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# IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XXI  
 April 7, 1999

NUMBER 21  
 Pages 2301 to 2572

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## PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economic Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committee, Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analyses and Agenda for monthly Administrative Rules Review Committee meetings. Other "materials deemed fitting and proper by the Administrative Rules Review Committee" include summaries of Public Hearings, Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [12C.6]; Workers' Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)"a"]; Agricultural Credit Corporation Maximum Loan Rates [535.12]; and Regional Banking—Notice of Application and Hearing [524.1905(2)].

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

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**Customer Service Center**  
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**Hoover State Office Building, Level A**  
**Des Moines, IA 50319**  
**Telephone: (515)242-5120**

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NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 25 '98	Jan. 13 '99	Feb. 2 '99	Feb. 17 '99	Feb. 19 '99	Mar. 10 '99	Apr. 14 '99	July 12 '99
Jan. 8	Jan. 27	Feb. 16	Mar. 3	Mar. 5	Mar. 24	Apr. 28	July 26
Jan. 22	Feb. 10	Mar. 2	Mar. 17	Mar. 19	Apr. 7	May 12	Aug. 9
Feb. 5	Feb. 24	Mar. 16	Mar. 31	Apr. 2	Apr. 21	May 26	Aug. 23
Feb. 19	Mar. 10	Mar. 30	Apr. 14	Apr. 16	May 5	June 9	Sept. 6
Mar. 5	Mar. 24	Apr. 13	Apr. 28	Apr. 30	May 19	June 23	Sept. 20
Mar. 19	Apr. 7	Apr. 27	May 12	May 14	June 2	July 7	Oct. 4
Apr. 2	Apr. 21	May 11	May 26	May 28	June 16	July 21	Oct. 18
Apr. 16	May 5	May 25	June 9	June 11	June 30	Aug. 4	Nov. 1
Apr. 30	May 19	June 8	June 23	June 25	July 14	Aug. 18	Nov. 15
May 14	June 2	June 22	July 7	July 9	July 28	Sept. 1	Nov. 29
May 28	June 16	July 6	July 21	July 23	Aug. 11	Sept. 15	Dec. 13
June 11	June 30	July 20	Aug. 4	Aug. 6	Aug. 25	Sept. 29	Dec. 27
June 25	July 14	Aug. 3	Aug. 18	Aug. 20	Sept. 8	Oct. 13	Jan. 10 '00
July 9	July 28	Aug. 17	Sept. 1	Sept. 3	Sept. 22	Oct. 27	Jan. 24 '00
July 23	Aug. 11	Aug. 31	Sept. 15	Sept. 17	Oct. 6	Nov. 10	Feb. 7 '00
Aug. 6	Aug. 25	Sept. 14	Sept. 29	Oct. 1	Oct. 20	Nov. 24	Feb. 21 '00
Aug. 20	Sept. 8	Sept. 28	Oct. 13	Oct. 15	Nov. 3	Dec. 8	Mar. 6 '00
Sept. 3	Sept. 22	Oct. 12	Oct. 27	Oct. 29	Nov. 17	Dec. 22	Mar. 20 '00
Sept. 17	Oct. 6	Oct. 26	Nov. 10	Nov. 12	Dec. 1	Jan. 5 '00	Apr. 3 '00
Oct. 1	Oct. 20	Nov. 9	Nov. 24	Nov. 26	Dec. 15	Jan. 19 '00	Apr. 17 '00
Oct. 15	Nov. 3	Nov. 23	Dec. 8	Dec. 10	Dec. 29	Feb. 2 '00	May 1 '00
Oct. 29	Nov. 17	Dec. 7	Dec. 22	Dec. 24	Jan. 12 '00	Feb. 16 '00	May 15 '00
Nov. 12	Dec. 1	Dec. 21	Jan. 5 '00	Jan. 7 '00	Jan. 26 '00	Mar. 1 '00	May 29 '00
Nov. 26	Dec. 15	Jan. 4 '00	Jan. 19 '00	Jan. 21 '00	Feb. 9 '00	Mar. 15 '00	June 12 '00
Dec. 10	Dec. 29	Jan. 18 '00	Feb. 2 '00	Feb. 4 '00	Feb. 23 '00	Mar. 29 '00	June 26 '00
Dec. 24	Jan. 12 '00	Feb. 1 '00	Feb. 16 '00	Feb. 18 '00	Mar. 8 '00	Apr. 12 '00	July 10 '00
Jan. 7 '00	Jan. 26 '00	Feb. 15 '00	Mar. 1 '00	Mar. 3 '00	Mar. 22 '00	Apr. 26 '00	July 24 '00

### PRINTING SCHEDULE FOR IAB

**ISSUE NUMBER**

**SUBMISSION DEADLINE**

**ISSUE DATE**

23

Friday, April 16, 1999

May 5, 1999

24

Friday, April 30, 1999

May 19, 1999

25

Friday, May 14, 1999

June 2, 1999

**PLEASE NOTE:**

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

## PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies  
FROM: Kathleen K. Bates, Iowa Administrative Code Editor  
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses Interleaf 6 to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the processing of rule-making documents, we request a 3.5" High Density (not Double Density) IBM PC-compatible diskette of the rule making. Please indicate on each diskette the following information: agency name, file name, format used for exporting, and chapter(s) amended. Diskettes may be delivered to the Administrative Code Division, 1st Floor, Lucas State Office Building or included with the documents submitted to the Governor's Administrative Rules Coordinator.

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**Please note that changes made prior to publication of the rule-making documents are reflected on the hard copy returned to agencies by the Governor's office, but not on the diskettes; diskettes are returned unchanged.**

Your cooperation helps us print the Bulletin more quickly and cost-effectively than was previously possible and is greatly appreciated.

*Guide to Rule Making, June 1995 Edition*, available upon request to the Iowa Administrative Code Division,  
Lucas State Office Building, First Floor, Des Moines, Iowa 50319.

## To All Agencies:

The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)“b” by allowing the opportunity for oral presentation (hearing) to be held at least **twenty** days after publication of Notice in the Iowa Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
<b>AGRICULTURAL DEVELOPMENT AUTHORITY[25]</b>		
Agency procedures, 1.4 to 1.9, chs 7, 9, 10 IAB 3/24/99 ARC 8818A	Conference Room 505 Fifth Ave., Suite 327 Des Moines, Iowa	April 28, 1999 9:30 a.m.
<b>AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]</b>		
Agency procedures, chs 2, 4, 5 IAB 3/24/99 ARC 8819A	Conference Room—1st Floor Wallace State Office Bldg. Des Moines, Iowa	April 16, 1999 1 p.m.
<b>BANKING DIVISION[187]</b>		
Agency procedures, chs 5, 6, 11 IAB 3/24/99 ARC 8817A	Conference Room 200 E. Grand Ave. Des Moines, Iowa	April 13, 1999 1:30 p.m.
<b>CIVIL RIGHTS COMMISSION[161]</b>		
Agency procedures, 1.2, 1.4, 4.1 to 4.33 IAB 3/24/99 ARC 8808A	Conference Room—2nd Floor 211 E. Maple St. Des Moines, Iowa	April 13, 1999 1 p.m.
<b>COMMUNITY ACTION AGENCIES DIVISION[427]</b>		
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<b>CREDIT UNION DIVISION[189]</b>		
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<b>CRIMINAL AND JUVENILE JUSTICE PLANNING DIVISION[428]</b>		
Agency procedures, chs 6 to 8 IAB 3/24/99 ARC 8802A	Director's Conference Room Lucas State Office Bldg. Des Moines, Iowa	April 13, 1999 10 a.m.
<b>CULTURAL AFFAIRS DEPARTMENT[221]</b>		
Agency procedures, 1.1, 1.2, 1.4 to 1.7, chs 3, 4 IAB 3/24/99 ARC 8839A	Director's Conference Room 600 E. Locust St. Des Moines, Iowa	April 13, 1999 1 p.m.

**DEAF SERVICES DIVISION[429]**

Agency procedures, chs 6 to 9 IAB 4/7/99 ARC 8860A	Director's Conference Room Lucas State Office Bldg. Des Moines, Iowa	April 27, 1999 10 a.m.
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**DENTAL EXAMINERS BOARD[650]**

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Complaints, 31.5 to 31.15 IAB 3/24/99 ARC 8828A	Conference Room—2nd Floor Executive Hills West 1209 E. Court Ave. Des Moines, Iowa	April 21, 1999 1 p.m.
Contested cases, ch 51 IAB 3/24/99 ARC 8826A	Conference Room—2nd Floor Executive Hills West 1209 E. Court Ave. Des Moines, Iowa	April 21, 1999 1 p.m.

**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]**

Emergency shelter grants program, ch 24 IAB 4/7/99 ARC 8913A	Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	April 27, 1999 3:30 p.m.
Homeless shelter operation grants program, ch 29 IAB 4/7/99 ARC 8914A	Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	April 27, 1999 3:30 p.m.
Use of marketing logo, ch 72 IAB 4/7/99 ARC 8911A	Business Finance Conference Room First Floor 200 E. Grand Ave. Des Moines, Iowa	May 4, 1999 1:30 p.m.

**EDUCATIONAL EXAMINERS BOARD[282]**

Student loan default/noncompliance with agreement for payment of obligation, ch 9 IAB 4/7/99 ARC 8898A	Conference Room 3 North—3rd Floor Grimes State Office Bldg. Des Moines, Iowa	May 4, 1999 10 a.m.
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**EDUCATION DEPARTMENT[281]**

General accreditation standards,  
12.1 to 12.9  
IAB 4/7/99 ARC 8896A

**ICN Network** April 27, 1999  
Grimes State Office Bldg., Des Moines 6:30 to 8 p.m.  
(Origination Site)  
Alta High School  
Iowa State University, Ames  
Clarinda Guard Armory  
Council Bluffs AEA  
Southwestern Community College,  
Creston  
Eagle Grove Guard Armory  
Emmetsburg High School  
Knoxville Guard Armory  
Sioux Center Middle School  
Sioux City Central Campus

**ICN Network** April 28, 1999  
Grimes State Office Bldg., Des Moines 6:30 to 8 p.m.  
(Origination Site)  
Community College, Bettendorf  
Notre Dame High School, Burlington  
Cedar Falls AEA  
Cedar Rapids Guard Armory  
Clinton Community College  
Elkader High School  
Marshalltown AEA  
Mason City High School  
Ottumwa High School  
Washington Guard Armory

Board Room—2nd Floor May 3, 1999  
Educational Services Center 6:30 to 8 p.m.  
346 2nd Ave. SW  
Cedar Rapids, Iowa

High School Auditorium May 6, 1999  
1015 Division St. 6:30 to 8 p.m.  
Cedar Falls, Iowa

High School Auditorium May 17, 1999  
601 W. Townline 6:30 to 8 p.m.  
Creston, Iowa

South Elementary Auditorium May 24, 1999  
310 Cayuga 6:30 to 8 p.m.  
Storm Lake, Iowa

High School Auditorium May 27, 1999  
307 E. Monroe 6:30 to 8 p.m.  
Mount Pleasant, Iowa

**ELDER AFFAIRS DEPARTMENT[321]**

Agency procedures,  
2.7, chs 13, 18, 28  
IAB 3/24/99 ARC 8854A

North Conference Room April 13, 1999  
Clemens Bldg. 10 a.m.  
200 10th St.  
Des Moines, Iowa



**ENVIRONMENTAL PROTECTION COMMISSION[567]**

Air pollution, amendments to chs 20 to 23, 25 IAB 3/10/99 <b>ARC 8744A</b>	East Conference Room Air Quality Bureau 7900 Hickman Ave., Suite 1 Urbandale, Iowa	April 9, 1999 1 p.m.
Public and private drinking water, 40.1 to 40.7 IAB 4/7/99 <b>ARC 8903A</b>	Conference Room—4th Floor Wallace State Office Bldg. Des Moines, Iowa	May 4, 1999 10 a.m.
	Hanson Room 8—Siebens Forum Buena Vista College 4th and Grand Ave. Storm Lake, Iowa	May 6, 1999 10 a.m.
	Muse-Norris Conference Room North Iowa Area Community College 500 College Dr. Mason City, Iowa	May 24, 1999 10 a.m.
	Community Room (upstairs/back entrance) 101 E. Main St. Manchester, Iowa	May 25, 1999 10 a.m.
	Room A Public Library 123 S. Linn St. Iowa City, Iowa	May 26, 1999 10 a.m.
	Conference Room Municipal Utilities 15 W. 3rd St. Atlantic, Iowa	May 27, 1999 10 a.m.
Water supplies, amendments to ch 41, IAB 4/7/99 <b>ARC 8902A</b>	Conference Room—4th Floor Wallace State Office Bldg. Des Moines, Iowa	May 4, 1999 10 a.m.
	Hanson Room 8—Siebens Forum Buena Vista College 4th and Grand Ave. Storm Lake, Iowa	May 6, 1999 10 a.m.
	Muse-Norris Conference Room North Iowa Area Community College 500 College Dr. Mason City, Iowa	May 24, 1999 10 a.m.
	Community Room (upstairs/back entrance) 101 E. Main St. Manchester, Iowa	May 25, 1999 10 a.m.
	Room A Public Library 123 S. Linn St. Iowa City, Iowa	May 26, 1999 10 a.m.
	Conference Room Municipal Utilities 15 W. 3rd St. Atlantic, Iowa	May 27, 1999 10 a.m.

**ENVIRONMENTAL  
PROTECTION  
COMMISSION[567]**  
(Cont'd)

Public notification, public education, consumer confidence reports, reporting, and record maintenance, ch 42 IAB 4/7/99 <b>ARC 8901A</b>	Conference Room—4th Floor Wallace State Office Bldg. Des Moines, Iowa	May 4, 1999 10 a.m.
	Hanson Room 8—Siebens Forum Buena Vista College 4th and Grand Ave. Storm Lake, Iowa	May 6, 1999 10 a.m.
	Muse-Norris Conference Room North Iowa Area Community College 500 College Dr. Mason City, Iowa	May 24, 1999 10 a.m.
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	Room A Public Library 123 S. Linn St. Iowa City, Iowa	May 26, 1999 10 a.m.
	Conference Room Municipal Utilities 15 W. 3rd St. Atlantic, Iowa	May 27, 1999 10 a.m.
Water supplies—design and operation, 43.1 to 43.3, 43.5, 43.7, 43.8 IAB 4/7/99 <b>ARC 8905A</b>	Conference Room—4th Floor Wallace State Office Bldg. Des Moines, Iowa	May 4, 1999 10 a.m.
	Hanson Room 8—Siebens Forum Buena Vista College 4th and Grand Ave. Storm Lake, Iowa	May 6, 1999 10 a.m.
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**ENVIRONMENTAL  
PROTECTION  
COMMISSION[567]  
(Cont'd)**

Aquifer storage and recovery,  
ch 55  
IAB 4/7/99 **ARC 8909A**

Conference Room—4th Floor  
Wallace State Office Bldg.  
Des Moines, Iowa  
May 4, 1999  
10 a.m.

Hanson Room 8—Siebens Forum  
Buena Vista College  
4th and Grand Ave.  
Storm Lake, Iowa  
May 6, 1999  
10 a.m.

Muse-Norris Conference Room  
North Iowa Area Community College  
500 College Dr.  
Mason City, Iowa  
May 24, 1999  
10 a.m.

Community Room  
(upstairs/back entrance)  
101 E. Main St.  
Manchester, Iowa  
May 25, 1999  
10 a.m.

Room A  
Public Library  
123 S. Linn St.  
Iowa City, Iowa  
May 26, 1999  
10 a.m.

Conference Room  
Municipal Utilities  
15 W. 3rd St.  
Atlantic, Iowa  
May 27, 1999  
10 a.m.

Laboratory certification,  
83.1 to 83.7  
IAB 4/7/99 **ARC 8910A**

Conference Room—4th Floor  
Wallace State Office Bldg.  
Des Moines, Iowa  
May 4, 1999  
10 a.m.

Hanson Room 8—Siebens Forum  
Buena Vista College  
4th and Grand Ave.  
Storm Lake, Iowa  
May 6, 1999  
10 a.m.

Muse-Norris Conference Room  
North Iowa Area Community College  
500 College Dr.  
Mason City, Iowa  
May 24, 1999  
10 a.m.

Community Room  
(upstairs/back entrance)  
101 E. Main St.  
Manchester, Iowa  
May 25, 1999  
10 a.m.

Room A  
Public Library  
123 S. Linn St.  
Iowa City, Iowa  
May 26, 1999  
10 a.m.

Conference Room  
Municipal Utilities  
15 W. 3rd St.  
Atlantic, Iowa  
May 27, 1999  
10 a.m.

**ENVIRONMENTAL  
PROTECTION  
COMMISSION[567]**  
(Cont'd)

Organic materials composting facilities, ch 105 IAB 4/7/99 ARC 8907A	West Conference Room—5th Floor Wallace State Office Bldg. Des Moines, Iowa	April 27, 1999 10 a.m.
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**HUMAN RIGHTS DEPARTMENT[421]**

Agency procedures, 2.1, 2.3(1), 2.6, chs 3 to 6 IAB 3/24/99 ARC 8814A	Director's Conference Room Lucas State Office Bldg. Des Moines, Iowa	April 13, 1999 10 a.m.
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**INSURANCE DIVISION[191]**

Agency procedures, chs 2 to 4 IAB 3/24/99 ARC 8836A	340 E. Maple St. Des Moines, Iowa	April 16, 1999 10 a.m.
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**LABOR SERVICES DIVISION[875]**

Agency procedures, amendments to ch 1, 150.11(4), 150.15, 202.9; rescind ch 300 IAB 3/24/99 ARC 8847A	1000 E. Grand Ave. Des Moines, Iowa	April 19, 1999 1 p.m. (If requested)
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**LATINO AFFAIRS DIVISION[433]**

Agency procedures, chs 3 to 5, 7 IAB 3/24/99 ARC 8825A	Director's Conference Room Lucas State Office Bldg. Des Moines, Iowa	April 13, 1999 10 a.m.
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**LAW ENFORCEMENT ACADEMY[501]**

Agency procedures, 6.2(2), rescind 6.3, 6.4; chs 14, 15 IAB 3/24/99 ARC 8830A	Law Enforcement Academy Library Camp Dodge Johnston, Iowa	April 13, 1999 10 a.m.
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**LOTTERY DIVISION[705]**

Prize payment; agency procedures, 1.29, 2.16, amendments to ch 6, ch 7, 13.23, ch 14 IAB 3/24/99 ARC 8856A	2015 Grand Ave. Des Moines, Iowa	April 15, 1999 9 a.m.
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**NATURAL RESOURCE COMMISSION[571]**

Game management areas, 51.5(2), 51.9 IAB 3/10/99 ARC 8747A	State Forest Nursery 2404 S. Duff Ames, Iowa	April 17, 1999 10 a.m.
Wildlife refuges—Chichaqua and Cottonwood, 52.1(2) IAB 3/10/99 ARC 8748A	State Forest Nursery 2404 S. Duff Ames, Iowa	April 17, 1999 10 a.m.

**NATURAL RESOURCE  
COMMISSION[571]**  
(Cont'd)

Waterfowl and coot hunting, 91.1, 91.3, 91.4(2), 91.6 IAB 3/10/99 ARC 8746A	State Forest Nursery 2404 S. Duff Ames, Iowa	April 17, 1999 10 a.m.
Wild turkey fall hunting, 99.2(1), 99.5 IAB 3/10/99 ARC 8743A	State Forest Nursery 2404 S. Duff Ames, Iowa	April 17, 1999 10 a.m.
Deer hunting, 106.2(4), 106.8(2), 106.10(6) IAB 3/10/99 ARC 8749A	State Forest Nursery 2404 S. Duff Ames, Iowa	April 17, 1999 10 a.m..

**PERSONS WITH DISABILITIES DIVISION[431]**

Agency procedures, 1.2, chs 4 to 6 IAB 4/7/99 ARC 8859A	Director's Conference Room Lucas State Office Bldg. Des Moines, Iowa	April 27, 1999 10 a.m.
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**PROFESSIONAL LICENSURE DIVISION[645]**

Agency procedures, chs 6 to 9, 11 to 17 IAB 3/24/99 ARC 8834A	Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	April 15, 1999 9 to 11 a.m.
Barber examiners, 20.201 to 20.213, 20.300; rescind chs 23 to 27, 29 IAB 4/7/99 ARC 8891A	Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	April 28, 1999 9 to 11 a.m.
Behavioral science examiners, rescind 31.7, 31.11 to 31.20, chs 32 to 34, 36 to 39 IAB 4/7/99 ARC 8890A	Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	April 28, 1999 9 to 11 a.m.
Chiropractic examiners, 40.21 to 40.35; rescind 40.47 and chs 41, 42, 49 IAB 3/24/99 ARC 8833A	Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	April 15, 1999 9 to 11 a.m.
Cosmetology, rescind 65.1 to 65.11, 65.13, 65.101, chs 66 to 71 IAB 4/7/99 ARC 8889A	Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	April 28, 1999 9 to 11 a.m.
Dietetic examiners, rescind 80.200 to 80.213, 80.215 to 80.219, chs 86 to 91 IAB 4/7/99 ARC 8888A	Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	April 28, 1999 9 to 11 a.m.
Mortuary science examiners, rescind 101.201 to 101.209, 201.211; amend 101.212; rescind chs 102 to 104, 109, 114, 115 IAB 4/7/99 ARC 8885A	Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	April 28, 1999 9 to 11 a.m.
Hearing aid dealers, rescind 120.201 to 120.211, 120.213, 120.300, chs 121 to 125, 129 IAB 4/7/99 ARC 8887A	Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	April 28, 1999 9 to 11 a.m.

**PROFESSIONAL LICENSURE  
DIVISION[645]  
(Cont'd)**

Massage therapy examiners, rescind 131.6 to 131.16; amend 131.17(2); rescind chs 136 to 139 IAB 4/7/99 <b>ARC 8886A</b>	Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	April 28, 1999 9 to 11 a.m.
Nursing home administrators, amend 141.12; rescind 141.13, chs 144 to 148 IAB 4/7/99 <b>ARC 8884A</b>	Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	April 28, 1999 9 to 11 a.m.
Optometry examiners, rescind 180.101 to 180.114, 180.116 to 180.122, 180.300, chs 186 to 191 IAB 4/7/99 <b>ARC 8883A</b>	Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	April 28, 1999 9 to 11 a.m.
Physical and occupational therapy examiners, 201.18 to 201.26, 202.16 to 202.23; rescind 202.25, 202.26, chs 204 to 209 IAB 4/7/99 <b>ARC 8880A</b>	Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	April 28, 1999 9 to 11 a.m.
Podiatry examiners, rescind 220.201 to 220.211, 220.213, 220.300, chs 225 to 230 IAB 4/7/99 <b>ARC 8881A</b>	Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	April 28, 1999 9 to 11 a.m.
Psychology examiners, 240.200 to 240.300; rescind chs 241, 242, 249 IAB 3/24/99 <b>ARC 8840A</b>	Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	April 15, 1999 9 to 11 a.m.
Respiratory care examiners, 260.18 to 260.28, 260.30 to 260.34; rescind chs 261, 262, 269 IAB 4/7/99 <b>ARC 8879A</b>	Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	April 28, 1999 9 to 11 a.m.
Social work examiners, amendments to ch 280; rescind chs 281 to 285, 289 IAB 3/24/99 <b>ARC 8832A</b>	Board Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	April 14, 1999 9 to 11 a.m.
Speech pathology and audiology examiners, 301.101 to 301.113; rescind chs 303 to 307, 309 IAB 4/7/99 <b>ARC 8878A</b>	Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	April 28, 1999 9 to 11 a.m.
Physician assistant examiners, 325.11 to 325.14; rescind chs 326, 327 IAB 4/7/99 <b>ARC 8882A</b>	Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	April 28, 1999 9 to 11 a.m.
Athletic training examiners, 350.22 to 350.30; rescind chs 355 to 358 IAB 3/24/99 <b>ARC 8831A</b>	Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	April 15, 1999 9 to 11 a.m.

**PUBLIC SAFETY DEPARTMENT[661]**

Breath testing devices, 7.2(3) IAB 3/24/99 ARC 8796A	Conference Room—3rd Floor West Half Wallace State Office Bldg. Des Moines, Iowa	April 19, 1999 9:30 a.m.
Agency procedures, ch 10 IAB 3/24/99 ARC 8855A	Conference Room—3rd Floor West Half Wallace State Office Bldg. Des Moines, Iowa	April 19, 1999 9 a.m.
Criminal history record checks, 11.2, 11.5, 11.21 IAB 4/7/99 ARC 8895A	Conference Room—3rd Floor West Half Wallace State Office Bldg. Des Moines, Iowa	May 3, 1999 9:30 a.m.

**RACING AND GAMING COMMISSION[491]**

Rule making and declaratory orders, ch 2 IAB 3/24/99 ARC 8810A	IMTA Auditorium (next to Racing and Gaming Office) 717 E. Court, Suite B Des Moines, Iowa	April 13, 1999 9 a.m.
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**REAL ESTATE COMMISSION[193E]**

Agency procedures, 1.23, 1.42, chs 4, 7 IAB 3/24/99 ARC 8792A	Conference Room—2nd Floor Dept. of Commerce Bldg. 1918 S.E. Hulsizer Ankeny, Iowa	April 13, 1999 9 a.m.
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**SECRETARY OF STATE[721]**

Constitutional amendment, 21.200(5) IAB 3/24/99 ARC 8843A	Office of Secretary of State Second Floor Hoover State Office Bldg. Des Moines, Iowa	April 13, 1999 1:30 p.m.
Alternative voting systems, 22.5(3), 22.40, 22.41, 22.461, 22.462 IAB 4/7/99 ARC 8893A	Office of Secretary of State Second Floor Hoover State Office Bldg. Des Moines, Iowa	April 27, 1999 1:30 p.m.

**SOIL CONSERVATION DIVISION[27]**

Agency procedures, chs 3 to 5 IAB 3/24/99 ARC 8815A	Conference Room—1st Floor East Half Wallace State Office Bldg. Des Moines, Iowa	April 13, 1999 10 a.m.
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**STATUS OF AFRICAN-AMERICANS, DIVISION ON THE[434]**

Agency procedures, chs 3 to 6 IAB 4/7/99 ARC 8862A	Director's Conference Room Lucas State Office Bldg. Des Moines, Iowa	April 27, 1999 10 a.m.
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**STATUS OF WOMEN DIVISION[435]**

Agency procedures, chs 7 to 9 IAB 3/24/99 ARC 8816A	Director's Conference Room Lucas State Office Bldg. Des Moines, Iowa	April 13, 1999 10 a.m.
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**TRANSPORTATION DEPARTMENT[761]**

Logo signing, 118.2 to 118.6 IAB 3/24/99 ARC 8789A	Commission Conference Room 800 Lincoln Way Ames, Iowa	April 15, 1999 10 a.m. (If requested)
Vehicle registration and certificate of title, 400.60(1) IAB 3/24/99 ARC 8794A	Conference Room—Lower Level Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	April 15, 1999 10 a.m. (If requested)

**TREASURER OF STATE[781]**

Agency procedures, chs 17, 18 IAB 3/24/99 ARC 8835A	Office of Treasurer of State—1st Floor State Capitol Bldg. Des Moines, Iowa	April 16, 1999 9 a.m.
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**VETERINARY MEDICINE BOARD[811]**

Agency procedures, chs 3, 4, 10 IAB 3/24/99 ARC 8820A	Conference Room—1st Floor Wallace State Office Bldg. Des Moines, Iowa	April 16, 1999 2:30 p.m.
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**WORKFORCE DEVELOPMENT DEPARTMENT[871]**

Organizational changes, 1.1(6), 2.1(2), 2.4(4), 2.5, 2.7(2), 2.8 IAB 3/24/99 ARC 8809A	Director's Conference Room 1000 E. Grand Ave. Des Moines, Iowa	April 16, 1999 10:30 a.m. (If requested)
Agency procedures, 43.5, amendments to ch 44 IAB 3/24/99 ARC 8849A	1000 E. Grand Ave. Des Moines, Iowa	April 13, 1999 9:30 a.m.

**CITATION of Administrative Rules**

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).



Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Agricultural Development Authority[25]

Soil Conservation Division[27]

ATTORNEY GENERAL[61]

AUDITOR OF STATE[81]

BEEF INDUSTRY COUNCIL, IOWA[101]

BLIND, DEPARTMENT FOR THE[111]

CITIZENS' AIDE[141]

CIVIL RIGHTS COMMISSION[161]

COMMERCE DEPARTMENT[181]

Alcoholic Beverages Division[185]

Banking Division[187]

Credit Union Division[189]

Insurance Division[191]

Professional Licensing and Regulation Division[193]

Accountancy Examining Board[193A]

Architectural Examining Board[193B]

Engineering and Land Surveying Examining Board[193C]

Landscape Architectural Examining Board[193D]

Real Estate Commission[193E]

Real Estate Appraiser Examining Board[193F]

Savings and Loan Division[197]

Utilities Division[199]

CORRECTIONS DEPARTMENT[201]

Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]

Arts Division[222]

Historical Division[223]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

City Development Board[263]

Iowa Finance Authority[265]

EDUCATION DEPARTMENT[281]

Educational Examiners Board[282]

College Student Aid Commission[283]

Higher Education Loan Authority[284]

Iowa Advance Funding Authority[285]

Libraries and Information Services Division[286]

Public Broadcasting Division[288]

School Budget Review Committee[289]

EGG COUNCIL[301]

ELDER AFFAIRS DEPARTMENT[321]

EMPOWERMENT BOARD, IOWA[349]

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

EXECUTIVE COUNCIL[361]

FAIR BOARD[371]

GENERAL SERVICES DEPARTMENT[401]

HUMAN INVESTMENT COUNCIL[417]

HUMAN RIGHTS DEPARTMENT[421]

Community Action Agencies Division[427]

Criminal and Juvenile Justice Planning Division[428]

Deaf Services Division[429]

Persons With Disabilities Division[431]

Latino Affairs Division[433]

Status of Blacks Division[434]

Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]

INSPECTIONS AND APPEALS DEPARTMENT[481]  
    Employment Appeal Board[486]  
    Foster Care Review Board[489]  
    Racing and Gaming Commission[491]  
    State Public Defender[493]  
LAW ENFORCEMENT ACADEMY[501]  
LIVESTOCK HEALTH ADVISORY COUNCIL[521]  
MANAGEMENT DEPARTMENT[541]  
    Appeal Board, State[543]  
    City Finance Committee[545]  
    County Finance Committee[547]  
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]  
NATIONAL AND COMMUNITY SERVICE, IOWA COMMISSION ON[555]  
NATURAL RESOURCES DEPARTMENT[561]  
    Energy and Geological Resources Division[565]  
    Environmental Protection Commission[567]  
    Natural Resource Commission[571]  
    Preserves, State Advisory Board[575]  
PERSONNEL DEPARTMENT[581]  
PETROLEUM UNDERGROUND STORAGE TANK FUND  
    BOARD, IOWA COMPREHENSIVE[591]  
PREVENTION OF DISABILITIES POLICY COUNCIL[597]  
PUBLIC DEFENSE DEPARTMENT[601]  
    Emergency Management Division[605]  
    Military Division[611]  
PUBLIC EMPLOYMENT RELATIONS BOARD[621]  
PUBLIC HEALTH DEPARTMENT[641]  
    Substance Abuse Commission[643]  
    Professional Licensure Division[645]  
    Dental Examiners Board[650]  
    Medical Examiners Board[653]  
    Nursing Board[655]  
    Pharmacy Examiners Board[657]  
PUBLIC SAFETY DEPARTMENT[661]  
RECORDS COMMISSION[671]  
REGENTS BOARD[681]  
    Archaeologist[685]  
REVENUE AND FINANCE DEPARTMENT[701]  
    Lottery Division[705]  
SECRETARY OF STATE[721]  
SEED CAPITAL CORPORATION, IOWA[727]  
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]  
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]  
TRANSPORTATION DEPARTMENT[761]  
    Railway Finance Authority[765]  
TREASURER OF STATE[781]  
UNIFORM STATE LAWS COMMISSION[791]  
VETERANS AFFAIRS COMMISSION[801]  
VETERINARY MEDICINE BOARD[811]  
VOTER REGISTRATION COMMISSION[821]  
WORKFORCE DEVELOPMENT DEPARTMENT[871]  
    Labor Services Division[875]  
    Workers' Compensation Division[876]  
    Workforce Development Board and  
        Workforce Development Center Administration Division[877]

**NOTICE - AVAILABILITY OF PUBLIC FUNDS**

IAB 4/7/99

AGENCY	PROGRAM	SERVICE DELIVERY AREA	ELIGIBLE APPLICANTS	SERVICES	APPLICATION DUE DATE	CONTRACT PERIOD
Public Health	PRIMECARRE Loan Repayment Program	Statewide	Communities in Federally Designated Health Provider Shortage Areas in Iowa	Loan Repayment for eligible primary care practitioners	May 6, 1999	Extends until the service commitment has been completed

Faxed requests will be accepted.  
Request application packet from:

Margaret A. Pitiris, MS  
 PRIMECARRE Program Coordinator  
 Bureau of Rural Health & Primary Care  
 Division of Family and Community Health  
 Iowa Department of Public Health  
 Lucas State Office Building  
 321 East 12<sup>th</sup> Street  
 Des Moines, Iowa 50319-0075  
 Telephone: (515) 281-5069  
 FAX: (515) 242-6384

**PUBLIC FUNDS AVAILABILITY**

## ARC 8863A

## AUDITOR OF STATE[81]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 17A.3, the Office of Auditor of State hereby gives Notice of Intended Action to amend Chapter 25, "Organization and Procedures," and adopt Chapter 27, "Agency Procedure for Rule Making," Iowa Administrative Code

The proposed amendments bring the Office of Auditor of State's rules on administrative rule making and declaratory orders into conformance with 1998 Iowa Acts, chapter 1202, which amended the Iowa Administrative Procedure Act.

Interested persons may make written comments or suggestions on the proposed amendments on or before April 27, 1999. Comments should be addressed to the Office of Auditor of State, State Capitol Building, Des Moines, Iowa 50319, or faxed to (515)242-6134.

These amendments are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

The following amendments are proposed.

ITEM 1. Amend rule 81—25.10(17A,11) as follows:

**81—25.10(17A,11) Declaratory rulings orders.** A petition for a declaratory ruling order may be filed in writing by competent persons as to the applicability as to any statutory provision, rule or other written statement of law or policy provision or order of the *agency auditor of state*. Petitions for a declaratory ruling order shall state the statutory provision, rule or other written statement of law or policy decision or order of the *agency auditor of state* in question and shall contain a full statement of the facts being submitted for the *department's auditor of state's* consideration.

ITEM 2. Rescind rule 81—25.12(17A,11) and adopt a new 81—Chapter 27 as follows:

## CHAPTER 27

## AGENCY PROCEDURE FOR RULE MAKING

The auditor of state adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code with the following amendments:

**81—27.3(17A) Public rule-making docket.**

27.3(2) Anticipated rule making. In lieu of the words "(commission, board, director)", insert "auditor of state".

**81—27.4(17A) Notice of proposed rule making.**

27.4(3) Copies of notices. In lieu of the words "(specify time period)", insert "one calendar year".

**81—27.5(17A) Public participation.**

27.5(1) Written comments. Strike the words "(identify office and address)" or".

27.5(5) Accessibility. In lieu of the words "(designate office and telephone number)", insert "the office of auditor of state at (515)281-5834".

**81—27.6(17A) Regulatory analysis.**

27.6(2) Mailing list. In lieu of the words "(designate office)", insert "the Office of Auditor of State, State Capitol Building, Des Moines, Iowa 50319".

**81—27.10(17A) Exemption from public rule-making procedures.**

27.10(2) Categories exempt. In lieu of the words "(List here narrowly drawn classes of rules where such an exemption is justified and a brief statement of the reasons for exempting each of them.)", insert the following:

"a. Rules which are mandated by federal law or regulation in any situation where the auditor of state has no option but to adopt specified rules or where federal funding is contingent upon the adoption of the rules;

"b. Rules which implement recent legislation when a statute provides for the usual notice and public participation requirements;

"c. Rules which confer a benefit or remove a restriction on the public or some segment of the public;

"d. Rules which are necessary because of imminent peril to the public health, safety or welfare; and

"e. Nonsubstantive rules intended to correct typographical errors, incorrect citations or other errors in existing rules."

**81—27.11(17A) Concise statement of reasons.**

27.11(1) General. In lieu of the words "(specify the office and address)", insert "the Office of Auditor of State, State Capitol Building, Des Moines, Iowa 50319".

**81—27.13(17A) Agency rule-making record.**

27.13(2) Contents. Amend paragraph "c" by inserting "auditor of state" in lieu of "(agency head)".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

## ARC 8860A

## DEAF SERVICES DIVISION[429]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 216A.115, the Deaf Services Commission hereby gives Notice of Intended Action to rescind Chapter 6, "Declaratory Rulings," and adopt a new Chapter 6, "Declaratory Orders," and to rescind Chapter 7, "Petitions for Rule Making," Chapter 8, "Agency Procedure for Rule Making," and Chapter 9, "Contested Cases," and adopt new chapters 7 to 9 with the same titles, Iowa Administrative Code.

Chapters 6, 7, 8 and 9 will provide the Commission with rules governing petitions for rule making, procedures for rule making, declaratory orders and contested cases.

The Seventy-seventh General Assembly passed amendments to the Iowa Administrative Procedure Act in 1998 Iowa Acts, chapter 1202. The Attorney General's Office drafted amendments to the Uniform Rules on Agency Procedure to implement the amendments to the Iowa Administrative Procedure Act. The Commission is adopting the uniform rules which become effective July 1, 1999.

## DEAF SERVICES DIVISION[429](cont'd)

Any interested person may make written suggestions or comments on this proposed amendment on or before April 27, 1999. Such written materials should be directed to the Administrator, Division of Deaf Services, Department of Human Rights, Lucas State Office Building, First Floor, Des Moines, Iowa 50319; fax (515)242-6119.

Persons are also invited to present oral or written suggestions or comments at a public hearing which will be held on April 27, 1999, at 10 a.m. in the Director's Conference Room, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319. At the hearing, persons will be asked to confine their remarks to the subject of the amendment.

Any persons who intend to attend a public hearing and have special requirements such as hearing or mobility impairments should contact the Deaf Services Division and advise of specific needs.

This amendment is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 216A.115.

The following amendment is proposed.

Rescind 429—Chapter 6 to 429—Chapter 9 and adopt the following new chapters:

#### CHAPTER 6 DECLARATORY ORDERS

**429—6.1(17A) Adoption by reference.** The division of deaf services hereby adopts the declaratory orders segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words “(designate agency)”, insert “division of deaf services”.

2. In lieu of the words “(designate office)”, insert “Division of Deaf Services, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.

3. In lieu of the words “(AGENCY NAME)”, insert “DIVISION OF DEAF SERVICES”.

4. In lieu of the words “\_\_\_\_\_ days (15 or less)”, insert “10 days”.

5. In lieu of the words “\_\_\_\_\_ days” in subrule 6.3(1), insert “20 days”.

6. In lieu of the words “(designate official by full title and address)”, insert “Administrator, Division of Deaf Services, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.

7. In lieu of the words “(specify office and address)”, insert “Division of Deaf Services, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.

8. In lieu of the words “(agency name)”, insert “division of deaf services”.

9. In lieu of the words “(designate agency head)”, insert “administrator”.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

#### CHAPTER 7 PETITIONS FOR RULE MAKING

**429—7.1(17A) Adoption by reference.** The division of deaf services hereby adopts the petitions for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words “(designate office)”, insert “division of deaf services, department of human rights”.

2. In lieu of the words “(AGENCY NAME)”, insert “DIVISION OF DEAF SERVICES”.

3. In lieu of the words “(designate official by full title and address)”, insert “Administrator, Division of Deaf Services, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

#### CHAPTER 8 AGENCY PROCEDURE FOR RULE MAKING

**429—8.1(17A) Adoption by reference.** The division of deaf services hereby adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words “(commission, board, council, director)”, insert “administrator”.

2. In lieu of the words “(specify time period)”, insert “one year”.

3. In lieu of the words “(identify office and address)”, insert “Division of Deaf Services, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.

4. In lieu of the words “(designate office and telephone number)”, insert “the administrator at (515)281-3164 voice/tty”.

5. In lieu of the words “(designate office)”, insert “Division of Deaf Services, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.

6. In lieu of the words “(specify the office and address)”, insert “Division of Deaf Services, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.

7. In lieu of the words “(agency head)”, insert “administrator”.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

#### CHAPTER 9 CONTESTED CASES

**429—9.1(17A) Adoption by reference.** The division of deaf services hereby adopts the contested cases segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words “(agency name)”, insert “division of deaf services, department of human rights”.

2. In lieu of the words “(designate official)”, insert “administrator”.

3. In subrule 7.3(2) delete the words “or by (specify rule number)”.

4. In lieu of the words “(agency specifies class of contested case)”, insert “division contested cases”.

5. In lieu of the words “(specify office and address)”, insert “Division of Deaf Services, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.

6. In lieu of the words “(designate office)”, insert “division of deaf services”.

7. In lieu of the words “(agency to designate person to whom violations should be reported)”, insert “administrator”.

## DEAF SERVICES DIVISION[429](cont'd)

8. In lieu of the words "(board, commission, director)", insert "administrator".

9. In lieu of the words "(the agency)", insert "division of deaf services".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

**ARC 8913A****ECONOMIC DEVELOPMENT,  
IOWA DEPARTMENT OF[261]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to rescind Chapter 24, "Emergency Shelter Grants Program," Iowa Administrative Code, and adopt a new Chapter 24 with the same title.

The proposed new rules allow for format and style revisions to conform with other programs administered by the Division of Community and Rural Development. The proposed rules are intended to clarify and simplify program operations for potential users.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on April 27, 1999. Interested persons may submit written or oral comments by contacting: Roselyn McKie Wazny, Division of Community and Rural Development, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4622.

A public hearing to receive comments about the proposed new chapter will be held on April 27, 1999, at 3:30 p.m. at the above address in the IDED main conference room. Individuals interested in providing comments at the hearing should contact Roselyn McKie Wazny by 4 p.m. on April 26, 1999, to be placed on the hearing agenda.

These rules are intended to implement Iowa Code section 15.108(1)"a."

The following chapter is proposed.

Rescind 261—Chapter 24 and adopt in lieu thereof the following new chapter:

**CHAPTER 24****EMERGENCY SHELTER GRANTS PROGRAM**

**261—24.1(PL100-628) Purpose.** The program is designed to help improve the quality of services to the homeless, to make available needed services, to help meet the costs of operating essential social services to homeless individuals so that these persons have access not only to safe and sanitary shelter, but also to the supportive services and other types of assistance homeless persons need to improve their situations.

**261—24.2(PL100-628) Definitions.**

"Applicant" means a provider of homeless services applying for funds through the ESGP program.

"ESG" or "ESGP" means the emergency shelter grants program.

"Grantee" means a qualifying city government, county government, or nonprofit organization receiving funds under this chapter.

"Homeless" or "homeless individual" means:

1. An individual who lacks a fixed, regular, and adequate nighttime residence; and

2. An individual who has a primary nighttime residence that is:

- A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

- An institution that provides a temporary residence for individuals intended to be institutionalized; or

- A public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings.

"HUD" means the U.S. Department of Housing and Urban Development.

"IDED" means the Iowa department of economic development.

"Major rehabilitation" means rehabilitation that involves costs in excess of 75 percent of the value of the building before rehabilitation.

"Nonprofit recipient" means any private nonprofit organization providing assistance to the homeless to which a unit of general local government distributes ESGP funds. For purposes of this chapter, a nonprofit recipient is a subgrantee.

"Obligated" means that the grantee has placed orders, awarded contracts, received services, or entered similar transactions that require payment from the grant amount. Grant amounts awarded by IDED by a written agreement or letter of award requiring payment from the grant amounts are obligated.

"Private nonprofit organization" means a secular or religious organization described in Section 501(c) of the Internal Revenue Code which:

1. Is exempt from taxation under Subtitle A of the Internal Revenue Code,

2. Has an accounting system and a voluntary board, and

3. Practices nondiscrimination in the provision of services to clients.

"Rehabilitation" means labor, materials, tools, and other costs of improving buildings including repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing buildings; installation of security devices; and improvement through alterations or additions to, or enhancements of, existing buildings, including improvements to increase the efficient use of energy in buildings.

"Renovation" means rehabilitation that involves costs of 75 percent or less of the value of the building before rehabilitation.

"Value of the building" means the monetary value assigned to a building by an independent real estate appraiser, or as otherwise reasonably established by the grantee.

**261—24.3(PL100-628) Eligible applicants.** City governments, county governments, and private nonprofit organizations are eligible applicants under the emergency shelter grants program.

**261—24.4(PL100-628) Eligible activities.** Eligible activities are based on guidelines established by the Stewart B.

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

McKinney Homeless Assistance Amendment Act of 1988 and further defined in 24 Code of Federal Regulations Part 576. Activities assisted by this program may include only the following:

1. Rehabilitation, renovation, or conversion of buildings for use as providers of services for the homeless.
2. Provision of essential services if the service is a new service or a quantifiable increase in the level of service. No more than 30 percent of the IDED annual grant amount may be used for this purpose.
3. Payment of normal operating expenses that include staff salaries, maintenance, insurance, utilities, furnishings, and all other documented normal operating expenses.
4. Payment for eligible activities that assist in prevention of homelessness. Grants may be made for homeless prevention as long as the total amount of such grants does not exceed 30 percent of the total emergency shelter grants program allocation. Examples of eligible activities include, but are not limited to, short-term subsidies to help defray rent and utility arrearages for families faced with eviction or termination of utility services; security deposits or first month's rent for a family to acquire its own apartment; programs to provide mediation services for landlord-tenant disputes; or programs to provide legal representation to indigent tenants in eviction proceedings. Other possible types of homeless prevention efforts include making needed payments to prevent a home from falling into foreclosure.
5. Administrative costs. A grantee may use a portion of a grant received for administrative purposes as determined by IDED. The maximum allowed for these administrative costs shall be 5 percent of the state's ESGP allocation. IDED reserves the authority for distribution of administrative funds.

**261—24.5(PL100-628) Ineligible activities.** The general rule is that any activity that is not authorized under the provision of P.L. 100-628 is ineligible to be carried out with homeless shelter grants program funds. The following are items specially listed as ineligible in 24 Code of Federal Regulations Part 576.

1. Acquisition of an emergency shelter for the homeless;
2. Renting commercial, transient accommodations for the homeless;
3. Rehabilitation services, such as preparation of work specification, loan processing, or inspections;
4. Renovation, rehabilitation, or conversion of buildings owned by primarily religious organizations or entities.

**261—24.6(PL100-628) Application procedures.** The Iowa department of economic development will request applications from eligible applicants as often as the state expects funding from the U.S. Department of Housing and Urban Development (HUD). Applicants will be given at least 30 days in which to reply to the state's request. The Iowa department of economic development will make funding decisions in conjunction with the time frame established by HUD. The application must be submitted on forms prescribed by IDED and must, at a minimum, include the amount of funds requested, the need for the funds, documentation of other available funding sources, source of required local match, and estimated number of persons to be served by the applicant (daily average).

**261—24.7(PL100-628) Application review process.** Applications will be reviewed by a panel of the staff of the Iowa department of economic development and coordinated with representatives of other homeless assistance programs. Ap-

plications will be reviewed to determine eligibility based on the following criteria:

1. The identified community need for the funds, including the number of clients served, the unmet need in the community, geographic area of service, and common factors leading to the need for the service.
2. The comprehensiveness and flexibility of the program, including how the applicant strives to meet the total and special needs of its clients and how homeless assistance is integrated with other programs.
3. The accessibility of the applicant's services to its clients, including how well the applicant promotes its services within the community, any barriers to service, and any network with other service providers in the area.
4. How well the applicant deals with cultural diversity within its community.
5. Any partnerships or collaborations between the applicant and other programs within the organization or with other organizations performing similar or complementary services.
6. The unique role of the applicant within the area of service, including any innovative parts of the organization's project that would make it stand out.
7. A description of specific outcome measures for short- or long-term objectives for clients.
8. The experience of the applicant in administering an ESGP contract.
9. How well the applicant maximizes or leverages resources.

If an application contains an activity determined to be ineligible under the ESG program within the request for funds, the ineligible activity will be deleted from the application or referred to another funding source, if applicable.

Staff reserves the right to negotiate directly with the applicant to determine the priority of funding requested within the application. Staff may also review applications with the department of human rights, department of human services, or other groups with expertise in the area of serving homeless persons before making final funding recommendations. Consultation with other agencies is intended to avoid duplication and promote maximum utilization of funding sources. Based on the review process, IDED may revise the overall funding request by activity or funding level and recommend a final funding figure to the director of IDED for approval. A city or county government may be determined, at the discretion of IDED, to administer a contract for multiple applicants within a prescribed geographic area. IDED reserves the right to negotiate all aspects of a funding request prior to final approval.

