulation, published or circulated in the county of last-known residence of the credential holder. The newspaper will be selected by the secretary or designee. The first notice of hearing will be published at least 30 days prior to the scheduled hearing.
[**ARC 8024C**, IAB 5/15/24, effective 7/1/24]

811—16.6(17A) Presiding officer. Disciplinary hearings will be conducted by the board pursuant to Iowa Code section 272C.6. The chairperson of the board will designate the presiding officer in accordance with the provisions of Iowa Code section 17A.11.

16.6(1) For nondisciplinary proceedings, any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections, appeals, and licensing must file a written request within 20 days after service of a notice of hearing.

16.6(2) In lieu of "agency (or its designee)" insert "executive secretary".

c. The board does not adopt X.6(2)*"c."*

i. The request would not conform to the disciplinary hearing provision of Iowa Code section 272C.6.

16.6(3) The executive secretary will issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

16.6(4) The board does not adopt X.6(4).

16.6(6) In lieu of "agency heads and members of multimembered agency heads" insert "the board".
[**ARC 8024C**, IAB 5/15/24, effective 7/1/24]

811—16.9(17A) Disqualification.

16.9(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 16.9(1), the party must file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person must withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer must enter an order to that effect.
[**ARC 8024C**, IAB 5/15/24, effective 7/1/24]

811—16.12(17A) Service and filing of pleadings and other papers.

16.12(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding must be filed with the board.
[**ARC 8024C**, IAB 5/15/24, effective 7/1/24]

811—16.15(17A) Motions.

16.15(5) The board does not adopt X.15(5).
[**ARC 8024C**, IAB 5/15/24, effective 7/1/24]

811—16.17(17A) Continuances. The executive secretary has the authority to grant a continuance after consultation, if needed, with the chairperson of the board.

A request for continuance of a contested case matter must be submitted in writing to the board not later than seven days prior to the scheduled date of the hearing. Exceptions may be granted at the discretion of the executive secretary only in situations involving extenuating, extraordinary, or emergency circumstances.
[**ARC 8024C**, IAB 5/15/24, effective 7/1/24]

811—16.19(17A) Intervention. The board does not adopt X.19.
[**ARC 8024C**, IAB 5/15/24, effective 7/1/24]

811—16.22(17A) Default.

16.22(8) The board does not adopt X.22(8).

16.22(10) The board does not adopt X.22(10).
[**ARC 8024C**, IAB 5/15/24, effective 7/1/24]

811—16.23(17A) Ex parte communication.

16.23(6) In lieu of "executive director" insert "executive secretary".

16.23(9) Promptly after being assigned to serve as presiding officer on a hearing panel, as a member of a full board hearing, on an intra-agency appeal, or other basis, a presiding officer must disclose to all parties material factual information received through ex parte communication prior to such assignment, unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

16.23(10) In lieu of "(agency to designate person to whom violations should be reported)" insert "the board's executive secretary".
[**ARC 8024C**, IAB 5/15/24, effective 7/1/24]

811—16.24(17A) Recording costs. In lieu of "(agency name)" insert "board".
[**ARC 8024C**, IAB 5/15/24, effective 7/1/24]

811—16.25(17A) Interlocutory appeals. The board does not adopt X.25.
[**ARC 8024C**, IAB 5/15/24, effective 7/1/24]

811—16.26(17A) Final decision. When the board presides over reception of the evidence at the hearing, its decision is a final decision.

16.26(1) When a panel of specialists presides over the reception of evidence at the hearing, the findings of fact will be considered by the board at the earliest feasible time. The decision of the board is a final decision.

16.26(2) A final decision in a contested case proceeding must be in writing and include findings of fact and conclusions of law, separately stated.

a. Findings of fact must be accompanied by a concise and explicit statement of underlying facts supporting the findings.

b. The decision must include an explanation of why the relevant evidence in the record supports each material finding of fact.

c. Conclusions of law must be supported by cited authority or by a reasoned opinion.