**261—24.8(PL100-628) Matching requirement.** Each recipient of emergency shelter grants program funds must match the grant amount with an equal amount. This may come from the grantee, or through nonprofit recipients whose contracts are being administered by a local city or county government. In calculating the amount of matching funds, the following may be included: the value of any donated material or building, the value of any lease on a building, any salary paid to staff of the grantee or to any state recipient in carrying out the emergency shelter program; and the time and services contributed by volunteers at the rate of \$5 per hour. For purposes of this rule, IDED will determine the value of any donated material or building, or any lease, using any method reasonably calculated to establish fair market value. The state may grant an exemption of matching funds up to a maximum of \$100,000 of the state allocation received from HUD for those recipients least capable of providing such

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

matching amounts. The recipient must document its need to participate in this exemption from matching requirements.

**261—24.9(PL100-628) Grant awards.** Grants will be awarded to individual applicants. IDEED may award a grant to a local city or county government on behalf of multiple applicants, at the discretion of IDEED and with the approval of those applicants affected and the local governmental unit. If a city or county is designated as the grantee of an award, that city or county will be responsible for coordination of requests for funds by eligible private nonprofit recipients within their jurisdiction by consolidating them into one contract. IDEED reserves the right to negotiate the amount of the grant award, the scale of the project, and alternative methods in completing the project.

**261—24.10(PL100-628) Restrictions placed on grantees.**

**24.10(1) Use as provider of homeless services.** Any building for which emergency shelter grants program funds are used must be maintained as a provider of homeless services for not less than a three-year period, or for not less than a ten-year period if the grant amounts are used for major rehabilitation or conversion of the building. All other operating and maintenance costs have a one-year requirement. In calculating the applicable time period, the three- and ten-year periods are determined as follows:

a. In the case of a building that was not operated as a provider of services for the homeless before receipt of grant funds, on the date of initial occupancy as a provider of services to the homeless.

b. In the case of a building that was operated as a provider of services to the homeless before the receipt of grant funds, on the date that grant funds are first obligated to the homeless service provider.

**24.10(2) Building standards.** Any building for which emergency shelter grants program funds are used for renovation, conversion, rehabilitation, or major rehabilitation must meet the local government standard of being safe and in sanitary condition.

**24.10(3) Assistance to the homeless.** Homeless individuals must be given assistance in obtaining:

a. Appropriate supportive services including permanent housing, medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living; and

b. Other federal, state, local, and private assistance available to them.

**24.10(4) Participation by homeless individuals and families.**

a. Recipients of ESGP funds must certify that they involve, through employment, volunteer services, or otherwise, homeless individuals and families, to the maximum extent practicable, in construction, renovating, maintaining, and operating assisted facilities.

b. Local government recipients or qualified subrecipients must have the participation of at least one homeless person or formerly homeless person on their board of directors or equivalent policy-making entity. The Secretary of HUD may grant a waiver to the recipient if the recipient agrees to otherwise consult with homeless or formerly homeless individuals when making policy decisions.

**24.10(5) Termination of assistance.** Recipients or qualified subrecipients must establish and implement a formal process to terminate assistance to individuals or families who violate program requirements. The formal process must include a hearing process recognizing the rights of individuals.

**261—24.11(PL100-628) Compliance with applicable federal and state laws and regulations.** All grantees shall comply with the Iowa Code governing activities performed under this program and with all applicable provisions of the Stewart B. McKinney Homeless Assistance Amendment Act of 1988 and its implementing regulations. Use of ESGP funds must comply with the following additional requirements.

**24.11(1) Nondiscrimination and equal opportunity.** All grantees must comply with the following:

a. The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-19 and implementing regulations; Executive Order 11063 and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2002d) and its implementing regulations at 24 CFR Part 1.

b. Affirmative action requirements as implemented with Executive Orders 11625, 12432, and 12138 which require that every effort be made to solicit the participation of minority and women business enterprises (MBE/WBE) in governmental projects.

c. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07).

d. The prohibitions against discrimination against disabled individuals under Section 504 of the Rehabilitation Act of 1973/Americans with Disabilities Act.

**24.11(2) Auditing.** Auditing requirements are as outlined in the Single Audit Act of 1996 and the implementing regulations found in OMB Circular A-133.

**261—24.12(PL100-628) Administration.**

**24.12(1) Contracts.** Upon selection of an application for funding, IDEED will issue a contract. The contract shall be between IDEED and the designated grantee as determined by IDEED. If a local city or county government is designated as the grantee, the private nonprofit providers covered through the contract shall remain responsible for adherence to the requirements of the ESG program, including these rules. These rules and applicable federal and state laws and regulations become part of the contract.

Certain activities may require that permits or clearances be obtained from other state or federal agencies prior to proceeding with the project. Grant awards may be conditioned upon the timely completion of these requirements.

**24.12(2) Record keeping and retention.** Financial records, supporting documents, statistical records, and all other records pertinent to the grant program shall be retained by the grantee. Private nonprofit recipients covered through an ESGP contract from a local city or county government are responsible for ensuring that pertinent records of their ESGP funds be made available to the administering city or county and to IDEED upon request. Proper record retention must be in accordance with the following:

a. Records for any assisted activity shall be retained for three years after final closeout and, if applicable, until audit procedures are completed and accepted by IDEED;

b. Representatives of the Secretary of the U.S. Department of Housing and Urban Development, the Inspector General, the General Accounting Office, the state auditor's office, and IDEED shall have access to all books, accounts, documents, records, and other property belonging to or in use by a grantee pertaining to the receipt of assistance under these rules.

**24.12(3) Reporting requirements.** Grantees shall submit reports to IDEED as prescribed in the contract. These reports are:



## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

a. CHIP data reports. All recipients of ESGP funds are required to submit monthly reports on clients served through the counting homeless Iowans program (CHIP) as prescribed by IDEED.

b. ESGP Form-1, request for funds. Grantees must submit requests for funds as needed during the contract year as prescribed by IDEED.

IDEED may perform any review or field inspections it deems necessary to ensure program compliance, including review of grantee records and reports. When problems of compliance are noted, IDEED may require remedial actions to be taken. Failure to respond to notifications of need for remedial action may result in the implementation of 24.11(5).

**24.12(4) Amendments to contracts.** Any substantive change to a funded homeless shelter operation grants program will be considered a contract amendment. Substantive changes include: contract time extensions, budget revisions, and significant alterations of existing activities that will change the scope, location, objectives, or scale of the approved activities or beneficiaries. An amendment must be requested in writing by the chief elected or appointed official of the grantee. No amendment will be valid until approved in writing by IDEED.

**24.12(5) Remedies for noncompliance.** At any time before project closeout, IDEED may, for cause, find that a grantee is not in compliance with the requirements under this program. At IDEED's discretion, remedies for noncompliance may include the following:

a. Issue a warning letter that further failure to comply with program requirements within a stated period of time will result in a more serious action.

b. Condition a future grant.

c. Direct the grantee to stop incurring costs with grant amounts.

d. Require that some or all of the grant amounts be re-mitted to the state.

e. Reduce the levels of funds the recipient would otherwise be entitled to receive.

f. Elect not to provide future grant funds to the recipient until appropriate actions are taken to ensure compliance.

Reasons for a finding of noncompliance include, but are not limited to: the grantee's use of program funds for activities not described in its application, the grantee's failure to complete approved activities in a timely manner, the grantee's failure to comply with any applicable state or federal rules or regulations, or the lack of continuing capacity by the grantee to carry out the approved program in a timely manner.

These rules are intended to implement Iowa Code section 15.108(1)"a."

**ARC 8914A****ECONOMIC DEVELOPMENT,  
IOWA DEPARTMENT OF[261]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to adopt Chap-

ter 29, "Homeless Shelter Operation Grants Program," Iowa Administrative Code.

The proposed new rules establish eligibility criteria, application procedures, and administrative requirements for the Homeless Shelter Operation Grants, a program funded by the state of Iowa and administered by the Department of Economic Development. The program was transferred from the Iowa Finance Authority to the Department. These proposed rules bring the format of program rules into conformance with existing homeless assistance programs administered by the Department.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on April 27, 1999. Interested persons may submit written or oral comments by contacting Roselyn McKie Wazny, Division of Community and Rural Development, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4822.

A public hearing to receive comments about the proposed new chapter will be held on April 27, 1999, at 3:30 p.m. at the above address in the IDEED main conference room. Individuals interested in providing comments at the hearing should contact Roselyn McKie Wazny by 4 p.m. on April 26, 1999, to be placed on the hearing agenda.

These rules are intended to implement 1998 Iowa Acts, chapter 1225, section 1(3f).

The following chapter is proposed.

Adopt new 261—Chapter 29 as follows:

**CHAPTER 29  
HOMELESS SHELTER OPERATION  
GRANTS PROGRAM**

**261—29.1(77GA,ch1225) Purpose.** The program is designed to help improve the quality of services to the homeless; to make available additional needed services; and to help meet the costs of operating essential social services to homeless individuals so that these persons have access not only to safe and sanitary shelter, but also to the supportive services and other types of assistance homeless persons need to improve their situations.

**261—29.2(77GA,ch1225) Definitions.**

"Applicant" means a provider of homeless services applying for funds through the homeless shelter operation grants program.

"Grantee" means a qualifying city government, county government, or nonprofit organization receiving funds under this chapter.

"Homeless" or "homeless individual" means:

1. An individual who lacks a fixed, regular, and adequate nighttime residence; and

2. An individual who has a primary nighttime residence that is:

- A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

- An institution that provides a temporary residence for individuals intended to be institutionalized; or

- A public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings.

"HSOG" means the homeless shelter operation grants program.

"IDEED" means the Iowa department of economic development.

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

“Legislature” means the Iowa general assembly.

“Nonprofit recipient” means any private nonprofit organization providing assistance to the homeless to which a unit of general local government distributes HSOG funds. For purposes of this chapter, a nonprofit recipient is a subgrantee.

“Obligated” means that the grantee has placed orders, awarded contracts, received services, or entered similar transactions that require payment from the grant amount. Grant amounts awarded by IDED by a written agreement or letter of award requiring payment from the grant amounts are obligated.

“Private nonprofit organization” means a secular or religious organization described in Section 501(c) of the Internal Revenue Code which:

1. Is exempt from taxation under Subtitle A of the Internal Revenue Code,
2. Has an accounting system and a voluntary board, and
3. Practices nondiscrimination in the provision of assistance to homeless clients.

“Rehabilitation” means labor, materials, tools, and other costs of improving buildings including repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing buildings; installation of security devices; and improvement through alterations or additions to, or enhancements of, existing buildings, including improvements to increase the efficient use of energy in buildings.

“Renovation” means rehabilitation that involves costs of 75 percent or less of the value of the building before rehabilitation.

“Value of the building” means the monetary value assigned to a building by an independent real estate appraiser, or as otherwise reasonably established by the grantee.

**261—29.3(77GA,ch1225) Eligible applicants.** City governments, county governments, and private nonprofit organizations are eligible applicants under the homeless shelter operation grants program.

**261—29.4(77GA,ch1225) Eligible activities.** Activities assisted by this program may include but are not limited to the following:

1. Rehabilitation, renovation, or conversion of buildings for use as providers of services for the homeless.
2. Provision of essential services if the service is a new service or a quantifiable increase in the level of service.
3. Payment of normal operating expenses that include staff salaries, maintenance, insurance, utilities, furnishings, and all other documented normal operating expenses.
4. Payment for eligible activities that assist in homeless prevention. Examples of eligible activities include, but are not limited to, short-term subsidies to help defray rent and utility arrearages for families faced with eviction or termination of utility services; security deposits or first month's rent for a family to acquire its own apartment; programs to provide mediation services for landlord-tenant disputes; or programs to provide legal representation to indigent tenants in eviction proceedings. Other possible types of homeless prevention efforts include making needed payments to prevent a home from falling into foreclosure.
5. Administrative costs. A grantee may use a portion of a grant received for administrative purposes as determined by IDED. The maximum allowed for these administrative costs shall be 5 percent of the state of Iowa's HSOG allocation. IDED reserves the authority to determine the distribution of administrative funds.

**261—29.5(77GA,ch1225) Ineligible activities.** The general rule is that any activity that is not allowed under 261—29.4(77GA,ch1225) is ineligible to be carried out with homeless shelter operation grants program funds. The following items are ineligible under this rule:

1. Acquisition of an emergency shelter for the homeless;
2. Renting commercial, transient accommodations for the homeless;
3. Rehabilitation services, such as preparation of work specification, loan processing, or inspections.
4. Renovation, rehabilitation, or conversion of buildings owned by primarily religious organizations or entities.

**261—29.6(77GA,ch1225) Application procedures.** The Iowa department of economic development will request applications from eligible applicants as often as the state expects funding for the HSOG program. Applicants will be given at least 30 days in which to reply to the state's request for applications. The Iowa department of economic development will make funding decisions in the U.S. Department of Housing and Urban Development's Emergency Shelter Grants Program (ESGP) which is a federal program utilizing the same application procedure as the HSOG program. The application must be submitted on forms prescribed by IDED and the application must, at a minimum, include the amount of funds requested, the need for the funds, documentation on other available funding sources, and estimated number of persons to be served by the applicant (daily average).

**261—29.7(77GA,ch1225) Application review process.** Applications will be reviewed by a panel of the staff of the Iowa department of economic development and coordinated with representatives of other homeless assistance programs. Applications will be reviewed to determine basic eligibility based on the following criteria:

1. The identified community need for the funds, including the number of clients served, the unmet need in the community, geographic area of service, and common factors leading to the need for the service.
2. The comprehensiveness and flexibility of the program, including how the applicant strives to meet the total needs of its clients, how special needs of clients are not being met, and how homeless assistance is integrated with other programs.
3. The accessibility of the program to the community, including how well the applicant promotes its services within the community, any barriers to service, and any network with other service providers in the area.
4. How the applicant deals with cultural diversity within its community.
5. Partnerships or collaborations between the applicant and other programs within the organization or with other organizations performing similar or complementary services.
6. Description of the unique role of the applicant within the area of service, including innovative parts of the applicant's project that would make it stand out.
7. A description of specific outcome measures for short- or long-term objectives for clients.
8. The experience of the applicant in administering an HSOG program contract.
9. How well the applicant maximizes or leverages resources.

If an application contains an activity determined to be ineligible under the HSOG program within the request for funds, the ineligible activity will be deleted from the application or referred to another funding source, if applicable.

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

Staff reserves the right to negotiate directly with the applicant to determine the priority of funding requested within the application. Staff may also review applications with the department of human rights, department of human services, or other groups with an expertise in the area of serving homeless persons before making final funding recommendations. Consultation with other agencies is intended to avoid duplication and promote maximum utilization of funding sources. Based on the review process, IDEED may revise the overall funding request by activity or funding level and recommend a final funding figure to the director of IDEED for approval. A city or county government may be determined, at the discretion of IDEED, to administer a contract for multiple applicants within a prescribed geographic area. IDEED reserves the right to negotiate all aspects of a funding request prior to final approval.

**261—29.8(77GA,ch1225) Matching requirement.** There is no matching requirement with the HSOG program.

**261—29.9(77GA,ch1225) Grant awards.** Grants will be awarded to individual applicants. IDEED may award a grant to a local city or county government on behalf of multiple applicants, at the discretion of IDEED and with the approval of those applicants affected and the local governmental unit. If a city or county is designated as the grantee of an award, that city or county will be responsible for coordination of requests for funds by eligible private nonprofit recipients within their jurisdiction by consolidating them into one contract. IDEED reserves the right to negotiate the amount of the grant award, the scale of the project, and alternative methods in completing the project.

**261—29.10(77GA,ch1225) Compliance with applicable federal and state laws and regulations.** All grantees shall comply with the Iowa Code governing activities performed under this program. Use of HSOG funds must comply with the following nondiscrimination and equal opportunity requirements:

1. The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-19 and implementing regulations; Executive Order 11063 and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2002d) and its implementing regulations at 24 CFR Part 1.

2. Affirmative action requirements as implemented with Executive Orders 11625, 12432, and 12138 which require that every effort be made to solicit the participation of minority and women business enterprises (MBE/WBE) in governmental projects.

3. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07).

4. The prohibitions against discrimination against disabled individuals under Section 504 of the Rehabilitation Act of 1973/Americans with Disabilities Act.

**261—29.11(77GA,ch1225) Administration.**

**29.11(1) Contracts.** Upon selection of an application for funding, IDEED will issue a contract. The contract shall be between IDEED and the designated grantee as determined by IDEED. If a local city or county government is designated as the grantee, the private nonprofit providers covered through the contract shall remain responsible for adherence to the requirements of the HSOG program, including these rules. These rules and state laws and regulations become part of the contract.

Certain activities may require that permits or clearances be obtained from other state or federal agencies prior to proceeding with the project. Grant awards may be conditioned upon the timely completion of these requirements.

**29.11(2) Record keeping and retention.** Financial records, supporting documents, statistical records, and all other records pertinent to the grant program shall be retained by the grantee for three years. Private nonprofit recipients covered through an HSOG contract from a local city or county government are responsible for ensuring that pertinent records of their HSOG funds be made available to the administering city or county and to IDEED upon request. Proper record retention must be in accordance with the following:

a. Records for any assisted activity shall be retained for three years after final closeout and, if applicable, until audit procedures are completed and accepted by IDEED;

b. Representatives of the state auditor's office and IDEED shall have access to all books, accounts, documents, records, and other property belonging to or in use by a grantee pertaining to the receipt of assistance under these rules.

**29.11(3) Reporting requirements.** Grantees shall submit reports to IDEED as prescribed in the contract. These reports are:

a. CHIP data reports. All recipients of HSOG funds are required to submit monthly reports on clients served through the counting homeless Iowans program (CHIP) as prescribed by IDEED.

b. HSOG Form-1, request for funds. Grantees must submit requests for funds as needed during the contract year as prescribed by IDEED.

IDEED may perform any review or field inspections it deems necessary to ensure program compliance, including review of grantee records and reports. When problems of compliance are noted, IDEED may require remedial actions to be taken. Failure to respond to notifications of need for remedial action may result in the implementation of 29.11(5).

**29.11(4) Amendments to contracts.** Any substantive change to a funded homeless shelter operation grants program will be considered a contract amendment. Substantive changes include contract time extensions, budget revisions, and significant alterations of existing activities that will change the scope, location, objectives, or scale of the approved activities or beneficiaries. An amendment must be requested in writing by the chief elected or appointed official of the grantee. No amendment will be valid until approved in writing by IDEED.

**29.11(5) Remedies for noncompliance.** At any time before project closeout, IDEED may, for cause, find that a grantee is not in compliance with the requirements under this program. At IDEED's discretion, remedies for noncompliance may include the following:

a. Issue a warning letter that further failure to comply with program requirements within a stated period of time will result in a more serious action.

b. Condition a future grant.

c. Direct the grantee to stop incurring costs with grant amounts.

d. Require that some or all of the grant amounts be remitted to the state.

e. Reduce the levels of funds the recipient would otherwise be entitled to receive.

f. Elect not to provide future grant funds to the recipient until appropriate actions are taken to ensure compliance.

Reasons for a finding of noncompliance include, but are not limited to: the grantee's use of program funds for activities not described in its application, the grantee's failure to

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

complete approved activities in a timely manner, the grantee's failure to comply with any applicable state rules or regulations, or the lack of continuing capacity by the grantee to carry out the approved program in a timely manner.

These rules are intended to implement 1998 Iowa Acts, chapter 1225, section 1(3f).

**ARC 8911A****ECONOMIC DEVELOPMENT,  
IOWA DEPARTMENT OF[261]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to rescind Chapter 72, "Use of Marketing Logo," Iowa Administrative Code, and adopt a new Chapter 72 with the same title.

The proposed new chapter reflects the adoption by the Board of a new marketing logo, establishes eligibility requirements, and describes application procedures.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on May 4, 1999. Interested persons may submit written or oral comments by contacting: Cindy Jordan, International Division, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4731.

A public hearing to receive comments about the proposed new chapter will be held on May 4, 1999, at 1:30 p.m. at the above address in the Business Finance Conference Room on the first floor. Individuals interested in providing comments at the hearing should contact Cindy Jordan by 4 p.m. on May 3, 1999, to be placed on the hearing agenda.

These rules are intended to implement Iowa Code section 15.108(2b).

These rules were also Adopted and Filed Emergency and are published herein as **ARC 8912A**. The content of that submission is incorporated by reference.

**ARC 8898A****EDUCATIONAL EXAMINERS  
BOARD[282]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to adopt Chapter 9, "Student Loan Default/Noncompliance With Agreement for Payment of Obligation," Iowa Administrative Code.

These rules implement Iowa Code sections 261.121 to 261.127 [1998 Iowa Acts, chapter 1081] requiring the Educational Examiners Board to deny the issuance or renewal of a license upon receipt of a certificate of noncompliance from the College Student Aid Commission.

There will be a public hearing on the proposed amendment at 10 a.m. on May 4, 1999, in Conference Room 3 North, Third Floor, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa. Persons may present their views at the public hearing orally or in writing. Persons who wish to make oral presentation at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any interested person may make written comments or suggestions on the proposed amendment through 4:30 p.m., May 5, 1999. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address.

These rules are intended to implement Iowa Code chapters 261 and 272.

The following new chapter is proposed:

**CHAPTER 9  
STUDENT LOAN DEFAULT/NONCOMPLIANCE  
WITH AGREEMENT FOR PAYMENT OF  
OBLIGATION**

**282—9.1(261) Issuance or renewal of a license—denial.** The board shall deny the issuance or renewal of a license upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code sections 261.121 to 261.127. In addition to the procedures contained in those sections, the following shall apply.

**9.1(1)** The notice required by Iowa Code section 261.126 shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant or licensee may accept service personally or through authorized counsel.

**9.1(2)** The effective date of the denial of the license issuance or renewal, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the applicant or licensee.

**9.1(3)** The board's administrator is authorized to prepare and serve the notice required by Iowa Code section 261.126 upon the applicant or licensee.

**9.1(4)** Applicants and licensees shall keep the board informed of all court actions and all college student aid commission actions taken under or in connection with Iowa Code chapter 261 and 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 261.127, court orders entered in such actions, and withdrawals of certificates of noncompliance by the college student aid commission.

**9.1(5)** All board fees required for application, license renewal, or license reinstatement must be paid by applicants or licensees and all continuing education requirements must be met before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license pursuant to Iowa Code chapter 261.

**9.1(6)** In the event an applicant or licensee timely files a district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

9.1(7) The board shall notify the applicant or licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license and shall similarly notify the applicant or licensee when the license is issued or renewed following the board's receipt of the certificate of noncompliance.

282—9.2(261) **Suspension or revocation of a license.** The board shall suspend or revoke a license upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code sections 261.121 to 261.127. In addition to the provisions contained in those sections, the following shall apply.

9.2(1) The notice required by Iowa Code section 261.126 shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the licensee may accept service personally or through authorized counsel.

9.2(2) The effective date of the denial of the license suspension or revocation, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the licensee.

9.2(3) The board's administrator is authorized to prepare and serve the notice required by Iowa Code section 261.126, and is directed to notify the licensee that the license will be suspended, unless the license is already suspended on other grounds. In the event a license is on suspension, the administrator shall notify the licensee of the board's intention to continue the suspension.

9.2(4) Licensees shall keep the board informed of all court actions and all college student aid commission actions taken under or in connection with Iowa Code chapter 261 and 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 261.127, court orders entered in such actions, and withdrawals of certificates of noncompliance by the college student aid commission.

9.2(5) All board fees required for license renewal or license reinstatement must be paid by licensees and all continuing education requirements must be met before a license will be renewed or reinstated after the board has suspended or revoked a license pursuant to Iowa Code chapter 261.

9.2(6) In the event a licensee timely files a district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

9.2(7) The board shall notify the licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license and shall similarly notify the licensee when the license is reinstated following the board's receipt of the certificate of noncompliance.

282—9.3(17A,22,261) **Sharing of information.** Notwithstanding any statutory confidentiality provision, the board may share information with the college student aid commission for the sole purpose of identifying applicants or licensees subject to enforcement under Iowa Code chapter 261.

These rules are intended to implement Iowa Code chapter 261.

ARC 8896A

EDUCATION DEPARTMENT[281]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby gives Notice of Intended Action to amend Chapter 12, "General Accreditation Standards," Iowa Administrative Code.

Chapter 12 provides rules for the general accreditation of schools and school districts by the State Board of Education and is being amended in accordance with 1998 Iowa Acts, chapter 1176. Provisions formerly found in 12.2(1) to 12.2(6) have been amended and moved to 12.1(7) to 12.1(11).

Any interested party may make written suggestions or comments on the proposed amendments on or before May 27, 1999. Written materials should be directed to Judy Jeffrey, Administrator, Division of Early Childhood, Elementary and Secondary Education, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0145, fax (515)281-7700. Persons who wish to convey their views orally should contact the Division of Early Childhood, Elementary and Secondary Education at (515) 281-3333 or at the division offices on the second floor of the Grimes State Office Building.

Persons may also present their views either orally or in writing at one of the following public hearings. At the hearings, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amended chapter.

Public Hearings: ICN  
April 27 6:30-8:00 p.m.

- Des Moines, Grimes Building (Origination Site)
- Alta High School
- Ames, Iowa State University
- Clarinda Guard Armory
- Council Bluffs AEA
- Creston Southwestern Community College
- Eagle Grove Guard Armory
- Emmetsburg High School
- Knoxville Guard Armory
- Sioux Center Middle School
- Sioux City Central Campus

April 28 6:30-8:00 p.m.

- Des Moines, Grimes Building (Origination Site)
- Bettendorf, Community College
- Burlington Notre Dame High School
- Cedar Falls Area Education Agency
- Cedar Rapids Guard Armory

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Clinton Community College  
Elkader High School  
Marshalltown Area Education Agency  
Mason City High School  
Ottumwa High School  
Washington Guard Armory

Public Hearings: On-site 6:30-8:00 p.m.

May 3 Educational Services Center  
2nd Floor, Board Room  
346 2nd Avenue SW  
Cedar Rapids

May 6 High School Auditorium  
1015 Division Street  
Cedar Falls

May 17 High School Auditorium  
601 West Townline  
Creston

May 24 South Elementary Auditorium  
310 Cayuga  
Storm Lake

May 27 High School Auditorium  
307 East Monroe  
Mount Pleasant

Any person who intends to attend a public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the Division of Early Childhood, Elementary and Secondary Education, (515)281-3333, no later than April 26, 1999.

These rules are intended to implement Iowa Code sections 256.7 and 256.11.

The following amendments are proposed.

ITEM 1. Rescind 281—Chapter 12, title and preamble, and adopt the following new title and preamble:

CHAPTER 12  
GENERAL ACCREDITATION STANDARDS  
(Applicable July 7, 1999)

PREAMBLE

The goal for the early childhood through twelfth grade educational system in Iowa is to improve the learning, achievement, and performance of all students so they become successful members of a community and workforce. It is expected that each school and school district shall continue to improve its educational system so that more students will increase their learning, achievement, and performance.

Accreditation focuses on an ongoing school improvement process for schools and school districts. However, general accreditation standards are the minimum requirements that must be met by an Iowa public school district to be accredited. A public school district that does not maintain accreditation shall be merged, by the state board of education, with one or more contiguous school districts as required by Iowa Code subsection 256.11(12). A nonpublic school must meet the general accreditation standards if it wishes to be designated as accredited for operation in Iowa.

General accreditation standards are intended to fulfill the state's responsibility for making available an appropriate educational program that has high expectations for all students in Iowa. The accreditation standards ensure that each child has access to an educational program that meets the needs and abilities of the child regardless of race, color, national origin, gender, disability, religion, creed, or socioeconomic background.

With local community input, school districts and accredited nonpublic schools shall incorporate accountability for student achievement into comprehensive school improvement plans designed to increase the learning, achievement, and performance of students. As applicable, and to the extent possible, local comprehensive school improvement plans shall consolidate federal and state program goal setting, planning, and reporting requirements. Planning required for multicultural and gender fair education, technology education, global education, provisions for gifted and talented students, provisions for at-risk students, provisions for students with disabilities, and provisions for staff development shall be incorporated, as applicable, into the comprehensive school improvement plan. See subrules 12.5(8) to 12.5(13), 12.7(1), and 12.8(1).

ITEM 2. Amend subrule 12.1(1) as follows:

~~12.1(1) Educational units~~ *Schools and school districts* governed by *general accreditation* standards. These standards govern the accreditation of all prekindergarten, if offered, or kindergarten through grade twelve school districts operated by public school corporations and the accreditation, if requested, of prekindergarten or kindergarten through grade twelve schools operated under nonpublic auspices. ~~"School" means prekindergarten, if offered, and any organizational pattern of kindergarten through grade twelve of an elementary-secondary education program.~~ Equal opportunity in programs shall be provided to all students regardless of ~~race, national origin, sex, or disability~~ *race, color, national origin, gender, disability, religion, creed, or socioeconomic background*. Each board shall take affirmative steps to integrate students in attendance centers and courses. In order to monitor progress, district, attendance centers, and course enrollment, data shall be collected on the basis of race, national origin, sex and disability, and reviewed and updated annually.

ITEM 3. Rescind subrule 12.1(6) and renumber 12.1(7) as 12.1(6) and amend as follows:

~~12.1(7)~~ **12.1(6)** Alternative provisions for accreditation. School districts may meet accreditation requirements through the provisions of Iowa Code sections 256.13, non-resident ~~pupils~~ *students*; 273.7A, services to school districts; 279.20, superintendent—term; 280.15, joint employment and sharing; 282.7, attending in another corporation—payment; and 282.10, whole grade sharing. Nonpublic schools may meet accreditation requirements through the provisions of Iowa Code section 256.12.

ITEM 4. Amend 281—12.1(256) by adopting the following new subrules:

**12.1(7)** Minimum school calendar and day of instruction. Each board shall adopt a school calendar that identifies specific days for student instruction, staff development and in-service time, and time for parent-teacher conferences. The length of the school calendar does not dictate the length of contract or employment days for instructional and non-instructional staff. The school calendar may be operated any-time during the school year of July 1 to June 30 as defined by Iowa Code section 279.10. A minimum of 180 days of the school calendar, for school districts beginning no sooner than a day during the calendar week in which the first day of September falls, shall be used for student instruction. However, if the first day of September falls on a Sunday, school may begin any day during the calendar week preceding September 1. These 180 days shall meet the requirements of "day of school" in subrule 12.1(8), "minimum school day" in subrule 12.1(9), and "day of attendance" in subrule 12.1(10).

## EDUCATION DEPARTMENT[281](cont'd)

(Exception: A school or school district may, by board policy, excuse graduating seniors up to five days of instruction after school or district requirements for graduation have been met.) If additional days are added to the regular school calendar because of inclement weather, a graduating senior who has met the school's requirements for graduation may be excused from attendance during the extended school calendar. A school or school district may begin its school calendar for other educational purposes involving instructional and non-instructional staff.

**12.1(8) Day of school.** A day of school is a day during which the school or school district is in session and students are under the guidance and instruction of the instructional professional staff. School shall be considered in session during parent-teacher conferences as well as during activities such as field trips if students are engaged in school programs or activities under the guidance and direction of the instructional professional staff. All grade levels of the school or school district must be operated and available for attendance by all students. An exception is if either the elementary or secondary grades are closed and provided that this time missed is made up at some other point during the school calendar so as to meet the minimum of 180 days of instruction for all grade levels 1 through 12. If a classroom or attendance center is closed for emergency health or safety reasons but the remainder of the school or school district is in operation, the day may be counted as a day of school.

Furthermore, if the total hours of instructional time for the first four consecutive days equal at least 27½ hours because parent-teacher conferences are held beyond the regular school day, a school or school district may record zero hours of instructional time on the fifth consecutive school day as a minimum school day.

**12.1(9) Minimum school day.** A school day shall consist of a minimum of five and one-half hours of instructional time for all grades one through twelve. The minimum hours shall be exclusive of the lunch period. Passing time between classes as well as time spent on parent-teacher conferences may be counted as part of the five and one-half hour requirement. The school or school district may record a day of school with less than the minimum instructional hours if emergency health or safety factors require the late arrival or early dismissal of students on a specific day; or if the total hours of instructional time for all grades one through twelve in any five consecutive school days equal a minimum of 27½ hours, even though any one day of school is less than the minimum instructional hours because staff development is provided for the instructional professional staff or because parent-teacher conferences have been scheduled beyond the regular school day.

**12.1(10) Day of attendance.** A day of attendance shall be a day during which students were present and under the guidance and instruction of the instructional professional staff. When staff development designated by the board occurs outside of the time required for a "minimum school day," students shall be counted in attendance. (Note exceptions in subrules 12.1(8) and 12.1(9).)

**12.1(11) Kindergarten.** The number of instructional days within the school calendar and the length of the school day for kindergarten shall be defined by the board. This subrule applies to an accredited nonpublic school only if it offers kindergarten.

ITEM 5. Rescind rule 281—12.2(256) and adopt the following new rule:

**281—12.2(256) Definitions.** For purposes of these rules, the following definitions shall apply:

"Annual improvement goals" means the desired one-year rate of improvement for students.

"Baseline data" means information gathered at a selected point in time and used thereafter as a basis from which to monitor change.

"Benchmarks" means specific knowledge and skills anchored to content standards that a student needs to accomplish by a specific grade or grade span.

"Board" means the board of directors in charge of a public school district or the authorities in charge of an accredited nonpublic school.

"Comprehensive school improvement plan" means a design that shall describe how the school or school district will increase student learning, achievement, and performance. This ongoing improvement design may address more than student learning, achievement, and performance.

"Content standards" means broad statements about what students are expected to know and be able to do.

"Curriculum" means a plan that outlines what students shall be taught. Curriculum refers to all the courses offered, or all the courses offered in a particular area of study.

"Department" means the department of education.

"Districtwide" means, for purposes of these rules, school districts and accredited nonpublic schools.

"Districtwide assessments" means large-scale achievement or performance measures. At least one districtwide assessment shall allow for the following: the year-to-year comparison of the same group of students over time as they progress through the grades and the cross-sectional comparison of students at the same grades over multiple years.

"Districtwide progress" means the quantifiable change in school or school district student achievement and performance.

"Educational program." The educational program adopted by the board is the entire offering of the school, including out-of-class activities and the sequence of curriculum areas and activities. The educational program shall provide articulated, developmental learning experiences from the date of student entrance until high school graduation.

"Enrolled student" means a person that has officially registered with the school or school district and is taking part in the educational program.

"Incorporate" means integrating career education, multicultural and gender fair education, technology education, global education, higher order thinking skills, learning skills, and communication skills into the total educational program.

"Indicators" provide information about the general status, quality, or performance of an educational system.

"Long-range goals" means desired targets to be reached over an extended period of time.

"Multiple assessment measures," for reporting to the local community or the state, means more than one valid and reliable instrument that quantifies districtwide student learning, including specific grade-level data.

"Performance levels." The federal Elementary and Secondary Education Act (ESEA) requires that at least three levels of performance be established to assist in determining which students have or have not achieved a satisfactory or proficient level of performance. At least two of those three levels shall describe what all students ought to know or be able to do if their achievement and performance is deemed proficient or advanced. The third level shall describe students who are not yet performing at the proficient level. A school or school district may establish more than three per-

## EDUCATION DEPARTMENT[281](cont'd)

formance levels that include all students for districtwide or other assessments.

"Proficient," as it relates to content standards, characterizes a student performance at a level that is acceptable by the school or school district.

"School" means an accredited nonpublic school.

"School district" means a public school district.

"School improvement advisory committee" means a committee, as defined in Iowa Code section 280.12, that is appointed by the board. Committee membership shall include students, parents, teachers, administrators, and representatives from the local community which may include business, industry, labor, community agencies, higher education, or other community constituents. Committee membership shall consist of females, males, members of diverse racial/ethnic groups represented within the school or school district, and persons with disabilities represented within the school or school district. The school improvement advisory committee as defined by 280.12 and the board are also part of, but not inclusive of, the local community.

"Student learning goals" means general statements of expectations for all graduates.

"Students with disabilities" means students who have individualized education programs regardless of the disability.

"Subgroups" means a subset of the student population that has a common characteristic. Subgroups include, but are not limited to, gender, race, students with disabilities, and socioeconomic status.

"Successful employment in Iowa" may be determined by, but is not limited to, reviewing student achievement and performance based on locally identified indicators such as earnings, educational attainment, reduced unemployment, medical coverage, and employability.

ITEM 6. Amend 281—12.3(256) by rescinding subrules 12.3(2) to 12.3(12) and adopting the following new subrules:

12.3(2) Policy manual. The board shall develop and maintain a policy manual which provides a codification of its policies, including the adoption date, the review date, and any revision date for each policy. Policies shall be reviewed at least every five years to ensure relevance to current practices and compliance with the Iowa Code, administrative rules and decisions, and court decisions.

12.3(3) Personnel evaluation. Each board shall adopt evaluation criteria and procedures for all contracted staff. The evaluation processes shall conform to Iowa Code sections 272.33, 279.14, and 279.23A.

12.3(4) Student records. Each board shall require its administrative staff to establish and maintain a system of student records. This system shall include for each student a permanent office record and a cumulative record.

The permanent office record shall serve as a historical record of official information concerning the student's education. At a minimum, the permanent office record should contain evidence of attendance and educational progress, serve as an official transcript, contain other data for use in planning to meet student needs, and provide data for official school and school district reports. This record is to be permanently maintained and stored in a fire-resistant safe or vault or can be maintained and stored electronically with a secure back-up file.

The cumulative record shall provide a continuous and current record of significant information on progress and growth. It should reflect information such as courses taken, scholastic progress, school attendance, physical and health record, experiences, interests, aptitudes, attitudes, abilities,

honors, extracurricular activities, part-time employment, and future plans. It is the "working record" used by the instructional professional staff in understanding the student. At the request of a receiving school or school district, a copy of the cumulative record shall be sent to officials of that school when a student transfers.

For the sole purpose of implementing an interagency agreement with state and local agencies in accordance with Iowa Code section 280.25, a pupil's permanent record may include information contained in the cumulative record as defined above.

The board shall adopt a policy concerning the accessibility and confidentiality of student records that complies with the provisions of the federal Family Educational Rights and Privacy Act of 1974 and Iowa Code chapter 22.

12.3(5) Requirements for graduation. Each board providing a program through grade twelve shall adopt a policy establishing the requirements students must meet for high school graduation. This policy shall make provision for early graduation and shall be consistent with these requirements and Iowa Code section 280.14.

12.3(6) Student responsibility and discipline. The board shall adopt student responsibility and discipline policies as required by Iowa Code section 279.8. The board shall involve parents, students, instructional and noninstructional professional staff, and community members in the development and revision of those policies where practicable or unless specific policy is mandated by legislation. The policies shall relate to the educational purposes of the school or school district. The policies shall include, but are not limited to, the following: attendance; use of tobacco; the use or possession of alcoholic beverages or any controlled substance; harassment of or by students and staff; violent, destructive, and seriously disruptive behavior; suspension, expulsion, emergency removal, weapons, and physical restraint; out-of-school behavior; participation in extracurricular activities; academic progress; and citizenship.

The policies shall ensure due process rights for students and parents, including consideration for students who have been identified as requiring special education programs and services.

The board shall also consider the potential, disparate impact of the policies on students because of race, color, national origin, gender, disability, religion, creed, or socioeconomic background.

The board shall publicize its support of these policies; its support of the staff in enforcing them; and the staff's accountability for implementing them.

12.3(7) Health services. The board shall adopt a policy for the implementation of a school health services program consistent with the provisions of 281—41.96(256B).

12.3(8) Audit of school funds. This subrule applies to school districts. The results of the annual audit of all school district funds conducted by the state auditor or a private auditing firm shall be made part of the official records of the board as described in Iowa Code section 11.6.

12.3(9) School or school district building grade-level organization. The board shall adopt a grade-level organization for the buildings under its jurisdiction as described in Iowa Code section 279.39.

12.3(10) Report on accredited nonpublic school students. Between September 1 and October 1 of each year, the board secretary of each school district shall secure from each accredited nonpublic school located within its boundaries information about enrolled students as required by Iowa Code section 299.3. Each accredited nonpublic school shall sub-



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mit the required information in duplicate. The board secretary of each school district shall send one copy to the board secretary of the area education agency within which the school district is located.

Within ten days of receipt of notice, each accredited nonpublic school shall send a report to the board secretary of the school district within which the accredited nonpublic school is located. This report shall conform to the requirements of Iowa Code section 299.3.

ITEM 7. Amend subrule 12.4(9) as follows:

~~12.4(9) Educational aide assistant. An educational aide assistant shall be defined as an employee or volunteer who, in the presence or absence of an instructional professional staff member but under the direction, supervision, and control of the instructional professional staff, supervises students on a monitorial or service basis; and works with students in a supportive role under conditions determined by the instructional professional staff responsible for the students, but not as a or assists in providing instructional and other direct educational services to students and their families. An educational assistant shall not substitute for or a replacement of replace the functions and duties of a teacher as established in subrule 12.4(8).~~

During the initial year of employment, an educational aide assistant shall complete an in-service training program staff development approved by the board as provided in subrule 12.7(1).

ITEM 8. Amend 281—12.4(256) by adopting the following new subrule:

~~12.4(16) Volunteer. A volunteer shall be defined as an individual who, without compensation or remuneration, provides a supportive role and performs tasks under the direction, supervision, and control of the district staff. A volunteer shall not work as a substitute for or replace the functions and duties of a teacher as established in subrule 12.4(8).~~

ITEM 9. Amend subrules 12.5(7) and 12.5(8) as follows:

~~12.5(7) Career education. The board shall provide a comprehensive career education program. Each school or school district shall incorporate school-to-career education programming into its comprehensive school improvement plan. Curricular and cocurricular teaching and learning experiences from the prekindergarten level through grade 12 shall be provided for all students. Curricular and cocurricular teaching and learning experiences regarding career education shall be provided from the prekindergarten level through grade 12. The career education program shall be infused into the total education program. Career education shall be incorporated into the total educational program and The program shall include, but need is not be limited to, awareness of self in relation to others and the needs of society; exploration of employment opportunities at a minimum, within Iowa; experiences in personal decision making; and experiences to that help students integrate connect work values into all aspects of their lives and work skills into their lives; and the development of employability skills. In the implementation of this standard, the board shall comply with Iowa Code section 280.9.~~

~~12.5(8) Board's responsibility for ensuring multicultural, nonsexist approaches to educational programs. Multicultural and gender fair approaches to the educational program. The board shall establish a policy to ensure the school is that students are free from discriminatory practices in its educational programs program as required by Iowa Code section 256.11. In developing or revising this the policy, parents, students, instructional and noninstructional staff, and~~

~~community members shall be involved. In addition, each board shall adopt a written plan, to be evaluated and updated at least every five years, for achieving and maintaining a multicultural, nonsexist educational program. A copy of the plan shall be on file in the administrative office of the school. Each school or school district shall incorporate multicultural and gender fair goals for the educational program into its comprehensive school improvement plan. The plan shall include: Incorporation shall include the following:~~

a. ~~Multicultural approaches to the educational program. These shall be defined as processes approaches which foster knowledge of, and respect and appreciation for, the historical and contemporary contributions of diverse cultural groups to society. Special emphasis shall be placed on Asian Americans, Black Americans, Hispanic Americans, American Indians, and the disabled. The contributions and perspectives of Asian Americans, African Americans, Hispanic Americans, American Indians, European Americans, and persons with disabilities shall be included in the program. The program shall provide equal opportunity for all participants regardless of race, color, marital status, national origin, religion, or disability race, color, national origin, gender, disability, religion, creed, or socioeconomic background.~~

b. ~~Nonsexist Gender fair approaches to the educational program. These shall be defined as processes approaches which foster knowledge of, and respect and appreciation for, the historical and contemporary contributions of women and men to society. The program shall reflect the wide variety of roles open to both women and men and shall provide equal opportunity to both sexes.~~

~~The plan shall also include specific goals and objectives, with implementation timelines for each component of the educational program; specific provisions for the infusion of multicultural, nonsexist concepts into each area of the curriculum developed under the provisions of subrule 12.5(16); a description of the in-service activities planned for all staff members on multicultural, nonsexist education; and evidence of systematic input by men and women, minority groups, and the disabled in developing and implementing the plan. In schools where no minority students are enrolled, minority group resource persons shall be utilized at least annually. A description of a periodic, ongoing system to monitor and evaluate the plan shall also be included.~~

ITEM 10. Rescind subrules 12.5(10) to 12.5(22) and adopt the following new subrules:

12.5(10) Technology education. Each school or school district shall incorporate technology education into its comprehensive school improvement plan that demonstrates the use of technology to meet its student learning goals. As described in Iowa Code section 295.3, progress with the use of technology shall be included in the school district's annual progress report.

12.5(11) Global education. Each school or school district shall incorporate global education into its comprehensive school improvement plan as required by Iowa Code section 256.11. Global education shall be incorporated into all areas and levels of the educational program so students have the opportunity to acquire a realistic perspective on world issues, problems, and the relationship between an individual's self-interest and the concerns of people elsewhere in the world.

12.5(12) Gifted and talented education. Each school or school district shall incorporate gifted and talented education into its comprehensive school improvement plan as required by Iowa Code section 256.11. Valid and systematic procedures, including multiple selection criteria, shall be

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used for identifying gifted and talented students from the total student population. To ensure that a qualitatively differentiated program is provided, gifted and talented education shall include curriculum to meet the cognitive and affective needs of gifted and talented students and support services, including materials and staff. Each school or school district shall review and evaluate its gifted and talented program.

For those school districts requesting to use additional allowable growth for gifted and talented education, the comprehensive school improvement plan shall incorporate the requirements specified in Iowa Code sections 257.42 to 257.45.

**12.5(13) Provisions for at-risk students.** Each school or school district shall make provisions in its comprehensive school improvement plan for meeting the needs of at-risk students. Valid and systematic procedures and criteria shall be used to identify at-risk students within the school district's school-age population. Provisions for at-risk students shall include the following: modified instructional practices, specialized curriculum, parental involvement, and in-school and community-based support services as required in Iowa Code sections 256.11, 280.19, and 280.19A. Each school or school district shall review and evaluate its at-risk program.

For those school districts requesting to use additional allowable growth for its at-risk program, the comprehensive school improvement plan shall incorporate the requirements specified in Iowa Code sections 257.38 to 257.40.

**12.5(14) Unit.** A unit is a course which meets one of the following criteria: It is taught for at least 200 minutes per week for 36 weeks; it is taught for the equivalent of 120 hours of instruction; or it is an equated requirement as a part of an innovative program filed as prescribed in rule 12.9(256). A fractional unit shall be calculated in a manner consistent with this subrule. Multiple section courses taught at the same time in a single classroom situation by one teacher do not meet this unit definition for the assignment of a unit of credit. However, the third and fourth years of a foreign language may be taught at the same time by one teacher in a single classroom situation each yielding a unit of credit.

**12.5(15) Credit.** A student shall receive a credit or a partial credit upon successful completion of a course which meets one of the criteria in subrule 12.5(14). The board may award credit on a performance basis through the administration of an examination, provided the examination covers the content ordinarily included in the regular course.

**12.5(16) Subject offering.** A subject shall be regarded as offered when the teacher of the subject has met the licensure and endorsement standards of the state board of educational examiners for that subject; instructional materials and facilities for that subject have been provided; and students have been informed, based on their aptitudes, interests, and abilities, about possible value of the subject.

A subject shall be regarded as taught only when students are instructed in it in accordance with all applicable standards outlined herein. Subjects which the law requires schools and school districts to offer and teach shall be made available during the school day as defined in subrules 12.1(8) to 12.1(10).

**12.5(17) Educational excellence program—Phase III.** Educational excellence funds received by school districts shall support the school district's comprehensive school improvement plan according to the intent of the general assembly as described in Iowa Code section 294A.12. When Phase III funds are used to support the district's comprehensive

school improvement plan, the school district shall submit the Phase III budget on forms supplied by the department.

ITEM 11. Rescind subrule 12.7(1) and adopt the following new subrule:

**12.7(1) Provisions for staff development.** Each school or school district shall incorporate into its comprehensive school improvement plan provisions for the professional development of all staff. To meet the professional needs of all staff, staff development activities shall align with district goals; shall be based on student and staff information; shall prepare all employees to work effectively with diverse learners and to implement multicultural, gender fair approaches to the educational program; and shall emphasize the research-based practices to achieve, at the least, increased student achievement and performance as stated in the comprehensive school improvement plan.

ITEM 12. Rescind the Division VIII heading and rule **281—12.8(256)** and adopt the following new division headings and new rules:

## DIVISION VIII

## ACCOUNTABILITY FOR STUDENT ACHIEVEMENT

**281—12.8(256) Accountability for student achievement.** Schools and school districts shall meet the following accountability requirements for increased student achievement. Area education agencies shall provide technical assistance as required by 281—72.7(273).

**12.8(1) Comprehensive school improvement.** The general accreditation standards are minimum, uniform requirements. However, the department encourages that schools and school districts go beyond the minimum with their work toward ongoing improvement. As a means to this end, local comprehensive school improvement plans shall be specific to a school or school district and designed, at a minimum, to increase the learning, achievement, and performance of all students.

As a part of ongoing improvement in its educational system, the board shall adopt a written comprehensive school improvement plan designed for continuous school, parental, and community involvement in the development and monitoring of a plan that is aligned with school or school district determined needs. The plan shall incorporate, to the extent possible, the consolidation of federal and state planning, goal setting, and reporting requirements. The plan shall contain, but is not limited to, the following components:

a. Community involvement.

(1) Local community. The school or school district shall involve the local community in decision-making processes as appropriate. The school or school district shall seek input from the local community about, but not limited to, the following elements at least once every five years:

1. Vision, mission, beliefs, or statement of philosophy;
2. Major educational needs; and
3. Student learning goals.

(2) School improvement advisory committee. To meet requirements of Iowa Code section 280.12(1), the board shall appoint and charge a school improvement advisory committee to make recommendations to the board. Based on the committee members' analysis of the needs assessment data, they shall make recommendations to the board about the following components:

1. Major educational needs;
2. Student learning goals; and

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3. Long-range goals that include, but are not limited to, the state indicators that address reading, mathematics, and science achievement.

(3) At least annually, the committee shall also make recommendations to the board with regard to, but not limited to, the following:

1. Progress achieved with the annual improvement goals for the state indicators that address reading, mathematics, and science in 12.8(3);

2. Progress achieved with other locally determined core indicators; and

3. Annual improvement goals for the state indicators that address reading, mathematics, and science achievement.

b. Data collection, analysis, and goal setting.

(1) Policy. The board shall adopt a policy for conducting ongoing and long-range needs assessment processes. This policy shall ensure involvement of and communication with the local community regarding its expectations for adequate preparation for all students as responsible citizens and successful wage earners. The policy shall include provisions for keeping the local community regularly informed of progress on state indicators as described in subrule 12.8(3) and other locally determined indicators within the school improvement plan as required by Iowa Code section 280.12. The policy shall describe how the school or school district shall provide opportunities for local community feedback on an ongoing basis.

(2) Long-range data collection and analysis. The long-range needs assessment process shall include provisions for collecting, analyzing, and reporting information derived from local, state, and national sources. The process shall include provisions for reviewing information acquired over time on the following:

1. State indicators and other locally determined indicators;

2. Locally established student learning goals; and

3. Specific data collection required by federal and state programs.

Schools and school districts shall also collect information about additional factors influencing student achievement which may include, but are not limited to, demographics, attitudes, health, and other risk factors.

(3) Long-range goals. The board, with input from its school improvement advisory committee, shall adopt long-range goals to improve student achievement in at least the areas of reading, mathematics, and science.

(4) Annual data collection and analysis. The ongoing needs assessment process shall include provisions for collecting and analyzing annual assessment data on the state indicators, other locally determined indicators, and locally established student learning goals.

(5) Annual improvement goals. The board, with input from its school improvement advisory committee, shall adopt annual improvement goals based on data from at least one districtwide assessment. The goals shall describe desired annual increase in the curriculum areas of, but not limited to, mathematics, reading, and science achievement for all students or for particular subgroups of students or both. Annual improvement goals may be set for other state indicators, locally determined indicators, locally established student learning goals, other curriculum areas, future student employability, or factors influencing student achievement.

c. Content standards and benchmarks.

(1) Policy. The board shall adopt policy outlining its procedures for developing, implementing, and evaluating its total curriculum. The policy shall describe a process for estab-

lishing content standards, benchmarks, performance levels, and annual improvement goals aligned with needs assessment information.

(2) Content standards and benchmarks. The board shall adopt clear, rigorous, and challenging content standards and benchmarks in reading, mathematics, and science to guide the learning of students from the date of school entrance until high school graduation. Standards and benchmarks may be adopted for other curriculum areas defined in rule 12.5(256). The comprehensive school improvement plan submitted to the department shall contain, at a minimum, content standards for reading, mathematics, and science. The educational program as defined in 281—Chapter 12, Division II, shall incorporate career education, multicultural and gender fair education, technology, global education, higher-order thinking skills, learning skills, and communication skills as outlined in subrules 12.5(7), 12.5(8), 12.5(10), 12.5(11), and 12.8(1)"c"(1).

d. Determination and implementation of actions to meet the needs. The comprehensive school improvement plan shall include actions the school or school district shall take districtwide in order to accomplish its long-range and annual improvement goals as required in Iowa Code section 280.12(1)"b."

(1) Actions shall include, but are not limited to, addressing the improvement of curricular and instructional practices to attain the long-range and annual improvement goals.

(2) A school or school district shall document consolidation of state and federal resources and requirements, as appropriate, to implement the actions in its comprehensive school improvement plan. State and federal resources shall be used, as applicable, to support implementation of the plan.

(3) A school or school district may have building-level action plans, aligned with the comprehensive school improvement plan. These may be included in the plan or kept on file at the local level.

e. Evaluation of the comprehensive school improvement plan. A school or school district shall develop strategies to collect data and information to determine if the plan has accomplished the goals for which it was established.

f. Assessment of student progress. Each school or school district shall consolidate into its comprehensive school improvement plan provisions for districtwide assessment of student progress. The plan shall identify valid and reliable student assessment procedures aligned with local content standards. These assessments are not limited to commercially developed measures.

(1) State indicators. Using at least one districtwide assessment, a school or school district shall assess student progress on the state indicators in, but not limited to, reading, mathematics, and science as specified in subrule 12.8(3). At least one districtwide assessment shall allow for, but is not limited to, the comparison of the school or school district's students with students from across the state and in the nation in reading, mathematics, and science. A school or school district shall use additional assessments to measure progress on locally determined content standards in at least reading, mathematics, and science.

(2) Performance levels. A school or school district shall establish at least three performance levels on at least one districtwide valid and reliable assessment in the areas of reading and mathematics for at least grades 4, 8, and 11 and science in grades 8 and 11 or use the achievement levels as established by the Iowa Testing Program to meet the intent of this subparagraph (2).

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g. Assurances and support. A school or school district shall provide evidence that its board has approved and supports the five-year comprehensive school improvement plan and any future revisions of that plan. This assurance includes the commitment for ongoing improvement of the educational system.

12.8(2) Submission of a comprehensive school improvement plan. A school or school district shall submit to the department and respective area education agency a multiyear comprehensive school improvement plan on or before September 15, 2000. Beginning July 1, 2001, a school or school district shall submit a revised five-year comprehensive school improvement plan by September 15 of the school year following the comprehensive site visit specified in Iowa Code section 256.11 which incorporates, when appropriate, areas of improvement noted by the school improvement visitation team as described in subrule 12.8(4). A school or school district may, at any time, file a revised comprehensive school improvement plan with the department and respective area education agency.

12.8(3) Annual reporting requirements. A school or school district shall, at minimum, report annually to its local community about the progress on the state indicators and other locally determined indicators.

a. State indicators. A school or school district shall collect data on the following indicators for reporting purposes.

(1) The percentage of all fourth, eighth, and eleventh grade students achieving proficient or higher reading status using at least three achievement levels and by gender, race, socioeconomic status, students with disabilities, and other subgroups as required by the department.

(2) The percentage of all fourth, eighth, and eleventh grade students achieving proficient or higher mathematics status using at least three achievement levels and for gender, race, socioeconomic status, students with disabilities, and other subgroups as required by the department.

(3) The percentage of all eighth and eleventh grade students achieving proficient or higher science status using at least three achievement levels.

(4) The percentage of students considered as dropouts for grades 7 to 12 by gender, race, and students with disabilities.

(5) The percentage of high school seniors who intend to pursue postsecondary education/training.

(6) The percentage of high school students achieving a score or status on a measure indicating probable post secondary success. This measure should be the measure used by the majority of students in the school, school district, or attendance center who plan to attend a postsecondary institution.

(7) The percentage of high school graduates who complete a core program of four years of English-language arts and three or more years each of mathematics, science, and social studies.

b. Annual progress report. Each school or school district shall submit a public annual progress report to its local community, its respective area education agency, and the department. That report shall be submitted to the department by September 15, 2000, and by September 15 every year thereafter.

The report shall include, but is not limited to, the following information:

(1) Baseline data on at least one districtwide assessment for the state indicators described in subrule 12.8(3). Every year thereafter the school or school district shall compare the annual data collected with the baseline data. A school or school district is not required to report to the community

about subgroup assessment results when a subgroup contains fewer than ten students at a grade level. A school or school district shall report districtwide assessment results for all enrolled and tuitioned-in students.

(2) Locally determined performance levels for at least one districtwide assessment in, at a minimum, the areas of reading, mathematics, and science. Student achievement levels as defined by the Iowa Testing Program may be used to fulfill this requirement.

(3) Long-range goals to improve student achievement in the areas of, but not limited to, reading, mathematics, and science.

(4) Annual improvement goals for at least one districtwide assessment in, at a minimum, the areas of reading, mathematics, and science. One annual improvement goal may address all areas, or individual annual improvement goals for each area may be identified. When a school or school district does not meet its annual improvement goals for one year, it shall include in its annual progress report the actions it will take to meet annual improvement goals for the next school year.

(5) Data on multiple assessments for reporting achievement for all students in the areas of reading and mathematics by September 15, 2001, and for science by September 15, 2003.

(6) Results by individual attendance centers, as appropriate, on the state indicators as stated in subrule 12.8(3) and any other locally determined factors or indicators. An attendance center, for reporting purposes, is a building that houses students in grade 4 or grade 8 or grade 11.

(7) Progress with the use of technology as required by Iowa Code section 295.3. This requirement does not apply to accredited nonpublic schools.

(8) Other reports of progress as the director of the department requires and other reporting requirements as the result of federal and state program consolidation.

12.8(4) Comprehensive school improvement and the accreditation process. All schools and school districts having accreditation upon the effective date of these rules are presumed accredited unless or until the state board takes formal action to remove accreditation. The department shall use a Phase I and a Phase II process for the continued accreditation of schools and school districts as defined in Iowa Code section 256.11(10).

a. Phase I. The Phase I process includes ongoing monitoring by the department of each school and school district to determine if it is meeting the goals of its comprehensive school improvement plan and meeting the accreditation standards. Phase I contains the following two components:

(1) Annual comprehensive desk audit. This audit consists of a review by the department of a school or school district's annual progress report. The department shall review the report as required by subrule 12.8(3) and provide feedback regarding the report. The audit shall also include a review by the department of other annual documentation submitted by a school or school district as required for compliance with the educational standards in Iowa Code section 256.11 and other reports required by the director.

When the department determines a school or school district has areas of noncompliance, the department shall consult with the school or school district to determine what appropriate actions shall be taken by the school or school district. The department shall facilitate technical assistance if requested. When the department determines that a school or school district has not met compliance with one or more accreditation standards within a reasonable amount of time, the

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school or school district shall submit an action plan that is approved by the department. The action plan shall contain reasonable timelines for coming into compliance. If the department determines that the school or school district is not taking the necessary actions, the director of the department may place the school or school district in a Phase II accreditation process.

If a school or school district does not meet its stated annual improvement goals for at least two consecutive years in the areas of mathematics and reading and is not taking corrective steps, the department shall consult with the school or school district and determine whether a self-study shall be required. The department shall facilitate technical assistance if needed. The self-study shall include, but is not limited to, the following:

1. A review of the comprehensive school improvement plan.
2. A review of each attendance center's student achievement data.
3. Identification of factors that influenced the lack of goal attainment.
4. Submission of new annual improvement goals, if necessary.
5. Submission, if necessary, of a revised comprehensive school improvement plan.

Upon completion of a required self-study determined by the department, the department shall collaborate with the school or school district to determine whether one or more attendance centers are to be identified as in need of improvement. For those attendance centers identified as in need of improvement, the department shall facilitate technical assistance.

When a school or school district has completed a required self-study and has not met its annual improvement goals for at least two or more consecutive years, the department may conduct a site visit. When a site visit occurs, the department shall determine if appropriate actions were taken. If the site visit findings indicate that appropriate actions were taken, accreditation status shall remain.

(2) Comprehensive site visit. A comprehensive site visit shall occur at least once every five years as required by Iowa Code section 256.11(10) or before, if requested by the school or school district. The purpose of a comprehensive site visit is to assess progress with the comprehensive school improvement plan, to provide a general assessment of educational practices, to make recommendations with regard to the visit findings for the purposes of improving educational practices above the level of *minimum compliance*, and to determine that a school or school district is in compliance with the accreditation standards. The department and a school district or school may coordinate the accreditation with activities of other accreditation associations. The comprehensive site visit shall include the following components:

1. School improvement site visit team. The department shall determine the size and composition of the school improvement site visit team. The team shall include members of the department staff and may include other members such as, but not limited to, area education agency staff, postsecondary staff, and other school district or school staff.
2. Previsit actions. The school improvement team shall review the five-year comprehensive school improvement plan, annual progress reports, and any other information requested by the department.
3. The site visit report. Upon review of documentation and site visit findings, the department shall provide a written report to the school or school district based on the compre-

hensive school improvement plan and other general accreditation standards. The report shall state areas of strength, areas in need of improvement, and areas, if any, of noncompliance. For areas of noncompliance, the school or school district shall submit, within a reasonable time frame, an action plan to the department. The department shall determine if the school or school district is implementing the necessary actions to address areas of noncompliance. If the department determines that the school or school district is not taking the necessary actions, the director of the department may place the school or school district in a Phase II accreditation process.

4. Conditions under which a Phase II visit may occur. When the department determines that the school or school district is not taking the necessary actions, the director of the department may place the school or school district in a Phase II accreditation process. A Phase II accreditation process shall occur if one or more of the following conditions exist:

- When either the annual monitoring or the comprehensive site visit indicates that a school or school district is deficient and fails to be in compliance with accreditation standards;
- In response to a petition filed with the director of the department requesting such a committee visitation that is signed by 20 percent or more of the registered voters of a school or school district;
- In response to a petition filed with the director of the department requesting such a committee visitation that is signed by 20 percent or more of the families having enrolled students; or
- At the direction of the state board of education.

b. The Phase II process. The Phase II process shall consist of monitoring by the department. This monitoring shall include the appointment of an accreditation committee to complete a comprehensive review of the school or school district documentation on file with the department. The accreditation committee shall complete one or more site visits. The Phase II process shall include the following components:

(1) Accreditation committee. The director of the department shall determine accreditation committee membership. The chairperson and majority of the committee shall be department staff. The committee may also include at least one representative from another school or school district, AEA staff, postsecondary education staff, board members, or community members. No member of an accreditation committee shall have a direct interest, as determined by the department, in the school or school district involved in the Phase II process. The accreditation committee shall have access to all documentation obtained from the Phase I process.

(2) Site visit. The accreditation committee shall conduct one or more site visits to determine progress made on noncompliance issues.

(3) Accreditation committee actions. The accreditation committee shall make a recommendation to the director of the department regarding accreditation status of the school or school district. This recommendation shall be contained in a report to the school or school district that includes areas of strength, areas in need of improvement, and, if any, the areas still not in compliance. The committee shall provide advice on available resources and technical assistance for meeting the accreditation standards. The school or school district may respond in writing to the director if it does not agree with the findings in the Phase II accreditation committee report.

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(4) State board of education actions. The director of the department shall provide a report and a recommendation to the state board as a result of the Phase II accreditation committee visit and findings. The state board shall determine accreditation status. When the state board determines that a school or school district shall not remain accredited, the director of the department shall collaborate with the school or school district board to establish an action plan that includes deadlines by which areas of noncompliance shall be corrected. The action plan is subject to the approval by the state board.

(5) Accreditation status. During the period of time the school or school district is implementing the action plan approved by the state board, the school or school district shall remain accredited. The accreditation committee may revisit the school or school district and determine whether the areas of noncompliance have been corrected. The accreditation committee shall report and recommend one of the following actions:

1. The school or school district shall remain accredited.
2. The school or school district shall remain accredited under certain specified conditions.
3. The school or school district shall have its accreditation removed as outlined in Iowa Code section 256.11(12).

The state board shall review the report and recommendation, may request additional information, and shall determine the accreditation status and further actions required by the school or school district as outlined in Iowa Code section 256.11(12).

## DIVISION IX

## EXEMPTION REQUEST PROCESS

**281—12.9(256) General accreditation standards exemption request.** A school or school district may seek department approval for an exemption as stated in Iowa Code sections 256.9(48) and 256.11(8). The school or school district shall submit the exemption request to the director of the department with, at a minimum, the following: (1) the written request and (2) the standard exemption plan as described in subrule 12.9(1). For the 1999-2000 school year, the written request and plan shall be submitted after July 7, 1999, and on or before September 15, 1999. For subsequent school years, the written request and plan shall be submitted on or before January 1 preceding the beginning of the school year for which the exemption is sought. The exemption request may be approved for a time period not to exceed five years. The department may approve, on request of the school or school district, an extension of the exemption beyond the initial five-year period. The department shall notify the school or school district of the approval or denial of its exemption request not later than March 1 of the school year in which the request was submitted.

**12.9(1) General accreditation standards exemption plan.** The plan shall contain, but is not limited to, the following components:

- a. The standard or standards for which the exemption is requested.
- b. A rationale for each general accreditation standard identified in paragraph "a." The rationale shall describe how the approval of the request will assist the school or school district to improve student achievement or performance as described in its comprehensive school improvement plan.
- c. The sources of supportive research evidence and information, when appropriate, that were analyzed and used to form the basis of each submitted rationale.

d. How the school or school district staff collaborated with the local community or with the school improvement advisory committee about the need for the exemption request.

e. Evidence that the board approved the exemption request.

f. A list of the indicators that will be measured to determine success.

g. How the school or school district will measure the success of the standards exemption plan on improving student achievement or performance.

In its annual progress report as described in paragraph 12.8(3)"b," the school or school district that receives an exemption approval shall include data to support increased student learning, achievement, or performance that has resulted from the approved standards exemption.

**12.9(2) General accreditation standards exemption request and plan review criteria.** The department shall use the information provided in the written request and exemption plan as described in subrule 12.9(1) to determine approval or denial of requests for exemptions from the general accreditation standards. The department will use the following criteria for approval or denial of an exemption plan:

a. Components "a" through "g" listed in subrule 12.9(1) are addressed.

b. Clarity, thoroughness, and reasonableness are evident, as determined by the department, for each component of the accreditation standards exemption plan.

These rules are intended to implement Iowa Code sections 256.11, 280.23, and 256.7(21).

## ARC 8903A

ENVIRONMENTAL PROTECTION  
COMMISSION[567]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 40, "Scope of Division—Definitions—Forms—Rules of Practice," Iowa Administrative Code.

These amendments include a brief contents listing of each chapter pertaining to public and private drinking water supply rules. New definitions are added for the following terms: acute, community water system, consecutive public water supply, customers, department, director, drinking water state revolving fund, health advisory, health-based standard, maximum contaminant level goal, nonacute, noncommunity water system, special irrigation district, transient noncommunity water system, and water distribution system. Definitions are amended for the following terms: act, best available technology, compliance cycle, compliance period, confluent growth, diatomaceous earth filtration, EPA methods, man-made beta particle and photon emitters, nontransient noncommunity water system, point-of-use treatment device, population served, public water supply system, service con-

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

nection, standard methods, ten state standards, and unregulated contaminant.

The mailing address of the Wallace State Office Building is corrected, and the construction permit fee references are rescinded. The public water supply operation permit application procedures are amended to include the annual operation fee due date and reasons for denial of an operation permit. Two new rules are adopted to comply with U.S. EPA regulations: the drinking water state revolving loan fund application procedures and the viability assessment procedures.

Any interested person may make written suggestions or comments on these proposed amendments prior to May 27, 1999. Such written materials should be directed to Diane Moles, Water Supply Section, Department of Natural Resources, Wallace State Office Building, 502 E. Ninth Street, Des Moines, Iowa 50319-0034; fax (515)281-8895. Persons who wish to convey their views orally should contact the Water Supply Section at (515)281-8863 or at the Environmental Protection Division offices on the fifth floor of the Wallace State Office Building.

Also, there will be six public hearings at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. The public hearings will be held at 10 a.m. in the following places on the following dates:

- May 4, 1999 Department of Natural Resources  
Henry A. Wallace Building  
Fourth Floor Conference Room  
502 E. Ninth Street  
Des Moines, Iowa
- May 6, 1999 Buena Vista College  
Siebens Forum  
Hanson Room 8  
Fourth and Grand Avenue  
Storm Lake, Iowa
- May 24, 1999 North Iowa Area Community College  
Muse-Norris Conference Room  
500 College Drive  
Mason City, Iowa
- May 25, 1999 Community Room  
(upstairs/use back entrance)  
101 E. Main Street  
Manchester, Iowa
- May 26, 1999 Iowa City Public Library  
Room A  
123 S. Linn Street  
Iowa City, Iowa
- May 27, 1999 Atlantic Municipal Utilities  
Conference Room  
15 W. Third Street  
Atlantic, Iowa

Any persons who intend to attend a public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code section 17A.3(1)"b" and chapter 455B, division III, part 1. The following amendments are proposed.

ITEM 1. Amend rule 567—40.1(455B) as follows:

**567—40.1(455B) Scope of division.** The department conducts the public water supply program, *provides grants to counties*, and establishes minimum standards for the construction of private water supply systems. The public water supply program includes *the following*: the establishment of drinking water standards, including maximum contaminant levels, treatment techniques, *action levels*, monitoring, *viability assessment*, *consumer confidence reporting*, and public notice requirements, *public water supply system operator certification standards*, *environmental drinking water laboratory certification program*, and a *state revolving loan program* consistent with the federal Safe Drinking Water Act, and the establishment of construction standards. The construction, modification and operation of any public water supply system requires a specific permit from the department. Certain construction permits are issued upon certification by a registered professional engineer that a project meets standards, and in certain instances permits are issued by local authorities pursuant to 567—Chapter 9. Private water supplies are regulated by local boards of health.

~~This chapter includes rules of practice, including forms, applicable to the public in the department's administration of the subject matter of this division. The lead and copper provisions also establish a treatment technique that includes requirements for corrosion control treatment, source water treatment, lead service line replacement, and public education. These requirements are triggered, in some cases, by lead and copper action levels measured in samples collected at consumers' taps.~~

~~Chapter 41 contains the drinking water standards and specific monitoring and record-keeping requirements for the public water supply program. Chapter 83 contains provisions for the certification of laboratories to provide environmental testing of drinking water supplies. Chapter 43 contains specific design, construction, and operating requirements for the public water supply program. Chapter 47 contains provisions for county grants for creating programs for (1) the testing of private water supply wells and (2) the proper closure of private, abandoned wells within the jurisdiction of the county. Chapter 49 provides minimum standards for the construction of private water wells.~~

~~Chapter 40 includes rules of practice, including designation of forms, applicable to the public in the department's administration of the subject matter of this division.~~

~~Chapter 41 contains the drinking water standards and specific monitoring requirements for the public water supply program.~~

~~Chapter 42 contains the public notification, public education, consumer confidence reporting, and record-keeping requirements for the public water supply program.~~

~~Chapter 43 contains specific design, construction, fee, operating, and operation permit requirements for the public water supply program.~~

~~Chapter 44 contains the drinking water state revolving fund program for the public water supply program.~~

~~Chapter 47 contains provisions for county grants for creating programs for (1) the testing of private water supply wells, (2) rehabilitation of private wells, and (3) the proper closure of private, abandoned wells within the jurisdiction of the county. Chapter 39 contains requirements for the proper closure or abandonment of wells.~~

~~Chapter 49 provides minimum standards for construction of private water wells, and private well construction permits may be issued by local county authorities pursuant to Chapter 38.~~

~~Chapter 81 contains the provisions for the certification of public water supply system operators.~~

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

*Chapter 83 contains the provisions for the certification of laboratories to provide environmental testing of drinking water supplies.*

ITEM 2. Amend rule 567—40.2(455B) by amending the definitions as shown and adopting the following new definitions in alphabetical order:

“Act” means the Public Health Service Act as amended by the Safe Drinking Water Act and the 1986 Amendments to the Safe Drinking Water Act (Pub. L. No. 93-523, 88 Stat. (1860) 42 U.S.C. §300f et seq., and Pub. L. No. 99-339, 100 Stat. 642), Public Law 93-523.

“Acute” means the health effect of a contaminant which is an immediate rather than a long-term risk to health.

“Best available technology” or “BAT” means the best technology, treatment techniques, or other means which the state finds, after examinations examination, for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration).

“Community water system (CWS)” means a public water supply system which has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

“Compliance cycle” means the nine-year (calendar year) cycle during which public water systems must monitor. Each compliance cycle consists of three three-year compliance periods. The first calendar year cycle begins January 1, 1993, and ends December 31, 2001; the second begins January 1, 2002, and ends December 31, 2010; the third begins January 1, 2011, and ends December 31, 2019, and continues every nine years thereafter.

“Compliance period” means a three-year (calendar year) period within a compliance cycle. Each compliance cycle has three three-year compliance periods. Within the first compliance cycle, the first compliance period runs from January 1, 1993, to December 31, 1995; the second from January 1, 1996, to December 31, 1998; the third from January 1, 1999, to December 31, 2001, and continues every three years thereafter.

“Confluent growth” means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.

“Consecutive public water supply” means an active public water supply which purchases or obtains water from another, separate public water supply.

“Customers” in consumer confidence reports are defined as billing units or service connections to which water is delivered by a community water system.

“Department” means the Iowa department of natural resources, which has jurisdiction over all nontribal public water systems in Iowa.

“Diatomaceous earth filtration” means a process resulting in substantial particulate removal in which (1) a precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum), and (2) while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.

“Director” means the director of the Iowa department of natural resources or a designee.

“Drinking water state revolving fund (DWSRF)” means the department-administered fund intended to develop drinking water revolving loans to help finance drinking water infrastructure improvements, source water protection, system technical assistance, and other activities intended to encourage and facilitate public water supply system rule

compliance and public health protection established by Iowa Code sections 455B.291 to 455B.299.

“EPA Methods” means “Methods for Chemical Analysis of Water and Wastes,” U.S. Environmental Protection Agency, EPA Environmental Monitoring and Support Laboratory, Cincinnati, Ohio, revised March 1983. “EPA methods” means methods listed in the Manual for the Certification of Laboratories Analyzing Drinking Water, 4th edition, EPA document 815-B-97-001, March 1997.

“Health advisory (HA)” means a group of levels set by EPA below which no harmful effect is expected from a given contaminant. The HAs used by the department are listed in the most current edition of the EPA “Drinking Water Regulations and Health Advisories” bulletin. The lifetime HA is the concentration of a chemical in drinking water that is not expected to cause any adverse noncarcinogenic effects over a lifetime of exposure, with a margin of safety. The long-term HA is the concentration of a chemical in drinking water that is not expected to cause any adverse noncarcinogenic effects up to approximately seven years (10 percent of an individual's lifetime of exposure), with a margin of safety.

“Health-based standard” means a standard regulating the amount of allowable contaminant in drinking water, and includes maximum contaminant levels, action levels, treatment techniques, and health advisory levels.

“Man-made beta particle and photon emitters” means all radionuclides emitting beta particles or photons or both listed in maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure, NBS Handbook 69, as amended August 1963, U.S. Department of Commerce, except the daughter products of thorium-232, uranium-235 and uranium-238.

“Maximum contaminant level goal (MCLG)” means the nonenforceable concentration of a drinking water contaminant that is protective of adverse human health effects and allows an adequate margin of safety.

“Nonacute” means the health effect of a contaminant which is a long-term rather than immediate risk to health.

“Noncommunity water system” means a public water system that is not a community water system. A noncommunity water system is either a “transient noncommunity water system (TNC)” or a “nontransient noncommunity water system (NTNC).”

“Nontransient noncommunity water system” or “NTNCWS:” “NTNC” means a public water system other than a community water system which regularly serves at least 25 of the same persons four hours or more per day, for four or more days per week, for 26 or more weeks per year. Examples of NTNCWSs NTNCs are schools, day-care centers, factories, offices and other public water systems which provide water to a fixed population of 25 or more people. In addition, other service areas, such as hotels, resorts, hospitals and restaurants, are considered as NTNCWSs NTNCs if they employ 25 or more people and are open for 26 or more weeks of the year.

“Point-of-use treatment device” is a treatment device applied to a single tap or multiple taps used for the purpose of reducing contaminants in drinking water at that one tap those taps, but is not intended to treat all of the water in the facility.

“Population served” means the total number of persons served by a public water supply that provides water intended for human consumption. For municipalities which serve only the population within their incorporated boundaries, it is the last official U.S. census population (or officially amended census population). For all other community pub-



## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

lic water supply systems, it is either the actual population counted which is verifiable by the department, or population as calculated by multiplying the number of service connections by an occupancy factor of 2.5 persons per service connection. *For municipalities which also serve outside their incorporated boundaries, the served population must be added to the official census population determined either by verifiable count or by the 2.5 persons per service connection occupancy factor.* For nontransient noncommunity (NTNC) and transient noncommunity (TNC) systems, it is the average number of daily employees plus the average number of other persons served such as customers or visitors during the peak month of the year regardless if each person actually uses the water for human consumption. Where a system provides water to another public water supply system (consecutive public water supply system) which is required to have an operation permit, the population of the recipient water supply shall not be counted as a part of the water system providing the water. Community and nontransient noncommunity public water supply systems will pay their operation permit fees based upon the population served.

~~“Public water supply system” (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 which are used primarily in connection with such system. A public water supply system is either a “community water system” or a “noncommunity water system.”~~

~~1. “Community water system” means a public water supply system which has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.~~

~~2. “Noncommunity water system” means a public water supply system that is not a community water system.~~

~~“Public water supply system (PWS)” means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, 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: any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any “special irrigation district.” A public water system is either a “community water system” or a “noncommunity water system.”~~

“Public water supply system control” is defined as one of the following forms of authority over a service line: authority to set standards for construction, repair, or maintenance of the service line; authority to replace, repair, or maintain the service line; or, ownership of the line. Contaminants added to the water under circumstances controlled by the water consumer or user, with the exception of those contaminants resulting from the corrosion of piping and plumbing caused by water quality, are excluded from this definition of control.

“Service connections” means the total number of active and inactive service lines originating from a water distribu-

tion main for the purpose of delivering water intended for human consumption. For municipalities, rural water districts, mobile home parks, housing developments, and similar facilities, this includes, but is not limited to, occupied and unoccupied residences and buildings, provided that there is a service line connected to the water main (or another service line), and running onto the property. For rental properties which are separate public water supply systems, this includes, but is not limited to, the number of rental units such as apartments. *Connections to a system that delivers water by a constructed conveyance other than a pipe are excluded from the definition, if:*

1. *The water is used exclusively for purposes other than human consumption;*

2. *The department determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for human consumption; or*

3. *The department determines that the water provided for human consumption is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations.*

*“Special irrigation district” means an irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use where the system or the residential or similar users of the system comply with 567—Chapters 40 through 43.*

*“Standard methods” means “Standard Methods for the Examination of Water and Wastewater,” Seventeenth edition, American Public Health Association, 1015 15th Street NW, Washington, DC 20005 (1989).*

*“Ten States Standards” means the “Recommended Standards for Water Works,” 1992 1997 edition as adopted by the Great Lakes—Upper Mississippi River Board of State Sanitary Engineers.*

*“Transient noncommunity water system (TNC)” means a noncommunity water system that does not regularly serve at least 25 of the same persons over six months per calendar year.*

*“Unregulated contaminant” means a contaminant for which no MCL has been set, but which does have monitoring requirements set in 567—41.11(455B) subrule 41.11(2).*

*“Water distribution system” means that portion of the water supply system in which water is conveyed from the water treatment plant or other supply point to the premises of the consumer, including any storage facilities and pumping stations.*

ITEM 3. Amend rule 567—40.3(17A,455B), introductory paragraph, as follows:

~~567—40.3(17A,455B) Forms.~~ The following forms are used by the public to apply for department approvals and to report on activities related to the public water supply program of the department. All forms may be obtained from the Environmental Protection Division, Administrative Support Station, Department of Natural Resources, Henry A. Wallace Building, ~~900 East Grand Avenue, Des Moines, Iowa 50319-0032~~ 502 East Ninth Street, Des Moines, Iowa 50319-0034. Properly completed application forms shall be submitted to the Water Supply Section, Environmental Protection Division. Water supply system monthly and other operation reporting forms shall be submitted to the appropriate field office (see rule ~~567—43.7(455B)~~ 567—subrule 42.4(3)). Properly completed laboratory forms (reference ~~567—43.3(3)“b”~~ Chapter 83) shall be submitted to

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

the University Hygienic Laboratory or as otherwise designated by the department.

ITEM 4. Amend subrule **40.3(1)**, first two table entries, as follows:

Schedule No.	Name of Form	Form Number
"1" "1a"	General Information	542-3178
"1a"	Fee-Schedule	542-3179

ITEM 5. Amend subrule 40.4(1), introductory paragraph, as follows:

**40.4(1)** General procedures. Applications for written approval from the department for any new construction or for reconstruction pursuant to 567—Chapter 41 shall consist of complete plans and specifications, application fee, and appropriate water supply construction permit application schedules. Upon review, the department will issue a construction permit for approval of a project if the review shows that the project meets all departmental design standards in accordance with 567—Chapter 43. Approval of a project which does not meet all department design standards will be denied unless a variance as provided by 567—paragraph 43.3(2)"c" is granted. A variance may be requested at the time plans and specifications are submitted or after the design discrepancy is pointed out to the applicant.

ITEM 6. Amend subrule **40.4(2)**, paragraph "b," as follows:

b. Completed Schedule 4 1a— General Information

ITEM 7. Amend rule 567—40.5(17A,455B) as follows:

**567—40.5(17A,455B) Public water supply operation permit application procedures.** A person requesting a water supply operation permit pursuant to 567—43.2(455B) must complete the appropriate application form, which will be provided by the department. ~~Upon receipt of a complete application and the appropriate fee pursuant to 43.2(3)"b," the department shall review the application and, if approvable, shall prepare and issue a water supply operation permit or draft permit, as applicable, and transmit it to the applicant. Upon receipt of a completed application, the department will review the application and, if approved, will prepare and issue a water supply operation permit or draft permit, as applicable, and transmit it to the applicant. An annual operation fee pursuant to 567—subrule 43.2(1) is due by September 1 of each year.~~ A permit or renewal will be denied when the applicant does not meet one or more requirements for issuance or renewal of this permit. *Reasons for denial of an operation permit include the following: system failed to pay the operation fee; system is not viable; system is not in compliance with the applicable maximum contaminant levels, treatment techniques, or action levels; system is in significant noncompliance with the provisions of 567—Chapter 41, 42, or 43.*

ITEM 8. Amend 567—Chapter 40 by adopting the following new rules:

**567—40.6(455B) Drinking water state revolving loan fund application procedures.** A person requesting a drinking water state revolving fund loan pursuant to 567—44.7(455B) must complete the appropriate application form, which will be provided by the department. The department will review the application package pursuant to 567—44.9(455B). Eligible projects will be ranked according to priority, with the highest-ranked projects receiving funding priority.

**567—40.7 (455B) Viability assessment procedures.** A person required to complete a viability assessment pursuant

to 567—43.8(455B) must submit the appropriate information as outlined in 567—43.8(455B) to the department. Self-assessment worksheets which can be used to prepare the viability assessment are available from the Water Supply Section, Department of Natural Resources, Henry A. Wallace Building, 502 East Ninth Street, Des Moines, Iowa 50319-0034.

**ARC 8902A**

## ENVIRONMENTAL PROTECTION COMMISSION[567]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 41, "Water Supplies," Iowa Administrative Code.

These amendments comply with U.S. EPA requirements for coverage, analytical methods, minor technical corrections, and maximum contaminant levels (arsenic, nitrate at noncommunities, nickel). The arsenic MCL applies to community public water supplies and schools and daycares which are nontransient noncommunity public water supplies. The nitrate MCL of 10 mg/l applies to all public water supplies; however, an allowance can be made for noncommunity water supplies meeting certain criteria to have nitrate levels up to 20 mg/l. The nickel MCL has been remanded, as has the nickel public notification language.

Other changes make grammatical corrections; add catchwords to paragraphs and subparagraphs; require schools and daycares to comply with the fluoride maximum contaminant level since the affected population is children under age nine; require monthly monitoring for nitrate and nitrite for systems exceeding the MCL with no confirmation sample allowance; correct the nitrate sample holding time; move the reporting, public notification, and public education requirements to Chapter 42; move the previously duplicated best available technology tables to Chapter 43, making the disinfectant residual entering the system requirement for surface waters and influenced groundwater systems consistent with current requirements in Chapter 43.

Any interested person may make written suggestions or comments on these proposed amendments prior to May 27, 1999. Such written materials should be directed to Diane Moles, Water Supply Section, Department of Natural Resources, Wallace State Office Building, 502 E. Ninth Street, Des Moines, Iowa 50319-0034; fax (515)281-8895. Persons who wish to convey their views orally should contact the Water Supply Section at (515)281-8863 or at the Environmental Protection Division offices on the fifth floor of the Wallace State Office Building.

Also, there will be six public hearings at which time persons may present their view either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. The public hearings will be held at 10 a.m. in the following places on the following dates:

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

- May 4, 1999 Department of Natural Resources  
Henry A. Wallace Building  
Fourth Floor Conference Room  
502 E. Ninth Street  
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Siebens Forum  
Hanson Room 8  
Fourth and Grand Avenue  
Storm Lake, Iowa
- May 24, 1999 North Iowa Area Community College  
Muse-Norris Conference Room  
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101 E. Main Street  
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- May 26, 1999 Iowa City Public Library  
Room A  
123 S. Linn Street  
Iowa City, Iowa
- May 27, 1999 Atlantic Municipal Utilities  
Conference Room  
15 W. Third Street  
Atlantic, Iowa

Any persons who intend to attend a public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code section 17A.3(1)"b" and chapter 455B, division III, part 1.

The following amendments are proposed.

ITEM 1. Amend rule 567—41.1(455B) as follows:

**567—41.1(455B) Primary drinking water regulations—coverage.** ~~Rules 41.2(455B) to 41.5(455B) and 567—43.2(455B) shall apply to each public water supply system, unless the public water supply system meets all of the following conditions: Chapters 567—40 through 44 and 83 shall apply to each public water supply system, unless the public water supply system meets all of the following conditions:~~

1. Consists only of distribution and storage facilities (and does not have any collection and treatment facilities);
2. Obtains all of its water from, but is not owned or operated by, a public water supply system to which such regulations apply;
3. Does not sell water to any person; and
4. Is not a carrier which conveys passengers in interstate commerce.

ITEM 2. Amend subrule 41.2(1) as follows:

Amend paragraph "b" as follows:

b. Maximum contaminant levels (MCL) for total coliforms, fecal coliforms, and *E. coli*. *The MCL is based on the presence or absence of total coliforms in a sample.*

(1) ~~The MCL is based on the presence or absence of total coliforms in a sample. Nonacute coliform bacteria MCL. The system is in compliance with MCL requirements for total coliform if it meets the following requirements:~~

1. For a system which collects 40 samples or more per month, no more than 5.0 percent of the samples collected during a month may be total coliform-positive. *A nonacute coliform bacteria MCL violation occurs when more than 5.0 percent of routine and repeat samples collected during a month are total coliform-positive, but are not fecal coliform-positive or E. coli-positive.*

2. For a system which collects less than 40 samples per month, no more than one sample collected during a month may be total coliform-positive. *A nonacute coliform bacteria MCL violation occurs when two or more routine and repeat samples collected during a month are total coliform-positive, but are not fecal coliform-positive or E. coli-positive.*

(2) *Acute coliform bacteria MCL.* Any fecal coliform-positive repeat sample or *E. coli*-positive repeat sample, or any total coliform-positive repeat sample following a fecal coliform-positive or *E. coli*-positive routine sample constitutes a violation of the MCL for total coliforms. For purposes of the public notification requirements in ~~41.10(2)"a"(2), 42.1(1)"b,"~~ this is a violation that may pose an acute risk to health.

(3) *MCL compliance period.* Compliance of a system with the MCL for total coliforms in 41.2(1)"b"(1) and (2) is based on each month in which the system is required to monitor for total coliforms.

(4) *Compliance determination.* Results of all routine and repeat samples not invalidated by the department or laboratory must be included in determining compliance with the MCL for total coliforms.

Amend paragraph "c," subparagraph (1), numbered paragraphs "5" and "6," as follows:

5. Noncommunity water systems. The monitoring frequency for total coliforms for noncommunity water systems is as listed in the four unnumbered paragraphs below until June 29, 1999. Public water systems which do not collect five or more routine samples each month must undergo an initial sanitary survey by June 29, 1999. After June 29, 1999, the minimum number of samples shall be five routine samples per month unless the department determines, after completing sanitary surveys (at intervals not exceeding five years), that the monitoring frequency may continue as listed below.

A noncommunity water system using only groundwater (except groundwater under the direct influence of surface water, as defined in 567—paragraph 43.5 (1)"b") and serving 1,000 persons or fewer must monitor each calendar quarter that the system provides water to the public. Systems serving more than 1,000 persons during any month must monitor at the same frequency as a like-sized community water system, as specified in 41.2(1)"c"(1)"3."

A noncommunity water system using surface water, in total or in part, must monitor at the same frequency as a like-sized community water system, as specified in 41.2(1)"c"(1)"3," regardless of the number of persons it serves.

A noncommunity water system using groundwater under the direct influence of surface water, as defined in 567—paragraph 43.5(1)"b," must monitor at the same frequency as a like-sized community water system, as specified in 41.2(1)"c"(1)"3," regardless of the number of persons it serves. The system must begin monitoring at this frequency beginning six months after the department determines that the groundwater is under the direct influence of surface water.

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A noncommunity water system serving schools or day-cares must monitor at the same frequency as a like-sized community water system, as specified in 41.2(1)"c"(1)"3."

6. If the department, on the basis of a sanitary survey or on the basis of the monitoring results history, determines that some greater frequency of monitoring is more appropriate, that frequency shall be the frequency required under these regulations. This frequency shall be confirmed or changed on the basis of subsequent surveys.

Amend paragraph "c," subparagraph (2), numbered paragraph "5," as follows:

5. If a system collecting fewer than five routine samples per month has one or more total coliform-positive samples and the department does not invalidate the sample(s) under 41.2(1)"c"(3), it must collect at least five routine samples during the next month the system provides water to the public. For systems monitoring on a quarterly basis, the additional five routine samples may be required to be taken within the same quarter in which the original total coliform-positive sample occurred.

The department may waive the requirement to collect five routine samples the next month the system provides water to the public if the department has determined that through an on-site visit the reason that the sample was total coliform-positive and establishes that the system has corrected the problem or will correct the problem before the end of the next month the system serves water to the public. In this case, the department must document this decision to waive the following month's additional monitoring requirement in writing, have it approved and signed by the supervisor of the water supply section and the department official who recommends such a decision, and make this document available to the EPA and public. The written documentation will generally be provided by the public water supply system in the form of a request and must describe the specific cause of the total coliform-positive sample and what action the system has taken to correct the problem. The department will not waive the requirement to collect five routine samples the next month the system provides water to the public solely on the grounds that all repeat samples are total coliform-negative. Under If the requirement to collect five routine samples is waived under this paragraph, a system must still take at least one routine sample before the end of the next month it serves water to the public and use it to determine compliance with the MCL for total coliforms in 41.2(1)"b."

Amend paragraph "c," subparagraph (4), numbered paragraph "2," and subparagraph (5) as follows:

2. The department may allow a public water supply system, on a case-by-case basis, to forego fecal coliform or E. coli on a total coliform-positive sample if that system assumes that the total coliform-positive sample is fecal coliform-positive or E. coli-positive. Accordingly, the system must notify the department as specified in 41.2(1)"c"(5)"1" and meet the provisions of 41.10(2) 567—42.1(455B) pertaining to public notification.

(5) Public water supply system's response to violation.

1. A public water supply system which has exceeded the MCL for total coliforms in 41.2(1)"b" must report the violation to the water supply section of the department by telephone no later than the end of the next business day after it learns of the violation, and notify the public in accordance with 41.10(2)"a." 567—subrule 42.1(1).

2. A public water supply system which has failed to comply with a coliform monitoring requirement must report the monitoring violation to the department within ten days

after the system discovers the violation and notify the public in accordance with 41.10(2)"b." 567—subrule 42.1(2).

3. If fecal coliforms or E. coli are detected in a routine or repeat sample, the system must notify the department by telephone by the end of the day when the system is notified of the test result, unless the system is notified of the result after the department office is closed, in which case the system must notify the department before the end of the next business day and notify the public in accordance with 41.10(2)"a"(1) and (2). 567—paragraphs 42.1(1) "a" and "b."

Amend paragraph "d" as follows:

d. Best available technology (BAT). The U.S. EPA identifies, and the department has adopted, the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant level for total coliforms in 41.2(1)"b."

(1) Well protection. Protection of wells from contamination by coliforms by appropriate placement and construction;

(2) Disinfectant residual. Maintenance of a disinfectant residual throughout the distribution system;

(3) Distribution system maintenance. Proper maintenance of the distribution system including appropriate pipe replacement and repair procedures, main flushing programs, proper operation and maintenance of storage tanks and reservoirs, and continual maintenance of a minimum positive water pressure of 20 psig in all parts of the distribution system at all times; and

(4) Filtration or disinfection. Filtration or disinfection of surface water or groundwater under the direct influence of surface water in accordance with 567—43.5(455B) or disinfection of groundwater using strong oxidants such as, but not limited to, chlorine, chlorine dioxide, or ozone.

ITEM 3. Amend subrule 41.2(1), paragraph "e," subparagraphs (1) and (2), as follows:

(1) Sample volume. The standard sample volume required for total coliform analysis, regardless of analytical method used, is 100 ml.

(2) Presence/absence determination. Public water supply systems shall determine the presence or absence of total coliforms. A determination of total coliform density is not required.

ITEM 4. Rescind subrule 41.2(1), paragraph "e," subparagraph (3), and adopt in lieu thereof the following new subparagraph (3):

(3) Total coliform bacteria analytical methodology. Public water supply systems must conduct total coliform analyses in accordance with one of the analytical methods in the following table:

Organism	Methodology	Citation <sup>1</sup>
Total Coliforms <sup>2</sup>	Total Coliform Fermentation Technique <sup>3,4,5</sup>	9221A, B
	Total Coliform Membrane Filter Technique	9222A, B, C
	Presence-Absence (P-A) Coliform Test <sup>5,6</sup>	9221D
	ONPG-MUG Test <sup>7</sup> Colisure Test <sup>8</sup>	9223

<sup>1</sup> Methods 9221A, B; 9222A, B, C; 9221D; and 9223 are contained in Standard Methods for the Examination of Water and

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Wastewater, 18th edition, 1992, American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005.

<sup>2</sup> The time from sample collection to initiation of the analysis may not exceed 30 hours. Systems are encouraged but not required to hold samples below 10 degrees Celsius during transit.

<sup>3</sup> Lactose broth, as commercially available, may be used in lieu of lauryl tryptose broth, if the system conducts at least 25 parallel tests between this medium and lauryl tryptose broth using the water normally tested, and this comparison demonstrates that the false-positive rate and false-negative rate for total coliforms, using lactose broth, is less than 10 percent.

<sup>4</sup> If inverted tubes are used to detect gas production, the media should cover these tubes at least one-half to two-thirds after the sample is added.

<sup>5</sup> No requirement exists to run the completed phase on 10 percent of all total coliform-positive confirmed tubes

<sup>6</sup> Six-times formulation strength may be used if the medium is filter-sterilized rather than autoclaved.

<sup>7</sup> The ONPG-MUG Test is also known as the Autoanalysis Colilert System.

<sup>8</sup> The Colisure Test must be incubated for 28 hours before examining the results. If an examination of the results at 28 hours is not convenient, then results may be examined at any time between 28 hours and 48 hours. A description of the Colisure Test may be obtained from the Millipore Corp., Technical Services Department, 80 Ashby Road, Bedford, MA 01730.

ITEM 5. Rescind and reserve subrule 41.2(1), paragraph "e," subparagraph (4).

ITEM 6. Amend subrule 41.2(1), paragraph "e," subparagraphs (5) through (7), as follows:

(5) Fecal coliform ~~analysis~~ *analytical methodology*. Public water systems must conduct fecal coliform analysis in accordance with the following procedure. When the MTF Technique or presence-absence (P-A) coliform test is used to test for total coliforms, shake the lactose-positive presumptive tube or P-A bottle vigorously and transfer the growth with a sterile 3-mm loop or sterile applicator stick into brilliant green lactose bile broth and EC medium to determine the presence of total and fecal coliforms, respectively. For EPA-approved analytical methods which use a membrane filter, remove the membrane containing the total coliform colonies from the substrate with sterile forceps and carefully curl and insert the membrane into a tube of EC medium. (The laboratory may first remove a small portion of selected colonies for verification). Gently shake the inoculated EC tubes to ensure adequate mixing and incubate in a waterbath at 44.5 (+ or -) 0.2 degrees C for 24 (+ or -) 2 hours. Gas production of any amount in the inner fermentation tube of the EC medium indicates a positive fecal coliform test. The preparation of EC medium is described in "~~Standard Methods~~" Method 9221C p. 9-75, paragraph 1a Method 9221E (paragraph 1a) in *Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992*. Public water supply systems need only determine the presence or absence of fecal coliforms; a determination of fecal coliform density is not required.