16.26(3) The decision or order must be promptly delivered to the parties in the manner provided by Iowa Code section 17A.12.

16.26(4) The final decision is a public record pursuant to Iowa Code section 272C.6(4).
[**ARC 8024C**, IAB 5/15/24, effective 7/1/24]

811—16.27(17A) Appeals.

16.27(1) *Appeal by party.* Any adversely affected party may appeal a final decision of the board to the district court within 30 days after issuance in accordance with Iowa Code section 17A.19.

16.27(2) *Review.* The board may initiate review of the decision or order on its own motion at any time within 30 days following the issuance of such a decision.

16.27(3) *Notice of appeal.* In lieu of "a proposed decision" insert "decision or order", and in lieu of "(agency name)" insert "board".

16.27(4) *Requests to present additional evidence.* In lieu of "14 days (or other time period designated by the agency)" insert "15 days". In lieu of "(board, commission, director)" insert "board".

16.27(5) *Scheduling.* In lieu of "(agency name)" insert "board".

16.27(6) *Briefs and arguments.* In lieu of "(board, commission, director)" insert "board".
[**ARC 8024C**, IAB 5/15/24, effective 7/1/24]

811—16.28(17A) Applications for rehearing.

16.28(3) *Time of filing.* In lieu of "(agency name)" insert "board".

16.28(4) *Notice to other parties.* In lieu of "(agency name)" insert "board".
[**ARC 8024C**, IAB 5/15/24, effective 7/1/24]

811—16.29(17A) Stays of agency actions. The board does not adopt X.29.
[**ARC 8024C**, IAB 5/15/24, effective 7/1/24]

811—16.30(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable.
[**ARC 8024C**, IAB 5/15/24, effective 7/1/24]

811—16.31(272C) Disciplinary hearing—fees and costs.

16.31(1) *Definitions.* As used in this rule in relation to a formal disciplinary action filed by the board against a credential holder:

"Deposition" means the testimony of a person taken pursuant to subpoena or at the request of the state of Iowa taken in a setting other than a hearing.

"Expenses" means costs incurred by persons appearing pursuant to subpoena or at the request of the state of Iowa for purposes of providing testimony on the part of the state of Iowa in a hearing or other official proceeding and shall include mileage reimbursement at the rate specified in Iowa Code section 70A.9 or, if commercial air or ground transportation is used, the actual cost of transportation to and from the proceeding. Also included are actual costs incurred for meals and necessary lodging.

"Medical examination fees" means actual costs incurred by the board in a physical, mental, chemical abuse, or other impairment-related examination or evaluation of a credential holder when the examination or evaluation is conducted pursuant to an order of the board.

"Record" means the proceedings of the hearing including but not limited to the transcript and any documentary evidence admitted or offered at the hearing.

"Transcript" means a printed verbatim reproduction of everything said on the record during a hearing or other official proceeding.

"Witness fees" means compensation paid by the board to persons appearing pursuant to subpoena or at the request of the state of Iowa for purposes of providing testimony on the part of the state of Iowa. For the purpose of this rule, compensation shall be the same as outlined in Iowa Code section 622.69 or 622.72, as applicable.

16.31(2) *Disciplinary hearing fee.* The board may charge a fee not to exceed the amount authorized in Iowa Code section 272C.6 for conducting a disciplinary hearing that results in disciplinary action taken against the credential holder by the board. An order assessing a fee must be included as part of the board's final decision. The order must direct the credential holder to deliver payment directly to the department of agriculture and land stewardship as provided in subrule 16.31(6).

16.31(3) *Recovery of related hearing costs.* The board may also recover from the credential holder the costs for transcripts, witness fees and expenses, depositions, and medical examination fees, if disciplinary action is taken. The board may assess these costs in the manner it deems most equitable in accordance with the following:

a. Transcript costs. The board may assess the transcript costs against the credential holder pursuant to Iowa Code section 272C.6(6) or against the requesting party pursuant to Iowa Code section 17A.12(7).