(6) *E. coli* ~~analysis~~ *analytical methodology*. Public water systems must conduct analysis of *Escherichia coli* (E. coli) in accordance with one of the following analytical methods:

1. EC medium supplemented with 50 micrograms per milliliter of 4-methylumbelliferyl-beta-D-glucuronide (MUG) (final concentration). EC medium is described in ~~Standard Methods 16th edition, p. 879~~ *Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992, Method 9221E, paragraph 1a*. MUG may be added to

EC medium before autoclaving. EC medium supplemented with 50 micrograms per milliliter of MUG is commercially available. At least 10 ml of EC medium supplemented with MUG must be used. The inner inverted fermentation tube may be omitted. The procedure for transferring a total coliform-positive culture to EC medium supplemented with MUG shall be as specified in subrule 41.2(1)"e"(5) for transferring a total coliform-positive culture to EC medium. Observe fluorescence with an ultraviolet light (366 nm) in the dark after incubating tube at 44.5 plus or minus 0.2 degrees Celsius for 24 plus or minus 2 hours.

2. Nutrient agar supplemented with 100 micrograms per ml 4-methylumbelliferyl-beta-D-glucuronide (MUG) (final concentration). Nutrient Agar is described in ~~Standard Methods 16th Edition, p. 874~~ *Method 9221B (paragraph 3) in Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992*. This test is used to determine if a total coliform-positive sample, as determined by the Membrane-Filter Technique or any other method in which a membrane filter is used, contains *E. coli*. Transfer the membrane filter containing a total coliform colony(ies) to nutrient agar supplemented with 100 micrograms per ml (final concentration) of MUG. After incubating the agar plate at 35 degrees Celsius for 4 hours, observe the colony(ies) under ultraviolet light (366 nm) in the dark for fluorescence. If fluorescence is visible, *E. coli* are present.

3. No change.

(7) *Optional E. coli analytical methodology*. As an option to 41.2(1)"e"(6) a system with a total coliform-positive, MUG-negative, MMO-MUG Test may further analyze the culture for the presence of *E. coli* by transferring a 0.1 ml, 28-hour MMO-MUG culture to EC Medium + MUG with a pipette. The formulation and incubation conditions of EC Medium + MUG and observation of the results are described in 41.2(1)"e"(6).

ITEM 7. Amend subrule 41.2(3), paragraph "e," as follows:

e. Analytical methodology. Public water systems shall conduct heterotrophic plate count bacteria analysis in accordance with 567—subrule 43.5(2) and the following analytical method. Measurements for heterotrophic plate count bacteria must be conducted by a laboratory certified by the department to do such analysis. ~~Until laboratory certification criteria are developed for the analysis of heterotrophic plate count bacteria, any laboratory certified for total coliform analysis by the department is certified for heterotrophic plate count bacteria analysis. After certification criteria have been established, the laboratory shall meet the criteria at renewal of certification.~~

(1) *Method*. The heterotrophic plate count shall be performed in accordance with Method 9215B (~~Pour Plate Method~~), pp. 9-58 to 9-61, as set forth in "~~Standard Methods~~" *Pour Plate Method, Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992*.

(2) *Reporting*. The public water system shall report the results of heterotrophic plate count in accordance with ~~567—paragraph 43.7(3)"b."~~ 567—subparagraph 42.4(3) "c"(2).

ITEM 8. Amend subrule 41.2(4) as follows:

41.2(4) Macroscopic organisms and algae.

a. No change.

b. Maximum contaminant levels (MCLs) for macroscopic organisms and algae. Finished water shall be free of any macroscopic organisms such as plankton, worms, or cysts. The finished water algal cell count shall not exceed

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500 organisms per milliliter or 10 percent of the total cells found in the raw water, whichever is greater. Compliance with the maximum contaminant level for algal cells is calculated in accordance with 41.2(4)“c.”

c. and d. No change.

e. Analytical methodology. Measurement of the algal cells shall be in accordance with Method 10200F, “Standard Methods”: *Phytoplankton Counting Techniques, Standard Methods for the Examination of Water and Wastewater, 18th edition*, pp. 10-23 10-13 to 10-28 10-16. Such measurement shall be required only when the department determines on the basis of complaints or otherwise that excessive algal cells are may be present.

ITEM 9. Rescind subrule 41.3(1), paragraph “a,” and adopt in lieu thereof the following new paragraph:

a. Applicability. Maximum contaminant levels for inorganic contaminants (IOCs) specified in 41.3(1)“b” apply to community water systems and nontransient noncommunity water systems as specified herein. The maximum contaminant level for arsenic applies only to community water systems and nontransient noncommunity systems which primarily serve children (daycares and schools). The maximum contaminant level specified for fluoride applies only to community water systems and nontransient noncommunity systems which primarily serve children (daycares and schools). The maximum contaminant levels specified for nitrate, nitrite, and total nitrate and nitrite apply to community, nontransient noncommunity, and transient noncommunity water systems. At the discretion of the department, nitrate levels not to exceed 20 mg/l may be allowed in a noncommunity water system if the supplier of water demonstrates to the satisfaction of the department that:

(1) Such water will not be available to children under 6 months of age; and

(2) There will be continuous posting of the fact that nitrate levels exceed 10 mg/l and the potential health effects of exposure; and

(3) The following public health authorities will be notified annually of nitrate levels that exceed 10 mg/l, in addition to the reporting requirements of 567—Chapters 41 and 42: county board of health, county health department, county sanitarian, county public health administrator, and Iowa department of public health; and

(4) No adverse health effects shall result.

The requirements also contain monitoring requirements, best available technology (BAT) identification, and analytical method requirements pursuant to 41.3(1)“c,” 41.3(1)“e,” and 567—paragraph 43.3(10)“b,” respectively.

ITEM 10. Rescind subrule 41.3(1), paragraph “b,” subparagraph (1), and adopt in lieu thereof the following new subparagraph:

(1) IOC MCLs. The following table specifies the MCLs for IOCs:

Contaminant	EPA Contaminant Code	Maximum Contaminant Level (mg/l)
Antimony	1074	0.006
Arsenic	1005	0.05
Asbestos	1094	7 million fibers/liter (longer than 10 micrometers in length)
Barium	1010	2
Beryllium	1075	0.004
Cadmium	1015	0.005

Chromium	1020	0.1
Cyanide (as free Cyanide)	1024	0.2
Fluoride*	1025	4.0
Mercury	1035	0.002
Nitrate	1040	10 (as nitrogen)
Nitrite	1041	1 (as nitrogen)
Total Nitrate and Nitrite	1038	10 (as nitrogen)
Selenium	1045	0.05
Thallium	1085	0.002

\*The recommended fluoride level is 1.1 milligrams per liter or the level as calculated from “Water Fluoridation, a Manual for Engineers and Technicians” Table 2-4 published by the U.S. Department of Health and Human Services, Public Health Service (September 1986). At this optimum level in drinking water fluoride has been shown to have beneficial effects in reducing the occurrence of tooth decay.

ITEM 11. Amend subrule 41.3(1), paragraph “b,” subparagraph (2), as follows:

(2) Compliance calculations. Compliance with 41.3(1)“b”(1) shall be determined based on the analytical result(s) obtained at each source/entry point.

1. Sampling frequencies greater than annual (e.g., monthly or quarterly). For public water supply systems which are conducting monitoring at a frequency greater than annual, compliance with the maximum contaminant levels for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, and thallium is determined by a running annual average at any sampling point. If the average at any sampling point is greater than the MCL, then the system is out of compliance. If any one sample would cause the annual average to be exceeded, then the system is out of compliance immediately. Any sample below the method detection limit shall be calculated at zero for the purpose of determining the annual average.

2. Sampling frequencies of annual or less. For public water supply systems which are monitoring annually, or less frequently, the system is out of compliance with the maximum contaminant levels for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, and selenium, and thallium if the level of a contaminant at any sampling point is greater than the MCL. If a confirmation sample is required by the department, it must be collected as soon as possible from the same sampling location, but not to exceed two weeks, and the determination of compliance will be based on the average of the two samples.

3. Compliance calculations for nitrate and nitrite. Compliance with the maximum contaminant levels for nitrate and nitrite is determined based on one sample if the level of these contaminants is below the MCLs. If the level of nitrate or nitrite exceeds the MCLs in the initial sample, a confirmation sample is may be required in accordance with 41.3(1)“c”(7)“2,” and compliance shall be determined based on the average of the initial and confirmation samples.

4. Separable distribution systems. If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, the department may allow the system to give public notice to only the area served by that portion of the system which is out of compliance.

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ITEM 12. Amend subrule 41.3(1), paragraph "b," by adopting the following new subparagraph (3):

(3) Additional requirements. The department may assign additional requirements as deemed necessary to protect the public health, including public notification requirements.

ITEM 13. Amend subrule 41.3(1), paragraph "c," subparagraph (1), as follows:

(1) Routine IOC monitoring (*excluding asbestos, nitrate, and nitrite*). Community public water supply systems and nontransient noncommunity water systems shall conduct monitoring to determine compliance with the MCLs specified in 41.3(1)"b" in accordance with this subrule. Transient noncommunity water systems shall conduct monitoring to determine compliance with the nitrate and nitrite maximum contaminant levels in 41.3(1)"b" as required by 41.3(1)"c"(5) and (6).

ITEM 14. Rescind subrule 41.3(1), paragraph "c," subparagraph (2), numbered paragraph "4," and adopt in lieu thereof the following new numbered paragraph "4":

4. Composite sampling. The department may reduce the total number of samples which must be analyzed by the use of compositing. In systems serving less than or equal to 3,300 persons, composite samples from a maximum of five samples are allowed, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Compositing of samples must be done in the laboratory. If the concentration in the composite sample is greater than or equal to one-fifth of the MCL of any inorganic chemical, then a follow-up sample must be taken within 14 days at each sampling point included in the composite. These samples must be analyzed for the contaminants which exceeded one-fifth of the MCL in the composite sample. If duplicates of the original sample taken from each sampling point used in the composite are available, the system may use these duplicates instead of resampling. The duplicate must be analyzed and the results reported to the department within 14 days of collection. If the population served by the system is greater than 3,300 persons, then compositing may only be permitted by the department as sampling points within a single system. In systems serving less than or equal to 3,300 persons, the department may permit compositing among different systems provided the five-sample limit is maintained. Detection limits for each inorganic contaminant analytical method are contained in 41.3(1)"e"(1).

ITEM 15. Amend subrule 41.3(1), paragraph "c," subparagraph (3), numbered paragraph "3," as follows:

3. Bases of an asbestos waiver. The department may grant a waiver based on a consideration of potential asbestos contamination of the water source, ~~and also upon~~ the use of asbestos-cement pipe for finished water distribution, and the corrosive nature of the water.

ITEM 16. Amend subrule 41.3(1), paragraph "c," subparagraph (4), numbered paragraph "4," as follows:

4. Bases of an IOC waiver and grandfathered data. The department may grant a waiver provided surface water systems have monitored annually for at least three years and groundwater systems have conducted a minimum of three rounds of monitoring. (At least one sample shall have been taken since January 1, 1990.) Both surface and groundwater systems shall demonstrate that all previous analytical results were less than the maximum contaminant level. Systems that use a new water source are not eligible for a waiver until three rounds of monitoring from the new source have been completed. *Systems may be granted a waiver for monitoring*

*of cyanide, provided that the department determines that the system is not vulnerable due to lack of any industrial source of cyanide.*

ITEM 17. Amend subrule 41.3(1), paragraph "c," subparagraph (4), numbered paragraph "8," as follows:

8. IOCs reliably and consistently below the MCL. The department may decrease the quarterly monitoring requirement to the frequencies specified in 41.3(1)"c"(4)"1" and "2 3" provided it has determined that the public water supply system is reliably and consistently below the maximum contaminant level. In no case can the department make this determination unless a groundwater system takes a minimum of two quarterly samples and a surface water system takes a minimum of four quarterly samples.

ITEM 18. Amend subrule 41.3(1), paragraph "c," subparagraph (5), as follows:

(5) Routine and repeat monitoring frequency for nitrates. All public water supply systems (community; nontransient noncommunity; and transient noncommunity systems) shall monitor to determine compliance with the maximum contaminant level for nitrate in 41.3(1)"b."

1. Initial nitrate sampling. Community and nontransient noncommunity water systems served by groundwater systems shall monitor annually beginning January 1, 1993; systems served by surface water shall monitor quarterly beginning January 1, 1993. *Transient noncommunity water systems shall monitor annually beginning January 1, 1993.*

2. Groundwater repeat nitrate sampling frequency. For community and ~~nontransient~~ noncommunity water systems, the repeat monitoring frequency for groundwater systems shall be:

~~quarterly~~ ◦ *Quarterly* for at least one year following any one sample in which the concentration is greater than or equal to 5.0 mg/l as N. The department may allow a groundwater system to reduce the sampling frequency to annually after four consecutive quarterly samples are reliably and consistently less than 5.0 mg/l as N.

◦ *Monthly for at least one year following any nitrate MCL exceedance.*

3. Surface water repeat nitrate sampling frequency. For community and ~~nontransient~~ noncommunity water systems, the department may allow a surface water system to reduce the sampling frequency to:

~~annually~~ ◦ *Annually* if all analytical results from four consecutive quarters are less than 5.0 mg/l as N. ~~A surface water system shall return to quarterly monitoring if any one sample is greater than 5.0 mg/l as N.~~

◦ *Quarterly for at least one year following any one sample in which the concentration is greater than or equal to 5.0 mg/l as N. The department may allow a surface water system to reduce the sampling frequency to annually after four consecutive quarterly samples are reliably and consistently less than 5.0 mg/l as N.*

◦ *Monthly for at least one year following any nitrate MCL exceedance.*

~~4. Transient noncommunity water systems shall monitor annually beginning January 1, 1993.~~

5. 4. Scheduling annual nitrate repeat samples. After the initial round of quarterly sampling is completed, each community and nontransient noncommunity system which is monitoring annually shall take subsequent samples during the quarter(s) which previously resulted in the highest analytical result.

ITEM 19. Amend subrule 41.3(1), paragraph "c," subparagraph (6), numbered paragraph "3," as follows:

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3. Nitrite increased monitoring. For community, non-transient noncommunity, and transient noncommunity water systems, the repeat monitoring frequency for any water system shall be:

**quarterly** • *Quarterly* for at least one year following any one sample in which the concentration is greater than or equal to 0.5 mg/l as N. The department may allow a system to reduce the sampling frequency to annually after determining the system is reliably and consistently less than the MCL 0.5 mg/l.

• *Monthly* for at least one year following any nitrite MCL exceedance.

ITEM 20. Amend subrule 41.3(1), paragraph "c," subparagraph (7), as follows:

(7) Confirmation sampling.

1. Deadline for IOCs confirmation samples. Where the results of an analysis for *antimony*, arsenic, asbestos, barium, *beryllium*, cadmium, chromium, *cyanide*, fluoride, mercury, *nickel*, and selenium, and *thallium* indicate an exceedance of the maximum contaminant level, the department may require that one additional sample be collected as soon as possible after the initial sample was taken (but not to exceed two weeks) at the same sampling point.

2. Deadline for nitrate and nitrite confirmation samples. Where nitrate or nitrite sampling results indicate an exceedance of the maximum contaminant level *and the sampling frequency is quarterly or annual*, the system shall take a confirmation sample within 24 hours of the system's receipt of notification of the analytical results of the first sample. Public water supply systems unable to comply with the 24-hour sampling requirement must immediately notify the consumers served by the area served by the public water system in accordance with 41.10(2) 567—42.1(455B) and complete an analysis of a confirmation sample within two weeks of notification of the analytical results of the first sample. *Where the sampling frequency is monthly, a confirmation sample will not be used to determine compliance with the MCL.*

3. *Deadline for VOC and SOC confirmation samples. Where the results of an analysis for any VOC or SOC indi-*

*cate an exceedance of the maximum contaminant level, the department may require that one or more additional samples be collected as soon as possible after the initial sample was taken, but not to exceed two weeks, at the same sampling point.*

3. 4. Compliance calculations and confirmation samples. If a required confirmation sample as collected within the time specified in 41.3(1)"c"(7)"1" is taken for any contaminant, then the results of the initial and confirmation sample shall be averaged. The resulting average shall be used to determine the system's compliance in accordance with 41.3(1)"b." The department has the discretion to *delete invalidate* results of obvious sampling errors.

ITEM 21. Amend subrule 41.3(1), paragraph "c," subparagraph (8), numbered paragraph "3," as follows:

3. Blending or treatment processes conducted for the purpose of complying with ~~the MCL health-based standards~~, and

ITEM 22. Rescind and reserve subrule 41.3(1), paragraph "d."

ITEM 23. Rescind subrule 41.3(1), paragraph "e," subparagraph (1), and adopt in lieu thereof the following new subparagraph:

(1) Analytical methods for IOCs. Analysis for the listed inorganic contaminants shall be conducted using the following methods, or their equivalent as determined by EPA. Criteria for analyzing arsenic, barium, beryllium, cadmium, chromium, copper, lead, nickel, selenium, sodium, and thallium with digestion or directly without digestion, and other analytical test procedures are contained in Technical Notes on Drinking Water Methods, EPA-600/R-94-173, October, 1994. This document is available from the National Technical Information Service, NTIS PB95-104766, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. The toll-free number is (800)553-6847.

## INORGANIC CONTAMINANTS ANALYTICAL METHODS

Contaminant	Methodology	EPA	ASTM <sup>3</sup>	SM <sup>4</sup>	Other	Detection Limit, mg/l
Antimony	Atomic absorption; furnace			3113B		0.003
	Atomic absorption; platform	200.9 <sup>2</sup>				0.0008
	ICP-Mass spectrometry	200.8 <sup>2</sup>				0.0004
Arsenic	Atomic absorption; hydride		D3697-92			0.001
	Inductively coupled plasma	200.7 <sup>2</sup>		3120B		
	ICP-Mass spectrometry	200.8 <sup>2</sup>				
	Atomic absorption; platform	200.9 <sup>2</sup>				
Asbestos	Atomic absorption; furnace		D2972-93C	3113B		
	Atomic absorption; hydride		D2972-93B	3114B		
	Transmission electron microscopy	100.1 <sup>9</sup>				0.01 MFL
Barium	Transmission electron microscopy	100.2 <sup>10</sup>				
	Inductively coupled plasma	200.7 <sup>2</sup>		3120B		0.002
Beryllium	ICP-Mass spectrometry	200.8 <sup>2</sup>				0.0003
	Atomic absorption; direct			3111D		0.1
	Atomic absorption; furnace			3113B		0.002
	Inductively coupled plasma	200.7 <sup>2</sup>		3120B		0.0003
Cadmium	ICP-Mass spectrometry	200.8 <sup>2</sup>				0.0003
	Atomic absorption; platform	200.9 <sup>2</sup>				0.00002 <sup>12</sup>
	Atomic absorption; furnace		D3645-93B	3113B		0.0002
	Inductively coupled plasma	200.7 <sup>2</sup>				0.001



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Contaminant	Methodology	EPA	ASTM <sup>3</sup>	SM <sup>4</sup>	Other	Detection Limit, mg/l
Chromium	ICP-Mass spectrometry	200.8 <sup>2</sup>				
	Atomic absorption; platform	200.9 <sup>2</sup>				
	Atomic absorption; furnace			3113B		0.0001
	Inductively coupled plasma	200.7 <sup>2</sup>		3120B		0.007
	ICP-Mass spectrometry	200.8 <sup>2</sup>				
Cyanide	Atomic absorption; platform	200.9 <sup>2</sup>		3113B		0.001
	Atomic absorption; furnace			4500-CN-C		
	Manual distillation (followed by one of the following analytical methods:)					
	Spectrophotometric; amenable <sup>14</sup>		D2036-91B	4500-CN-D		0.02
	Spectrophotometric; manual <sup>13</sup>		D2036-91A	4500-CN-E	I-3300-85 <sup>5</sup>	0.02
Fluoride	Spectrophotometric; semi-automated <sup>13</sup>	335.4 <sup>6</sup>				0.005
	Selective electrode <sup>13</sup>			4500-CN-F		0.05
	Ion chromatography	300.0 <sup>6</sup>	D4327-91	4110B		
	Manual distillation; colorimetric; SPADNS			4500F-B,D		
	Manual electrode		D1179-93B	4500F-C		
Mercury	Automated electrode				380-75WE <sup>11</sup>	
	Automated alizarin			4500F-E	129-71W <sup>11</sup>	
	Manual, cold vapor		D3223-91	3112B		0.0002
	Automated, cold vapor	245.2 <sup>1</sup>				0.0002
	ICP-Mass spectrometry	200.8 <sup>2</sup>				
Nickel	Inductively coupled plasma	200.7 <sup>2</sup>		3120B		0.005
	ICP-Mass spectrometry	200.8 <sup>2</sup>				0.0005
	Atomic absorption; platform	200.9 <sup>2</sup>				0.0006 <sup>12</sup>
	Atomic absorption; direct			3111B		
	Atomic absorption; furnace			3113B		0.001
Nitrate	Ion chromatography	300.0 <sup>6</sup>	D4327-91	4110B	B-1011 <sup>8</sup>	0.01
	Automated cadmium reduction	353.2 <sup>6</sup>	D3867-90A	4500-NO <sub>3</sub> -F		0.05
	Ion selective electrode			4500-NO <sub>3</sub> -D	601 <sup>7</sup>	1
	Manual cadmium reduction		D3867-90B	4500-NO <sub>3</sub> -E		0.01
	Ion chromatography	300.0 <sup>6</sup>	D4327-91	4110B	B-1011 <sup>8</sup>	0.004
Nitrite	Automated cadmium reduction	353.2 <sup>6</sup>	D3867-90A	4500-NO <sub>3</sub> -F		0.05
	Manual cadmium reduction		D3867-90B	4500-NO <sub>3</sub> -E		0.01
	Spectrophotometric			4500-NO <sub>3</sub> -B		0.01
	Atomic absorption; hydride		D3859-93A	3114B		0.002
	ICP-Mass spectrometry	200.8 <sup>2</sup>				
Selenium	Atomic absorption; platform	200.9 <sup>2</sup>				
	Atomic absorption; furnace		D3859-93B	3113B		0.002
	Inductively coupled plasma	200.7 <sup>2</sup>				
Sodium	Atomic absorption; direct			3111B		
	ICP-Mass spectrometry	200.8 <sup>2</sup>				
Thallium	Atomic absorption; platform	200.9 <sup>2</sup>				0.0007 <sup>12</sup>

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the documents may be obtained from the sources listed below. Contact the Safe Drinking Water Hotline at (800)426-4791 to obtain information about these documents. Documents may be inspected at EPA's Drinking Water Docket, 401 M Street SW, Washington, DC 20460 (telephone: (202)260-3027); or at the Office of Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

<sup>1</sup> "Methods for Chemical Analysis of Water and Wastes," EPA-600/4-79-020, March 1983. Available at NTIS, PB84-128677. Also available from US EPA, EMSL, Cincinnati, OH 45268.

<sup>2</sup> "Methods for the Determination of Metals in Environmental Samples—Supplement I," EPA-600/R-94-111, May 1994. Available at NTIS, PB94-184942.

<sup>3</sup> Annual Book of ASTM Standards, 1994, Vols. 11.01 and 11.02, American Society for Testing and Materials (ASTM). Copies may be obtained from the American Society for Testing and Materials, 101 Barr Harbor Drive, West Conshohocken, PA 19428.

<sup>4</sup> 18th edition of Standard Methods for the Examination of Water and Wastewater, 1992, American Public Health Association. Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005.

<sup>5</sup> Techniques of Water Resources Investigation of the U.S. Geological Survey, Book 5, Chapter A-1, 3rd edition, 1989, Method I-3300-85. Available from Information Services, U.S. Geological Survey, Federal Center, Box 25286, Denver, CO 80225-0425.

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6 "Methods for the Determination of Inorganic Substances in Environmental Samples," EPA-600-R-93-100, August 1993. Available at NTIS, PB94-121811.

7 The procedure shall be done in accordance with the Technical Bulletin 601, "Standard Method of Test for Nitrate in Drinking Water," July 1994, PN221890-001, Analytical Technology, Inc. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from ATI Orion, 529 Main Street, Boston, MA 02129. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street SW, Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

8 Method B-1011, "Water Test Method for Determination of Nitrite/Nitrate in Water Using Single Column Ion Chromatography." Copies may be obtained from Waters Corporation, Technical Services Division, 34 Maple Street, Milford, MA 01757.

9 Method 100.1, "Analytical Method for Determination of Asbestos Fibers in Water," EPA-600/4-83-043, EPA, September 1983. Available at NTIS, PB83-260471.

10 Method 100.2, "Determination of Asbestos Structure Over 10 Microns in Length in Drinking Water," EPA-600/R-94-134, June 1994. Available at NTIS, PB94-201902.

11 Industrial Method No. 129-71W, "Fluoride in Water and Wastewater," December 1972, and Method No. 380-75WE, "Fluoride in Water and Wastewater," February 1976, Technicon Industrial Systems. Copies may be obtained from Bran & Luebbe, 1025 Busch Parkway, Buffalo Grove, IL 60089.

12 Lower MDLs are reported using stabilized temperature graphite furnace atomic absorption.

13 Screening method for total cyanides.

14 Measures "free" cyanides.

ITEM 24. Rescind subrule 41.3(1), paragraph "e," subparagraphs (2), (3), and (4), and adopt in lieu thereof the following **new** subparagraph (2):

(2) Sampling methods for IOCs. Sample collection for antimony, asbestos, barium, beryllium, cadmium, chro-

mium, cyanide, fluoride, mercury, nickel, nitrate, nitrite, selenium, and thallium under this subparagraph shall be conducted using the sample preservation, container, and maximum holding time procedures specified in the table below:

SAMPLING METHODS FOR IOCs

Contaminant	Preservative <sup>1</sup>	Container <sup>2</sup>	Time <sup>3</sup>
Antimony	HNO <sub>3</sub>	P or G	6 months
Asbestos	4 degrees C	P or G	48 hours for filtration <sup>5</sup>
Barium	HNO <sub>3</sub>	P or G	6 months
Beryllium	HNO <sub>3</sub>	P or G	6 months
Cadmium	HNO <sub>3</sub>	P or G	6 months
Chromium	HNO <sub>3</sub>	P or G	6 months
Cyanide	4 degrees C, NaOH	P or G	14 days
Fluoride	None	P or G	1 month
Mercury	HNO <sub>3</sub>	P or G	28 days
Nickel	HNO <sub>3</sub>	P or G	6 months
Nitrate <sup>4</sup>	4 degrees C	P or G	48 hours
Nitrate-Nitrite <sup>4</sup>	H <sub>2</sub> SO <sub>4</sub>	P or G	28 days
Nitrite <sup>4</sup>	4 degrees C	P or G	48 hours
Selenium	HNO <sub>3</sub>	P or G	6 months
Thallium	HNO <sub>3</sub>	P or G	6 months

<sup>1</sup> When indicated, samples must be acidified at the time of collection to pH < 2 with concentrated acid, or adjusted with sodium hydroxide to pH > 12. When chilling is indicated, the sample must be shipped and stored at 4 degrees C or less.

<sup>2</sup> P: plastic, hard or soft; G: glass, hard or soft

<sup>3</sup> In all cases, samples should be analyzed as soon after collection as possible. Follow additional (if any) information on preservation, containers, or holding times that is specified in the method.

<sup>4</sup> Nitrate may only be measured separate from nitrite in samples that have not been acidified. Measurement of acidified sam-

ples provides a total nitrate (sum of nitrate plus nitrite) concentration.

<sup>5</sup> Instructions for containers, preservation procedures, and holding times as specified in Method 100.2 must be adhered to for all compliance analyses, including those conducted with Method 100.1.

ITEM 25. Rescind subrule 41.3(1), paragraph "f," and adopt the following **new** paragraph "f":

f. Unregulated inorganic chemicals.

ANALYTICAL METHODS FOR UNREGULATED INORGANIC CONTAMINANTS

Contaminant	EPA Contaminant Code	Methodology	EPA	ASTM <sup>1</sup>	SM <sup>2</sup>
Sulfate	1055	Ion Chromatography	300.0 <sup>3</sup>	D4327-91	4110
		Automated Methylthymol Blue	375.2 <sup>3</sup>		4500-SO <sub>4</sub> -F
		Gravimetric			4500-SO <sub>4</sub> -C,D

The procedures shall be done in accordance with the documents listed below. The incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Contact the Safe Drinking Water Hotline at (800)426-4791 to

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obtain information about these documents. Documents may be inspected at EPA's Drinking Water Docket, 401 M Street SW, Washington, DC 20460, (telephone (202)260-3027); or at the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

<sup>1</sup> Annual Book of ASTM Standards, 1994, Vols. 11.01 and 11.02, American Society for Testing and Materials. Copies may be obtained from the American Society for Testing and Materials, 101 Barr Harbor Drive, West Conshohocken, PA 19428.

<sup>2</sup> 18th edition of Standard Methods for the Examination of Water and Wastewater, 1992, American Public Health Association. Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005.

<sup>3</sup> "Methods for the Determination of Inorganic Substances in Environmental Samples," EPA-600/R-93-100, August 1993. Available at NTIS, PB94-121811.

ITEM 26. Amend subrule 41.4(1), paragraph "b," as follows:

b. Action levels.

(1) *Lead action level.* The lead action level is exceeded if the concentration of lead in more than 10 percent of tap water samples collected during any monitoring period conducted in accordance with 41.4(1)"c" is greater than 0.015 mg/l (i.e., if the "90th percentile" lead level is greater than 0.015 mg/l).

(2) *Copper action level.* The copper action level is exceeded if the concentration of copper in more than 10 percent of tap water samples collected during any monitoring period conducted in accordance with 41.4(1)"c" is greater than 1.3 mg/l (i.e., if the "90th percentile" copper level is greater than 1.3 mg/l).

(3) *Calculation of 90th percentile.* The 90th percentile lead and copper levels shall be computed as follows:

The results of all lead or copper samples taken during a monitoring period shall be placed in ascending order from the sample with the lowest concentration to the sample with the highest concentration. Each sampling result shall be assigned a number, ascending by single integers beginning with the number 1 for the sample with the lowest contaminant level. The number assigned to the sample with the highest contaminant level shall be equal to the total number of samples taken.

The number of samples taken during the monitoring period shall be multiplied by 0.9. The contaminant concentration in the numbered sample yielded by *this* the calculation in 41.4(1)"b"(3), second unnumbered paragraph, is the 90th percentile contaminant level.

For water systems serving fewer than 100 people that collect five samples per monitoring period, the 90th percentile is computed by taking the average of the highest and second highest concentrations.

ITEM 27. Amend subrule 41.4(1), paragraph "c," subparagraph (2), as follows:

(2) Sample collection methods.

1. Tap samples for lead and copper collected in accordance with this subparagraph, with the exception of lead service line samples collected under 567—subrule 43.8(4) 43.7(4), shall be first-draw samples.

2. No change.

3. Service line samples collected to determine if the service line is directly contributing lead (as described in 567—subrule 43.8(4) 43.7(4)) shall be one liter in volume and have stood motionless in the lead service line for at least six hours and be collected at the tap after flushing the volume of water between the tap and the lead service line. The volume of water shall be calculated based on the interior diameter and length of the pipe between the tap and the lead service line; tapping directly into the lead service line; or if the sampling site is a building constructed as a single-family residence, allowing the water to run until there is a significant change in temperature which would be indicative of water that has been standing in the lead service line.

4. No change.

ITEM 28. Amend subrule 41.4(1), paragraph "c," subparagraphs (3) and (4), as follows:

(3) Number of samples. Water systems shall collect at least one sample during each monitoring period specified in 41.4(1)"c"(4) from the number of sites as listed in the column below titled "standard monitoring." A system conducting reduced monitoring under 41.4(1)"c"(4) may collect one sample from the number of sites specified in the column titled "reduced monitoring" during each monitoring period specified in 41.4(1)"c"(5 4).

Required Number of Lead/Copper Samples

System Size (Number of People Served)	Standard Monitoring (Number of Sites)	Reduced Monitoring (Number of Sites)
greater than 100,000	100	50
10,001 to 100,000	60	30
3,301 to 10,000	40	20
501 to 3,300	20	10
101 to 500	10	5
less than or equal to 100	5	5

(4) Timing of monitoring.

1. Initial tap sampling. The first six-month monitoring period for small, medium-size and large systems shall begin on the following dates:

System Size (Number of People Served)	First Six-month Monitoring Period Begins on:
greater than 50,000 (large system)	January 1, 1992
3,301 to 50,000 (medium system)	July 1, 1992
less than or equal to 3,300 (small system)	July 1, 1993

All large systems shall monitor during two consecutive six-month periods. All small and medium-size systems shall monitor during each six-month monitoring period until the system exceeds the lead or copper action level and is, therefore, required to implement the corrosion control treatment requirements under 567—paragraph 43.8 7(1)"a," in which case the system shall continue monitoring in accordance with 41.4(1)"c"(4), or the system meets the lead and copper action levels during two consecutive six-month monitoring periods, in which case the system may reduce monitoring in accordance with 41.4(1)"c"(4).

2. Monitoring after installation of corrosion control and source water treatment. Large systems which install optimal corrosion control treatment pursuant to 567—subparagraph 43.8 7(1)"d"(4) shall monitor during two consecutive six-month monitoring periods by the date specified in 567—subparagraph 43.8 7(1)"d"(5). Small or medium-size systems which install optimal corrosion control treatment pursuant to 567—subparagraph 43.87(1)"e"(5) shall monitor during two consecutive six-month monitoring periods as specified in 567—subparagraph 43.8 7(1)"e"(6). Systems

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which install source water treatment shall monitor during two consecutive six-month monitoring periods by the date specified in 567—subparagraph 43.8 7(3)“a”(4).

3. Monitoring after the department specifies water quality parameter values for optimal corrosion control. After the department specifies the values for water quality control parameters under 567—paragraph 43.8 7(2)“f,” the system shall monitor during each subsequent six-month monitoring period, with the first monitoring period to begin on the date the department specifies the optimal values under 567—paragraph 43.8 7(2)“f.”

## 4. Reduced monitoring.

◦ A small or medium-size water system that meets the lead and copper action levels during each of two consecutive six-month monitoring periods may reduce the number of samples according to 41.4(1)“c”(3) and reduce the frequency of sampling to once per year.

◦ Any public water supply system that maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the department under 567—paragraph 43.87(2)“f” during each of two consecutive six-month monitoring periods may request that the system be allowed to reduce the monitoring frequency to once per year and to reduce the number of lead and copper samples according to 41.4(1)“c”(3). The department will review the information submitted by the water system and shall set forth the basis for its determination in writing. Where appropriate, the department will revise its determination when the system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

◦ A small or medium-size water system that meets the lead and copper action levels during three consecutive years of monitoring may reduce the frequency of monitoring for lead and copper from annually to once every three years. Any water system that maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the department under 567—paragraph 43.87(2)“f” during three consecutive years of monitoring may request the department to allow the system to reduce the frequency of monitoring from annually to once every three years. The department shall review the information submitted by the system and shall set forth the basis for its determination in writing. Where appropriate, the department will revise its determination when the system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

◦ A water system that reduces the number and frequency of sampling shall collect these samples from sites included in the pool of targeted sampling sites identified in 41.4(1)“c”(1). Systems sampling annually or less frequently shall conduct the lead and copper tap sampling during the months of June, July, August or September.

◦ A small or medium-size water system subject to reduced monitoring that exceeds the lead or copper action level shall resume sampling according to 41.4(1)“c”(4)“3” and collect the number of samples specified for standard monitoring in 41.4(1)“c”(4) (3). Such systems shall also conduct water quality parameter monitoring in accordance with 41.4(1)“d”(2), (3), or (4), as appropriate, during the monitoring period in which it exceeded the action level. Any water system subject to reduced monitoring frequency that fails to operate within the range of values for the water quality control parameters specified by the department under 567—paragraph 43.87(2)“f” shall resume tap water sampling ac-

ording to 41.4(1)“c”(4)“3” and collect the number of samples specified for standard monitoring in 41.4(1)“c”(3).

◦ Additional monitoring by systems. The results of any monitoring conducted in addition to the minimum requirements of 41.4(1)“c” shall be considered by the system and the department in making any determinations (i.e., calculating the 90th percentile lead or copper level) under this subrule.

ITEM 29. Amend subrule 41.4(1), paragraph “d,” as follows:

Amend the introductory paragraph and subparagraphs (1) to (5) as follows:

d. Water quality parameter monitoring requirements. All large public water supply systems (and all small and medium-size public water supply systems that exceed the lead or copper action level) shall monitor water quality parameters in addition to lead and copper in accordance with this subrule. The requirements of this subrule are summarized in the table at the end of 41.4(1)“d”(6). *The water quality parameters must be reported in accordance with the monthly operation report requirements listed in 567—subrule 42.4(3).*

## (1) General requirements.

1. No change.

2. Number of samples. Systems shall collect two samples for each applicable water quality parameter at each entry point to the distribution system during each six-month monitoring period specified in 41.4(1)“d”(2). During each monitoring period specified in 41.4(1)“d”(3) through (5), systems shall collect one sample for each applicable water quality parameter at each entry point to the distribution system. Systems shall collect two tap samples for applicable water quality parameters during each six-month monitoring period specified in 41.4(1)“d”(2) through (5) from the following number of sites.

REQUIRED NUMBER OF SAMPLES:  
WATER QUALITY PARAMETERS

System Size (Number of People Served)	Number of Sites for Water Quality Parameters
greater than 100,000	25
10,001 to 100,000	10
3,301 to 10,000	3
501 to 3,300	2
101 to 500	1
less than or equal to 100	1

(2) No change.

(3) Monitoring after installation of corrosion control. Large systems which install optimal corrosion control treatment pursuant to 567—subparagraph 43.87(1)“d”(4) shall measure the water quality parameters at the locations and frequencies specified below during each six-month monitoring period specified in 41.4(1)“c”(4)“2.” Small or medium-size systems which install optimal corrosion control treatment shall conduct such monitoring during each six-month monitoring period specified in 41.4(1)“c”(4)“2” in which the system exceeds the lead or copper action level.

1. and 2. No change.

(4) Monitoring after the department specifies water quality parameter values for optimal corrosion control. After the department specifies the values for applicable water quality control parameters reflecting optimal corrosion control treatment, large systems shall measure the applicable water quality parameters according to 41.4(1)“d”(3) during each monitoring period specified in 41.4(1)“c”(4)“3.” Any small

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or medium-size system shall conduct such monitoring during each monitoring period specified in 41.4(1)"c"(4)"3" in which the system exceeds the lead or copper action level. The system may take a confirmation sample for any water quality parameter value no later than three days after the first sample. If a confirmation sample is taken, the result must be averaged with the first sampling result and the average must be used for any compliance determinations. The department may delete *disregard* results of obvious sampling errors from this calculation.

(5) Reduced monitoring.

1. Public water supply systems that maintain the range of values for the water quality parameters reflecting optimal corrosion control treatment during each of two consecutive six-month monitoring periods under 41.4(1)"c"(4) shall continue monitoring at the entry point(s) to the distribution system as specified in 567—paragraph 43.8 7(2)"f." Such system may collect two tap samples for applicable water quality parameters from the following reduced number of sites during each six-month monitoring period.

Reduced Water Quality Parameter Monitoring

System Size (Number of People Served)	Reduced Number of Sites for Water Quality Parameters
greater than 100,000	10
10,001 to 100,000	7
3,301 to 10,000	3

501 to 3,300	2
101 to 500	1
less than or equal to 100	1

2. Public water systems that maintain the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the department under 567—paragraph 43.8 7(2)"f" during three consecutive years of annual monitoring under this paragraph may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters specified in 41.4(1)"d"(5) from annually to every three years.

3. A public water system that conducts sampling annually shall collect these samples evenly throughout the year so as to reflect seasonal variability.

4. Public water systems subject to reduced monitoring frequency that fail to operate within the range of values for the water quality parameters specified by the department under 567—paragraph 43.8 7(2)"f" shall resume tap water sampling in accordance with the number and frequency requirements in 41.4(1)"d"(3).

Adopt new subparagraph (6) as follows:

(6) Additional monitoring by systems. The results of any monitoring conducted in addition to the minimum requirements of this subrule shall be considered in making any determinations (i.e., determining concentrations of water quality parameters) under this subrule or 567—subrule 43.7(2).

SUMMARY OF MONITORING REQUIREMENTS FOR WATER QUALITY PARAMETERS<sup>1</sup>

Monitoring Period	Location	Parameters <sup>2</sup>	Frequency
Initial Monitoring	Taps and at entry point(s) to distribution systems	pH, alkalinity, orthophosphate or silica <sup>3</sup> , calcium, conductivity, temperature	Every 6 months
After Installation of Corrosion Control	Taps	pH, alkalinity, orthophosphate, silica <sup>3</sup> , calcium <sup>4</sup>	Every 6 months
	Entry point(s) to distribution system	pH, alkalinity dosage rate and concentration (if alkalinity adjusted as part of corrosion control), inhibitor dosage rate and inhibitor residual <sup>5</sup>	Biweekly
After State Specifies Parameter Values for Optimal Corrosion Control	Taps	pH, alkalinity, orthophosphate, silica <sup>3</sup> , calcium <sup>4</sup>	Every 6 months
	Entry point(s) to distribution system	pH, alkalinity, dosage rate and concentration (if alkalinity adjusted as part of corrosion control), inhibitor dosage rate and inhibitor residual <sup>5</sup>	Biweekly
Reduced Monitoring	Taps	pH, alkalinity, orthophosphate or silica <sup>3</sup> , calcium <sup>4</sup>	Every 6 months at a reduced number of sites
	Entry point(s) to distribution system	pH, alkalinity rate and concentration (if alkalinity adjusted as part of corrosion control), inhibitor dosage rate and inhibitor residual <sup>5</sup>	Biweekly

<sup>1</sup> Table is for illustrative purposes; consult the text of this subrule for precise regulatory requirements.

<sup>2</sup> Small and medium-size systems have to monitor for water quality parameters only during monitoring periods in which the system exceeds the lead or copper action level.

<sup>3</sup> Orthophosphate must be measured only when an inhibitor containing a phosphate compound is used. Silica must be measured only when an inhibitor containing silicate compound is used.

<sup>4</sup> Calcium must be measured only when calcium carbonate stabilization is used as part of corrosion control.

<sup>5</sup> Inhibitor dosage rates and inhibitor residual concentrations (orthophosphate or silica) must be measured only when an inhibitor is used.

ITEM 30. Amend subrule 41.4(1), paragraph "e," as follows:

e. Lead and copper source water monitoring requirements.

(1) Sample location, collection methods, and number of samples.

1. No change.

2. Where the results of sampling indicate an exceedance of maximum permissible source water levels established under 567—subparagraph 43.87(3)"b"(4), the department may require that one additional sample be collected as soon as

possible after the initial sample was taken (but not to exceed two weeks) at the same sampling point. If a confirmation sample is taken for lead or copper, then the results of the initial and confirmation samples shall be averaged in determining compliance with the maximum permissible levels. Lead and copper analytical results below the detection limit shall be considered to be zero. Analytical results above the detection limit but below the practical quantification level (PQL) shall either be considered as the measured value or be considered one-half the PQL.

(2) No change.

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(3) Monitoring after installation of source water treatment. Any system which installs source water treatment pursuant to 567—subparagraph 43.87(3)“a”(3) shall collect an additional source water sample from each entry point to the distribution system during two consecutive six-month monitoring periods by the deadline specified.

(4) Monitoring frequency after the department specifies maximum permissible source water levels or determines that source water treatment is not needed.

1. A system shall monitor at the frequency specified below in cases where the department specifies maximum permissible source water levels under 567—subparagraph 43.87(3)“b”(4) or determines that the system is not required to install source water treatment under 567—subparagraph 43.87(3)“b”(2). A water system using only groundwater shall collect samples once during the three-year compliance period in effect when the department makes this determination. Such systems shall collect samples once during each subsequent compliance period. A public water system using surface water (or a combination of surface and groundwater) shall collect samples once during each year, the first annual monitoring period to begin on the date on which the department makes this determination.

2. No change.

(5) Reduced monitoring frequency.

1. A water system using only groundwater which demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead or copper concentrations specified by the department in 567—subparagraph 43.87(3)“b”(4) during at least three consecutive compliance periods under 41.4(1)“e”(4)“1” may reduce the monitoring frequency for lead or copper to once during each nine-year compliance cycle as defined in 567—40.2(455B).

2. A water system using surface water (or a combination of surface and groundwaters) which demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and copper concentrations specified by the department in 567—subparagraph 43.87(3)“b”(4) for at least three consecutive years may reduce the monitoring frequency in 41.4(1)“e”(4)“1” to once during each nine-year compliance cycle.

3. No change.

ITEM 31. Amend subrule 41.4(1), paragraph “f,” as follows:

f. Corrosivity monitoring protocol—special monitoring for corrosivity characteristics. Suppliers of water for community public water systems shall collect samples from a representative entry point to the water distribution system for the purpose of analysis to determine the corrosivity characteristics of the water. The determination of corrosivity characteristics of water shall only include one round of sampling, except in cases where the department concludes additional monitoring is necessary due to variability of the raw water sources. Sampling requirements and approved analytical methods are as follows:

(1) *Surface water systems.* Systems utilizing a surface water source either in whole or in part shall collect two samples per plant for the purpose of determining the corrosivity characteristics. One of these samples is to be collected during the midwinter months and the other during midsummer.

(2) *Groundwater systems.* Systems utilizing groundwater sources shall collect one sample per plant or source, except systems with multiple plants that do not alter the corrosivity characteristics identified in 41.4(1)“f”(3) or systems

served by multiple wells drawing raw water from a single aquifer may, with departmental approval, be considered one treatment plant or source when determining the number of samples required.

(3) *Corrosivity characteristics analytical parameters.* Determination of corrosivity characteristics of water shall include measurements of pH, calcium hardness, alkalinity, temperature, total dissolved solids (total filterable residue), and calculation of the Langelier Index. In addition, sulfate and chloride monitoring may be required by the department. At the department’s discretion, the *Aggressive Aggressiveness* Index test may be substituted for the Langelier Index test.

(4) *Corrosivity indices methodology.* The following analytical methods must be used to calculate the corrosivity indices: by an approved laboratory, except for temperature which should be measured by the supplier using the approved method.

1. ~~Langelier Index—“Standard Methods for the Examination of Water and Wastewater,” Seventeenth Edition, American Public Health Association, 1015 15th Street N.W., Washington, D.C. 20005 (1989), Method 203, pp. 61-63.~~

2. ~~Aggressive Index—“AWWA Standard for Asbestos-Cement Pipe, 4 in. through 24 in. for Water and Other Liquids,” AWWA C400-75, Revision of C400-75, AWWA, Denver, Colorado.~~

3. ~~Total Filterable Residue—“Standard Methods,” Method 208B, pp. 92-93; or “Methods for Chemical Analysis of Water and Wastes,” Method 160.1.~~

4. ~~Temperature—“Standard Methods,” Method 212, pp. 125-126.~~

5. ~~Calcium-EDTA Titrimetric Method, “Standard Methods,” Method 306C, pp. 189-191; or “Annual Book of ASTM Standards,” Method D1126-67(8); “Methods for Chemical Analysis of Water and Waste,” Method 215.2.~~

6. ~~Alkalinity—Methyl Orange and paint pH 4.5. “Standard Methods,” Method 403, pp. 278-281; or “Annual Book of ASTM Standards,” Method D1067-70B; or “Methods for Chemical Analysis of Water and Wastes,” Method 310.1.~~

7. ~~pH—“Standard Methods,” Method 424, pp. 460-85; or “Methods for Chemical Analysis of Water and Wastes,” Method 150.1; or “Annual Book of ASTM Standards,” Method D129378 A or B.~~

8. ~~Chloride—Potentiometric Method, “Standard Methods,” p. 306.~~

9. ~~Sulfate—Turbidimetric Method, “Methods for Chemical Analysis of Water and Wastes,” pp. 217-278, EPA, Office of Technology Transfer, Washington, D.C. 20460, 1974, or “Standard Methods,” pp. 496-498.~~

1. *Aggressiveness Index—“ANSI/AWWA C401-93: AWWA Standard for the Selection of Asbestos Cement Pressure Pipe, 4”-16” for Water Distribution Systems,” American Water Works Association, Denver, CO.*

2. *Langelier Index—“Standard Methods for the Examination of Water and Wastewater,” 14th edition, American Public Health Association, 1015 15th Street NW, Washington, DC 20005 (1975), Method 203, pp. 61-63.*

(5) Distribution system construction materials. Community and nontransient noncommunity water supply systems shall identify whether the following construction materials are present in their distribution system and report to the department:

1. to 7. No change.

8. *Pipe with asbestos cement lining.*

ITEM 32. Rescind subrule 41.4(1), paragraph “g,” and adopt in lieu thereof the following new paragraph:

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g. Lead, copper, and water quality parameter analytical methods.

(1) Analytical methods. The following analytical methods must be used by an approved laboratory, except for tem-

perature which should be measured by the supplier using the approved method:

## LEAD, COPPER AND WATER QUALITY PARAMETER ANALYTICAL METHODS

Contaminant	EPA Contaminant Code	Methodology	Reference (Method Number)			
			EPA	ASTM <sup>3</sup>	SM <sup>4</sup>	USGS <sup>5</sup>
Alkalinity	1927	Titrimetric Electrometric titration		D1067-92B	2320 B	I-1030-85
Calcium	1919	EDTA titrimetric Atomic absorption; direct aspiration Inductively-coupled plasma	200.7 <sup>2</sup>	D511-93A D511-93B	3500-Ca D 3111 B 3120 B	
Chloride	1017	Ion chromatography Potentiometric titration	300.0 <sup>8</sup>	D4327-91	4110B 4500-Cl-D	
Conductivity	1064	Conductance		D1125-91A	2510 B	
Copper <sup>6</sup>	1022	Atomic absorption; furnace technique Atomic absorption; direct aspiration Inductively-coupled plasma Inductively-coupled plasma; mass spectrometry Atomic absorption; platform furnace	200.7 <sup>2</sup> 200.8 <sup>2</sup> 200.9 <sup>2</sup>	D1688-90C D1688-90A	3113 B 3111 B 3120 B	
Lead <sup>6</sup>	1030	Atomic absorption; furnace technique Inductively-coupled plasma; mass spectrometry Atomic absorption; platform furnace technique	200.8 <sup>2</sup> 200.9 <sup>2</sup>	D3559-90D	3113 B	
pH	1925	Electrometric	150.1 <sup>1</sup> 150.2 <sup>1</sup>	D1293-84	4500-H+ B	
Orthophosphate (Unfiltered no digestion or hydrolysis)	1044	Colorimetric, automated, ascorbic acid colorimetric  Colorimetric, ascorbic acid, single reagent Colorimetric, phosphomolybdate; Automated-segmented flow Automated discrete Ion Chromatography	365.1 <sup>8</sup>    300.0 <sup>7</sup>	  D515-88A  D4327-91	4500-P F  4500-P E  4110	    I-1601-85 I-2601-90 <sup>8</sup> I-2598-85
Silica	1049	Colorimetric, molybdate blue Automated-segmented flow Colorimetric Molybdosilicate Heteropoly blue Automated method for molybdate-reactive silica Inductively-coupled plasma <sup>6</sup>	200.7 <sup>2</sup>	  D859-88	4500-Si D 4500-Si E 4500-Si F 3120 B	I-1700-85 I-2700-85
Temperature	1996	Thermometric			2550 B	
Total Filterable Residue (TDS)	1930	Gravimetric			2540 C	

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the documents may be obtained from the sources listed below. Contact the Safe Drinking Water Hotline at (800)426-4791 to obtain information about these docu-

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ments. Documents may be inspected at EPA's Drinking Water Docket, 401 M Street SW, Washington, DC 20460 (telephone: (202)260-3027); or at the Office of Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

<sup>1</sup> "Methods for Chemical Analysis of Water and Wastes," EPA-600/4-79-020, March 1983. Available at NTIS as PB84-128677. Also available at US EPA, EMSL, Cincinnati, OH.

<sup>2</sup> "Methods for the Determination of Metals in Environmental Samples," EPA-600/4-91-010, June 1991. Available at NTIS as PB91-231498.

<sup>3</sup> Annual Book of ASTM Standards, 1994, Vols. 11.01 and 11.02, American Society for Testing and Materials. Copies may be obtained from the American Society for Testing and Materials, 101 Barr Harbor Drive, West Conshohocken, PA 19428.

<sup>4</sup> 18th edition of Standard Methods for the Examination of Water and Wastewater, 1992, American Public Health Association. Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005.

<sup>5</sup> Techniques of Water Resources Investigation of the U.S. Geological Survey, Book 5, Chapter A-1, 3rd ed., 1989. Available from Information Services, U.S. Geological Survey, Federal Center, Box 25286, Denver, CO 80225-0425.

<sup>6</sup> Samples may not be filtered. Samples that contain less than 1 NTU (Nephelometric turbidity unit) and are properly preserved (concentrated nitric acid to pH < 2) may be analyzed directly (without digestion) for total metals; otherwise, digestion is required. When digestion is required, the total recoverable technique as defined in the method must be used.

<sup>7</sup> "Methods for the Determination of Inorganic Substances in Environmental Samples," EPA/600/R-93/100, August 1993. Available at NTIS as PB94-121811.

<sup>8</sup> "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments, Open File Report 93-125." Available at Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(2) Certified laboratory requirements. Analyses under this subrule shall only be conducted by laboratories that have been certified by the department and are in compliance with the requirements of 567—Chapter 83.

(3) All lead and copper levels measured between the practical quantitation limit (PQL) and method detection limit (MDL) must be either reported as measured or they can be reported as one-half the PQL specified for lead and copper in

41.4(1)“g”(2)“2.” All levels below the lead and copper MDLs must be reported as zero.

ITEM 33. Rescind subrule 41.5(1), paragraph “b,” and adopt in lieu thereof the following **new** paragraph:

b. Maximum contaminant levels (MCLs) for organic compounds. The maximum contaminant levels for organic chemicals are listed in the following table.

(1) Table:

## ORGANIC CHEMICAL CONTAMINANTS, CODES, MCLs, ANALYTICAL METHODS, AND DETECTION LIMITS

Contaminant	EPA Contaminant Code	MCL (mg/l)	Methodology <sup>1</sup>	Detection Limit (mg/l) <sup>2</sup>
<b>Volatile Organic Chemicals (VOCs):</b>				
Benzene	2990	0.005	502.2, 524.2	
Carbon tetrachloride	2982	0.005	502.2, 524.2, 551	
Chlorobenzene (mono)	2989	0.7	502.2, 524.2	
1,2-Dichlorobenzene (ortho)	2968	0.6	502.2, 524.2	
1,4-Dichlorobenzene (para)	2969	0.075	502.2, 524.2	
1,2-Dichloroethane	2980	0.005	502.2, 524.2	
1,1-Dichloroethylene	2977	0.007	502.2, 524.2	
cis-1,2-Dichloroethylene	2380	0.07	502.2, 524.2	
trans-1,2-Dichloroethylene	2979	0.1	502.2, 524.2	
Dichloromethane	2964	0.005	502.2, 524.2	
1,2-Dichloropropane	2983*	0.005	502.2, 524.2	
Ethylbenzene	2992	0.7	502.2, 524.2	
Styrene	2996	0.1	502.2, 524.2	
Tetrachloroethylene	2987	0.005	502.2, 524.2, 551	
Toluene	2991	1	502.2, 524.2	
1,1,1-Trichloroethane	2981	0.2	502.2, 524.2, 551	
Trichloroethylene	2984	0.005	502.2, 524.2, 551	
1,2,4-Trichlorobenzene	2378	0.07	502.2, 524.2	
1,1,2-Trichloroethane	2985	0.005	502.2, 524.2, 551	
Vinyl chloride	2976	0.002	502.2, 524.2	
Xylenes (total)	2955*	10	502.2, 524.2	
<b>Synthetic Organic Chemicals (SOCs):</b>				
Alachlor	2051	0.002	505 <sup>3</sup> , 507, 525.2, 508.1	0.0002
Aldicarb	2047	0.003	531.1, 6610	0.0005
Aldicarb sulfone	2044	0.002	531.1, 6610	0.0008
Aldicarb sulfoxide	2043	0.004	531.1, 6610	0.0005
Atrazine	2050	0.003	505 <sup>3</sup> , 507, 525.2, 508.1	0.0001
Benzo(a)pyrene	2306	0.0002	525.2, 550, 550.1	0.00002



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Carbofuran	2046	0.04	531.1, 6610	0.0009
Chlordane	2959	0.002	505, 508, 508.1, 525.2	0.0002
2,4-D	2105	0.07	515.2, 555, 515.1	0.0001
Dalapon	2031	0.2	515.1, 552.1	0.001
1,2-Dibromo-3-chloropropane (DBCP)	2931	0.0002	504.1, 551	0.00002
Di(2-ethylhexyl)adipate	2035	0.4	506, 525.2	0.0006
Di(2-ethylhexyl)phthalate	2039	0.006	506, 525.2	0.0006
Dinoseb	2041	0.007	515.2, 555, 515.1	0.0002
Diquat	2032	0.02	549.1	0.0004
Endothall	2033	0.1	548.1	0.009
Endrin	2005	0.002	505, 508, 508.1, 525.2	0.00001
Ethylene dibromide (EDB)	2946	0.00005	504.1, 551	0.00001
Glyphosate	2034	0.7	547, 6651	0.006
Heptachlor	2065	0.0004	505, 508, 508.1, 525.2	0.00004
Heptachlor epoxide	2067	0.0002	505, 508, 508.1, 525.2	0.00002
Hexachlorobenzene	2274	0.001	505, 508, 508.1, 525.2	0.0001
Hexachlorocyclopentadiene	2042	0.05	505, 508, 508.1, 525.2	0.0001
Lindane (gamma BHC)	2010	0.0002	505, 508, 508.1, 525.2	0.00002
Methoxychlor	2015	0.04	505, 508, 508.1, 525.2	0.0001
Oxamyl	2036	0.2	531.1, 6610	0.002
Pentachlorophenol	2326	0.001	515.1, 515.2, 525.2, 555	0.00004
Picloram	2040	0.5	515.1, 515.2, 555	0.0001
Polychlorinated biphenyls <sup>4</sup> (as decachlorobiphenyl) (as Arochlors)	2383	0.0005	508A 505, 508	0.0001
Simazine	2037	0.004	505 <sup>3</sup> , 507, 508.1, 525.2	0.00007
2,3,7,8-TCDD (dioxin)	2063	3x10 <sup>-8</sup>	1613	5x10 <sup>-9</sup>
2,4,5-TP (Silvex)	2110	0.05	515.1, 515.2, 555	0.0002
Toxaphene	2020	0.003	505, 508, 525.2	0.001
Total Trihalomethanes (TTHMs):				
Total Trihalomethanes (the sum of the concentrations of bromodichloromethane, dibromochloromethane, tribromomethane (bromoform), and trichloromethane (chloroform))	2950	0.10	502.2, 524.2, 551.1	

\*As of January 1, 1999, the contaminant code for the following compounds was changed from the Iowa Contaminant Code to the EPA Contaminant Code:

Contaminant	Iowa Contaminant Code (Old)	EPA Contaminant Code (New)
1,2 Dichloropropane	2325	2983
Xylenes (total)	2974	2955

<sup>1</sup> Analyses for the contaminants in this section shall be conducted using the following EPA methods or their equivalent as approved by EPA. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street SW, Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

The following methods are available from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161 (telephone (800)553-6847).

Methods for the Determination of Organic Compounds in Drinking Water, EPA-600/4-88-039, December 1988, Revised July 1991 (NTIS PB91-231480): Methods 502.2, 505, 507, 508, 508A, 515.1, 531.1.

Methods for the Determination of Organic Compounds in Drinking Water—Supplement I, EPA-600/4-90-020, July 1990 (NTIS PB91-146027): Methods 506, 547, 550, 550.1, 551.

Methods for the Determination of Organic Compounds in Drinking Water—Supplement II, EPA-600/R-92-129, August 1992 (NTIS PB92-207703): Methods 515.2, 524.2, 548.1, 549.1, 552.1, 555.

Method 1613 "Tetra-through Octa-Chlorinated Dioxins and Furans by Isotope-Dilution HRGC/HRMS," EPA-821-B-94-005, October 1994 (NTIS PB95-104774).

The following American Public Health Association (APHA) documents are available from APHA, 1015 Fifteenth Street NW, Washington, DC 20005.

Supplement to the 18th edition of Standard Methods for the Examination of Water and Wastewater, 1994, APHA: Method 6610.  
Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992, APHA: Method 6651.

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Methods 504.1, 508.1, and 525.2 are available from U.S. EPA EMSL, Cincinnati, OH 45268 (telephone (513)569-7586).

Other required analytical test procedures germane to the conduct of these analyses are contained in Technical Notes on Drinking Water Methods, EPA-600/R-94-173, October 1994 (NTIS PB95-104766) are listed in this table.

<sup>2</sup> Detection limits are only listed for the SOCs, per 40CFR141.

<sup>3</sup> Substitution of the detector specified in Method 505 for the purpose of achieving lower detection limits is allowed as follows. Either an electron capture or nitrogen-phosphorus detector may be used provided all regulatory requirements and quality control criteria are met.

<sup>4</sup> PCBs are qualitatively identified as Aroclors and measured for compliance purposes as decachlorobiphenyl.

(2) Organic chemical compliance calculations (other than total trihalomethanes). Compliance with 41.5(1)"b"(1) shall be determined based on the analytical results obtained at each sampling point.

1. For systems which are conducting monitoring at a frequency greater than annual, compliance is determined by a running annual average of all samples taken at each sampling point. If the annual average of any sampling point is greater than the MCL, then the system is out of compliance. If the initial sample or a subsequent sample causes the annual average to be exceeded, then the system is out of compliance immediately. Any samples below the detection limit shall be calculated as zero for purposes of determining the annual average.

2. If monitoring is conducted annually, or less frequently, the system is out of compliance if the level of a contaminant at any sampling point is greater than the MCL. If a confirmation sample is required by the department, the determination of compliance will be based on the average of two samples.

3. If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, the department may allow the system to give public notice to only that portion of the system which is out of compliance.

(3) Treatment techniques for acrylamide and epichlorohydrin. Each public water supply system must certify annually in writing to the department (using third-party or manufacturer's certification) that when acrylamide and epichlorohydrin are used in drinking water systems, the combination (or product) of dose and monomer level does not exceed the levels specified as follows:

Acrylamide = 0.05% dosed at 1 ppm (or equivalent)

Epichlorohydrin = 0.01% dosed at 20 ppm (or equivalent)

Certifications can rely on information provided by manufacturers or third parties, as approved by the department.

ITEM 34. Amend subrule 41.5(1), paragraph "c," subparagraph (2), numbered paragraphs "2" and "3," as follows:

2. VOC surface water monitoring protocol. Surface water systems (and combined surface/groundwater systems) shall take a minimum of one sample at ~~points in the distribution system that are representative of each source~~ or at each entry point to the distribution system after treatment (hereafter called a source/entry point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source, treatment plant, or within the distribution system.

3. Multiple sources. If the system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water representative of all sources is being used). *If a representative sample of all water sources cannot be obtained, as determined by the department, separate source/entry points with the appropriate monitoring requirements will be assigned by the department.*

ITEM 35. Amend subrule 41.5(1), paragraph "c," subparagraph (2), numbered paragraph "6," as follows:

6. VOC monitoring waivers. Each community and non-transient noncommunity groundwater system which does not detect a contaminant listed in 41.5(1)"b"(1) may apply to the department for a waiver from the requirements of 41.5(1)"c"(4)(2)"4" and "5" after completing the initial monitoring. A waiver shall be effective for no more than six years (two compliance periods). The department may also issue waivers to small systems for the initial round of monitoring for 1,2,4-trichlorobenzene. Detection is defined as greater than or equal to 0.0005 mg/l.

ITEM 36. Amend subrule 41.5(1), paragraph "c," subparagraph (3), as follows:

(3) Routine and repeat synthetic organic chemical (SOC) monitoring requirements. Analysis of the *synthetic organic* contaminants listed in 41.5(1)"b"(2) (1) for the purposes of determining compliance with the maximum contaminant level shall be conducted as follows:

1. No change.

2. SOC surface water monitoring protocols. Surface water systems shall take a minimum of one sample at ~~points in the distribution system that are representative of each source~~ or at each entry point to the distribution system after treatment (hereafter called a source/entry point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. For purposes of this paragraph, surface water systems include systems with a combination of surface and ground sources.

3. Multiple sources. If the system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water representative of all sources is being used). *If a representative sample of all water sources cannot be obtained, as determined by the department, separate source/entry points with the appropriate monitoring requirements will be assigned by the department.*

4. SOC monitoring frequency. Community and non-transient noncommunity water systems shall take four consecutive quarterly samples for each contaminant listed in 41.5(1)"b"(2) (1) during each compliance period beginning with the compliance period starting January 1, 1993. Systems serving more than 3,300 persons which do not detect a contaminant in the initial compliance period may reduce the sampling frequency to a minimum of two quarterly samples in one year during each repeat compliance period. Systems serving less than or equal to 3,300 persons which do not detect a contaminant in the initial compliance period may reduce the sampling frequency to a minimum of one sample during each repeat compliance period.

5. and 6. No change.

7. Increased SOC monitoring. If ~~an~~ a synthetic organic contaminant listed in 41.5(1)"b"(2) (1) is detected in any sample, then:

- Each system must monitor quarterly at each sampling point which resulted in a detection.

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• The department may decrease the quarterly SOC monitoring requirement specified in 41.5(1)"c"(3)"7" provided it has determined that if the system is reliably and consistently below the maximum contaminant level. In no case shall the department make this determination unless a groundwater system takes a minimum of two quarterly samples and a surface water system takes a minimum of four quarterly samples.

• After the department determines the system is reliably and consistently below the maximum contaminant level, the system may monitor annually. Systems which monitor annually must monitor during the quarter that previously yielded the highest analytical result.

• Systems which have three consecutive annual samples with no detection of a contaminant may apply to the department for a waiver as specified in 41.5(1)"c"(3)"6."

• If monitoring results in detection of one or more of certain related contaminants (aldicarb, aldicarb sulfone, aldicarb sulfoxide, heptachlor, and heptachlor epoxide), then subsequent monitoring shall analyze for all related contaminants.

8. No change.

ITEM 37. Amend subrule 41.5(1), paragraph "c," subparagraph (4), as follows:

(4) Organic chemical (SOC and VOC) confirmation samples. The department may require a confirmation sample for positive or negative results. If a confirmation sample is required by the department, the result must be averaged with the first sampling result and the average is used for the compliance determination as specified by 41.5(1)"b"(4)(2). The department has discretion to delete *disregard* results of obvious sampling errors from this calculation.

ITEM 38. Amend subrule 41.5(1), paragraph "c," subparagraph (5), as follows:

(5) Organic chemical (SOC and VOC) composite samples. The department may reduce the total number of samples a system must analyze by allowing the use of compositing. Composite samples from a maximum of five sampling points are allowed, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Compositing of samples must be done in the laboratory and analyzed within 14 days of sample collection.

1. If the concentration in the SOC or VOC composite sample is greater than or equal to 0.0005 mg/l for any contaminant listed in 41.5(1)"b"(1) and (2), then a follow-up sample must be taken and analyzed within 14 days from each sampling point included in the composite.

2. to 6. No change.

~~7. Increased organic chemical (SOC and VOC) sampling. The department may increase required monitoring where necessary to detect variations within the system.~~

8 7. Increased organic chemical (SOC and VOC) monitoring. The department may increase the required monitoring frequency, where necessary, to detect variations within the system (e.g., fluctuations in concentration due to seasonal use, changes in water source, changes to treatment facilities or normal operation thereof).

9 8. Organic chemical (SOC and VOC) vulnerability assessment criteria. Vulnerability of each public water system shall be determined by the department based upon an assessment of the following factors.

• VOC vulnerability assessment criteria—previous monitoring results. A system will be classified vulnerable if any sample was analyzed to contain one or more contaminants listed in 41.5(1)"b"(1)-(VOCs) or 41.5(1)"b"(3) except

cept for trihalomethanes or other demonstrated disinfection by-products.

• SOC vulnerability assessment criteria—previous monitoring results. A system will be classified vulnerable if any sample was analyzed to contain one or more contaminants listed in 41.5(1)"b"(2)-(SOCs) or 41.5(1)"b"(3) except for trihalomethanes or other demonstrated disinfection by-products.

• Proximity of surface water supplies to commercial or industrial use, disposal or storage of volatile synthetic organic chemicals. Surface waters which withdraw water directly from reservoirs are considered vulnerable if the drainage basin upgradient and within two miles of the shoreline at the maximum water level contains major transportation facilities such as primary highways or railroads or any of the contaminant sources listed in this subparagraph. Surface water supplies which withdraw water directly from flowing water courses are considered vulnerable if the drainage basin upgradient and within two miles of the water intake structure contains major transportation facilities such as primary highways or railroads or any of the contaminant sources listed in this subparagraph.

• Proximity of supplies to commercial or industrial use, disposal or storage of volatile synthetic organic chemicals. Wells that are not separated from sources of contamination by at least the following distances will be considered vulnerable.

Sources of Contamination	Shallow Wells, as defined in 567—40.2(455B)	Deep Wells, as defined in 567—40.2(455B)
Sanitary and industrial point discharges	400 ft.	400 ft.
Mechanical waste treatment plants	400 ft.	200 ft.
Lagoons	1,000 ft.	400 ft.
Chemical and storage (above ground)	200 ft.	100 ft.
Chemical and mineral storage including underground storage tanks on or below ground	400 ft.	200 ft.
Solid waste disposal site	1,000 ft.	1,000 ft.

• A system is deemed to be vulnerable for a period of three years after any positive measurement of one or more contaminants listed in 41.5(1)"b"(3) except for trihalomethanes or other demonstrated disinfection by-products.

ITEM 39. Rescind and reserve subrule 41.5(1), paragraph "d."

ITEM 40. Amend subrule 41.5(1), paragraph "e," as follows:

e. Total trihalomethanes sampling, analytical and other requirements. The maximum contaminant level for total trihalomethanes applies to community water systems which serve a population of 10,000 or more individuals and which add a disinfectant (oxidant) to the water in any part of the treatment process. Compliance with the maximum contaminant level is calculated pursuant to 41.5(1)"b"(3)(1). Total trihalomethanes is the sum of the concentrations of bromodichloromethane, dibromochloromethane, tribromomethane (bromoform) and trichloromethane (chloroform).

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(1) *Applicability.* Community water systems which serve a population of 10,000 or more individuals and which add disinfectant (oxidant) to the water in any part of the drinking water treatment process shall analyze for total trihalomethanes in accordance with this subrule.

1. For the purpose of this subrule, samples to be taken by the system shall be based on the number of treatment plants used by the system, except that multiple wells drawing water from a single aquifer may, with approval of the department, be considered as one treatment plant for determining the minimum number of samples.

2. All samples required within a calendar quarter shall be collected within a 24-hour period.

3. *The system shall submit the results of at least one sample for maximum TTHM potential using the procedure specified in 41.5(1) "e" (5).*

4. *A sample must be analyzed from each treatment plant used by the system and be taken at a point in the distribution system reflecting the maximum residence time of the water in the system.*

(2) and (3) No change.

(4) *Compliance calculation.* Compliance with 41.5(1) "b" (3) shall be determined based on a running annual average of quarterly samples collected by the system as prescribed in 41.5(1) "e" (2) "1" or 41.5(1) "e" (2) "2." If the average of samples covering any 12-month period exceeds the maximum contaminant level, the supplier of water shall notify the public pursuant to 41.10(2) 567—42.1(455B). Monitoring after public notification shall be at a frequency designated by the department and shall continue until a monitoring schedule as a condition to an operation permit or enforcement action shall become effective.

(5) *Sampling and analytical methodology.* Sampling and analyses made pursuant to this subrule shall be conducted by one of the following approved total trihalomethane methods listed in 41.5(1) "b."

1. ~~"The Analysis of Trihalomethanes in Finished Waters by the Purge and Trap Method," Method 501.1, EMSL, EPA, Cincinnati, Ohio.~~

2. ~~"The Analysis of Trihalomethanes in Drinking Water by Liquid/Liquid Extraction," Method 501.2, EMSL, EPA, Cincinnati, Ohio.~~

Samples for TTHM shall be dechlorinated upon collection to prevent further production of trihalomethanes, according to the procedures described in the above referenced two methods, *except acidification is not required if only THMs or TTHMs are to be determined.* Samples for maximum TTHM potential should not be dechlorinated or acidified, and should be held for seven days at 25 degrees Celsius (or above) prior to analysis, ~~according to the procedures described in the above two methods.~~

(6) *System modification.* Before a community water system makes any modifications to its existing treatment process for the purposes of achieving compliance with 41.5(1) "b" (3) the TTHM MCL, such system must submit and obtain department approval of a plan setting forth its proposed modification and any safeguards that it will implement to ensure that the bacteriological quality of the drinking water served by such system will not be adversely affected by such modification.

Each system shall comply with the provisions set forth in the department-approved plan. At a minimum, a department-approved plan shall require any system modifying its disinfection practice to:

1. to 4. No change.

5. Demonstrate an active disinfectant residual throughout the distribution system at all times during and after the modification.

Before a community water system makes any modifications to its existing physical treatment plant for the purpose of achieving compliance with 41.5(1) "b" (3), such system must obtain department approval in accordance with 567—43.3(455B).

(7) *Maximum total trihalomethane potential methodology.* The water sample for determination of maximum total trihalomethane potential is taken from a point in the distribution system that reflects maximum residence time. Procedures for sample collection and handling are given in the methods. No reducing agent is added to "quench" the chemical reaction producing THMs at the time of sample collection. The intent is to permit the level of THM precursors to be depleted and the concentration of THMs to be maximized for the supply being tested. Four experimental parameters affecting maximum THM production are pH, temperature, reaction time, and the presence of a disinfectant residual. These parameters are dealt with as follows:

1. Measure the disinfectant residual at the selected sampling point. Proceed only if a measurable residual is present.

2. Collect triplicate 40 ml water samples at the pH prevailing at the time of sampling and prepare a method blank according to the methods.

3. Seal and store these samples together for seven days at 25 degrees Celsius or above.

4. After this time period, open one of the sample containers and check for disinfectant residual. Absence of a disinfectant residual invalidates the sample for further analysis.

5. Once a disinfectant residual has been demonstrated, open another of the sealed samples and determine THM concentration using an approved analytical method.

ITEM 41. Rescind subrule 41.5(1), paragraph "f," subparagraphs (1) to (4), and adopt in lieu thereof the following new subparagraphs (1) and (2):

(1) Volatile organic chemical (VOC) and synthetic organic chemical (SOC) analytical methods. Analysis for the VOC and SOC contaminants listed in 41.5(1) "b" (1) must be conducted using the specified EPA methods. Other analytical test procedures are contained in Technical Notes on Drinking Water Methods, EPA-600/R-94-173, October 1994, NTIS PB95-104766.

(2) PCB analytical methodology. Analysis for PCBs shall be conducted as follows:

1. Each system which monitors for PCBs shall analyze each sample using either Method 505 or 508 pursuant to 41.5(1) "b."

2. If PCBs (as one of seven Aroclors) are detected in any sample analyzed using Method 505 or 508, the system shall reanalyze the sample using Method 508A to quantitate PCBs as decachlorobiphenyl.

PCB AROCLOR DETECTION LIMITS

Aroclor	Detection Limit (mg/l)
1016	0.00008
1221	0.02
1232	0.0005
1242	0.0003
1248	0.0001
1254	0.0001
1260	0.0002

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

3. Compliance with the PCB MCL shall be determined based upon the quantitative results of analyses using Method 508A.

ITEM 42. Amend subrule 41.7(1), paragraph "b," subparagraph (4), introductory paragraph, as follows:

(4) Other filtration technologies. A public water system may use either a filtration technology not listed in 41.7(1)"b"(1) to 41.7(1)"b"(3) or a filtration technology listed in 41.7(1)"b"(1) and (2) at a higher turbidity level if it demonstrates to the department through a preliminary report submitted by a registered professional engineer, using pilot plant studies or other means, that the alternative filtration technology in combination with disinfection treatment that meets the requirements of 567—subrule 43.5(2), consistently achieves 99.9 percent removal or inactivation of *Lambia Giardia lamblia* and 99.99 percent removal or inactivation of viruses. For a system that uses alternative filtration technology and makes this demonstration, the maximum contaminant levels (treatment technique requirements) for turbidity are as follows:

ITEM 43. Amend subrule 41.7(1), paragraph "c," subparagraph (2), as follows:

(2) *Turbidity requirements for population greater than 100,000.* A supplier of water serving a population or population equivalent of greater than 100,000 persons shall provide a continuous or rotating cycle turbidity monitoring and recording device or take hourly grab samples to determine compliance with 41.7(1)"b."

ITEM 44. Rescind subrule 41.7(1), paragraph "e," subparagraph (1), and adopt in lieu thereof the following new subparagraph:

(1) Turbidity analytical methodology. Turbidity monitoring shall be conducted using the following methodology:

Methodology	Analytical Method		
	EPA	SM	GLI
Nephelometric	180.1 <sup>1</sup>	2130B <sup>2</sup>	Method 2 <sup>3</sup>

<sup>1</sup> "Methods for the Determination of Inorganic Substances in Environmental Samples," EPA-600/R-93-100, August 1993. Available at NTIS, PB94-121811.

<sup>2</sup> Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992, American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005.

<sup>3</sup> GLI Method 2, "Turbidity," November 2, 1992, Great Lakes Instruments, Inc., 8855 North 55th Street, Milwaukee, WI 53223.

ITEM 45. Amend subrule 41.7(1), paragraph "e," subparagraph (2), as follows:

(2) Reporting. The public water supply system shall report the results of the turbidity analysis in accordance with 567—~~subrules 43.7(1) and 43.7(3), paragraphs 42.4(3) "a" and 42.4(3) "c."~~

ITEM 46. Amend subrule 41.7(2), paragraphs "a" to "c," as follows:

a. Applicability. Public water supply systems which apply chlorine shall monitor, record, and report the concentrations daily in accordance with 567—subparagraph 43.7(1)"b"(5), 42.4(3) "a"(2) "5." In addition, all public water supply systems that use a surface water source or a groundwater source under the direct influence of surface water must provide treatment consisting of disinfection, as specified in 567—subrule 43.5(2), and filtration treatment, as specified in 567—subrule 43.5(3), and shall *report to the department in accordance with 567—42.4(3) "c."* ~~monitor for~~

~~the residual disinfectant concentration in both the water entering the distribution system and in the distribution system and shall report the results of that analysis in accordance with 567—subrule 43.7(3).~~

b. Maximum contaminant levels. Reserved.

c. Monitoring requirements. Public water supplies that use surface water or groundwater under the direct influence of surface water shall monitor for the residual disinfectant concentration in both the water entering the distribution system and in water in the distribution system so as to demonstrate compliance with 567—subrule 43.5(2).

(1) Disinfectant residual entering system. Residual disinfectant concentration of the water entering the distribution system shall be monitored continuously, and the lowest value recorded each day, except that if there is a failure in the continuous monitoring equipment, grab sampling every four hours may be conducted in lieu of continuous monitoring, but not to exceed five working days following the failure of the equipment. Systems serving 3,300 or fewer persons may take grab samples in lieu of providing continuous monitoring on an ongoing basis at the frequencies prescribed below:

DISINFECTANT RESIDUAL SAMPLES REQUIRED  
OF SURFACE WATER OR IGW PWS

System size (persons served)	Samples per day*
less than 500	1
501 to 1,000	2
1,001 to 2,500	3
2,501 to 3,300	4

\*When more than one grab sample is required per day, the day's samples cannot be taken at the same time. The sampling intervals must be at a minimum of four-hour intervals.

If at any time the disinfectant concentration falls below 0.3 mg/l *free residual* or 1.5 mg/l *total residual chlorine* in a system using grab sampling in lieu of continuous monitoring, the system shall take a grab sample every four hours until the residual disinfectant concentration is equal to or greater than 0.3 mg/l *free residual* or 1.5 mg/l *total residual chlorine*.

(2) Disinfectant residual in system. The residual disinfectant concentration must be measured at least at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in 41.2(1)"c," except that the department may allow a public water system which uses both a surface water source or a groundwater source under direct influence of surface water, and a groundwater source to take disinfectant residual samples at points other than the total coliform sampling points, if these points are included as a part of the coliform sample site plan meeting the requirements of 41.2(1)"c"(1)"1" and the department determines that such points are representative of treated (disinfected) water quality within the distribution system. Heterotrophic bacteria, measured as heterotrophic plate count (HPC), ~~as specified in 41.2(3),~~ may be measured in lieu of residual disinfectant concentration, using Method 9215B, *Pour Plate Method, Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992. The time from sample collection to initiation of analysis may not exceed eight hours. Samples must be kept below 10 degrees Celsius during transit to the laboratory. All samples must be analyzed by a department-certified laboratory.*

ITEM 47. Rescind subrule 41.7(2), paragraph "e," subparagraphs (1) and (2), and adopt in lieu thereof the following new subparagraphs:

(1) Disinfectant analytical methodology. Public water systems must measure residual disinfectant concentrations

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with one of the analytical methods in the following table. Residual disinfectant concentrations for free chlorine and combined chlorine also may be measured by using DPD colorimetric test kits. Free and total chlorine residuals may be measured continuously by adapting a specified chlorine

residual method for use with a continuous monitoring instrument provided the chemistry, accuracy and precision remain the same. Instruments used for continuous monitoring must be calibrated with a grab sample measurement at least every five days.

## DISINFECTANT ANALYTICAL METHODOLOGY

Residual	Methodology	Methods <sup>1, 2</sup>
Free chlorine	Amperometric Titration	4500-Cl D
	DPD Ferrous Titrimetric	4500-Cl F
	DPD Colorimetric	4500-Cl G
	Syringaldazine (FACTS)	4500-Cl H
Total chlorine	Amperometric Titration	4500-Cl D
	Amperometric Titration (low level measurement)	4500-Cl E
	DPD Ferrous Titrimetric	4500-Cl F
	DPD Colorimetric	4500-Cl G
	Iodometric Electrode	4500-Cl I
Chlorine dioxide	Amperometric Titration	4500-ClO <sub>2</sub> C
	DPD Method	4500-ClO <sub>2</sub> D
	Amperometric Titration	4500-ClO <sub>2</sub> E
Ozone	Indigo Method	4500-O <sub>3</sub> B

<sup>1</sup> Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992, American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005.

<sup>2</sup> Other analytical test procedures are contained within Technical Notes on Drinking Water Methods, EPA-600/R-94-173, October 1994, which is available as NTIS PB95-104766.

(2) Reporting. The public water supply system shall report the results in compliance with 567—paragraphs 42.4(3)“a” and 42.4(3)“c.”

ITEM 48. Amend subrule 41.7(3), paragraph “e,” as follows:

e. Analytical methodology. Measurements for temperature must be conducted by a Grade II, III or IV operator meeting the requirements of 567—Chapter 81, any person under the supervision of a Grade II, III or IV operator meeting the requirements of 567—Chapter 81, or a laboratory certified by the department to perform analysis under 567—Chapter 83. Temperature shall be determined in compliance with Method 2550 (Temperature), p. 2-59, as set forth in “Standard Methods,” 18th Edition the methodology listed in 41.4(1)“g”(1).

ITEM 49. Amend subrule 41.7(4), paragraph “e,” as follows:

e. Analytical methodology. Measurements for pH shall be conducted by a Grade II, III or IV operator meeting the requirements of 567—Chapter 81, any person under the supervision of a Grade II, III, or IV operator meeting the requirements of 567—Chapter 81, or a laboratory certified by the department to perform analysis under 567—Chapter 83. pH shall be determined in compliance with Method 4500-H+ (pH Value), pp. 4-65 to 4-69, as set forth in “Standard Methods,” 18th Edition the methodology listed in 41.4(1)“g”(1).

ITEM 50. Rescind subrule 41.8(2) and adopt in lieu thereof the following **new** subrule:

**41.8(2)** Beta particle and photon radioactivity from man-made radionuclides in community water systems.

a. Maximum contaminant level. The average annual concentration of beta particle and photon radioactivity from man-made radionuclides in drinking water shall not produce an annual dose equivalent to the total body or any internal organ greater than 4 millirem/year.

b. MCL calculation. Except for the radionuclides listed in the table below, the concentration of man-made radionuclides causing 4 mrem total body or organ dose equivalents shall be calculated on the basis of a 2 liter per day drinking water intake using the 168-hour data listed in “Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure,” NBS Handbook 69 as amended August 1963, U.S. Department of Commerce. If two or more radionuclides are present, the sum of their annual dose equivalent to the total body or to any organ shall not exceed 4 millirem/year.

AVERAGE ANNUAL CONCENTRATIONS  
ASSUMED TO PRODUCE  
A TOTAL BODY OR ORGAN DOSE OF 4 MREM/YR

Radionuclide	Critical Organ	pCi per liter
Strontium-90	Bone marrow	8
Tritium	Total body	20,000

ITEM 51. Rescind rule 567—41.9(455B) and insert in lieu thereof the following **new** rule:

**567—41.9(455B) Sampling and analytical requirements for radionuclides.**

**41.9(1)** Analytical methods for radioactivity.

a. Radionuclide analytical methodology. Analysis for the following contaminants shall be conducted to determine compliance with 41.8(1) in accordance with the methods in the following table, or their equivalent as determined by EPA.

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## Radionuclide Analytical Methodology

Contaminant	Methodology	Reference (method or page number)								
		EPA <sup>1</sup>	EPA <sup>2</sup>	EPA <sup>3</sup>	EPA <sup>4</sup>	SM <sup>5</sup>	ASTM <sup>6</sup>	USGS <sup>7</sup>	DOE <sup>6</sup>	Other
Naturally occurring:										
Gross alpha <sup>11</sup> & beta	Evaporation	900.0	p. 1	00-01	p. 1	302, 7110B		R-1120-76		
Gross alpha <sup>11</sup>	Co-precipitation			00-02		7110C				
Radium 226	Radon emanation	903.1	p. 16	Ra-04	p. 19	7500-Ra C	D 3454-91	R-1141-76	Ra-05	NY <sup>9</sup>
	Radiochemical	903.0	p. 13	Ra-03		304, 305, 7500-Ra B	D 2460-90	R-1140-76		
Radium 228	Radiochemical	904.0	p. 24	Ra-05	p. 19	304, 7500-Ra D		R-1142-76		NY <sup>9</sup> NJ <sup>10</sup>
Uranium <sup>12</sup>	Radiochemical	908.0				7500-U B				
	Fluorometric	908.1				7500-U C <sup>13</sup>	D 2907-91	R-1180-76 R-1181-76	U-04	
	Alpha spectrometry Laser phosphorimetry			00-07	p. 33	7500-U C <sup>14</sup>	D 3972-90 D 5174-91	R-1182-76	U-02	
Man-made:										
Radioactive Cesium	Radiochemical	901.0	p. 4			7500-Cs B	D 2459-72	R-1111-76		
	Gamma ray spectrometry	901.1			p. 92	7120 <sup>15</sup>	D 3649-91	R-1110-76	4.5.2.3	
Radioactive Iodine	Radiochemical	902.0	p. 6 p. 9			7500-I B 7500-I C 7500-I D	D 3649-91			
	Gamma ray spectrometry	901.1			p. 92	7120 <sup>15</sup>	D 4785-88		4.5.2.3	
Radioactive Strontium 89, 90	Radiochemical	905.0	p. 29	Sr-04	p. 65	303, 7500-Sr B		R-1160-76	Sr-01 Sr-02	
Tritium	Liquid scintillation	906.0	p. 34	H-02	p. 87	306, 7500-3H B	D 4107-91	R-1171-76		
Gamma emitters	Gamma ray spectrometry	901.1			p. 92	7120 <sup>15</sup>	D 3649-91	R-1110-76	4.5.2.3	
		902.0				7500-Cs B	D 4785-88			
		901.0				7500-I B				

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of documents 1 through 10 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the documents may be obtained from the sources listed below. Contact the Safe Drinking Water Hotline at (800)426-4791 to obtain information about these documents. Documents may be inspected at EPA's Drinking Water Docket, 401 M Street SW, Washington, DC 20460 (telephone (202)260-3027); or at the Office of Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

<sup>1</sup> "Prescribed Procedures for Measurement of Radioactivity in Drinking Water," EPA 600/4-80-032, August 1980. Available at the US Department of Commerce, NTIS, 5285 Port Royal Road, Springfield VA 22161 (telephone (800)553-6847) PB 80-224744.

<sup>2</sup> "Interim Radiochemical Methodology for Drinking Water," EPA 600/4-75-008(revised), March 1976. Available at NTIS, *ibid.* PB 253258.

<sup>3</sup> "Radiochemistry Procedures Manual," EPA 520/5-84-006, December 1987. Available at NTIS, *ibid.* PB 84-215581.

<sup>4</sup> "Radiochemical Analytical Procedures for Analysis of Environmental Samples," March 1979. Available at NTIS, *ibid.* EMSL LV 053917.

<sup>5</sup> Standard Methods for the Examination of Water and Wastewater, 13th, 17th, 18th, 19th editions, 1971, 1989, 1992, 1995. Available at American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005. All methods are in the 17th, 18th, and 19th editions except 7500-U C Fluorimetric Uranium was discontinued after the 17th edition; 7120 Gamma Emitters is only in the 19th edition; and 302, 303, 304, 305, and 306 are only in the 13th edition.

<sup>6</sup> Annual Book of ASTM Standards, Vol. 11.02, 1994. Available at American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

<sup>7</sup> "Methods for Determination of Radioactive Substances in Water and Fluvial Sediments," Chapter A5 in Book 5 of Techniques of Water-Resources Investigations of the United States Geological Survey, 1977. Available at US Geological Survey (USGS) Information Services, Box 25286, Federal Center, Denver CO 80225-0425.

<sup>8</sup> "EML Procedures Manual," 27th edition, Volume 1, 1990. Available at the Environmental Measurements Laboratory, US Department of Energy (DOE), 376 Hudson Street, New York, NY 10014-3621.

<sup>9</sup> "Determination of Ra-226 and Ra-228 (Ra-02)," January 1980, revised June 1982. Available at Radiological Sciences Institute Center for Laboratories and Research, New York State Department of Health, Empire State Plaza, Albany, NY 12201.

<sup>10</sup> "Determination of Ra-228 in Drinking Water," August 1980. Available at State of New Jersey, Department of Environmental Protection, Division of Environmental Quality, Bureau of Radiation and Inorganic Analytical Services, 9 Ewing Street, Trenton, NJ 08625.

<sup>11</sup> Natural uranium and thorium-230 are approved as gross alpha calibration standards for gross alpha with co-precipitation and evaporation methods; americium-241 is approved with co-precipitation methods.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

<sup>12</sup> If uranium (U) is determined by mass, a 0.67 pCi/ug of uranium conversion factor must be used. This conversion factor is based on the 1:1 activity ratio of U-234 to U-238 that is characteristic of naturally occurring uranium.

<sup>13</sup> Standard Methods for the Examination of Water and Wastewater, 17th edition, APHA, 1989.

<sup>14</sup> Standard Methods for the Examination of Water and Wastewater, 18th or 19th edition, APHA, 1992, 1995.

<sup>15</sup> Standard Methods for the Examination of Water and Wastewater, 19th edition, APHA, 1995.

b. Method references for other radionuclides. When the identification and measurement of radionuclides other than those listed in 41.9(2) are required, the following references are to be used, except in cases where alternative methods have been approved in accordance with 41.12(455B).

(1) "Procedures for Radiochemical Analysis of Nuclear Reactor Aqueous Solutions," H. L. Krieger and S. Gold, EPA-R4-73-014, Environmental Protection Agency, Cincinnati, Ohio 45268 (May 1973).

(2) "HASL Procedure Manual," edited by John H. Harley. HASL 300, ERDA Health and Safety Laboratory, New York, NY (1973).

c. Radionuclide detection limits. For the purpose of monitoring radioactivity concentration in drinking water, the required sensitivity of the radioanalysis is defined in terms of a detection limit. The detection limit shall be that concentration which can be counted with a precision of plus or minus 100 percent at the confidence level (1.960 sigma where sigma is the standard deviation of the net counting rate of the sample).

(1) To determine compliance with 41.8(1)"a," the detection limit shall not exceed 1 pCi/l. To determine compliance with 41.8(1)"b," the detection limit shall not exceed 3 pCi/l.

(2) To determine compliance with 41.8(2), the detection limits shall not exceed the concentrations listed in the table below.

TABLE — Detection Limits for Man-Made Beta Particle and Photon Emitters

Radionuclide	Detection Limit
Tritium	1,000 pCi/l
Strontium-89	10 pCi/l
Strontium-90	2 pCi/l
Iodine-131	1 pCi/l
Cesium-134	10 pCi/l
Gross beta	4 pCi/l
Other radionuclides	1/10 of the applicable limit

d. Calculating compliance with radionuclide MCLs. To determine compliance with the maximum contaminant levels listed in 41.8(1) and 41.8(2), averages of data shall be used and shall be rounded to the same number of significant figures as the maximum contaminant level for the substance in question.

**41.9(2) Monitoring frequency for radioactivity in community water systems.**

a. Monitoring requirements for gross alpha particle activity, radium-226 and radium-228.

(1) Initial monitoring requirement and period. Initial sampling to determine compliance with 41.8(1) shall begin by June 24, 1979, and the analysis shall be completed by June 24, 1980. Compliance shall be based on the analysis of an annual composite of four consecutive quarterly samples or the average of the analyses of four samples obtained at quarterly intervals.

A gross alpha particle activity measurement may be substituted for the required radium-226 and radium-228 analysis, provided that the measured gross alpha particle activity does not exceed 5 pCi/l at a confidence level of 95 percent (1.65 0 {sigma} where 0 {sigma} is the standard deviation of the net counting rate of the sample). In localities where radium-228 may be present in drinking water, radium-226 or

radium-228 analyses are required when the gross alpha particle activity exceeds 2 pCi/l.

When the gross alpha particle activity exceeds 5 pCi/l, the same or an equivalent sample shall be analyzed for radium-226. If the concentration of radium-226 exceeds 3 pCi/l, the same or an equivalent sample shall be analyzed for radium-228.

(2) Data substitution for initial requirement. For the initial analysis required by 41.9(2)"a"(1), data acquired on or after June 24, 1976, may be substituted at the discretion of the department.

(3) Monitoring requirements. Suppliers of water shall monitor at least once every four years following the procedure required by 41.9(2)"a"(1). At the discretion of the department, when an annual record taken in conformance with 41.9(2)"a"(1) has established that the average annual concentration is less than half the maximum contaminant levels established by 41.8(1), analysis of a single sample may be substituted for the quarterly sampling procedure required by 41.9(2)"a"(1).

More frequent monitoring shall be conducted when requested by the department in the vicinity of mining or other operations which may contribute alpha particle radioactivity to either surface or groundwater sources of drinking water.

A supplier of water shall monitor in conformance with 41.9(2)"a"(1) within one year of the introduction of a new water source for a community water system. More frequent monitoring shall be conducted when requested by the department in the event of possible contamination or when changes in the distribution system or treatment processing occur which may increase the concentration of radioactivity in finished water.

A community water system using two or more sources having different concentrations of radioactivity shall monitor source water, in addition to water from a free-flowing tap, when requested by the department.

Monitoring for compliance with 41.8(1) after the initial period need not include radium-228 except when required by the department, provided that the average annual concentration of radium-228 has been assayed at least once using the quarterly sampling procedure required by 41.9(2)"a"(1).

Suppliers of water shall conduct annual monitoring of any community water system in which the radium-226 concentration exceeds 3 pCi/l, when requested by the department.

(4) Exceedance of the MCL. If the average annual maximum contaminant level for gross alpha particle activity or total radium as set forth in 41.8(1) is exceeded, the supplier of a community water system shall notify the public as required by 567—42.1(455B). Monitoring at quarterly intervals shall be continued until the annual average concentration no longer exceeds the maximum contaminant level or until a monitoring schedule as a condition of an operation permit or enforcement action shall become effective.

b. Monitoring requirements for man-made radioactivity in community water systems.

(1) Applicability and initial monitoring requirements. Systems using surface water sources and serving more than 100,000 persons and such other community water systems as are designated by the department shall be monitored for compliance with 41.8(2) by analysis of a composite of four



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consecutive quarterly samples. Compliance with 41.8(2) may be assumed without further analysis if the average annual concentration of gross beta particle activity is less than 50 pCi/l and if the average annual concentrations of tritium and strontium-90 are less than those listed in the detection limits table, provided, that if both radionuclides are present, the sum of their annual dose equivalents to bone marrow shall not exceed 4 millirem/year.

If the gross beta particle activity exceeds 50 pCi/l, an analysis of the sample must be performed to identify the major radioactive constituents present, and the appropriate organ and total body doses shall be calculated to determine compliance with 41.8(2).

Suppliers of water shall conduct additional monitoring, as requested by the department, to determine the concentration of man-made radioactivity in principal watersheds designated by the department.

At the discretion of the department, suppliers of water utilizing only groundwaters may be required to monitor for man-made radioactivity.

(2) Data substitution for initial requirement. For the initial analysis required by 41.9(2)"b"(1), data acquired on or after June 24, 1976, may be substituted at the discretion of the department.

(3) Monitoring requirement. After the initial analysis required by 41.9(2)"b"(1), suppliers of water shall monitor at least every four years following the procedure given in 41.9(2)"b"(2).

(4) Monitoring requirements for PWSs receiving effluent from nuclear facilities. The supplier of any community water system designated by the department as utilizing water contaminated by effluents from nuclear facilities shall initiate quarterly monitoring for gross beta particle and iodine-131 radioactivity and annual monitoring for strontium-90 and tritium.