(1) The cost of the transcript includes the transcript of the original contested case hearing before the board, as well as transcripts of any other formal proceedings before the board that occur after the notice of the contested case hearing is filed.

(2) In the event of an appeal to the full board from a proposed decision, the appealing party must timely request and pay for the transcript necessary for use in the board appeal process.

b. Witness fees and expenses. The parties in a contested case are responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing. In addition, the board may assess a credential holder the witness fees and expenses incurred by witnesses called to testify on behalf of the state of Iowa, provided that the costs are calculated as follows:

(1) The costs for lay witnesses will be determined in accordance with Iowa Code section 622.69. For purposes of calculating the mileage expenses allowed under that section, the provisions of Iowa Code section 625.2 do not apply.

(2) The costs for expert witnesses will be determined in accordance with Iowa Code section 622.72. For purposes of calculating the mileage expenses allowed under that section, the provisions of Iowa Code section 625.2 do not apply.

(3) The provisions of Iowa Code section 622.74 regarding advance payment of witness fees and the consequences of failure to make such payment are applicable with regard to witnesses who are subpoenaed by either party to testify at the hearing.

(4) The board may assess as costs the meal and lodging expenses necessarily incurred by witnesses testifying at the request of the state of Iowa. Meal and lodging costs shall not exceed the reimbursement employees of the state of Iowa receive for these expenses under the department of revenue guidelines currently in effect.

c. Deposition costs. Deposition costs for purposes of allocating costs against a credential holder include only those deposition costs incurred by the state of Iowa. The credential holder is directly responsible for the payment of deposition costs incurred by the credential holder.

(1) The costs for depositions include the cost of transcripts, the daily charge of the court reporter for attending and transcribing the deposition, and all mileage and travel time charges of the court reporter for traveling to and from the deposition that are charged in the ordinary course of business.

(2) If the deposition is of an expert witness, the deposition costs include a reasonable fee for an expert witness. This fee must not exceed the expert's customary hourly or daily fee, and must include the time reasonably and necessarily spent in connection with the deposition, including the time spent in travel to and from the deposition, but excluding time spent in preparation for the deposition.

d. Medical examination fees. All costs of physical or mental examinations ordered by the board pursuant to Iowa Code section 272C.9(1) as part of an investigation of a pending complaint or as a sanction following a contested case must be paid directly by the credential holder.

16.31(4) *Certification of reimbursable costs.* Within ten days after conclusion of a contested case hearing and before issuance of any final decision assessing costs, the secretary must certify any reimbursable costs to the board. The secretary must calculate the specific costs, certify the costs calculated, and file the certification as part of the record in the contested case. A copy of the certification must be served on each party of record at the time of the filing.

16.31(5) *Assessment of fees and costs.* A final decision of the board imposing disciplinary action against a credential holder must include the amount of any fee assessed. If the board also assesses costs against the credential holder, the final decision must include a statement of costs delineating each category of costs and the amount assessed. The board must specify the time period in which the fees and costs must be paid by the credential holder.

a. A party must file an objection to any fees or costs imposed in a final decision in order to exhaust administrative remedies. An objection must be filed in the form of an application for rehearing pursuant to Iowa Code section 17A.16(2).

b. The application must be resolved by the board consistent with the procedures for ruling on an application for rehearing. Any dispute regarding the calculations of any fees or costs to be assessed may be resolved by the board upon receipt of the parties' written objections.

16.31(6) *Payment of fees and costs.* Payment for fees and costs assessed pursuant to this rule must be made in the form of a check or money order made payable to the state of Iowa and delivered by the credential holder to the department of agriculture and land stewardship.

16.31(7) *Failure to make payment.* Failure of a credential holder to pay any fees and costs within the time specified in the board's decision constitutes a violation of an order of the board and is grounds for disciplinary action.

[**ARC 8024C**, IAB 5/15/24, effective 7/1/24]

These rules are intended to implement Iowa Code chapters 17A, 169, and 272C.

[Filed ARC 8024C (Notice ARC 7570C, IAB 1/24/24), IAB 5/15/24, effective 7/1/24]