Quarterly monitoring for gross beta particle activity shall be based on the analysis of monthly samples or the analysis of a composite of three monthly samples. The former is recommended. If the gross beta particle activity in a sample exceeds 15 pCi/l, the same or an equivalent sample shall be analyzed for strontium-89 and cesium-134. If the gross beta particle activity exceeds 50 pCi/l, an analysis of the sample must be performed to identify the major radioactive constituents present and the appropriate organ and total body doses shall be calculated to determine compliance with 41.8(2).

For iodine-131, a composite of five consecutive daily samples shall be analyzed once each quarter. As requested by the department, more frequent monitoring shall be conducted when iodine-131 is identified in the finished water.

Annual monitoring for strontium-90 and tritium shall be conducted by means of the analysis of a composite of four consecutive quarterly samples or analysis of four quarterly samples. The latter procedure is recommended.

The department may allow the substitution of environmental surveillance data taken in conjunction with a nuclear facility for direct monitoring of man-made radioactivity by the supplier of water where the department determines such data is applicable to a particular community water system.

(5) Exceedance of the MCL. If the average annual maximum contaminant level for man-made radioactivity set forth in 41.8(2) is exceeded, the operator of a community water system shall give notice to the public as required by 567—42.1(455B). Monitoring at monthly intervals shall be continued until the concentration no longer exceeds the maximum contaminant level or until a monitoring schedule as a

condition of an operation permit or enforcement action becomes effective.

ITEM 52. Rescind and reserve rule 567—41.10(455B).

ITEM 53. Amend rule 567—41.11(455B), catchwords, as follows:  
567—41.11(455B) ~~Unregulated contaminant monitoring and prohibition on lead use.~~

ITEM 54. Amend subrule 41.11(1), paragraphs "b" and "c," as follows:

b. Volatile organic chemical contaminants (VOCs). Community water systems and nontransient, noncommunity water systems shall monitor for the following contaminants except as provided in 41.11(1)"c"(4) of this subrule:

(1) to (4) No change.

(5) ~~Chlorobenzene Dibromomethane~~

(6) to (20) No change.

c. Special organic chemical (VOC) monitoring protocol.

(1) ~~Surface water monitoring requirements.~~ Surface water systems shall sample ~~at points in the distribution system representative of each water source or~~ at entry points to the distribution system after any application of treatment. The minimum number of samples is one year of quarterly samples per water source.

(2) ~~Groundwater monitoring requirements.~~ Groundwater systems shall sample at points of entry to the distribution system representative of each well after any application of treatment. The minimum number of samples is one sample per entry point of the distribution system.

(3) ~~Confirmation samples.~~ The department may require confirmation samples for positive or negative results.

(4) ~~Ethylene dibromide and 1,2-Dibromo-3-chloropropane monitoring requirements.~~ Monitor for ethylene dibromide (EDB) and 1,2-Dibromo-3-chloropropane (DBCP) only if the department determines they are vulnerable to contamination by either or both of these substances. For the purpose of 41.11(1)"c," a vulnerable system is defined as a system which is potentially contaminated by EDB and DBCP, including surface water systems where these two compounds are applied, manufactured, stored, disposed of, or shipped upstream, and for groundwater systems in areas where the compounds are applied, manufactured, stored, disposed of, or shipped in the groundwater recharge basin, or for groundwater systems, shallow wells as defined in 567—40.2(455B) that are less than 400 feet and deep wells as defined in 567—40.2(455B) that are less than 200 feet from underground storage tanks that contain leaded gasoline.

(5) ~~Monitoring for the following compounds is required at the discretion of the department.~~

~~1. 1,2,4-Trimethylbenzene~~

~~2. 1,2,3-Trichlorobenzene~~

~~3. n-Propylbenzene~~

~~4. n-Butylbenzene~~

~~5. Naphthalene~~

~~6. Hexachlorobutadiene~~

~~7. 1,3,5-Trimethylbenzene~~

~~8. p-Isopropyltoluene~~

~~9. Isopropylbenzene~~

~~10. Tert-butylbenzene~~

~~11. Sec-butylbenzene~~

~~12. Fluorotrichloromethane~~

~~13. Dichlorodifluoromethane~~

~~14. Bromochloromethane~~

(5) *VOC discretionary compounds. Monitoring for the following list of VOC compounds is required at the discretion*

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of the department. The requirement for a PWS to monitor for the discretionary compounds will be listed in their operation permit, issued by the department.

Bromochloromethane  
*n*-Butylbenzene  
*sec*-Butylbenzene  
*tert*-Butylbenzene  
 Dichlorodifluoromethane  
 Fluorotrichloromethane  
 Hexachlorobutadiene  
 Isopropylbenzene  
*p*-Isopropyltoluene  
 Naphthalene  
*n*-Propylbenzene  
 1,2,3-Trichlorobenzene  
 1,2,4-Trimethylbenzene  
 1,3,5-Trimethylbenzene

(6) Small system monitoring waivers. Instead of performing the monitoring required by this subrule, a community water system or nontransient noncommunity water system serving fewer than 150 service connections may send a letter to the department stating that its system is available for sampling. The letter must be sent to the state no later than January 1, 1991. The system shall not send such samples to the department is not required to submit samples to a certified laboratory for analysis, unless requested to do so by the department.

(7) and (8) No change.

ITEM 55. Amend subrule 41.11(1), paragraph "d," subparagraphs (1) and (2), as follows:

d. Analytical methods.

(1) *Methodology references.* Analysis under this subrule shall be conducted using the recommended EPA methods as follows, or their equivalent as determined by the department and EPA: 502.1, "Volatile Halogenated Organic Compounds in Water by Purge and Trap Gas Chromatography," 502.2, "Volatile Organic Compounds in Water by Purge and Trap Gas Chromatography with Photoionization and Electrolytic Conductivity Detectors in Series," 503.1, "Volatile Aromatic and Unsaturated Organic Compounds in Water by Purge and Trap Gas Chromatography," 524.1, "Volatile Organic Compounds in Water by Purge and Trap Gas Chromatography/Mass Spectrometry," or 524.2, "Volatile Organic Compounds in Water by Purge and Trap Capillary Column Gas Chromatography/Mass Spectrometry." These methods are contained in "Methods for the Determination of Organic Compounds in Finished Drinking Water and Raw Source Water," September 1986, available from the Drinking Water Public Docket or the National Technical Information Service (NTIS), NTIS PB91-231480 and PB91-146027, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The toll-free number is 800-336-4700. Analysis for bromodichloromethane, bromoform, chlorodibromomethane, and chloroform also may be conducted by EPA Method 551, and analysis for 1,2,3-trichloropropane also may be conducted by EPA Method 504.1.

(2) *Certified laboratory requirements.* Analysis under this subrule shall only be conducted by laboratories approved certified under 567—Chapter 42 83. In addition to these requirements, each laboratory analyzing for ethylene dibromide (EDB) and 1,2-dibromo-3-chloropropane (DBCP) must achieve a method detection limit for EDB and DBCP of 0.00002 mg/l, according to the procedures in Appendix B of 40 Code of Federal Regulations Part 136, June 20, 1986.

ITEM 56. Amend subrule 41.11(2) as follows:

41.11(2) Inorganic and organic chemicals (VOCs) special unregulated contaminants monitoring.

a. Applicability. Monitoring for unregulated contaminants. Monitoring of the contaminants listed in 41.11(2)"b" and 41.3(1)"f" shall be conducted as follows:

(1) Sampling for organic contaminants. Each community and nontransient noncommunity water system shall take four consecutive quarterly samples at each sampling point source/entry point for each contaminant listed in 41.11(2)"b" and report the results to the department. Monitoring must be completed by December 31, 1995, and take place during the calendar quarter which is specified by the department.

(2) Sampling for unregulated inorganic contaminants. Each community and nontransient noncommunity water system shall take one sample at each sampling point source/entry point for each contaminant listed in 41.11(2)"b" 41.3(1)"f" and report the results to the department. Monitoring must be completed by December 31, 1995, using the methodology specified in 41.3(1)"f."

b. MCLs (unregulated organics)

Unregulated organic chemical contaminants.

Organic Contaminants	EPA Analytical Method
Aldrin	505, 508, 525
Butachlor	507, 525
Carbaryl	531.1
Dicamba	515.1
Dieldrin	505, 508, 525
3-Hydroxycarbofuran	531.1
Methomyl	531.1
Metolachlor	507, 525
Metribuzin	507, 508, 525
Propachlor	507, 525

Analytical Methods for Unregulated Inorganic Contaminants:

Inorganic Contaminants	EPA Analytical Method
Sulfate	Colorimetric

b. *Unregulated organic chemical (SOC) contaminants.* Systems shall monitor for the unregulated contaminants listed below, using the methods identified below and using the analytical test procedures contained within Technical Notes on Drinking Water Methods, EPA-600/R-94-173, October 1994, which is available at NTIS, PB95-104766. Method 6610 shall be followed in accordance with the Standard Methods for the Examination of Water and Wastewater, 18th edition Supplement, 1994, American Public Health Association. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of methods listed in Standard Methods for the Examination of Water and Wastewater may be obtained from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street SW, Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

UNREGULATED ORGANIC CONTAMINANTS  
 AND METHODOLOGY

Organic Contaminants	EPA Analytical Method
Aldicarb	531.1, 6610
Aldicarb sulfone	531.1, 6610
Aldicarb sulfoxide	531.1, 6610
Aldrin	505, 508, 508.1, 525.1

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<i>Butachlor</i>	507, 525.1
<i>Carbaryl</i>	531.1, 6610
<i>Dicamba</i>	515.1, 515.2, 555
<i>Dieldrin</i>	505, 508, 508.1, 525.1
<i>3-Hydroxycarbofuran</i>	531.1, 6610
<i>Methomyl</i>	531.1, 6610
<i>Metolachlor</i>	507, 508.1, 525.1
<i>Metribuzin</i>	507, 508.1, 525.1
<i>Propachlor</i>	507, 508.1, 525.1

## c. Monitoring protocols.

(1) Groundwater sampling protocols. Groundwater systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment (~~hereafter called a sampling point~~). Each sample must be taken at the same ~~sampling source/entry point~~ unless conditions make another sampling point more representative of each source or treatment plant.

(2) Surface water sampling protocols. Surface water systems shall take a minimum of one sample at ~~points in the distribution system that are representative of each source or at~~ each entry point to the distribution system after treatment (~~hereafter called a sampling point~~). Each sample must be taken at the same ~~sampling source/entry point~~ unless conditions make another sampling point more representative of each source or treatment plant. For purposes of this subparagraph, surface water systems include systems with a combination of surface and ground sources.

(3) Multiple sources. If the system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water representative of all sources is being used). *If a representative sample of all water sources cannot be obtained, as determined by the department, separate source/entry points with the appropriate monitoring requirements will be assigned by the department.*

(4) and (5) No change.

(6) Confirmation sampling. A confirmation sample for positive or negative results may be required *by the department*.

(7) and (8) No change.

ITEM 57. Amend subrule 41.11(3) as follows:

**41.11(3) Special monitoring for sodium.** Suppliers of water for community public water systems shall collect and have analyzed one sample per source or plant, for the purpose of determining the sodium concentration in the distribution system. Systems utilizing multiple wells, drawing raw water from a single aquifer may, with departmental approval, be considered as one source for determining the minimum number of samples to be collected. Sampling frequency and approved analytical methods are as follows:

a. *Surface water systems.* Systems utilizing a surface water source, in whole or in part, shall monitor for sodium at least once annually;

b. *Groundwater systems.* Systems utilizing groundwater sources shall monitor at least once every three years;

c. *Increased monitoring.* Suppliers may be required to monitor more frequently where sodium levels are variable;

d. *Analytical methodology.* Analyses for sodium shall be performed using the flame photometric method in accordance with 41.3(1)"e"(1) ~~the procedures described in "Standard Methods," pp. 250-253; or by Method 273.1, Atomic Absorption-Direct Aspiration or Method 273.2, Atomic Absorption-Graphite Furnace, in "Methods for Chemical Anal-~~

~~ysis of Water and Waste," EMSL, Cincinnati, EPA, 1979; or by Method D1428-64(a) in Annual Book of ASTM Standards, Part 31, Water.~~

## ARC 8901A

ENVIRONMENTAL PROTECTION  
COMMISSION[567]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby gives Notice of Intended Action to adopt Chapter 42, "Public Notification, Public Education, Consumer Confidence Reports, Reporting, and Record Maintenance," Iowa Administrative Code.

Chapter 42 is a new chapter which contains the requirements for public notification, public education, reporting, record maintenance, and consumer confidence reports. Portions of these requirements were previously contained in Chapters 41 and 43. The consumer confidence report is a new requirement, to comply with the U.S. EPA regulations. Additional changes include: minor technical corrections; compliance with ANSI/NSF Chemical Application Standard 60; standardizing the records retention periods to 5 and 10 year increments; public notification requirements for health advisory exceedance and for failure to comply with an operation permit schedule, administrative order, or court order; allowance for immediate public notification in cases of imminent risk to health; requiring influenced groundwater supplies and supplies which blend water sources to maintain compliance with a health-based standard to submit monthly operation reports; and exemption of noncommunity systems from self-monitoring requirements for cation-exchange and iron/manganese removal "off-the-shelf" treatment, as long as no violation of a health-based standard exists.

Any interested person may make written suggestions or comments on this proposed new chapter prior to May 27, 1999. Such written materials should be directed to Diane Moles, Water Supply Section, Department of Natural Resources, Wallace State Office Building, 502 E. Ninth Street, Des Moines, Iowa 50319-0034; fax (515)281-8895. Persons who wish to convey their views orally should contact the Water Supply Section at (515)281-8863 or at the Environmental Protection Division offices on the fifth floor of the Wallace State Office Building.

Also, there will be six public hearings at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules. The public hearings will be held at 10 a.m. in the following places on the following dates:

May 4, 1999 Department of Natural Resources  
Henry A. Wallace Building  
Fourth Floor Conference Room  
502 E. Ninth Street  
Des Moines, Iowa

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

- May 6, 1999 Buena Vista College  
Siebens Forum  
Hanson Room 8  
Fourth and Grand Avenue  
Storm Lake, Iowa
- May 24, 1999 North Iowa Area Community College  
Muse-Norris Conference Room  
500 College Drive  
Mason City, Iowa
- May 25, 1999 Community Room  
(upstairs/back entrance)  
101 E. Main Street  
Manchester, Iowa
- May 26, 1999 Iowa City Public Library  
Room A  
123 S. Linn Street  
Iowa City, Iowa
- May 27, 1999 Atlantic Municipal Utilities  
Conference Room  
15 West Third Street  
Atlantic, Iowa

Any persons who intend to attend a public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These rules are intended to implement Iowa Code section 17A.3(1)"b" and chapter 455B, division III, part 1.

The following chapter is proposed.

Adopt the following **new** Chapter 42:

## CHAPTER 42

PUBLIC NOTIFICATION, PUBLIC EDUCATION,  
CONSUMER CONFIDENCE REPORTS, REPORTING,  
AND RECORD MAINTENANCE

**567—42.1(455B) Public notification.** Any public water supply system which incurs a violation of any type must conduct an initial notification of the public for that violation, as required in this rule. Public water supply systems with an acute violation must follow the public notification provisions of both 42.1(1)"a" and "b."

**42.1(1) Maximum contaminant level (MCL), treatment technique, compliance schedule, and health advisory violations.** The owner or operator of a public water supply system which fails to comply with an applicable MCL established by 567—41.2(455B) through 567—41.8(455B), treatment technique established by 567—subrule 43.3(10), fails to comply with the requirements of any compliance schedule prescribed in an operation permit, administrative order, or court order pursuant to 567—subrule 43.2(5), or fails to comply with a health advisory as determined by the department, shall notify persons served by the system as follows:

a. Distribution of public notice.

(1) Daily newspaper and mail delivery. Notice shall be given by publication in a daily newspaper of general circulation in the area served by the system as soon as possible, but in no case later than 14 days after the violation or failure, and by mail delivery (by direct mail, with the water bill, or by hand delivery) not later than 45 days after the violation or failure. The department may waive mail delivery if it determines that the owner or operator of the public water system in violation has corrected the violation or failure within the

45-day period. The department must issue the waiver in writing and within the 45-day period.

(2) Weekly newspaper and mail delivery. If the area served by a public water supply system is not served by a daily newspaper of general circulation, notice shall instead be given by publication in a weekly newspaper of general circulation serving the area and by mail delivery.

(3) Separable distribution systems. If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, the department may allow the system to give public notice to only the area served by that portion of the system which is out of compliance.

b. Additional acute MCL violation notification requirements (electronic media). For violations of the MCLs of contaminants that may pose an acute risk to human health, the owner or operator of a public water supply system shall, as soon as possible but in no case later than 72 hours after the violation, furnish a copy of the notice to the radio and television stations serving the area served by the public water system in addition to meeting the requirements of 42.1(1)"a." The following violations are acute violations:

(1) Any violations specified by the department as posing an acute risk to human health.

(2) Violation of the MCL for nitrate, nitrite, or combined nitrate and nitrite as established in 567—paragraph 41.3(1)"b" and determined according to 567—paragraph 41.3(1)"c."

(3) Violation of the MCL for total coliforms, when fecal coliforms or E. coli are present in the water distribution system, as specified in 567—paragraph 41.2(1)"b"(2).

(4) Occurrence of a waterborne disease outbreak.

For contaminants which pose an acute or immediate threat to public health, the department may require immediate public notification for a boil water order or where to obtain bottled water, via electronic media or door-to-door delivery of the notices.

c. Repeat nonacute MCL violation public notice requirements. Following the initial notice given under 42.1(1)"a," the owner or operator of the public water supply system must give notice at least once every three months by mail delivery (by direct mail, with the water bill, or by hand delivery), for as long as the violation or failure exists.

d. Additional public notice distribution methods. The owner or operator of a community water system in an area that is not served by a daily or weekly newspaper of general circulation must, in lieu of the requirements of 42.1(1)"a," "b," and "c," give notice within 14 days (72 hours for an acute violation) after the violation or failure by hand delivery or by continuous posting in conspicuous places within the area served by the system. Hand delivery must be repeated every three months or posting must continue for as long as the violation or failure exists.

e. Noncommunity water system public notice distribution requirements. The owner or operator of a noncommunity water system may, in lieu of the requirements of 42.1(1)"a," "b," and "c," give notice within 14 days (72 hours for an acute violation) after the violation or failure by hand delivery or by continuous posting in conspicuous places within the area served by the system. Hand delivery must be repeated every three months or posting must continue for as long as the violation or failure exists.

f. Notice to new billing units. The owner or operator of a community water system must give a copy of the most recent public notice for any outstanding violation of any health-based standard, treatment technique, or compliance

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

schedule to all billing units or new service connections prior to or at the time service begins.

**42.1(2) Other violations.**

a. Applicability. This subrule applies to all public water supply systems which incur a violation due to:

(1) Failure to perform monitoring required in 567—Chapter 41, this chapter, and 567—Chapter 43;

(2) Failure to comply with a testing procedure established in 567—Chapter 41;

(3) Failure to comply with an interim contaminant level;

(4) Detection of an unregulated contaminant and the department advises that public notification is necessary;

(5) Failure to report the required data to the department;

(6) Failure to meet the requirements of this chapter for public notification, public education, or the development and distribution of the consumer confidence report.

b. Initial notification. The public water supply system must notify, by newspaper only, persons served by the system within three months by the methods described in 42.1(1)“a” or by applicable methods described in 42.1(1)“d” or “e.”

c. Repeat notification. Notice must continue once every three months by the following methods for as long as the violation exists.

(1) Newspaper and mail delivery. Notice shall be given by publication in a daily or weekly newspaper of general circulation in the area served by the system and by mail delivery (which includes by direct mail, with the water bill, or by hand delivery).

(2) Hand delivery and posting. If no daily or weekly newspaper of general circulation is available in the area served by the public water supply system, hand delivery or continuous posting in conspicuous places in the area served by the system is acceptable.

**42.1(3) Notice of available information for synthetic organic chemicals.** The owner or operator of a public water supply system shall notify persons served by the system of the availability of the results of sampling conducted for synthetic organic chemicals, under 567—paragraphs 41.11(1)“b” and “c,” by including a notice in the first set of water bills issued by the system after the receipt of the results or by written notice within three months. The public water supply may use the annual consumer confidence report to comply with this requirement. For surface water supply systems, public notification is required only after the first quarter’s monitoring and must include a statement that additional monitoring will be conducted for three or more quarters with the results available upon request. The owner or operator shall also provide to all new billing units or new hookups, prior to or at the time service begins, a copy of the most recent public notice for any outstanding violation of any maximum contaminant level established by 567—41.2(455B) through 567—41.8(455B), results of sampling conducted under 567—paragraphs 41.11(1)“b” and “c,” any notice of a treatment technique requirement established by 567—subrule 43.2(5) and notice of any failure to comply with the requirements of any schedule prescribed pursuant to 567—subrule 43.2(5). The notice shall provide the name and telephone number of a person to contact for information.

**42.1(4) General content of public notice.** Each notice required by this rule must provide a clear and readily understandable explanation of the violation, any potential adverse health effects, the population at risk, the steps that the public water system is taking to correct the violation, the necessity for seeking alternative water supplies, if any, and any preventive measures the consumer should take until the viola-

tion is corrected. Each notice shall be conspicuous and shall not contain unduly technical language, unduly small print, language intended to diminish the importance of the notice, or similar problems that frustrate the purpose of the notice. Each notice shall include the telephone number of the owner, operator, or designee of the public water supply system as a source of additional information concerning the notice. Where appropriate, the notice shall be multilingual.

**42.1(5) Mandatory health effects language.** When providing the information on potential adverse health effects required by 42.1(4) in notices of violations of maximum contaminant levels or treatment technique requirements, or notices of the granting or the continued existence of interim contaminant levels or compliance schedules, or notices of failure to comply with an interim contaminant level or compliance schedule, the owner or operator of the public water system shall include the language specified in Appendix A for each contaminant. (If language for a particular contaminant is not specified in Appendix A at the time notice is required and is not provided by the department, this subrule does not apply.)

**42.1(6) Operation permit compliance schedule public notice requirements.** When the director determines that a public water supply system cannot promptly comply with one or more health-based standards of 567—Chapters 41 and 43, and that there is no immediate, unreasonable risk to the health of persons served by the system, a draft operation permit or modified permit will be formulated, which may include interim contaminant levels or a compliance schedule. Prior to issuance of a final permit, notice and opportunity for public participation must be given in accordance with this subrule. The notice shall be circulated in a manner designed to inform interested and potentially interested persons of any proposed interim contaminant level or compliance schedule.

a. Preparation of notice. The public notice shall be prepared by the department and circulated by the applicant within its geographical area as described in 42.1(1)“a.” The public notice shall be mailed by the department to any person upon request.

b. Public comment period. The department shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the operation permit. All written comments submitted during the 30-day comment period shall be retained by the department and considered by the director in the formulation of the director’s final determination with respect to the operation permit. The period for comment may be extended at the discretion of the department.

c. Content of notice. The contents of the public notice of a proposed operation permit shall include at least the following:

(1) The name, address, and telephone number of the department.

(2) The name and address of the applicant.

(3) A statement of the department’s tentative determination to issue the operation permit.

(4) A brief description of each applicant’s water supply operations which necessitate the proposed permit conditions.

(5) A brief description of the procedures for the formulation of final determinations, including the 30-day comment period required by 42.1(6)“b.”

(6) The right to request a public hearing pursuant to this paragraph and any other means by which interested persons may influence or comment upon those determinations.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

(7) The address and telephone number of places at which interested persons may obtain further information, request a copy of the draft permit prepared pursuant to this paragraph, and inspect and copy the application forms and related documents.

d. Public hearings on proposed operation permits. The applicant or any interested agency, person or group of persons may request or petition for a public hearing with respect to the proposed action. Any such request shall clearly state issues and topics to be addressed at the hearing. Any such request or petition for public hearing must be filed with the director within the 30-day period prescribed in 42.1(6)“b” and shall indicate the interest of the party filing such request and the reasons why a hearing is warranted. The director shall hold an informal and noncontested case hearing if there is a significant public interest (including the filing of requests or petitions for such hearing) in holding such a hearing. Frivolous or insubstantial requests for hearing may be denied by the director. Instances of doubt should be resolved in favor of holding the hearing. Any hearing held pursuant to this subrule shall be held in the geographical area of the system, or other appropriate area at the discretion of the director, and may, as appropriate, consider related groups of permit applications.

e. Public notice of public hearings.

(1) Public notice of any hearing held pursuant to this paragraph shall be circulated at least as widely as the notice under 42.1(6)“a” at least 30 days in advance of the hearing.

(2) The contents of the public notice of any hearing held pursuant to this paragraph shall include at least the following:

1. The name, address, and telephone number of the department;
2. The name and address of each applicant whose application will be considered at the hearing;
3. A brief reference to the public notice previously issued, including identification number and date of issuance;
4. Information regarding the time and location for the hearing;
5. The purpose of the hearing;
6. A concise statement of the issues raised by the person requesting the hearing;
7. The address and telephone number of the premises where interested persons may obtain further information, request a copy of the draft operation permit or modification prepared pursuant to this paragraph, and inspect and copy the application forms and related documents; and
8. A brief description of the nature of the hearing, including the rules and procedures to be followed.

f. Decision by the director. Within 30 days after the termination of the public hearing held pursuant to this paragraph or if no public hearing is held within 30 days after the termination of the period for requesting a hearing, the director shall issue or deny the operation permit.

**567—42.2(455B) Public education for lead action level exceedance.**

42.2(1) Applicability. A water system that exceeds the lead action level based on tap water samples collected in accordance with 567—paragraph 41.4(1)“c” shall deliver the public education materials contained in 42.2(2) in accordance with the requirements in 42.2(4).

42.2(2) Content of written materials. A water system shall include the following text in all of the printed materials it distributes through its lead public education program. Any additional information presented by a system shall be consis-

tent with the information below and be easily understood by laypersons.

a. Introduction. The United States Environmental Protection Agency (EPA) and (insert name of water supplier) are concerned about lead in your drinking water. Although most homes have very low levels of lead in their drinking water, some homes in the community have lead levels above the EPA action level of 15 parts per billion (ppb), or 0.015 milligrams of lead per liter of water (mg/L). Under federal law we are required to have a program in place to minimize lead in your drinking water by (insert date when corrosion control will be completed for your system). This program includes corrosion control treatment, source water treatment, and public education. We are also required to replace each lead service line that we control if the line contributes lead concentrations of more than 15 ppb after we have completed the comprehensive treatment program. If you have any questions about how we are carrying out the requirements of the lead regulation, please give us a call at (insert water system's phone number). This brochure explains the simple steps you can take to protect you and your family by reducing your exposure to lead in drinking water.

b. Health effects of lead. Lead is a common metal found throughout the environment in lead-based paint, air, soil, household dust, food, certain types of pottery, porcelain and pewter, and water. Lead can pose a significant risk to your health if too much of it enters your body. Lead builds up in the body over many years and can cause damage to the brain, red blood cells and kidneys. The greatest risk is to young children and pregnant women. Amounts of lead that won't hurt adults can slow down normal mental and physical development of growing bodies. In addition, a child at play often comes into contact with sources of lead contamination—such as dirt and dust—that rarely affect an adult. It is important to wash children's hands and toys often, and to try to make sure they only put food in their mouths.

c. Lead in drinking water.

(1) Lead in drinking water, although rarely the sole cause of lead poisoning, can significantly increase a person's total lead exposure, particularly the exposure of infants who drink baby formulas and concentrated juices that are mixed with water. The EPA estimates that drinking water can make up 20 percent or more of a person's total exposure to lead.

(2) Lead is unusual among drinking water contaminants in that it seldom occurs naturally in water supplies such as rivers and lakes. Lead enters drinking water primarily as a result of the corrosion, or wearing away, of materials containing lead in the water distribution system and household plumbing. These materials include lead-based solder used to join copper pipe, brass and chrome-plated brass faucets, and in some cases, pipes made of lead that connect your house to the water main (service lines). In 1986, Congress banned the use of lead solder containing greater than 0.2 percent lead and restricted the lead content of faucets, pipes and other plumbing materials to 8.0 percent.

(3) When water stands for several hours or more in lead pipes or plumbing systems containing lead, the lead may dissolve into your drinking water. This means the first water drawn from the tap in the morning, or later in the afternoon after returning from work or school, can contain fairly high levels of lead.

d. Steps you can take in the home to reduce exposure to lead in drinking water.

(1) Despite our best efforts mentioned earlier to control water corrosivity and remove lead from the water supply, lead levels in some homes or buildings can be high. To find

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

out whether you need to take action in your own home, have your drinking water tested to determine if it contains excessive concentrations of lead. Testing the water is essential because you cannot see, taste, or smell lead in drinking water. Some local laboratories that can provide this service are listed at the end of this booklet. For more information on having your water tested, please call (insert phone number of water system).

(2) If a water test indicates that the drinking water drawn from a tap in your home contains lead above 15 ppb, then you should take the following precautions:

Let the water run from the tap before using it for drinking or cooking anytime the water in a faucet has gone unused for more than six hours. The longer water resides in your home's plumbing the more lead it may contain. Flushing the tap means running the cold water faucet until the water gets noticeably colder, usually about 15 to 30 seconds. If your house has a lead service line to the water main, you may have to flush the water for a longer time, perhaps one minute, before drinking. Although toilet flushing or showering flushes water through a portion of your home's plumbing system, you still need to flush the water in each faucet before using it for drinking or cooking. Flushing tap water is a simple and inexpensive measure you can take to protect your family's health. It usually uses less than one or two gallons of water and costs less than (insert a cost estimate based on flushing two times a day for 30 days) per month. To conserve water, fill a couple of bottles for drinking water after flushing the tap, and whenever possible, use the first flush water to wash the dishes or water the plants. If you live in a high-rise building, letting the water flow before using it may not work to lessen your risk from lead. The plumbing systems have more, and sometimes larger, pipes than smaller buildings. Ask your landlord for help in locating the source of the lead and for advice on reducing the lead level.

Try not to cook with, or drink water from, the hot water tap. Hot water can dissolve more lead more quickly than cold water. If you need hot water, draw water from the cold tap and heat it on the stove.

Remove loose lead solder and debris from the plumbing materials installed in newly constructed homes, or homes in which the plumbing has recently been replaced, by removing the faucet strainers from all taps and running the water from three to five minutes. Thereafter, periodically remove the strainers and flush out any debris that has accumulated over time.

If your copper pipes are joined with lead solder that has been installed illegally since it was banned in 1986, notify the plumber who did the work and request that the plumber replace the lead solder with lead-free solder. Lead solder looks dull gray and, when scratched with a key, looks shiny. In addition, notify the Iowa department of natural resources about the violation.

Determine whether or not the service line that connects your home or apartment to the water main is made of lead. The best way to determine if your service line is made of lead is by either hiring a licensed plumber to inspect the line or by contacting the plumbing contractor who installed the line. You can identify the plumbing contractor by checking the city's record of building permits which should be maintained in the files of the (insert name of department that issues building permits). A licensed plumber can at the same time check to see if your home's plumbing contains lead solder, lead pipes, or pipe fittings that contain lead. The public water system that delivers water to your home should also maintain records of the materials located in the distribution

system. If the service line that connects your dwelling to the water main contributes more than 15 ppb to drinking water, after our comprehensive treatment program is in place, we are required to replace the line. If the line is only partially controlled by the (insert name of the city, county, or water system that controls the line), we are required to provide you with information on how to replace your portion of the service line, and offer to replace that portion of the line at your expense and take a follow-up tap water sample within 14 days of the replacement. Acceptable replacement alternatives include copper, steel, iron, and plastic pipes.

Have an electrician check your wiring. If grounding wires from the electrical system are attached to your pipes, corrosion may be greater. Check with a licensed electrician or your local electrical code to determine if your wiring can be grounded elsewhere. DO NOT attempt to change the wiring yourself because improper grounding can cause electrical shock and fire hazards.

(3) The steps described above will reduce the lead concentrations in your drinking water. However, if a water test indicates that the drinking water coming from your tap contains lead concentrations in excess of 15 ppb after flushing, or after we have completed our actions to minimize lead levels, then you may want to take the following additional measures:

Purchase or lease a home treatment device. Home treatment devices are limited in that each unit treats only the water that flows from the faucet to which it is connected, and all of the devices require periodic maintenance and replacement. Devices such as reverse osmosis systems or distillers can effectively remove lead from your drinking water. Some activated carbon filters may reduce lead levels at the tap. However, all lead reduction claims should be investigated. Be sure to check the actual performance of a specific home treatment device before and after installing the unit.

Purchase bottled water for drinking and cooking.

(4) You can consult a variety of sources for additional information. Your family doctor or pediatrician can perform a blood test for lead and provide you with information about the health effects of lead. State and local government agencies that can be contacted include: (insert the name of city or county department of public utilities) at (insert phone number) can provide you with information about your community's water supply, and a list of local laboratories that have been certified by EPA for testing water quality; (insert the name of city or county department that issues building permits) at (insert phone number) can provide you with information about building permit records that should contain the names of plumbing contractors that plumbed your home; and (insert the Iowa department of public health) at (insert phone number) or the (insert the name of the city or county health department) at (insert phone number) can provide you with information about the health effects of lead and how you can have your child's blood tested.

(5) The following is a list of some approved laboratories in your area that you can call to have your water tested for lead. (Insert names and phone numbers of at least two laboratories.)

42.2(3) Content of broadcast materials. A water system shall include the following information in all public service announcements submitted under its lead public education program to television and radio stations for broadcasting:

a. Why should everyone want to know the facts about lead and drinking water? Because unhealthy amounts of lead can enter drinking water through the plumbing in your home.

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That's why I urge you to do what I did. I had my water tested for (insert "free" or dollar amount per sample). You can contact the (insert the name of the city or water system) for information on testing and on simple ways to reduce your exposure to lead in drinking water.

b. To have your water tested for lead, or to get more information about this public health concern, please call (insert the phone number of the city or water system).

## 42.2(4) Delivery of a public education program.

a. In communities where a significant proportion of the population speaks a language other than English, public education materials shall be communicated in the appropriate language(s).

b. A community water system that fails to meet the lead action level on the basis of tap water samples collected in accordance with 567—paragraph 41.4(1)"c" shall, within 60 days:

(1) Insert notices in each customer's water utility bill containing the information in 42.2(2) along with the following alert on the water bill itself in large print: "SOME HOMES IN THIS COMMUNITY HAVE ELEVATED LEAD LEVELS IN THEIR DRINKING WATER. LEAD CAN POSE A SIGNIFICANT RISK TO YOUR HEALTH. PLEASE READ THE ENCLOSED NOTICE FOR FURTHER INFORMATION."

(2) Submit the information in 42.2(2) to the editorial departments of the major daily and weekly newspapers circulated throughout the community.

(3) Deliver pamphlets or brochures that contain the public education materials in 42.2(2) to facilities and organizations, including the following: public schools and local school boards; city or county health departments; Women, Infants, and Children and Head Start Program(s) whenever available; public and private hospitals and clinics; pediatricians; family planning clinics; and local welfare agencies.

(4) Submit the public service announcement in 42.2(3) to at least five of the radio and television stations with the largest audiences that broadcast to the community served by the water system.

c. A community water system shall repeat the tasks in 42.2(4)"b"(1) to (3) every 12 months and the tasks in 42.2(4)"b"(4) every 6 months for as long as the system exceeds the lead action level.

d. Within 60 days after it exceeds the lead action level, a nontransient noncommunity water system shall deliver the public education materials in 42.2(2)"a," "b," and "d" as follows:

(1) Post informational posters on lead in drinking water in a public place or common area in each of the buildings served by the system; and

(2) Distribute informational pamphlets or brochures on lead in drinking water to each person served by the nontransient noncommunity water system.

e. A nontransient noncommunity water system shall repeat the tasks in 42.2(4)"c" at least once during each calendar year in which the system exceeds the lead action level.

f. A water system may discontinue delivery of public education materials if the system has met the lead action level during the most recent six-month monitoring period conducted pursuant to 567—paragraph 41.4(1)"c." Such a system shall recommence public education in accordance with this subrule if it subsequently exceeds the lead action level during any monitoring period.

42.2(5) Supplemental monitoring and notification of results. A water system that fails to meet the lead action level on the basis of tap samples collected in accordance with

567—paragraph 41.4(1)"c" shall offer to sample the tap water of any customer who requests it. The system is not required to pay for collecting or analyzing the sample, nor is the system required to collect and analyze the sample itself.

## 42.2(6) Special lead ban public notice.

a. Applicability of public notice requirement.

(1) The owner or operator of each community water system and each nontransient noncommunity water system shall, except as provided in 42.2(6)"b," issue a notice to persons served by the system that may be affected by lead contamination of their drinking water. The department may require subsequent notices. The owner or operator shall provide notice under this subparagraph even if there is no violation of the lead action level as prescribed in 567—paragraph 41.4(1)"b."

(2) Notice required under 42.2(6)"a" is not required if the system demonstrates to the department that the water system, including the residential and nonresidential portions connected to the water system, are lead-free as defined in 567—40.2(455B).

b. Manner of notice. Notice shall be given to persons served by the system either by three newspaper notices (one for each of three consecutive months); or once by mailing the notice with the water bill or in a separate mailing; or once by hand delivery. For nontransient noncommunity water systems, notice may be given by continuous posting. If posting is used, the notice shall be posted in a conspicuous place in the area served by the system and must continue to be posted for three months.

c. General content of public notice.

(1) Notices issued under this subparagraph shall provide a clear and readily understandable explanation of the potential sources of lead in drinking water, potential adverse health effects, reasonably available methods of mitigating known or potential lead content in drinking water, any steps the water system is taking to mitigate lead content in drinking water, and the necessity for seeking alternative water supplies, if any. Use of the mandatory language in 42.2(6)"d" in the notice will be sufficient to explain potential adverse health effects.

(2) Each notice shall also include specific advice on how to determine if materials containing lead have been used in homes or the water distribution system and how to minimize exposure to water likely to contain high levels of lead. Each notice shall be conspicuous and shall not contain unduly technical language, unduly small print, or similar problems that frustrate the purpose of the notice. Each notice shall contain the telephone number of the owner, operator, or designee of the public water system as a source of additional information regarding the notice. Where appropriate, the notice shall be multilingual.

d. Mandatory health effects information. When providing the information in public notices required under 42.2(6)"c" on the potential adverse health effects of lead in drinking water, the owner or operator of the water system shall include the following specific language in the notice:

"The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that lead is a health concern at certain levels of exposure. There is currently a standard of 0.050 parts per million (ppm). Based on new health information, EPA is likely to lower the standard significantly.

"Part of the purpose of this notice is to inform you of the potential adverse health effects of lead. This is being done even though your water may not be in violation of the current standard.



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"EPA and others are concerned about lead in drinking water. Too much lead in the human body can cause serious damage to the brain, kidneys, nervous system, and red blood cells. The greatest risk, even with short-term exposure, is to young children and pregnant women.

"Lead levels in your drinking water are likely to be highest:

- if your home or water system has lead pipes, or
- if your home has copper pipes with lead solder, or
- if your home is less than five years old, or
- if you have soft or acidic water, or
- if water sits in the pipes for several hours."

e. Public notification by the department. The department may give notice to the public required by this subrule on behalf of the owner or operator of the public water system if the department complies with the requirements of this subrule. However, the owner or operator of the public water system remains legally responsible for ensuring that the requirements of this subrule are met.

**567—42.3(455B) Consumer confidence reports.**

**42.3(1) Applicability and purpose.** This rule applies to all community public water supply systems. The purpose of this rule is to establish the minimum requirements for the content of annual reports that community water systems must deliver to their customers. These reports must contain information on the quality of the water delivered by the systems and characterize the risks (if any) from exposure to contaminants in the drinking water in an accurate and understandable manner. The department may assign public notification requirements and assess administrative penalties to any community public water supply system which fails to fulfill the requirements of this rule.

**42.3(2) Reporting frequency.**

a. Existing community water systems. Existing community water systems must deliver the first report by October 19, 1999; its second report by July 1, 2000; and subsequent reports annually by July 1 thereafter. The first report must contain data collected during, or prior to, calendar year 1998. Each report thereafter must contain data collected during, or prior to, the previous calendar year.

b. New community water systems. New community water systems must deliver their first report by July 1 of the year after their first full calendar year in operation, and annually thereafter.

c. CWS which sells water to another CWS. A community water system that sells water to another community water system must deliver the applicable information required in subrule 42.3(3) to the buyer system:

(1) No later than April 19, 1999, for the 1998 report; by April 1, 2000, for the 1999 report; and annually by April 1 thereafter, or

(2) On a date mutually agreed upon by the seller and the purchaser, and specifically included in a contract between the parties.

**42.3(3) Content of the reports.** Each annual consumer confidence report must contain the following information, at a minimum:

a. Source water identification. The report must identify the source(s) of water delivered by the community public water supply system, including the following:

(1) Type of water (e.g., surface water, groundwater, groundwater purchased from another public water supply).

(2) Commonly used name of the aquifer, reservoir, or river (if any) and location of the body (or bodies) of water.

(3) If a source water assessment has been completed, notify consumers of the availability of this information and

the means to obtain it. In addition, systems are encouraged to highlight in the report significant sources of contamination in the source water area if they have readily available information. Where a system has received a source water assessment from the department, the report must include a brief summary of the system's susceptibility to potential sources of contamination, using language provided by the department or its designee, or written by the owner or operator.

b. Definitions. Each report must include the following definitions:

(1) "Maximum Contaminant Level Goal (MCLG)" means the level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.

(2) "Maximum Contaminant Level (MCL)" means the highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible using the best available treatment technology.

(3) "Variances and exemptions" means state permission not to meet an MCL or a treatment technique under certain conditions. This definition is only required for a water system which has been granted a variance, an exemption, or a compliance schedule extension through an operation permit, administrative order, or court order.

(4) A report which contains data on a contaminant for which EPA has set a treatment technique or an action level must include one or both of the following definitions, as applicable:

1. "Treatment technique" means a required process intended to reduce the level of a contaminant in drinking water.

2. "Action level" means the concentration of a contaminant which, if exceeded, triggers treatment or other requirements which a water system must follow.

(5) "Detected." For the purposes of this subrule, "detected" means at or above the levels prescribed by the following Chapter 41 references:

1. Inorganic contaminants:

567—paragraph 41.3(1)"e"(1).

2. Volatile organic contaminants:

567—paragraph 41.5(1)"b."

3. Synthetic organic contaminants:

567—paragraph 41.5(1)"b."

4. Radionuclide contaminants:

567—paragraph 41.9(1)"c."

5. Other contaminants with health advisory levels, as assigned by the department.

c. Information on detected contaminants. This paragraph specifies the requirements for information to be included in each report for contaminants subject to mandatory monitoring (except *Cryptosporidium*). It applies to the following: contaminants subject to an MCL, action level, or treatment technique (regulated contaminants); contaminants for which monitoring is required by 567—41.3(1)"f," 567—41.11(455B), and 567—41.15(455B) (unregulated and special contaminants); and disinfection by-products or microbial contaminants for which monitoring is required by 567—Chapters 40 to 43, except as provided under 42.3(3)"e"(1), and which are detected in the finished water.

(1) The data relating to these contaminants must be displayed in one table or in several adjacent tables. Any additional monitoring results which a community water system chooses to include in its report must be displayed separately.

1. The data must be derived from data collected to comply with departmental monitoring and analytical requirements during calendar year 1998 for the first report and sub-

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sequent calendar years thereafter. Where a system is allowed to monitor for contaminants less often than once a year, the table(s) must include the results and date of the most recent sampling and a brief statement indicating that the data presented in the report are from the most recent testing done in accordance with the regulations. No data older than five years need be included.

2. For detected regulated contaminants, which are listed in Appendix D, the table(s) must contain:

- The MCL for that contaminant, expressed as a number equal to or greater than 1.0 (as provided in Appendix C);
- The MCLG for that contaminant, expressed in the same units as the MCL;
- If there is no MCL for a detected contaminant, the table must indicate that there is a treatment technique, or specify the action level, applicable to that contaminant, and the report must include the definition for treatment technique or action level, as appropriate, specified in 42.3(3)"b"(4).

3. For contaminants subject to an MCL, except turbidity and total coliforms, the table must contain the highest contaminant level used to determine compliance with a primary drinking water standard and the range of detected levels, as follows:

- When compliance with the MCL is determined annually or less frequently: the highest detected level at any sampling point and the range of detected levels expressed in the same units as the MCL (such as inorganic compounds).
- When compliance with the MCL is determined by calculating a running annual average of all samples taken at a sampling point: the highest average of any of the sampling points and the range of all sampling points expressed in the same units as the MCL (such as organic compounds and radionuclides).
- When compliance with an MCL is determined on a system-wide basis by calculating a running annual average of all samples at all sampling points: the average and range of detection expressed in the same units as the MCL (such as total trihalomethane compounds).

NOTE: When rounding of results to determine compliance with the MCL is allowed by the regulations, rounding should be done prior to multiplying the results by the factor listed in Appendix C.

4. For turbidity:

- When it is reported pursuant to 567—paragraph 41.7(1)"b": the highest average monthly value.
- When it is reported pursuant to 567—43.5(455B): the highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in 567—43.5(455B) for the filtration technology being used. The report should include an explanation of the reasons for measuring turbidity.

5. For lead and copper: the 90th percentile value of the most recent round of sampling and the number of sampling sites exceeding the action level.

6. For total coliform:

- The highest monthly number of positive samples for systems collecting fewer than 40 samples per month; or
- The highest monthly percentage of positive samples for systems collecting at least 40 samples per month.

7. For fecal coliform:

- The total number of positive samples; and
- The likely source(s) of detected contaminants to the best of the owner's or operator's knowledge. Specific information regarding contaminants may be available in sanitary surveys and source water assessments. If the owner or operator lacks specific information on the likely contaminant

source, the report must include one or more of the typical sources for that contaminant listed in Appendix D, which are most applicable to the system.

8. If a community water system distributes water to its customers from multiple hydraulically independent distribution systems that are fed by different raw water sources, the table should contain a separate column for each service area and the report should identify each separate distribution system. Alternatively, systems can produce separate reports tailored to include data for each service area.

9. The table(s) must clearly identify any data indicating violations of a health-based standard, and the report must contain a clear and readily understandable explanation of the violation including:

- The length of the violation,
- The potential adverse health effects,
- Actions taken by the system to address the violation, and
- The relevant language from Appendix E to describe the potential health effects.

10. For detected unregulated contaminants for which monitoring is required, except *Cryptosporidium*, the table(s) must contain the average and range at which the contaminant was detected. The report may include a brief explanation of the reasons for monitoring for unregulated contaminants.

11. For public water supply systems which have fluoride levels greater than or equal to 2.0 mg/L and less than or equal to 4.0 mg/L, the report may contain the language listed in Appendix F, which is intended to alert families about dental problems that might affect children under nine years of age, instead of providing a separate public notification.

12. Community public water supply systems may list the most recent results of the special sodium monitoring requirement according to 567—subrule 41.11(3) in the annual report, instead of providing a separate public notification.

13. If a contaminant which does not have an MCL, TT, or AL is detected in the water, the PWS must contact the department for the specific health effects language, health advisory level, and contamination sources.

(2) If monitoring indicates that *Cryptosporidium* may be present in the source water or the finished water, or that radon may be present in the finished water, the report must include:

1. A summary of the results of the monitoring;
  2. An explanation of the significance of the results.
- (3) If the system has performed additional monitoring which indicates the presence of other contaminants in the finished water, the system must report any results which may indicate a health concern. To determine if results may indicate a health concern, the community public water supply can determine if there is a current or proposed health-based standard by contacting the department or by calling the national Safe Drinking Water Hotline (800-426-4791). The department considers the detection of a contaminant above a proposed MCL or health advisory to indicate possible health concerns. For such contaminants, the report should include:
1. The results of the monitoring; and
  2. An explanation of the significance of the results noting the existence of a health advisory or a proposed regulation.

d. Compliance with 567—Chapters 40, 41, 42, and 43. In addition to the requirements of 567—paragraph 42.3(3)"c"(1)"10," the report must note any violation that occurred during the year covered by the report of a requirement listed below and include a clear and readily understandable explanation of the violation, any potential adverse

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health effects, and the steps the system has taken to correct the violation. Note any violation of the following requirements:

(1) Monitoring and reporting of compliance data pursuant to 567—Chapters 41 and 43, which includes any contaminant with a health-based standard;

(2) Treatment techniques:

1. Filtration and disinfection prescribed by 567—43.5(455B). For systems which have failed to install adequate filtration or disinfection equipment or processes, or have had a failure of such equipment or processes which constitutes a violation, the report must include the following language as part of the explanation of potential adverse health effects: Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

2. Lead and copper control requirements. For systems which fail to take one or more actions prescribed by 567—Chapters 41 to 43 pertaining to lead and copper, the report must include the applicable language of Appendix E to this chapter for lead or copper, or both.

3. Acrylamide and epichlorohydrin control technologies prescribed by 567—paragraph 41.5(1)“b”(3). For systems which violate the requirements of 567—paragraph 41.5(1)“b”(3), the report must include the relevant language from Appendix E to this chapter.

(3) Record keeping of compliance data pursuant to 567—Chapters 40 to 43;

(4) Special monitoring requirements; and

(5) Violation of the terms of operation permit compliance schedule, or an administrative order or judicial order.

e. Operation permit or administrative order with a schedule which extends the time period in which compliance must be achieved. If a system has been issued a compliance schedule with an extension for compliance, the report must contain:

(1) An explanation of the reasons for the extension;

(2) The date on which the extension was issued;

(3) A brief status report on the steps the system is taking to install treatment, find alternative sources of water, or otherwise comply with the terms of the compliance schedule; and

(4) A notice of any opportunity for public input in the review or renewal of the compliance schedule.

f. Mandatory report language for explanation of contaminant occurrence. The reports must contain a brief explanation regarding contaminants which may reasonably be expected to be found in drinking water including bottled water. This explanation may include the language of the following subparagraphs (1) to (3). Subparagraph (4) is provided as a minimal alternative to subparagraphs (1) to (3). Systems may also develop their own comparable language. The report also must include the language of 42.3(3)“g.”

(1) The sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally occurring minerals and radioactive material, and can pick up substances resulting from the presence of animals or from human activity.

(2) Contaminants that may be present in source water include:

1. Microbial contaminants, such as viruses and bacteria, which may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife.

2. Inorganic contaminants, such as salts and metals, which can be naturally occurring or result from urban storm runoff, industrial or domestic wastewater discharges, oil and gas production, mining, or farming.

3. Pesticides and herbicides, which may come from a variety of sources such as agriculture, storm water runoff, and residential uses.

4. Organic chemical contaminants, including synthetic and volatile organics, which are by-products of industrial processes and petroleum production, and can also come from gas stations, urban storm water runoff and septic systems.

5. Radioactive contaminants, which can be naturally occurring or be the result of oil and gas production and mining activities.

(3) In order to ensure that tap water is safe to drink, the department prescribes regulations which limit the amount of certain contaminants in water provided by public water systems. The United States Food and Drug Administration regulations establish limits for contaminants in bottled water which must provide the same protection for public health.

(4) Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the national Safe Drinking Water Hotline (800-426-4791).

g. Required additional health information.

(1) All systems. All reports must prominently display the following language: Some people may be more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. The guidelines on appropriate means to lessen the risk of infection by *Cryptosporidium* and other microbial contaminants are available from the national Safe Drinking Water Hotline (800-426-4791).

(2) Arsenic levels greater than half the MCL (25 µg/L). A system which detects arsenic at levels above 25 µg/L, but below the MCL, must include the following information in its report:

1. Must include in its report a short information statement about arsenic, using language such as: EPA is reviewing the drinking water standard for arsenic because of special concerns that it may not be stringent enough. Arsenic is a naturally occurring mineral known to cause cancer in humans at high concentrations.

2. May write its own educational statement, but only in consultation with the department.

(3) Nitrate levels greater than half the MCL (5 mg/L). A system which detects nitrate at levels above 5 mg/L, but below the MCL, must include the following information in its report:

1. Must include a short informational statement about the impacts of nitrate on children using language such as: Nitrate in drinking water at levels above 10 ppm is a health risk for infants of less than six months of age. High nitrate levels in drinking water can cause blue baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If you are caring for an infant you should ask advice from your health care provider.

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2. May write its own education statement, but only in consultation with the department.

(4) Nitrite levels greater than half the MCL (0.5 mg/L). A system which detects nitrite at levels above 0.5 mg/L, but below the MCL, must include the following information in its report:

1. Must include a short informational statement about the impacts of nitrite on children using language such as: Nitrite in drinking water at levels above 1 ppm is a health risk for infants of less than six months of age. High nitrite levels in drinking water can cause blue baby syndrome. If you are caring for an infant you should ask advice from your health care provider.

2. May write its own education statement, but only in consultation with the department.

(5) Lead 95th percentile levels above the action level (0.015 mg/L). Systems which detect lead above the action level in more than 5 percent (95th percentile) but fewer than 10 percent (90th percentile) of homes sampled must include the following information in their report:

1. Must include a short informational statement about the special impact of lead on children using language such as: Infants and young children are typically more vulnerable to lead in drinking water than the general population. It is possible that lead levels at your home may be higher than at other homes in the community as a result of materials used in your home's plumbing. If you are concerned about elevated lead levels in your home's water, you may wish to have your water tested and flush your tap for 30 seconds to 2 minutes before using tap water. Additional information is available from the Safe Drinking Water Hotline (800-426-4791).

2. May write its own educational statement, but only in consultation with the department.

(6) Total trihalomethane (TTHM) levels above 0.080 mg/L but less than the MCL. Systems that detect TTHMs above 0.080 mg/L, but below the MCL in 567—subrule 41.5(1), as an annual average, monitored and calculated under the provisions of 567—paragraph 41.5(1)“e,” must include the health effects language for total trihalomethanes listed in Appendix E.

h. Additional mandatory report requirements.

(1) The report must include the telephone number of the owner, operator, or designee of the community water system as a source of additional information concerning the report.

(2) In communities with a large proportion of non-English speaking residents, as determined by the department, the report must contain information in the appropriate language(s) regarding the importance of the report or contain a telephone number or address where such residents may contact the system to obtain a translated copy of the report or assistance in the appropriate language.

(3) The report must include information (e.g., time and place of regularly scheduled board meetings) about opportunities for public participation in decisions that may affect the quality of the water.

(4) The systems may include such additional information as they deem necessary for the public education consistent with, and not detracting from, the purpose of the report.

42.3(4) Report delivery.

a. Required report recipients. Each community water system must mail or otherwise directly deliver one copy of the report to each customer.

(1) The system must make a good-faith effort to reach consumers who do not get water bills, using means recommended by the department. An adequate good-faith effort will be tailored to the consumers who are served by the sys-

tem but are not bill-paying customers, such as renters or workers. A good-faith effort to reach consumers would include a mix of methods appropriate to the particular system such as:

1. Posting the reports on the Internet;
2. Mailing to postal patrons in metropolitan areas;
3. Advertising the availability of the report in the news media;
4. Publication in a local newspaper;
5. Posting in public places such as cafeterias or lunchrooms of public buildings;
6. Delivery of multiple copies for distribution by single-billed customers such as apartment buildings or large private employers;
7. Delivery to community organizations.

(2) No later than the date the system is required to distribute the report to its customers, each community water system must mail a copy of the report to the department, followed within three months by a certification that the report has been distributed to customers, and that the information is correct and consistent with the compliance monitoring data previously submitted to the department.

(3) No later than the date the system is required to distribute the report to its customers, each community water system must deliver the report to any other agency or clearinghouse identified by the department, such as the Iowa department of public health or county board of health.

b. Availability of report. Each community water system must make its report available to the public upon request. Each community water system serving 100,000 or more persons must post its current year's report to a publicly accessible site on the Internet.

c. Waiver from mailing requirements for systems serving less than 10,000 persons. All community public water supply systems with less than 10,000 persons served will be granted the waiver, except for those systems which have the following: one or more exceedances of a health-based standard; an administrative order; court order; significant non-compliance with monitoring or reporting requirements; or an extended compliance schedule contained in the operation permit. Even though a public water supply system has been granted a mailing waiver, paragraphs 42.3(4)“a”(2) to (4) and 42.3(4)“b” still apply to all community public water supply systems. Systems which use the mailing waiver must:

(1) Publish the reports in one or more local newspapers serving the area in which the system is located;

(2) Inform the customers that the reports will not be mailed, either in the newspapers in which the reports are published or by other means approved by the department; and

(3) Make the reports available to the public upon request.

d. Waiver from mailing requirements for systems serving 500 or fewer in population. All community public water supply systems serving 500 or fewer persons will be granted the waiver, except for those systems which have the following: one or more exceedances of a health-based standard; an administrative order; court order; significant noncompliance with monitoring or reporting requirements; or an extended compliance schedule contained in the operation permit. Systems serving 500 or fewer persons which use the waiver may forego the requirements of subparagraphs 42.3(4)“c”(1) and (2) of this subrule if they provide notice at least once per year to their customers by mail, door-to-door delivery, or by posting that the report is available upon request, in conspicuous places within the area served by the system acceptable to the department. Even though a public water supply system has

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been granted a mailing waiver, paragraphs 42.3(4)"a"(2) to (4) and 42.3(4)"b" still apply to all community public water supply systems.

**567—42.4(455B) Reporting.**

**42.4(1)** Reporting requirements other than for lead and copper.

a. When required by the department, the supplier of water shall report to the department within ten days following a test, measurement or analysis required to be made by 567—Chapter 40, 41, 42, or 43 the results of that test, measurement or analysis in the form and manner prescribed by the department. This shall include reporting of all positive detects within the same specific analytical method.

b. Except where a different reporting period is specified in this rule or 567—Chapters 41 and 43, the supplier of water shall report to the department within 48 hours after any failure to comply with the monitoring requirements set forth in 567—Chapters 41 and 43. The supplier of water shall also notify the department within 48 hours of failure to comply with any primary drinking water regulations.

c. The public water supply system, within ten days of completion of each public notification required pursuant to 42.1(455B), shall submit to the department a representative copy of each type of notice distributed, published, posted, or made available to the persons served by the system or to the media.

**42.4(2)** Lead and copper reporting requirements. All water systems shall report all of the following information to the department in accordance with this subrule.

a. Reporting requirements for tap water monitoring for lead and copper and for water quality parameter monitoring.

(1) A water system shall report the information specified below for all tap water samples within the first ten days following the end of each applicable monitoring period specified in 567—41.4(455B) (i.e., every six months, annually, or every three years).

1. The results of all tap samples for lead and copper including the location of each site and the criteria under which the site was selected for the system's sampling pool;

2. A certification that each first draw sample collected by the water system is one liter in volume and, to the best of the collector's knowledge, has stood motionless in the service line, or in the interior plumbing of a sampling site, for at least six hours;

3. Where residents collected samples, a certification that each tap sample collected by the residents was taken after the water system informed them of proper sampling procedures specified in 567—paragraph 41.4(1)"c"(2)"2";

4. The 90th percentile lead and copper concentrations measured from among all lead and copper tap water samples collected during each monitoring period (calculated in accordance with 567—paragraph 41.4(1)"b"(3));

5. With the exception of initial tap sampling conducted pursuant to 567—paragraph 41.4(1)"c"(4)"1," the system shall designate any site which was not sampled during previous monitoring periods, and include an explanation of why sampling sites have changed;

6. The results of all tap samples for pH and, where applicable, alkalinity, calcium, conductivity, temperature, and orthophosphate or silica collected under 567—paragraphs 41.4(1)"d"(2) through (5);

7. The results of all samples collected at the entry point(s) to the distribution system for applicable water quality parameters under 567—paragraphs 41.4(1)"d"(2) and (5).

(2) By the applicable date in 567—paragraph 41.4(1)"c"(4)"1" for commencement of monitoring, each

community water system which does not complete its targeted sampling pool with tier 1 sampling sites meeting the criteria in 567—paragraph 41.4(1)"c"(1)"3" shall send a letter justifying its selection of tier 2 and tier 3 sampling sites under 567—paragraphs 41.4(1)"c"(1)"4" and "5," whichever is applicable.

(3) By the applicable date in 567—paragraph 41.4(1)"c"(4)"1" for commencement of monitoring, each nontransient noncommunity water system which does not complete its sampling pool with tier 1 sampling sites meeting the criteria in 567—paragraph 41.4(1)"c"(1)"6" shall send a letter to the department justifying its selection of sampling sites under 567—paragraph 41.4(1)"c"(1)"7."

(4) By the applicable date in 567—paragraph 41.4(1)"c"(4)"1" for commencement of monitoring, each water system with lead service lines that is not able to locate the number of sites served by such lines required under 567—paragraph 41.4(1)"c"(1)"8" shall send a letter to the department demonstrating why it was unable to locate a sufficient number of such sites based upon the information listed in 567—paragraph 41.4(1)"c"(1)"2."

(5) Each water system that requests that the department reduce the number and frequency of sampling shall provide the information required under 567—paragraph 41.4(1)"c"(4)"4."

b. Source water monitoring reporting requirements.

(1) A water system shall report the sampling results for all source water samples collected in accordance with 567—paragraph 41.4(1)"e" within the first ten days following the end of each source water monitoring period (i.e., annually, per compliance period, or per compliance cycle) specified in 567—paragraph 41.4(1)"e."

(2) With the exception of the first round of source water sampling conducted pursuant to 567—paragraph 41.4(1)"e"(2), the system shall specify any site which was not sampled during previous monitoring periods, and include an explanation of why the sampling point has changed.

c. Corrosion control treatment reporting requirements. By the applicable dates under 567—subrule 43.7(1), systems shall report the following information:

(1) For systems demonstrating that they have already optimized corrosion control, information required in 567—paragraph 43.7(1)"b"(2) or (3).

(2) For systems required to optimize corrosion control, their recommendation regarding optimal corrosion control treatment under 567—paragraph 43.7(2)"a."

(3) For systems required to evaluate the effectiveness of corrosion control treatments under 567—paragraph 43.7(2)"c," the information required by that paragraph.

(4) For systems required to install optimal corrosion control designated by the department under 567—paragraph 43.7(2)"d," a letter certifying that the system has completed installing that treatment.

d. Source water treatment reporting requirements. By the applicable dates in 567—paragraph 43.7(3)"b"(1), systems shall provide the following information to the department:

(1) If required under 567—paragraph 43.7(3)"b"(1), their recommendation regarding source water treatment;

(2) For systems required to install source water treatment under 567—paragraph 43.7(3)"b"(1), a letter certifying that the system has completed installing the treatment designated by this department within 24 months after the department designated the treatment.

e. Lead service line replacement reporting requirements. Systems shall report the following information to

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demonstrate compliance with the requirements of 567—subrule 43.7(4):

(1) Within 12 months after a system exceeds the lead action level in sampling referred to in 567—paragraph 43.7(4)“a,” the system shall demonstrate in writing to the department that it has conducted a materials evaluation, including the evaluation pursuant to 567—paragraph 41.4(1)“c”(1) to identify the initial number of lead service lines in its distribution system, and shall provide the department with the system’s schedule for replacing annually at least 7 percent of the initial number of lead service lines in its distribution system.

(2) Within 12 months after a system exceeds the lead action level in sampling referred to in 567—paragraph 43.7(4)“a” and every 12 months thereafter, the system shall demonstrate in writing that the system has either:

1. Replaced in the previous 12 months at least 7 percent of the initial lead service lines (or a greater number of lines specified by the department under 567—paragraph 43.7(4)“f” in its distribution system), or

2. Conducted sampling which demonstrates that the lead concentration in all service line samples from individual line(s), taken pursuant to 567—paragraph 41.4(1)“c”(2)“3,” is less than or equal to 0.015 mg/L. In such cases, the total number of lines replaced and which meet the criteria in 567—paragraph 43.7(4)“c” shall equal at least 7 percent of the initial number of lead lines identified under 567—paragraph 43.7(4)“c” or the percentage specified by the department under 567—paragraph 43.7(4)“f.”

(3) The annual letter submitted to the department under 42.4(2)“e”(2) shall contain the following information:

1. The number of lead service lines scheduled to be replaced during the previous year of the system’s replacement schedule;

2. The number and location of each lead service line replaced during the previous year of the system’s replacement schedule;

3. If measured, the water lead concentration and location of each lead service line sampled, the sampling method, and the date of sampling.

(4) As soon as practicable, but in no case later than three months after a system exceeds the lead action level in sampling referred to in 567—paragraph 43.7(4)“a,” any system seeking to rebut the presumption that it has control over the entire lead service line pursuant to 567—paragraph 43.7(4)“d” shall submit a letter to the department describing the legal authority (e.g., state statutes, municipal ordinances, public service contracts or other applicable legal authority) which limits the system’s control over the service lines and the extent of the system’s control.

f. Public education program reporting requirements. By December of each year, a water system that is subject to the public education requirements in 42.2(455B) shall submit a letter to the department demonstrating that the system has delivered the public education materials that meet the content requirements in 42.2(2) and 42.2(3) and the delivery requirements in 42.2(4). This information shall include a list of all the newspapers, radio stations, television stations, facilities and organizations to which the system delivered public education materials during the previous year. The water system shall submit the letter annually for as long as it exceeds the lead action level.

g. Reporting of additional monitoring data. A system which collects sampling data in addition to that required by 567—Chapters 41 and 43 shall report the results to the department within the first ten days following the end of the

applicable monitoring period under 567—paragraphs 41.4(1)“c,” “d,” and “e” during which the samples are collected.

42.4(3) Operation and maintenance for PWS.

a. Required records of operation.

(1) Applicability. Monthly records of operation shall be completed by all public water supplies, on forms provided by the department or on similar forms, unless a public water supply meets all of the following conditions:

1. Supplies an annual average of not more than 25,000 gpd or serves no more than an average of 250 individuals daily;

2. Is a community public water supply and does not provide any type of treatment, or is a noncommunity system (NTNC and TNC) which has only a cation-exchange softening or iron/manganese removal treatment unit, and meets the requirements of 42.4(3)“a”(2)“7”;

3. Does not utilize either a surface water or a groundwater under the direct influence of surface water either in whole or in part as a water source.

4. Does not use a treatment technique such as blending to achieve compliance with health-based standards.

The reports shall be completed as described in 42.4(3)“a”(2) and maintained at the facility for inspection by the department for a period of five years. For CWS and NTNC PWSs, the monthly operation report must be signed by the certified operator in direct responsible charge or the certified operator’s designee. For TNC PWSs, the monthly operation report, if required by the department, must be signed by the owner or the owner’s designee.

(2) Contents. Monthly operation reports shall be completed as follows:

1. Pumpage or flow. Noncommunity supplies shall measure and record the total water used each week. It is recommended that a daily measurement and recording be made. Community supplies shall measure and record daily water used. Reporting of pumpage or flow may be required in an operation permit where needed to verify MCL compliance.

2. Treatment effectiveness. Where treatment is practiced, the intended effect of the treatment shall be measured at locations and by methods which best indicate effectiveness of the treatment process. These measurements shall be made pursuant to Appendix B of this chapter.

3. Treatment effectiveness for a primary standard. Where the raw water quality does not meet the requirements of 567—Chapters 41 and 43 and treatment is practiced for the purpose of complying with a health-based standard drinking water standard, daily measurement of the primary standard constituent or an appropriate indicator constituent designated by the department shall be recorded. The department will require reporting of these results in the operation permit to verify MCL compliance.

4. Treatment effectiveness for a secondary standard. Where treatment is practiced for the purpose of achieving the recommended level of any constituent designated in the federal secondary standards, measurements shall be measured and recorded at a frequency specified in Appendix B.

5. Chemical application. Chemicals such as fluoride, iodine, bromine and chlorine, which are potentially toxic in excessive concentration, shall be measured and recorded daily. Recording shall include the amount of chemical applied each day. Where the supplier of water is attempting to maintain a residual of the chemical throughout the system, such as chlorine, the residual in the system shall be recorded daily. The quantity of all other chemicals applied shall be measured and recorded at least once each week.

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6. Static water levels and pumping water levels must be measured and recorded once per month for all groundwater sources. More or less frequent measurements may be approved by the department where historical data justifies it.

7. Noncommunity systems (NTNC and TNC) are exempt from the self-monitoring requirements for cation-exchange softening and iron/manganese removal if the treatment unit:

- Is a commercially available "off-the-shelf" unit designed for home use;
- Is self-contained, requiring only a piping connection for installation;
- Operates throughout a range of 35 to 80 psi; and
- Has not been installed for the purpose of removing a contaminant which has a health-based standard.

b. Chemical quality and application. Any drinking water system chemical which is added to raw, partially treated, or finished water must be suitable for the intended use in a potable water system. The chemical must be certified to meet the current American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 60, if such certification exists for the particular product, unless certified chemicals are not reasonably available for use, in accordance with guidelines provided by the department. If the chemical is not certified by the ANSI/NSF Standard 60 or no certification is available, the person seeking to supply or use the chemical must prove to the satisfaction of the department that the chemical is not toxic or otherwise a potential hazard in a potable public water supply system.

The supplier of water shall keep a record of all chemicals used. This record should include a clear identification of the chemical by brand or generic name and the dosage rate. When chemical treatment is applied with the intent of obtaining an in-system residual, the residuals will be monitored regularly. When chemical treatment is applied and in-system residuals are not expected, the effectiveness of the treatment will be monitored through an appropriate indication parameter.

(1) Continuous disinfection.

1. When required. Continuous disinfection must be provided at all public water supply systems, except for the following: groundwater supplies that have no treatment facilities or have only fluoride, sodium hydroxide or soda ash addition and that meet the bacterial standards as provided in 567—41.2(455B) and do not show other actual or potential hazardous contamination by microorganisms.

2. Method. Chlorine is the preferred disinfecting agent. Chlorination may be accomplished with liquid chlorine, calcium or sodium hypochlorites or chlorine dioxide. Other disinfecting agents will be considered, provided a residual can be maintained in the distribution system, reliable application equipment is available and testing procedures for a residual are recognized in Standard Methods for the Analysis of Water and Wastewater.

3. Chlorine residual. A minimum free available chlorine residual of 0.3 mg/L or a minimum total available chlorine residual of 1.5 mg/L must be continuously maintained throughout the water distribution system, except for those points on the distribution system that terminate as dead ends or areas that represent very low use when compared to usage throughout the rest of the distribution system as determined by the department.

4. Test kit. A test kit capable of measuring free and combined chlorine residuals in increments no greater than 0.1 mg/L in the range below 0.5 mg/L, and in increments no greater than 0.2 mg/L in the range from 0.5 mg/L to 1.0

mg/L, and in increments no greater than 0.3 mg/L in the range from 1.0 mg/L to 2.0 mg/L must be provided at all chlorination facilities. The test kit must use a method of analysis that is recognized in Standard Methods for the Analysis of Water and Wastewater.

5. Leak detection, control and operator protection. A bottle of at least 56 percent ammonium hydroxide must be provided at all gas chlorination installations for leak detection. Leak repair kits must be available where ton chlorine cylinders are used.

6. Other disinfectant residuals. If an alternative disinfecting agent is approved by this department, the residual levels and type of test kit used will be assigned by the department in accordance with and based upon analytical methods contained in Standard Methods for the Analysis of Water and Wastewater.

(2) Phosphate compounds.

1. When phosphate compounds are to be added to any public water supply system which includes iron or manganese removal or ion-exchange softening, such compounds must be applied after the iron or manganese removal or ion-exchange softening treatment units, unless the director has received and approved an engineering report demonstrating the suitability for addition prior to these units in accordance with the provisions of 567—subrule 43.3(2). The department may require the discontinuance of phosphate addition where it interferes with other treatment processes, the operation of the water system or if there is a significant increase in microorganism populations associated with phosphate application.

2. The total phosphate concentration in the finished water must not exceed 10 mg/L as  $PO_4$ .

3. Chlorine shall be applied to the phosphate solution in sufficient quantity to give an initial concentration of 10 mg/L in the phosphate solution. A chlorine residual must be maintained in the phosphate solution at all times.

4. Test kits capable of measuring polyphosphate and orthophosphate in a range from 0.0 to 10.0 mg/L in increments no greater than 0.1 mg/L must be provided.

5. Continuous application or injection of phosphate compounds directly into a well is prohibited.

(3) Hydrofluosilicic acid. Where hydrofluosilicic acid is added to a public water supply, the operator shall be equipped with a fluoride test kit with a minimum range of from 0.0 to 2.0 mg/L in increments no greater than 0.1 mg/L. Distilled water and standard fluoride solutions of 0.2 mg/L and 1.0 mg/L must be provided.

c. Reporting and record-keeping requirements for systems using surface water and groundwater under the direct influence of surface water. In addition to the monitoring requirements required by 42.4(3)"a" and "b," a public water system that uses a surface water source or a groundwater source under the direct influence of surface water must report monthly to the department the information specified in this subrule beginning June 29, 1993, or when filtration is installed, whichever is later.

(1) Turbidity measurements as required by 567—subrules 41.7(1) and 43.5(3) must be reported within ten days after the end of each month the system serves water to the public. Information that must be reported includes:

1. The total number of filtered water turbidity measurements taken during the month.

2. The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to the turbidity limits specified in 567—paragraph 41.7(1)"b" for the filtration technology being used.

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3. The date and value of any turbidity measurements taken during the month which exceed 5 NTU. If at any time the turbidity exceeds 5 NTU, the system must inform the department as soon as possible, but no later than the end of the next business day. This requirement is in addition to the monthly reporting requirement, pursuant to 567—43.5(455B).

(2) Disinfection information specified in 567—subrule 41.7(2) and 567—paragraph 42.4(3)“b” must be reported to the department within ten days after the end of each month the system serves water to the public. Information that must be reported includes:

1. For each day, the lowest measurement of residual disinfectant concentration in mg/L in water entering the distribution system.

2. The date and duration of each period when the residual disinfectant concentration in water entering the distribution system fell below 0.3 mg/L and when the department was notified of the occurrence. If at any time the residual falls below 0.3 mg/L in the water entering the distribution system, the system must notify the department as soon as possible, but no later than by the end of the next business day. The system also must notify the department by the end of the next business day whether or not the residual was restored to at least 0.3 mg/L within four hours. This requirement is in addition to the monthly reporting requirement, pursuant to 567—43.5(455B).

3. The information on the samples taken in the distribution system in conjunction with total coliform monitoring listed in 567—paragraph 43.5(2)“d” and pursuant to 567—paragraph 41.2(1)“c.”

**567—42.5(455B) Record maintenance.**

42.5(1) Record maintenance requirements. Any owner or operator of a public water system subject to the provisions of this rule shall retain on its premises or at a convenient location near its premises the following records:

a. Analytical records.

(1) Actual laboratory reports shall be kept, or data may be transferred to tabular summaries, provided that the following information is included:

1. The date, place, and time of sampling, and the name of the person who collected the sample;

2. Identification of the sample as to whether it was a routine distribution system sample, check sample, raw or process water sample or other special purpose sample;

3. Date of analysis;

4. Laboratory and person responsible for performing analysis;

5. The analytical technique or method used; and

6. The results of the analysis.

(2) Record retention for specific analytes.

1. Bacteria. Records of bacteriological analyses made pursuant to this subrule shall be kept for not less than five years.

2. Chemical: radionuclide, inorganic compounds, organic compounds. Records of chemical analyses made pursuant to 567—Chapter 41 shall be kept for not less than ten years. Additional lead and copper requirements are listed in 42.5(1)“b.”

b. Lead and copper record-keeping requirements. A system subject to the requirements of 42.4(2) shall retain on its premises original records of all data and analyses, reports, surveys, public education, letters, evaluations, schedules, and any other information required by 567—41.4(455B) and 567—Chapter 43. Each water system shall retain the records required by this subrule for ten years.

c. Records of action (violation correction). Records of action taken by the system to correct violations of primary drinking water regulations (including administrative orders) shall be kept for not less than five years after the last action taken with respect to the particular violation involved.

d. Reports and correspondence relating to sanitary surveys. Copies of any written reports, summaries, or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by any local, state or federal agency, shall be kept for a period of not less than ten years after completion of the sanitary survey involved.

e. Operation or construction permits. Records concerning an operation or a construction permit issued pursuant to 567—Chapter 43 to the system shall be kept for a period ending not less than ten years after the system achieves compliance with the health-based standard or after the system in question completes the associated construction project.

f. Public notification. Records of public notification, including the consumer confidence report, public notification examples, and reports requiring certification of who received the public notification, must be kept for at least five years.

g. Self-monitoring requirement records. The monthly records of operation must be completed as described in 42.4(3)“a”(2) and maintained at the facility for inspection by the department for a period of at least five years.

42.5(2) Reserved.

APPENDIX A

MANDATORY HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION

1. Acrylamide. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that acrylamide is a health concern at certain levels of exposure. Polymers made from acrylamide are sometimes used to treat water supplies to remove particulate contaminants. Acrylamide has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. Sufficiently large doses of acrylamide are known to cause neurological injury. EPA has set the drinking water standard for acrylamide using a treatment technique to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. This treatment technique limits the amount of acrylamide in the polymer and the amount of the polymer which may be added to drinking water to remove particulates. Drinking water systems which comply with this treatment technique have little to no risk and are considered safe with respect to acrylamide.

2. Alachlor. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that alachlor is a health concern at certain levels of exposure. This organic chemical is a widely used pesticide. When soil and climatic conditions are favorable, alachlor may get into drinking water by runoff into surface water or by leaching into groundwater. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for alachlor at 0.002 parts per million (ppm) to reduce the risk of cancer or other adverse health effects



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which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to alachlor.

3. Aldicarb. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that aldicarb is a health concern at certain levels of exposure. Aldicarb is a widely used pesticide. Under certain soil and climatic conditions (e.g., sandy soil and high rainfall), aldicarb may leach into groundwater after normal agricultural applications to crops such as potatoes or peanuts or may enter drinking water supplies as a result of surface runoff. This chemical has been shown to damage the nervous system in laboratory animals such as rats and dogs exposed to high levels. EPA has set the drinking water standard for aldicarb at 0.003 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to aldicarb.

4. Aldicarb sulfoxide. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that aldicarb sulfoxide is a health concern at certain levels of exposure. Aldicarb is a widely used pesticide. Aldicarb sulfoxide in groundwater is primarily a breakdown product of aldicarb. Under certain soil and climatic conditions (e.g., sandy soil and high rainfall), aldicarb sulfoxide may leach into groundwater after normal agricultural applications to crops such as potatoes or peanuts or may enter drinking water supplies as a result of surface runoff. This chemical has been shown to damage the nervous system in laboratory animals such as rats and dogs exposed to high levels. EPA has set the drinking water standard for aldicarb sulfoxide at 0.004 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to aldicarb sulfoxide.

5. Aldicarb sulfone. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that aldicarb sulfone is a health concern at certain levels of exposure. Aldicarb is a widely used pesticide. Aldicarb sulfone is formed from the breakdown of aldicarb and is considered for registration as a pesticide under the name aldoxycarb. Under certain soil and climatic conditions (e.g., sandy soil and high rainfall), aldicarb sulfone may leach into groundwater after normal agricultural applications to crops such as potatoes or peanuts or may enter drinking water supplies as a result of surface runoff. This chemical has been shown to damage the nervous system in laboratory animals such as rats and dogs exposed to high levels. EPA has set the drinking water standard for aldicarb sulfone at 0.002 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to aldicarb sulfone.

6. Antimony. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that antimony is a health concern at certain levels of exposure. This inorganic chemical occurs naturally in soils, groundwater and surface waters and is often used in the flame-retardant industry. It is also used in ceramics, glass, batteries, fireworks and explosives. It may get into drinking water through natural weathering of rock, industrial production, municipal waste disposal or manufacturing processes. This chemical has been shown to decrease longevity and to alter blood levels of cholesterol and glucose in laboratory animals such as rats exposed to high levels during their lifetimes. EPA has set the drinking water standard for antimony

at 0.006 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to antimony.

7. Asbestos. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that asbestos fibers greater than 10 micrometers in length are a health concern at certain levels of exposure. Asbestos is a naturally occurring mineral. Most asbestos fibers in drinking water are less than 10 micrometers in length and occur in drinking water from natural sources and from corroded asbestos-cement pipes in the distribution system. The major uses of asbestos were in the production of cements, floor tiles, paper products, paint, and caulking; in transportation-related applications; and in the production of textiles and plastics. Asbestos was once a popular insulating and fire-retardant material. Inhalation studies have shown that various forms of asbestos have produced lung tumors in laboratory animals. The available information on the risk of developing gastrointestinal tract cancer associated with the ingestion of asbestos from drinking water is limited. Ingestion of intermediate-range chrysotile asbestos fibers greater than 10 micrometers in length is associated with causing benign tumors in male rats. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for asbestos at 7 million long fibers per liter to reduce the potential risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to asbestos.

8. Atrazine. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that atrazine is a health concern at certain levels of exposure. This organic chemical is a herbicide. When soil and climatic conditions are favorable, atrazine may get into drinking water by runoff into surface water or by leaching into groundwater. This chemical has been shown to affect offspring of rats and the hearts of dogs. EPA has set the drinking water standard for atrazine at 0.003 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to atrazine.

9. Barium. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that barium is a health concern at certain levels of exposure. This inorganic chemical occurs naturally in some aquifers that serve as sources of groundwater. It is also used in oil and gas drilling muds, automotive paints, bricks, tiles and jet fuels. It generally gets into drinking water after dissolving from naturally occurring minerals in the ground. This chemical may damage the heart and cardiovascular system and is associated with high blood pressure in laboratory animals such as rats exposed to high levels during their lifetimes. In humans, EPA believes that effects from barium on blood pressure should not occur below 2 parts per million (ppm) in drinking water. EPA has set the drinking water standard for barium at 2 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to barium.

10. Beryllium. The United States Environmental Protection Agency (EPA) sets drinking water standards and has de-

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terminated that beryllium is a health concern at certain levels of exposure. This inorganic metal occurs naturally in soils, groundwater and surface waters and is often used in electrical equipment and electrical components. It generally gets into water from runoff from mining operations, discharge from processing plants and improper waste disposal. Beryllium compounds have been associated with damage to the bones and lungs and induction of cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. There is limited evidence to suggest that beryllium may pose a cancer risk via drinking water exposure. Therefore, EPA based the health assessment on noncancer effects with an extra uncertainty factor to account for possible carcinogenicity. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for beryllium at 0.004 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to beryllium.

11. Benzene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that benzene is a health concern at certain levels of exposure. This chemical is used as a solvent and degreaser of metals. It is also a major component of gasoline. Drinking water contamination generally results from leaking underground gasoline and petroleum tanks or improper waste disposal. This chemical has been associated with significantly increased risks of leukemia among certain industrial workers who were exposed to relatively large amounts of this chemical during their working careers. This chemical has also been shown to cause cancer in laboratory animals when the animals are exposed at high levels over their lifetimes. Chemicals that cause increased risk of cancer among exposed industrial workers and in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for benzene at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in humans and laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

12. Benzo(a)pyrene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that benzo(a)pyrene is a health concern at certain levels of exposure. Cigarette smoke and charbroiled meats are common sources of general exposure. The major source of benzo(a)pyrene in drinking water is the leaching from coal tar lining and sealants in water storage tanks. This chemical has been shown to cause cancer in animals such as rats and mice when the animals are exposed at high levels. EPA has set the drinking water standard for benzo(a)pyrene at 0.0002 parts per million (ppm) to protect against the risk of cancer. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to benzo(a)pyrene.

13. Cadmium. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that cadmium is a health concern at certain levels of exposure. Food and the smoking of tobacco are common sources of general exposure. This inorganic metal is a contaminant in the metals used to galvanize pipe. It generally gets into water by corrosion of galvanized pipes or by improper waste disposal. This chemical has been shown to damage the kidneys in animals such as rats and mice when

the animals are exposed at high levels over their lifetimes. Some industrial workers who were exposed to relatively large amounts of this chemical during working careers also suffered damage to the kidneys. EPA has set the drinking water standard for cadmium at 0.005 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to cadmium.

14. Carbofuran. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that carbofuran is a health concern at certain levels of exposure. This organic chemical is a pesticide. When soil and climatic conditions are favorable, carbofuran may get into drinking water by runoff into surface water or by leaching into groundwater. This chemical has been shown to damage the nervous and reproductive systems of laboratory animals such as rats and mice exposed at high levels over their lifetimes. Some humans who were exposed to relatively large amounts of this chemical during their working careers also suffered damage to the nervous system. Effects on the nervous system are generally rapidly reversible. EPA has set the drinking water standard for carbofuran at 0.04 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to carbofuran.

15. Carbon tetrachloride. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that carbon tetrachloride is a health concern at certain levels of exposure. This chemical was once a popular household cleaning fluid. It generally gets into drinking water by improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for carbon tetrachloride at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

16. Chlordane. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that chlordane is a health concern at certain levels of exposure. This organic chemical is a pesticide used to control termites. Chlordane is not very mobile in soils. It usually gets into drinking water after application near water supply intakes or wells. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for chlordane at 0.002 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to chlordane.

17. Chromium. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that chromium is a health concern at certain levels of exposure. This inorganic metal occurs naturally in the

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ground and is often used in the electroplating of metals. It generally gets into water from runoff from old mining operations and improper waste disposal from plating operations. This chemical has been shown to damage the kidneys, nervous system, and the circulatory system of laboratory animals such as rats and mice when the animals are exposed at high levels. Some humans who were exposed to high levels of this chemical suffered liver and kidney damage, dermatitis and respiratory problems. EPA has set the drinking water standard for chromium at 0.1 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to chromium.

18. Coliforms: Fecal coliforms/*E. coli* (to be used when there is a violation of 567—paragraph 41.2(1)“b”(2) or both 567—paragraphs 41.2(1)“b”(1) and (2)). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of fecal coliforms or *E. coli* is a serious health concern. Fecal coliforms and *E. coli* are generally not harmful themselves, but their presence in drinking water is serious because they usually are associated with sewage or animal wastes. The presence of these bacteria in drinking water is generally a result of a problem with water treatment or the pipes which distribute the water and indicates that the water may be contaminated with organisms that can cause disease. Disease symptoms may include diarrhea, nausea, and possibly jaundice, and associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than the drinking water. EPA has set an enforceable drinking water standard for fecal coliforms and *E. coli* to reduce the risk of these adverse health effects. Under this standard all drinking water samples must be free of these bacteria. Drinking water which meets this standard is associated with little or none of this risk and should be considered safe. State and local health authorities recommend that consumers take the following precautions: (to be inserted by the public water supply system, according to instructions from state or local authorities).

19. Coliforms: Total coliforms (to be used when there is a violation of 567—paragraph 41.2(1)“b”(1) and not a violation of 567—paragraph 41.2(1)“b”(2)). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of total coliforms is a possible health concern. Total coliforms are common in the environment and are generally not harmful themselves. The presence of these bacteria in drinking water, however, generally is a result of a problem with water treatment or the pipes which distribute the water and indicates that the water may be contaminated with organisms that can cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and any associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water but also may be caused by a number of factors other than the drinking water. EPA has set an enforceable drinking water standard for total coliforms to reduce the risk of these adverse health effects. Under this standard, no more than 5.0 percent of the samples collected during a month can contain these bacteria, except that systems collecting fewer than 40 samples per month that have one total coliform-positive sample per month are not violating the standard. Drinking water which meets this standard is usually not associated

with a health risk from disease-causing bacteria and should be considered safe.

20. Copper. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that copper is a health concern at certain exposure levels. Copper, a reddish-brown metal, is often used to plumb residential and commercial structures that are connected to water distribution systems. Copper contaminating drinking water as a corrosion by-product occurs as the result of the corrosion of copper pipes that remain in contact with water for a prolonged period of time. Copper is an essential nutrient, but at high doses it has been shown to cause stomach and intestinal distress, liver and kidney damage, and anemia. Persons with Wilson's disease may be at a higher risk of health effects due to copper than the general public. EPA's national primary drinking water regulation requires all public water systems to install optimal corrosion control to minimize copper contamination resulting from the corrosion of plumbing materials. Public water systems serving 50,000 people or fewer that have copper concentrations below 1.3 parts per million (ppm) in more than 90 percent of tap water samples (the EPA "action level") are not required to install or improve their treatment. Any water system that exceeds the action level must also monitor their source water to determine whether treatment to remove copper in source water is needed.

21. Cyanide. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that cyanide is a health concern at certain levels of exposure. This inorganic chemical is used in electroplating, steel processing, plastics, synthetic fabrics and fertilizer products. It usually gets into water as a result of improper waste disposal. This chemical has been shown to damage the spleen, brain and liver of humans fatally poisoned with cyanide. EPA has set the drinking water standard for cyanide at 0.2 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to cyanide.

22. 2,4-D. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 2,4-D is a health concern at certain levels of exposure. This organic chemical is used as a herbicide and to control algae in reservoirs. When soil and climatic conditions are favorable, 2,4-D may get into drinking water by runoff into surface water or by leaching into groundwater. This chemical has been shown to damage the liver and kidneys of laboratory animals such as rats exposed at high levels during their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the nervous system. EPA has set the drinking water standard for 2,4-D at 0.07 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to 2,4-D.

23. Dalapon. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that dalapon is a health concern at certain levels of exposure. This organic chemical is a widely used herbicide. It may get into drinking water after application to control grasses in crops, drainage ditches and along railroads. This chemical has been shown to cause damage to the kidneys and liver in laboratory animals when the animals are exposed to high levels over their lifetimes. EPA has set the drinking water standard for dalapon at 0.2 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking

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water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to dalapon.

24. Dibromochloropropane (DBCP). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that DBCP is a health concern at certain levels of exposure. This organic chemical was once a popular pesticide. When soil and climatic conditions are favorable, dibromochloropropane may get into drinking water by runoff into surface water or by leaching into groundwater. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for DBCP at 0.0002 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to DBCP.

25. 1,2-Dichlorobenzene (ortho-Dichlorobenzene). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that o-dichlorobenzene is a health concern at certain levels of exposure. This organic chemical is used as a solvent in the production of pesticides and dyes. It generally gets into water by improper waste disposal. This chemical has been shown to damage the liver, kidneys and the blood cells of laboratory animals such as rats and mice exposed to high levels during their lifetimes. Some industrial workers who were exposed to relatively large amounts of this chemical during working careers also suffered damage to the liver, nervous system, and circulatory system. EPA has set the drinking water standard for o-dichlorobenzene at 0.6 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to o-dichlorobenzene.

26. 1,4-Dichlorobenzene (para-Dichlorobenzene). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that para-dichlorobenzene is a health concern at certain levels of exposure. This chemical is a component of deodorizers, mothballs, and pesticides. It generally gets into drinking water by improper waste disposal. This chemical has been shown to cause liver and kidney damage in laboratory animals such as rats and mice when the animals are exposed to high levels over their lifetimes. Chemicals which cause adverse effects in laboratory animals also may cause adverse health effects in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for para-dichlorobenzene at 0.075 parts per million (ppm) to reduce the risk of these adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

27. 1,2-Dichloroethane. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,2-dichloroethane is a health concern at certain levels of exposure. This chemical is used as a cleaning fluid for fats, oils, waxes, and resins. It generally gets into drinking water from improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer

in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for 1,2-dichloroethane at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

28. 1,1-Dichloroethylene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,1-dichloroethylene is a health concern at certain levels of exposure. This chemical is used in industry and is found in drinking water as a result of the breakdown of related solvents. The solvents are used as cleaners and degreasers of metals and generally get into drinking water by improper waste disposal. This chemical has been shown to cause liver and kidney damage in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals which cause adverse effects in laboratory animals also may cause adverse health effects in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for 1,1-dichloroethylene at 0.007 parts per million (ppm) to reduce the risk of these adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

29. cis-1,2-Dichloroethylene. The United States Environmental Protection Agency (EPA) establishes drinking water standards and has determined that cis-1,2-dichloroethylene is a health concern at certain levels of exposure. This organic chemical is used as a solvent and intermediate in chemical production. It generally gets into water by improper waste disposal. This chemical has been shown to damage the liver, nervous system, and circulatory system of laboratory animals such as rats and mice when exposed at high levels over their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the nervous system. EPA has set the drinking water standard for cis-1,2-dichloroethylene at 0.07 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to cis-1,2-dichloroethylene.

30. trans-1,2-Dichloroethylene. The United States Environmental Protection Agency (EPA) establishes drinking water standards and has determined that trans-1,2-dichloroethylene is a health concern at certain levels of exposure. This organic chemical is used as a solvent and intermediate in chemical production. It generally gets into water by improper waste disposal. This chemical has been shown to damage the liver, nervous system, and the circulatory system of laboratory animals such as rats and mice when exposed at high levels over their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the nervous system. EPA has set the drinking water standard for trans-1,2-dichloroethylene at 0.1 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to trans-1,2-dichloroethylene.

31. Dichloromethane. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that dichloromethane (methylene chloride) is a health concern at certain levels of exposure. This organic

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chemical is a widely used solvent. It is used in the manufacture of paint remover, as a metal degreaser and as an aerosol propellant. It generally gets into drinking water after improper discharge of waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for dichloromethane at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe with respect to dichloromethane.

32. 1,2-Dichloropropane. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,2-dichloropropane is a health concern at certain levels of exposure. This organic chemical is used as a solvent and pesticide. When soil and climatic conditions are favorable, 1,2-dichloropropane may get into drinking water by runoff into surface water or by leaching into groundwater. It may also get into drinking water through improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for 1,2-dichloropropane at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to 1,2-dichloropropane.

33. Di(2-ethylhexyl)adipate. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that di(2-ethylhexyl)adipate is a health concern at certain levels of exposure. Di(2-ethylhexyl)adipate is a widely used plasticizer in a variety of products, including synthetic rubber, food packaging materials and cosmetics. It may get into drinking water after improper waste disposal. This chemical has been shown to damage liver and testes in laboratory animals such as rats and mice exposed to high levels. EPA has set the drinking water standard for di(2-ethylhexyl)adipate at 0.4 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to di(2-ethylhexyl)adipate.

34. Di(2-ethylhexyl)phthalate. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that di(2-ethylhexyl)phthalate is a health concern at certain levels of exposure. Di(2-ethylhexyl)phthalate is a widely used plasticizer, which is primarily used in the production of polyvinyl chloride (PVC) resins. It may get into drinking water after improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice exposed to high levels over their lifetimes. EPA has set the drinking water standard for di(2-ethylhexyl)phthalate at 0.006 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to di(2-ethylhexyl)phthalate.

35. Dinoseb. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that dinoseb is a health concern at certain levels of exposure. Dinoseb is a widely used pesticide and generally gets into drinking water after application on orchards, vineyards and other crops. This chemical has been shown to damage the thyroid and reproductive organs in laboratory animals such as rats exposed to high levels. EPA has set the drinking water standard for dinoseb at 0.007 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to dinoseb.

36. Diquat. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that diquat is a health concern at certain levels of exposure. This organic chemical is a herbicide used to control terrestrial and aquatic weeds. It may get into drinking water by runoff into surface water. This chemical has been shown to damage the liver, kidneys and gastrointestinal tract and causes cataract formation in laboratory animals such as dogs and rats exposed at high levels over their lifetimes. EPA has set the drinking water standard for diquat at 0.02 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to diquat.

37. Endothall. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that endothall is a health concern at certain levels of exposure. This organic chemical is a herbicide used to control terrestrial and aquatic weeds. It may get into water by runoff into surface water. This chemical has been shown to damage the liver, kidneys, gastrointestinal tract and reproductive system of laboratory animals such as rats and mice exposed at high levels over their lifetimes. EPA has set the drinking water standard for endothall at 0.1 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to endothall.

38. Endrin. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that endrin is a health concern at certain levels of exposure. This organic chemical is a pesticide no longer registered for use in the United States. However, this chemical is persistent in treated soils and accumulates in sediments and aquatic and terrestrial biota. This chemical has been shown to cause damage to the liver, kidneys and heart in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for endrin at 0.002 parts per million (ppm) to protect against the risk of these adverse health effects which have been observed in laboratory animals. Drinking water that meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to endrin.

39. Epichlorohydrin. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that epichlorohydrin is a health concern at certain levels of exposure. Polymers made from epichlorohydrin are sometimes used in the treatment of water supplies as a flocculent to remove particulates. Epichlorohydrin generally gets into drinking water by improper use of these polymers. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are ex-

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posed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for epichlorohydrin using a treatment technique to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. This treatment technique limits the amount of epichlorohydrin in the polymer and the amount of the polymer which may be added to drinking water as a flocculent to remove particulates. Drinking water systems which comply with this treatment technique have little to no risk and are considered safe with respect to epichlorohydrin.

40. Ethylbenzene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined ethylbenzene is a health concern at certain levels of exposure. This organic chemical is a major component of gasoline. It generally gets into water by improper waste disposal or leaking gasoline tanks. This chemical has been shown to damage the kidneys, liver, and nervous system of laboratory animals such as rats exposed to high levels during their lifetimes. EPA has set the drinking water standard for ethylbenzene at 0.7 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to ethylbenzene.

41. Ethylene dibromide (EDB). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that EDB is a health concern at certain levels of exposure. This organic chemical was once a popular pesticide. When soil and climatic conditions are favorable, EDB may get into drinking water by runoff into surface water or by leaching into groundwater. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for EDB at 0.00005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to EDB.

42. Fluoride. The U.S. Environmental Protection Agency requires that we send you this notice on the level of fluoride in your drinking water. The drinking water in your community has a fluoride concentration of \_\_\_\_\_ (the public water supply shall insert the compliance result which triggered notification under this subrule) milligrams per liter (mg/L).

Federal regulations require that fluoride, which occurs naturally in your water supply, not exceed a concentration of 4.0 mg/L in drinking water. This is an enforceable standard called a Maximum Contaminant Level (MCL), and it has been established to protect the public health. Exposure to drinking water levels above 4.0 mg/L for many years may result in some cases of crippling skeletal fluorosis, which is a serious bone disorder.

Federal law also requires that we notify you when monitoring indicates that the fluoride in your drinking water exceeds 2.0 mg/L. This is intended to alert families about dental problems that might affect children under nine years of age. The fluoride concentration of your water exceeds this federal guideline.

Fluoride in children's drinking water at levels of approximately 1 mg/L reduces the number of dental cavities. However, some children exposed to levels of fluoride greater than about 2.0 mg/L may develop dental fluorosis. Dental fluorosis, in its moderate and severe forms, is a brown staining or pitting of the permanent teeth.

Because dental fluorosis occurs only when developing teeth (before they erupt from the gums) are exposed to elevated fluoride levels, households without children are not expected to be affected by this level of fluoride. Families with children under the age of nine are encouraged to seek other sources of drinking water for their children to avoid the possibility of staining and pitting.

Your water supplier can lower the concentration of fluoride in your water so that you will still receive the benefits of cavity prevention while the possibility of stained and pitted teeth is minimized. Removal of fluoride may increase your water costs. Treatment systems are also commercially available for home use. Information on such systems is available at the address given below. Low fluoride bottled drinking water that would meet all standards is also commercially available.

For further information, contact \_\_\_\_\_ (the public water supply shall insert the name, address, and telephone number of a contact person at the public water system) at your water system.

43. Glyphosate. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that glyphosate is a health concern at certain levels of exposure. This organic chemical is a herbicide used to control grasses and weeds. It may get into drinking water by runoff into surface water. This chemical has been shown to cause damage to the liver and kidneys in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for glyphosate at 0.7 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to glyphosate.

44. Heptachlor. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that heptachlor is a health concern at certain levels of exposure. This organic chemical was once a popular pesticide. When soil and climatic conditions are favorable, heptachlor may get into drinking water by runoff into surface water or by leaching into groundwater. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standards for heptachlor at 0.0004 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to heptachlor.

45. Heptachlor epoxide. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that heptachlor epoxide is a health concern at certain levels of exposure. This organic chemical was once a popular pesticide. When soil and climatic conditions are favorable, heptachlor epoxide may get into drinking water by runoff into surface water or by leaching into groundwater. This chemical has been shown to cause cancer in lab-

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oratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standards for heptachlor epoxide at 0.0002 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to heptachlor epoxide.

46. Hexachlorobenzene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that hexachlorobenzene is a health concern at certain levels of exposure. This organic chemical is produced as an impurity in the manufacture of certain solvents and pesticides. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed to high levels during their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for hexachlorobenzene at 0.001 parts per million (ppm) to protect against the risk of cancer and other adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to hexachlorobenzene.

47. Hexachlorocyclopentadiene. The United States Environmental Protection Agency (EPA) establishes drinking water standards and has determined that hexachlorocyclopentadiene is a health concern at certain levels of exposure. This organic chemical is used as an intermediate in the manufacture of pesticides and flame retardants. It may get into water by discharge from production facilities. This chemical has been shown to damage the kidneys and the stomach of laboratory animals when exposed at high levels over their lifetimes. EPA has set the drinking water standard for hexachlorocyclopentadiene at 0.05 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to hexachlorocyclopentadiene.

48. Lead. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that lead is a health concern at certain exposure levels. Materials that contain lead have frequently been used in the construction of water supply distribution systems, and plumbing systems in private homes and other buildings. The most commonly found materials include service lines, pipes, brass and bronze fixtures, and solders and fluxes. Lead in these materials can contaminate drinking water as a result of the corrosion that takes place when water comes into contact with those materials. Lead can cause a variety of adverse health effects in humans. At relatively low levels of exposure, these effects may include interference with red blood cell chemistry, delays in normal physical and mental development in babies and young children, slight deficits in the attention span, hearing, and learning abilities of children, and slight increases in the blood pressure of some adults. EPA's national primary drinking water regulation requires all public water systems to optimize corrosion control to minimize lead contamination resulting from the corrosion of plumbing materials. Public water systems serving 50,000 people or fewer that have lead concentrations below 15 parts per billion (ppb) in more than 90 percent of tap water samples (the EPA "action level") have optimized their corrosion control treatment. Any water system that exceeds the action

level must also monitor its source water to determine whether treatment to remove lead in source water is needed. Any water system that continues to exceed the action level after installation of corrosion control or source water treatment must eventually replace all lead service lines contributing in excess of 15 ppb of lead to drinking water. Any water system that exceeds the action level must also undertake a public education program to inform consumers of ways they can reduce their exposure to potentially high levels of lead in drinking water.

49. Lindane. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that lindane is a health concern at certain levels of exposure. This organic chemical is used as a pesticide. When soil and climatic conditions are favorable, lindane may get into drinking water by runoff into surface water or by leaching into groundwater. This chemical has been shown to damage the liver, kidneys, nervous system, and immune system of laboratory animals such as rats, mice and dogs exposed at high levels during their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the nervous system and circulatory system. EPA has established the drinking water standard for lindane at 0.0002 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to lindane.

50. Mercury. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that mercury is a health concern at certain levels of exposure. This inorganic metal is used in electrical equipment and some water pumps. It usually gets into water as a result of improper waste disposal. This chemical has been shown to damage the kidneys of laboratory animals such as rats when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for mercury at 0.002 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to mercury.

51. Methoxychlor. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that methoxychlor is a health concern at certain levels of exposure. This organic chemical is used as a pesticide. When soil and climatic conditions are favorable, methoxychlor may get into drinking water by runoff into surface water or by leaching into groundwater. This chemical has been shown to damage the liver, kidneys, nervous system, and reproductive system of laboratory animals such as rats exposed at high levels during their lifetimes. It has also been shown to produce growth retardation in rats. EPA has set the drinking water standard for methoxychlor at 0.04 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to methoxychlor.

52. Microbiological contaminants (for use when there is a violation of the treatment technique requirements for filtration and disinfection in 567—43.5(455B)). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of microbiological contaminants is a health concern at certain levels of exposure. If water is inadequately treated, microbiological contaminants in that water may cause disease. Disease symptoms may include diarrhea, cramps, nausea, and

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possibly jaundice, and any associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than drinking water. EPA has set enforceable requirements for treating drinking water to reduce the risk of these adverse health effects. Treatment such as filtering and disinfecting the water removes or destroys microbiological contaminants. Drinking water which is treated to meet EPA requirements is associated with little or no risk and should be considered safe.

53. Monochlorobenzene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that monochlorobenzene is a health concern at certain levels of exposure. This organic chemical is used as a solvent. It generally gets into water by improper waste disposal. This chemical has been shown to damage the liver, kidneys and nervous system of laboratory animals such as rats and mice exposed to high levels during their lifetimes. EPA has set the drinking water standard for monochlorobenzene at 0.1 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to monochlorobenzene.

54. Nitrate. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that nitrate poses an acute health concern at certain levels of exposure. Nitrate is used in fertilizer and is found in sewage and wastes from humans or farm animals and generally gets into drinking water from those activities. Excessive levels of nitrate in drinking water have caused serious illness and sometimes death in infants under six months of age. The serious illness in infants is caused because nitrate is converted to nitrite in the body. Nitrite interferes with the oxygen carrying capacity of the child's blood. This is an acute disease in that symptoms can develop rapidly in infants. In most cases, health deteriorates over a period of days. Symptoms include shortness of breath and blueness of the skin. Clearly, expert medical advice should be sought immediately if these symptoms occur. The purpose of this notice is to encourage parents and other responsible parties to provide infants with an alternate source of drinking water. Local and state health authorities are the best source for information concerning alternate sources of drinking water for infants. EPA has set the drinking water standard at 10 parts per million (ppm) for nitrate to protect against the risk of these adverse effects. EPA has also set a drinking water standard for nitrite at 1 ppm. To allow for the fact that the toxicity of nitrate and nitrite is additive, EPA has also established a standard for the sum of nitrate and nitrite at 10 ppm. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to nitrate.

55. Nitrite. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that nitrite poses an acute health concern at certain levels of exposure. This inorganic chemical is used in fertilizers and is found in sewage and wastes from humans or farm animals and generally gets into drinking water as a result of those activities. While excessive levels of nitrite in drinking water have not been observed, other sources of nitrite have caused serious illness and sometimes death in infants under six months of age. The serious illness in infants is caused because nitrite interferes with the oxygen carrying capacity of the child's blood. This is an acute disease in that symptoms can develop rapidly. However, in most cases, health deteriorates over a period of days. Symptoms include shortness of breath and blueness of the skin. Clearly, expert medical ad-

vice should be sought immediately if these symptoms occur. The purpose of this notice is to encourage parents and other responsible parties to provide infants with an alternate source of drinking water. Local and state health authorities are the best source for information concerning alternate sources of drinking water for infants. EPA has set the drinking water standard at 1 part per million (ppm) for nitrite to protect against the risk of these adverse effects. EPA has also set a drinking water standard for nitrate (converted to nitrite in humans) at 10 ppm and for the sum of nitrate and nitrite at 10 ppm. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to nitrite.

56. Oxamyl. The United States Environmental Protection Agency (EPA) establishes drinking water standards and has determined that oxamyl is a health concern at certain levels of exposure. This organic chemical is used as a pesticide for the control of insects and other pests. It may get into drinking water by runoff into surface water or leaching into groundwater. This chemical has been shown to damage the kidneys of laboratory animals such as rats when exposed at high levels over their lifetimes. EPA has set the drinking water standard for oxamyl at 0.2 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to oxamyl.

57. Pentachlorophenol. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that pentachlorophenol is a health concern at certain levels of exposure. This organic chemical is used as a wood preservative, herbicide, disinfectant, and defoliant. It generally gets into drinking water by runoff into surface water or leaching into groundwater. This chemical has been shown to produce adverse reproductive effects and to damage the liver and kidneys of laboratory animals such as rats exposed to high levels during their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the liver and kidneys. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for pentachlorophenol at 0.001 parts per million (ppm) to protect against the risk of cancer or other adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to pentachlorophenol.

58. Picloram. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that picloram is a health concern at certain levels of exposure. This organic chemical is used as a pesticide for broadleaf weed control. It may get into drinking water by runoff into surface water or leaching into groundwater as a result of pesticide application and improper waste disposal. This chemical has been shown to cause damage to the kidneys and liver in laboratory animals such as rats when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for picloram at 0.5 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to picloram.



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59. Polychlorinated biphenyls (PCBs). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that polychlorinated biphenyls (PCBs) are a health concern at certain levels of exposure. These organic chemicals were once widely used in electrical transformers and other industrial equipment. They generally get into drinking water by improper waste disposal or leaking electrical industrial equipment. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for PCBs at 0.0005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to PCBs.

60. Selenium. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that selenium is a health concern at certain high levels of exposure. Selenium is also an essential nutrient at low levels of exposure. This inorganic chemical is found naturally in food and soils and is used in electronics, photocopy operations, the manufacture of glass, chemicals, drugs, and as a fungicide and a feed additive. In humans, exposure to high levels of selenium over a long period of time has resulted in a number of adverse health effects, including a loss of feeling and control in the arms and legs. EPA has set the drinking water standard for selenium at 0.05 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to selenium.

61. Simazine. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that simazine is a health concern at certain levels of exposure. This organic chemical is a herbicide used to control annual grasses and broadleaf weeds. It may leach into groundwater or run off into surface water after application. This chemical may cause cancer in laboratory animals such as rats and mice exposed at high levels during their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for simazine at 0.004 parts per million (ppm) to reduce the risk of cancer or other adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to simazine.

62. Styrene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that styrene is a health concern at certain levels of exposure. This organic chemical is commonly used to make plastics and is sometimes a component of resins used for drinking water treatment. Styrene may get into drinking water from improper waste disposal. This chemical has been shown to damage the liver and nervous system in laboratory animals when exposed at high levels during their lifetimes. EPA has set the drinking water standard for styrene at 0.1 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to styrene.

63. 2,3,7,8-TCDD (Dioxin). The United States Environmental Protection Agency (EPA) sets drinking water stan-

dards and has determined that dioxin is a health concern at certain levels of exposure. This organic chemical is an impurity in the production of some pesticides. It may get into drinking water by industrial discharge of wastes. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for dioxin at 0.00000003 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe with respect to dioxin.

64. 2,4,5-TP. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 2,4,5-TP is a health concern at certain levels of exposure. This organic chemical is used as a herbicide. When soil and climatic conditions are favorable, 2,4,5-TP may get into drinking water by runoff into surface water or by leaching into groundwater. This chemical has been shown to damage the liver and kidneys of laboratory animals such as rats and dogs exposed to high levels during their lifetimes. Some industrial workers who were exposed to relatively large amounts of this chemical during working careers also suffered damage to the nervous system. EPA has set the drinking water standard for 2,4,5-TP at 0.05 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to 2,4,5-TP.

65. Tetrachloroethylene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that tetrachloroethylene is a health concern at certain levels of exposure. This organic chemical has been a popular solvent, particularly for dry cleaning. It generally gets into drinking-water by improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for tetrachloroethylene at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to tetrachloroethylene.

66. Thallium. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that thallium is a health concern at certain high levels of exposure. This inorganic metal is found naturally in soils and is used in electronics, pharmaceuticals, and the manufacture of glass and alloys. This chemical has been shown to damage the kidneys, liver, brain and intestines of laboratory animals when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for thallium at 0.002 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to thallium.

67. Toluene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that toluene is a health concern at certain levels of

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exposure. This organic chemical is used as a solvent and in the manufacture of gasoline for airplanes. It generally gets into water by improper waste disposal or leaking underground storage tanks. This chemical has been shown to damage the kidneys, nervous system, and circulatory system of laboratory animals such as rats and mice exposed to high levels during their lifetimes. Some industrial workers who were exposed to relatively large amounts of this chemical during working careers also suffered damage to the liver, kidneys and nervous system. EPA has set the drinking water standard for toluene at 1 part per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to toluene.

68. Toxaphene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that toxaphene is a health concern at certain levels of exposure. This organic chemical was once a pesticide widely used on cotton, corn, soybeans, pineapples and other crops. When soil and climatic conditions are favorable, toxaphene may get into drinking water by runoff into surface water or by leaching into groundwater. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for toxaphene at 0.003 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to toxaphene.

69. 1,2,4-Trichlorobenzene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,2,4-trichlorobenzene is a health concern at certain levels of exposure. This organic chemical is used as a dye carrier and as a precursor in herbicide manufacture. It generally gets into drinking water by discharges from industrial activities. This chemical has been shown to cause damage to several organs, including the adrenal glands. EPA has set the drinking water standard for 1,2,4-trichlorobenzene at 0.07 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to 1,2,4-trichlorobenzene.

70. 1,1,1-Trichloroethane. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,1,1-trichloroethane is a health concern at certain levels of exposure. This chemical is used as a cleaner and degreaser of metals. It generally gets into drinking water by improper waste disposal. This chemical has been shown to damage the liver, nervous system, and circulatory system of laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Some industrial workers who were exposed to relatively large amounts of this chemical during their working careers also suffered damage to the liver, nervous system, and circulatory system. Chemicals which cause adverse effects among exposed industrial workers and in laboratory animals also may cause adverse health effects in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for 1,1,1-trichloroethane at 0.2 parts per million (ppm) to protect against the risk of these adverse health effects which have been observed in humans and laboratory animals. Drinking

water which meets this standard is associated with little to none of this risk and should be considered safe.

71. 1,1,2-Trichloroethane. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,1,2-trichloroethane is a health concern at certain levels of exposure. This organic chemical is an intermediate in the production of 1,1-dichloroethylene. It generally gets into water by industrial discharge of wastes. This chemical has been shown to damage the kidneys and liver of laboratory animals such as rats exposed to high levels during their lifetimes. EPA has set the drinking water standard for 1,1,2-trichloroethane at 0.005 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to 1,1,2-trichloroethane.

72. Trichloroethylene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that trichloroethylene is a health concern at certain levels of exposure. This chemical is a common metal-cleaning and dry-cleaning fluid. It generally gets into drinking water by improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set forth the enforceable drinking water standard for trichloroethylene at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

73. Vinyl chloride. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that vinyl chloride is a health concern at certain levels of exposure. This chemical is used in industry and is found in drinking water as a result of the breakdown of related solvents. The solvents are used as cleaners and degreasers of metals and generally get into drinking water by improper waste disposal. This chemical has been associated with significantly increased risks of cancer among certain industrial workers who were exposed to relatively large amounts of this chemical during their working careers. This chemical has also been shown to cause cancer in laboratory animals when the animals are exposed at high levels over their lifetimes. Chemicals that cause increased risk of cancer among exposed industrial workers and in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for vinyl chloride at 0.002 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in humans and laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

74. Xylene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that xylene is a health concern at certain levels of exposure. This organic chemical is used in the manufacture of gasoline for airplanes and as a solvent for pesticides, and as a cleaner and degreaser of metals. It usually gets into water by improper waste disposal. This chemical has been shown to damage the liver, kidneys and nervous system of laboratory animals such as rats and dogs exposed to high levels during

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their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the nervous system. EPA has set the drinking water standard for xylene at 10 parts per million (ppm) to protect against the

risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to xylene.

APPENDIX B: Minimum Self-Monitoring Requirements (SMR)

I. Minimum Self-Monitoring Requirements for TNCs (excluding surface water or influenced groundwater PWSs)

Notes:

- The self-monitoring requirements (SMRs) only apply to those supplies meeting the criteria in 42.4(3)“a”(1).
- TNCs are exempt from the self-monitoring requirements for point-of-use treatment devices, unless the device is used to remove a contaminant which has a health-based standard, in which case additional SMRs will be assigned by the department.
- Daily monitoring for TNCs applies only when the facility is in operation.
- Additional or more frequent monitoring requirements may be assigned by the department in the operation permit.
- Additional SMRs are required if treatment is used to remove a regulated contaminant. See Section II for the requirements under the specific treatment type.

General Requirements

All TNCs which meet the criteria in 42.4(3)“a”(1) must measure the following parameters, where applicable. Additional SMRs are required if treatment is used to remove a contaminant which has a health-based standard. See Section II for the requirements under the specific treatment type.

Parameter	PWS Type:		TNC*
	Sample Site		Frequency
Pumpage (Flow)	raw:		1/week
	final:		1/week
Disinfectant Residual	final:		1/day
	distribution system**:		1/day
Disinfectant, quantity used	day tank/scale		1/day
Static Water and Pumping Water Levels (Drawdown)	each active well:		1/month

\*TNCs must measure and record the total water used each week, but daily measurements are recommended, and may be required by the department in specific PWSs.

\*\*Monitoring is to be conducted at representative points in the distribution system which adequately demonstrate compliance with 42.4(3)“b”(1).

II. Minimum Self-Monitoring Requirements for CWS, NTNC, and IGW/SW TNC

Notes:

- The self-monitoring requirements (SMR) only apply to those supplies meeting the criteria in 42.4(3)“a”(1).
- NTNCs are exempt from the self-monitoring requirements for point-of-use treatment devices, unless the device is used to remove a contaminant which has a health-based standard, in which case additional SMRs will be assigned by the department.
- Daily monitoring for NTNCs applies only when the facility is in operation.
- These are the minimum self-monitoring requirements. Additional or more frequent monitoring requirements may be assigned by the department in the operation permit.

A. General Requirements

All PWSs which meet the criteria in 42.4(3)“a”(1) must measure the following parameters, where applicable:

Parameter	PWS Type:		NTNC*	CWS
	Sample Site		Frequency	Frequency
Pumpage (Flow)	raw:		1/week	1/day
	bypass:		1/week	1/day
	final:		1/week	1/day
Static Water and Pumping Water Levels (Drawdown)	each active well:		1/month	1/month

\*NTNCs must measure and record the total water used each week, but daily measurements are recommended, and may be required by the department in specific PWSs.

B. Chemical Addition

All PWSs which apply chemicals in the treatment process must monitor the following parameters, for the applicable processes:

Parameter	Pumpage or Flow:	0.025-0.1 MGD	0.1-0.5 MGD	>0.5 MGD
	Sample Site	Frequency	Frequency	Frequency
<b>DISINFECTION</b>				
Disinfectant Residual	final:	1/day	1/day	1/day
	distribution system*:	1/day	1/day	1/day
Disinfectant, quantity used	day tank/scale	1/day	1/day	1/day

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FLUORIDATION				
Fluoride	raw:	1/quarter	1/month	1/month
	final:	1/day	1/day	1/day
Fluoride, quantity used	day tank/scale:	1/day	1/day	1/day
pH ADJUSTMENT				
pH	final:	1/week	2/week	1/day
Caustic Soda, quantity used	day tank/scale:	1/week	1/week	1/week
PHOSPHATE ADDITION				
Phosphate, as PO <sub>4</sub>	final:	1/week	2/week	1/day
Phosphate, quantity used	day tank/scale:	1/week	1/week	1/week
OTHER CHEMICALS				
Chemical	final:	1/week	2/week	1/day
Chemical, quantity used	day tank/scale:	1/week	1/week	1/week

\*Monitoring is to be conducted at representative points in the distribution system which adequately demonstrate compliance with 42.4(3)"b"(1).

C. Iron or Manganese Removal

Nonmunicipalities except rural water systems, benefited water districts, and publicly owned PWSs are exempt from monitoring of iron/manganese removal equipment unless the treatment is or was installed to remove a contaminant which has a health-based standard. Any chemicals which are applied during the treatment process must be measured under section "B. Chemical Addition" of this table.

Parameter	Pumpage or Flow:	0.025-0.1 MGD	0.1-0.5 MGD	>0.5 MGD
	Sample Site	Frequency	Frequency	Frequency
Iron	raw:	1/quarter	1/month	1/month
	final:	1/week	2/week	1/day
Manganese	raw:	1/quarter	1/month	1/month
	final:	1/week	2/week	1/day

D. pH Adjustment for Iron and Manganese Removal, by precipitation and coagulation processes utilizing lime, soda ash, or other chemical additions. Testing is only required if a specific chemical is added.

Parameter	Pumpage or Flow:	0.025-0.1 MGD	0.1-0.5 MGD	>0.5 MGD
	Sample Site	Frequency	Frequency	Frequency
Alkalinity	raw:	1/quarter	1/month	1/month
	final:	1/week	2/week	1/day
Iron	raw:	1/quarter	1/month	1/month
	final:	1/week	2/week	1/day
Manganese	raw:	1/quarter	1/month	1/month
	final:	1/week	2/week	1/day
pH	raw:	1/week	1/week	1/week
	final:	1/week	2/week	1/day

E. Cation-e Exchange (Zeolite) Softening

Nonmunicipalities except for rural water systems and benefited water districts are exempt from the monitoring of water quality parameters associated with ion-exchange softening unless the treatment is or was installed to remove a contaminant which has a health-based standard.

Parameter	Pumpage or Flow:	0.025-0.1 MGD	0.1-0.5 MGD	>0.5 MGD
	Sample Site	Frequency	Frequency	Frequency
Hardness as CaCO <sub>3</sub>	raw:	1/quarter	1/month	1/month
	final:	1/week	2/week	1/day
pH	final:	1/week	2/week	1/day
Sodium	final:	1/year	1/year	1/year

F. Direct Filtration of Surface Waters or Influenced Groundwaters

Parameter	Pumpage or Flow:	All
	Sample Site	Frequency
CT Ratio	final:	1/day
Disinfectant Residual	source/entry point: distribution system*:	see 567—subrules 43.5(2) and 43.5(4) for the specific requirements

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Parameter	Sample Site	Frequency
Disinfectant, quantity used	day tank/scale:	1/day
pH	final:	1/day
Temperature	raw:	1/day
Turbidity	raw: final:	see 567—subrules 43.5(3) and 43.5(4) for the specific requirements

\*Monitoring is to be conducted at representative points in the distribution system which adequately demonstrate compliance with 567—subrule 43.5(2) and 567—subrule 43.5(4).

## G. Clarification or Lime Softening of Surface Waters or Influenced Groundwaters

Parameter	Pumpage or Flow:	All
	Sample Site	Frequency
Alkalinity	raw:	1/day
	final:	1/day
Caustic Soda, quantity used	day tank/scale:	1/week
CT Ratio	final:	1/day
Disinfectant Residual	source/entry point: distribution system*:	see 567—subrules 43.5(2) and 43.5(4) for the specific requirements
Disinfectant, quantity used	day tank/scale:	1/day
Hardness as CaCO <sub>3</sub>	raw:	1/day
	final:	1/day
Odor	raw:	1/week
	final:	1/day
pH	final:	1/day 1/day
Temperature	raw:	1/day
Turbidity	raw: final:	see 567—subrules 43.5(3) and 43.5(4) for the specific requirements

\*Monitoring is to be conducted at representative points in the distribution system which adequately demonstrate compliance with 567—subrule 43.5(2) and 567—subrule 43.5(4).

## H. Lime Softening of Groundwaters (excluding IGW)

Parameter	Pumpage or Flow:	0.025-0.1 MGD	>0.1 MGD
	Sample Site	Frequency	Frequency
Alkalinity	raw:	1/quarter	1/month
	final:	1/day	1/day
Hardness as CaCO <sub>3</sub>	raw:	1/quarter	1/month
	final:	1/day	1/day
pH	raw:	1/week	1/week
	final:	1/day	1/day
Temperature	raw:	1/week	1/week

## I. Reverse Osmosis or Electrodialysis

Parameter	Pumpage or Flow:	0.025-0.1 MGD	>0.1 MGD
	Sample Site	Frequency	Frequency
Alkalinity	raw:	1/quarter	1/month
	final:	1/day	1/day
Hardness as CaCO <sub>3</sub>	raw:	1/quarter	1/month
	final:	1/day	1/day
Iron	raw:	1/day	1/day
Manganese	raw:	1/day	1/day
pH	raw:	1/week	1/week
	final:	1/day	1/day
Total Dissolved Solids	raw:	1/month	1/month

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

J. Anion Exchange (i.e., Nitrate Reduction)

Parameter	Pumpage or Flow:	0.025-0.1 MGD	>0.1 MGD
	Sample Site	Frequency	Frequency
Nitrate	raw:	1/day	1/day
	final:	1/day	1/day
Sulfate	raw:	1/week	1/week
	final:	1/week	1/week

K. Activated Carbon for TTHM, VOC, or SOC Removal (GAC or PAC)

Parameter	Pumpage or Flow:	0.025-0.1 MGD	>0.1 MGD
	Sample Site	Frequency	Frequency
Total Organic Carbon (TOC)	final:	1/quarter	1/month

L. Air-Stripping for TTHM, VOC, or SOC Removal

Parameter	Pumpage or Flow:	0.025-0.1 MGD	>0.1 MGD
	Sample Site	Frequency	Frequency
Total Organic Carbon (TOC)	final:	1/quarter	1/month

M. Lead and Copper: Corrosion Control and Water Quality Parameters

The specific SMRs for corrosion control and water quality parameters are listed in 567—paragraph 41.4(1)“d” and 567—subrules 43.8(1) and 43.8(2).

N. Consecutive PWSs Supplied by a Surface Water or IGW PWS

Parameter	Pumpage or Flow:	All
	Sample Site	Frequency
Disinfectant Residual	source/entry point:	1/day
	distribution system*:	1/day
Disinfectant, quantity used (if applicable)	day tank/scale:	1/day
Pumpage or Flow	master meter:	1/day

\*Monitoring is to be conducted at representative points in the distribution system.

APPENDIX C:

CONVERTING MCL COMPLIANCE VALUES FOR CONSUMER CONFIDENCE REPORTS

Key

- AL Action Level
- MCL Maximum Contaminant Level
- MCLG Maximum Contaminant Level Goal
- MFL million fibers per liter
- mrem/year millirems per year (a measure of radiation absorbed by the body)
- NTU nephelometric turbidity units
- pCi/L picocuries per liter (a measure of radioactivity)
- ppb parts per billion, or micrograms per liter (µg/L)
- ppm parts per million, or milligrams per liter (mg/L)
- ppq parts per quadrillion, or picograms per liter (pg/L)
- ppt parts per trillion, or nanograms per liter (ng/L)
- TT Treatment Technique

MICROBIOLOGICAL CONTAMINANTS

Contaminant	MCL in compliance units (mg/L)	multiply by...	MCL in CCR units	MCLG in CCR units
Total coliform bacteria			presence of coliform bacteria in ≥ 5% of monthly samples	0
Fecal coliform and E. coli			A routine sample and a repeat sample are total coliform positive, and one is also fecal coliform or E. coli positive	0
Turbidity			TT (NTU)	n/a

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

## RADIONUCLIDE CONTAMINANTS

Contaminant	MCL in compliance units (mg/L)	multiply by...	MCL in CCR units	MCLG in CCR units
Beta/photon emitters	4 mrem/yr		4 mrem/yr	0
Alpha emitters	15 pCi/L		15 pCi/L	0
Combined radium	5 pCi/L		5 pCi/L	0

## INORGANIC CONTAMINANTS

Contaminant	MCL in compliance units (mg/L)	multiply by...	MCL in CCR units	MCLG in CCR units
Antimony	0.006	1000	6 ppb	6
Arsenic	0.05	1000	50 ppb	n/a
Asbestos	7 MFL		7 MFL	7
Barium	2		2 ppm	2
Beryllium	0.004	1000	4 ppb	4
Cadmium	0.005	1000	5 ppb	5
Chromium	0.1	1000	100 ppb	100
Copper	AL = 1.3		AL=1.3 ppm	1.3
Cyanide	0.2	1000	200 ppb	200
Fluoride	4		4 ppm	4
Lead	AL = 0.015	1000	AL=15 ppb	0
Mercury (inorganic)	0.002	1000	2 ppb	2
Nitrate (as Nitrogen)	10		10 ppm	10
Nitrite (as Nitrogen)	1		1 ppm	1
Selenium	0.05	1000	50 ppb	50
Thallium	0.002	1000	2 ppb	0.5

## SYNTHETIC ORGANIC CONTAMINANTS, including Pesticides and Herbicides

Contaminant	MCL in compliance units (mg/L)	multiply by...	MCL in CCR units	MCLG in CCR units
2,4-D	0.07	1000	70 ppb	70
2,4,5-TP (Silvex)	0.05	1000	50 ppb	50
Acrylamide	0		TT	0
Alachlor	0.002	1000	2 ppb	0
Atrazine	0.003	1000	3 ppb	3
Benzo(a)pyrene [PAHs]	0.0002	1,000,000	200 ppt	0
Carbofuran	0.04	1000	40 ppb	40
Chlordane	0.002	1000	2 ppb	0
Dalapon	0.2	1000	200 ppb	200
Di (2-ethylhexyl) adipate	0.4	1000	400 ppb	400
Di (2-ethylhexyl) phthalate	0.006	1000	6 ppb	0
Dibromochloropropane	0.0002	1,000,000	200 ppt	0
Dinoseb	0.007	1000	7 ppb	7
Diquat	0.02	1000	20 ppb	20
Dioxin [2,3,7,8-TCDD]	0.00000003	1,000,000,000	30 ppq	0
Endothall	0.1	1000	100 ppb	100
Endrin	0.002	1000	2 ppb	2
Epichlorohydrin			TT	0
Ethylene dibromide	0.00005	1,000,000	50 ppt	0
Glyphosate	0.7	1000	700 ppb	700
Heptachlor	0.0004	1,000,000	400 ppt	0
Heptachlor epoxide	0.0002	1,000,000	200 ppt	0

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Contaminant	MCL in compliance units (mg/L)	multiply by...	MCL in CCR units	MCLG in CCR units
Hexachlorobenzene	0.001	1000	1 ppb	0
Hexachlorocyclopentadiene	0.05	1000	50 ppb	50
Lindane	0.0002	1,000,000	200 ppt	200
Methoxychlor	0.04	1000	40 ppb	40
Oxamyl [Vydate]	0.2	1000	200 ppb	200
PCBs [Polychlorinated biphenyls]	0.0005	1,000,000	500 ppt	0
Pentachlorophenol	0.001	1000	1 ppb	0
Picloram	0.5	1000	500 ppb	500
Simazine	0.004	1000	4 ppb	4
Toxaphene	0.003	1000	3 ppb	0

VOLATILE ORGANIC CONTAMINANTS

Contaminant	MCL in compliance units (mg/L)	multiply by...	MCL in CCR units	MCLG in CCR units
Benzene	0.005	1000	5 ppb	0
Carbon tetrachloride	0.005	1000	5 ppb	0
Chlorobenzene	0.1	1000	100 ppb	100
o-Dichlorobenzene	0.6	1000	600 ppb	600
p-Dichlorobenzene	0.075	1000	75 ppb	75
1,2-Dichloroethane	0.005	1000	5 ppb	0
1,1-Dichloroethylene	0.007	1000	7 ppb	7
cis-1,2-Dichloroethylene	0.07	1000	70 ppb	70
trans-1,2-Dichloroethylene	0.1	1000	100 ppb	100
Dichloromethane	0.005	1000	5 ppb	0
1,2-Dichloropropane	0.005	1000	5 ppb	0
Ethylbenzene	0.7	1000	700 ppb	700
Styrene	0.1	1000	100 ppb	100
Tetrachloroethylene	0.005	1000	5 ppb	0
1,2,4-Trichlorobenzene	0.07	1000	70 ppb	70
1,1,1-Trichloroethane	0.2	1000	200 ppb	200
1,1,2-Trichloroethane	0.005	1000	5 ppb	3
Trichloroethylene	0.005	1000	5 ppb	0
THM [Total trihalomethanes]	0.1	1000	100 ppb	0
Toluene	1		1 ppm	1
Vinyl Chloride	0.002	1000	2 ppb	0
Xylene	10		10 ppm	10

APPENDIX D:  
REGULATED CONTAMINANTS TABLES FOR CONSUMER CONFIDENCE REPORTS

Key

AL	Action Level	ppb	parts per billion, or micrograms per liter (µg/L)
MCL	Maximum Contaminant Level		
MCLG	Maximum Contaminant Level Goal	ppm	parts per million, or milligrams per liter (mg/L)
MFL	million fibers per liter		
mrem/year	millirems per year (a measure of radiation absorbed by the body)	ppq	parts per quadrillion, or picograms per liter (pg/L)
NTU	nephelometric turbidity units	ppt	parts per trillion, or nanograms per liter (ng/L)
pCi/L	picocuries per liter (a measure of radioactivity)	TT	Treatment Technique



## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

## MICROBIOLOGICAL CONTAMINANTS

Contaminant (units)	MCLG	MCL	Major Source in drinking water
Total coliform bacteria	0	presence of coliform bacteria in >5% of monthly samples	Naturally present in the environment
Fecal coliform and E. coli	0	A routine sample and a repeat sample are total coliform positive, and one is also fecal coliform or E. coli positive	Human and animal fecal waste
Turbidity	N/A	TT	Soil runoff

## RADIONUCLIDE CONTAMINANTS

Contaminant (units)	MCLG	MCL	Major Source in drinking water
Beta/photon emitters (mrem/yr)	0	4	Decay of natural and man-made deposits
Alpha emitters (pCi/L)	0	15	Erosion of natural deposits
Combined radium (pCi/L)	0	5	Erosion of natural deposits

## INORGANIC CONTAMINANTS

Contaminant (units)	MCLG	MCL	Major Source in drinking water
Antimony (ppb)	6	6	Discharge from petroleum refineries; fire retardants; ceramics; electronics; solder
Arsenic (ppb)	N/A	50	Erosion of natural deposits; runoff from orchards; natural deposits; runoff from glass and electronic production wastes
Asbestos (MFL)	7	7	Decay of asbestos cement water mains; erosion of natural deposits
Barium (ppm)	2	2	Discharge of drilling wastes; discharge from metal refineries; erosion of natural deposits
Beryllium (ppb)	4	4	Discharge from metal refineries and coal-burning factories; discharge from electrical, aerospace, and defense industries
Cadmium (ppb)	5	5	Corrosion of galvanized pipes; erosion of natural deposits; discharge from metal refineries; runoff from waste batteries and paints
Chromium (ppb)	100	100	Discharge from steel and pulp mills; erosion of natural deposits
Copper (ppm)	1.3	AL=1.3	Corrosion of household plumbing systems; erosion of natural deposits; leaching from wood preservatives
Cyanide (ppb)	200	200	Discharge from steel/metal factories; discharge from plastic and fertilizer factories
Fluoride (ppm)	4	4	Water additive which promotes strong teeth; erosion of natural deposits; discharge from fertilizer and aluminum factories
Lead (ppb)	0	AL=15	Corrosion of household plumbing systems; erosion of natural deposits
Mercury [inorganic] (ppb)	2	2	Erosion of natural deposits; discharge from refineries and factories; runoff from landfills; runoff from cropland
Nitrate [as N] (ppm)	10	10	Runoff from fertilizer use; leaching from septic tanks, sewage; erosion of natural deposits
Nitrite [as N] (ppm)	1	1	Runoff from fertilizer use; leaching from septic tanks, sewage; erosion of natural deposits
Selenium (ppb)	50	50	Discharge from petroleum and metal refineries; erosion of natural deposits; discharge from mines
Thallium (ppb)	0.5	2	Leaching from ore-processing sites; discharge from electronics, glass, and drug factories

## SYNTHETIC ORGANIC CONTAMINANT, including Pesticides and Herbicides

Contaminant (units)	MCLG	MCL	Major Source in drinking water
2,4-D (ppb)	70	70	Runoff from herbicide used on row crops
2,4,5-TP (Silvex) (ppb)	50	50	Residue of banned herbicide
Acrylamide	0	TT	Added to water during sewage/wastewater treatment
Alachlor (ppb)	0	2	Runoff from herbicide used on row crops

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Contaminant (units)	MCLG	MCL	Major Source in drinking water
Atrazine (ppb)	3	3	Runoff from herbicide used on row crops
Benzo(a)pyrene [PAHs] (ppt)	0	200	Leaching from linings of water storage tanks and distribution lines
Carbofuran (ppb)	40	40	Leaching of soil fumigant used on rice and alfalfa
Chlordane (ppb)	0	2	Residue of banned termiticide
Dalapon (ppb)	200	200	Runoff from herbicide used on rights of way
Di (2-ethylhexyl)adipate (ppb)	400	400	Leaching from PVC plumbing systems; discharge from chemical factories
Di (2-ethylhexyl)phthalate (ppb)	0	6	Discharge from rubber and chemical factories
Dibromochloropropane (ppt)	0	200	Runoff/leaching from soil fumigant used on soybeans, cotton, pineapples, and orchards
Dinoseb (ppb)	7	7	Runoff from herbicide used on soybeans and vegetables
Diquat (ppb)	20	20	Runoff from herbicide use
Dioxin [2,3,7,8-TCDD] (ppq)	0	30	Emissions from waste incineration and other combustion; discharge from chemical factories
Endothall (ppb)	100	100	Runoff from herbicide use
Endrin (ppb)	2	2	Residue of banned insecticide
Epichlorohydrin	0	TT	Discharge from industrial chemical factories; an impurity of some water treatment chemicals
Ethylene dibromide (ppt)	0	50	Discharge from petroleum refineries
Glyphosate (ppb)	700	700	Runoff from herbicide use
Heptachlor (ppt)	0	400	Residue of banned termiticide
Heptachlor epoxide (ppt)	0	200	Breakdown of heptachlor
Hexachlorobenzene (ppb)	0	1	Discharge from metal refineries and agricultural chemical factories
Hexachlorocyclopentadiene (ppb)	50	50	Discharge from chemical factories
Lindane (ppt)	200	200	Runoff/leaching from insecticide used on cattle, lumber, gardens
Methoxychlor (ppb)	40	40	Runoff/leaching from insecticide used on fruits, vegetables, alfalfa, livestock
Oxamyl [Vydate] (ppb)	200	200	Runoff/leaching from insecticide used on apples, potatoes and tomatoes
PCBs (ppt) [Polychlorinated biphenyls]	0	500	Runoff from landfills; discharge of waste chemicals
Pentachlorophenol (ppb)	0	1	Discharge from wood preserving factories
Picloram (ppb)	500	500	Herbicide runoff
Simazine (ppb)	4	4	Herbicide runoff
Toxaphene (ppb)	0	3	Runoff/leaching from insecticide used on cotton and cattle

## VOLATILE ORGANIC CONTAMINANTS

Contaminant (units)	MCLG	MCL	Major Source in drinking water
Benzene (ppb)	0	5	Discharge from factories; leaching from gas storage tanks and landfills
Carbon tetrachloride (ppb)	0	5	Discharge from chemical plants and other industrial activities
Chlorobenzene (ppb)	100	100	Discharge from chemical and agricultural chemical factories
o-Dichlorobenzene (ppb)	600	600	Discharge from industrial chemical factories
p-Dichlorobenzene (ppb)	75	75	Discharge from industrial chemical factories
1,2-Dichloroethane (ppb)	0	5	Discharge from industrial chemical factories
1,1-Dichloroethylene (ppb)	7	7	Discharge from industrial chemical factories
cis-1,2-Dichloroethylene (ppb)	70	70	Discharge from industrial chemical factories
trans-1,2-Dichloroethylene (ppb)	100	100	Discharge from industrial chemical factories
Dichloromethane (ppb)	0	5	Discharge from pharmaceutical and chemical factories

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Contaminant (units)	MCLG	MCL	Major Source in drinking water
1,2-Dichloropropane (ppb)	0	5	Discharge from industrial chemical factories
Ethylbenzene (ppb)	700	700	Discharge from petroleum refineries
Styrene (ppb)	100	100	Discharge from rubber and plastic factories; leaching from landfills
Tetrachloroethylene (ppb)	0	5	Leaching from PVC pipes; discharge from factories and dry cleaners
1,2,4-Trichlorobenzene (ppb)	70	70	Discharge from textile-finishing factories
1,1,1-Trichloroethane (ppb)	200	200	Discharge from metal degreasing sites and other factories
1,1,2-Trichloroethane (ppb)	3	5	Discharge from industrial chemical factories
Trichloroethylene (ppb)	0	5	Discharge from metal degreasing sites and other factories
TTHM (ppb) [Total trihalomethanes]	0	100	By-products of drinking water chlorination
Toluene (ppm)	1	1	Discharge from petroleum factories
Vinyl Chloride (ppb)	0	2	Leaching from PVC piping; discharge from plastics factories
Xylene (ppm)	10	10	Discharge from petroleum factories; discharge from chemical factories

## APPENDIX E:

HEALTH EFFECTS LANGUAGE FOR  
CONSUMER CONFIDENCE REPORTS

## MICROBIOLOGICAL CONTAMINANTS

(1) Total coliform. Coliforms are bacteria which are naturally present in the environment and are used as an indicator that other, potentially harmful bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.

(2) Fecal coliform/E. coli. Fecal coliform and E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, and people with severely compromised immune systems.

(3) Turbidity. Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

## RADIOACTIVE CONTAMINANTS

(4) Beta/photon emitters. Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.

(5) Alpha emitters. Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. People who drink water containing these alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.

(6) Combined radium 226/228. Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.

## INORGANIC CONTAMINANTS

(7) Antimony. Some people who drink water containing antimony well in excess of the MCL over many years could

experience increases in blood cholesterol and decreases in blood sugar.

(8) Arsenic. Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.

(9) Asbestos. Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.

(10) Barium. Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.

(11) Beryllium. Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.

(12) Cadmium. Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.

(13) Chromium. Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.

(14) Copper. Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's disease should consult their personal doctor.

(15) Cyanide. Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.

(16) Fluoride. Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Children may get mottled teeth.

(17) Lead. Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

(18) Mercury (inorganic). Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.

(19) Nitrate. Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue-baby syndrome.

(20) Nitrite. Infants below the age of six months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue-baby syndrome.

(21) Selenium. Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail loss, numbness in fingers or toes, or problems with their circulation.

(22) Thallium. Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.

## SYNTHETIC ORGANIC CONTAMINANTS INCLUDING PESTICIDES AND HERBICIDES

(23) 2,4-D. Some people who drink water containing the weedkiller 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.

(24) 2,4,5-TP (Silvex). Some people who drink water containing Silvex in excess of the MCL over many years could experience liver problems.

(25) Acrylamide. Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood and may have an increased risk of getting cancer.

(26) Alachlor. Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.

(27) Atrazine. Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or difficulties with their reproductive system.

(28) Benzo(a)pyrene (PAHs). Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.

(29) Carbofuran. Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood or nervous or reproductive systems.

(30) Chlordane. Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system and may have an increased risk of getting cancer.

(31) Dalapon. Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.

(32) Dibromochloropropane (DBCP). Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.

(33) Di(2-ethylhexyl)adipate. Some people who drink water containing di(2-ethylhexyl)adipate well in excess of the MCL over many years could experience general toxic effects or reproductive difficulties.

(34) Di(2-ethylhexyl)phthalate. Some people who drink water containing di(2-ethylhexyl)phthalate in excess of the MCL over many years may have problems with their liver or experience reproductive difficulties and may have an increased risk of getting cancer.

(35) Dinoseb. Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.

(36) Dioxin (2,3,7,8-TCDD). Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.

(37) Diquat. Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.

(38) Endothall. Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.

(39) Endrin. Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.

(40) Epichlorohydrin. Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems and may have an increased risk of getting cancer.

(41) Ethylene dibromide. Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys and may have an increased risk of getting cancer.

(42) Glyphosate. Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.

(43) Heptachlor. Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.

(44) Heptachlor epoxide. Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.

(45) Hexachlorobenzene. Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, adverse reproductive effects, and may have an increased risk of getting cancer.

(46) Hexachlorocyclopentadiene. Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their stomach or kidneys.

(47) Lindane. Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.

(48) Methoxychlor. Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.

(49) Oxamyl (Vydate). Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.

(50) PCBs (Polychlorinated biphenyls). Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

(51) Pentachlorophenol. Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys and may have an increased risk of getting cancer.

(52) Picloram. Some people who drink water containing picloram well in excess of the MCL over many years could experience problems with their liver.

(53) Simazine. Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.

(54) Toxaphene. Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid and may have an increased risk of getting cancer.

**VOLATILE ORGANIC CONTAMINANTS**

(55) Benzene. Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets and may have an increased risk of getting cancer.

(56) Carbon tetrachloride. Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.

(57) Chlorobenzene. Some people who drink water containing chlorobenzene well in excess of the MCL over many years could experience problems with their kidneys or liver.

(58) o-Dichlorobenzene. Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.

(59) para-Dichlorobenzene. Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.

(60) 1,2-Dichloroethane. Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.

(61) 1,1-Dichloroethylene. Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.

(62) cis-1,2-Dichloroethylene. Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.

(63) trans-1,2-Dichloroethylene. Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.

(64) Dichloromethane. Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.

(65) 1,2-Dichloropropane. Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.

(66) Ethylbenzene. Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.

(67) Styrene. Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.

(68) Tetrachloroethylene. Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver and may have an increased risk of getting cancer.

(69) 1,2,4-Trichlorobenzene. Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.

(70) 1,1,1-Trichloroethane. Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system or circulation system.

(71) 1,1,2-Trichloroethane. Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver kidneys, or immune systems.

(72) Trichloroethylene. Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.

(73) TTHMs (Total Trihalomethanes). Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous systems and may have an increased risk of getting cancer.

(74) Toluene. Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.

(75) Vinyl chloride. Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.

(76) Xylene. Some people who drink water containing xylene in excess of the MCL over many years could experience damage to their nervous system.

**APPENDIX F:  
HEALTH EFFECTS LANGUAGE FOR FLUORIDE  
LEVELS BETWEEN 2 AND 4 MG/L**

Your public water supplier must notify customers when monitoring indicates that the fluoride in your drinking water exceeds 2.0 mg/L. This is intended to alert families about dental problems that might affect children under nine years of age. The fluoride concentration of your water exceeds this federal guideline.

Fluoride in children's drinking water at levels of approximately 1 mg/L reduces the number of dental cavities. However, some children exposed to levels of fluoride greater than about 2.0 mg/L may develop dental fluorosis. Dental fluorosis, in its moderate and severe forms, is a brown staining or pitting of the permanent teeth, or both.

Because dental fluorosis occurs only when developing teeth (before they erupt from the gums) are exposed to elevated fluoride levels, households without children are not expected to be affected by this level of fluoride.

Families with children under the age of nine are encouraged to seek other sources of drinking water for their children to avoid the possibility of staining and pitting.

Your water supplier can lower the concentration of fluoride in your water so you will still receive the benefits of cavity prevention while the possibility of stained and pitted teeth is minimized. Removal of fluoride may increase your water costs. Treatment systems are also commercially available for home use. Information on such systems is available at the address given by your public water supplier. Low-fluoride bottled drinking water that would meet all standards is also commercially available.

## ARC 8905A

ENVIRONMENTAL PROTECTION  
COMMISSION[567]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 43, "Water Supplies—Design and Operation," Iowa Administrative Code.

These amendments include minor technical corrections; grammatical corrections; allowance of point-of-use devices at noncommunity supplies for maximum contaminant level compliance; minimum bottled water standard; updating the engineering standards to reflect current practice (Ten States Standards); requiring water system components to meet ANSI/NSF Standard 61; and adoption of the new U.S. Environmental Protection Agency viability assessment program (also called capacity development).

Any interested person may make written suggestions or comments on these proposed amendments prior to May 27, 1999. Such written materials should be directed to Diane Moles, Water Supply Section, Department of Natural Resources, Wallace State Office Building, 502 E. Ninth Street, Des Moines, Iowa 50319-0034; fax (515)281-8895. Persons who wish to convey their views orally should contact the Water Supply Section at (515)281-8863 or at the Environmental Protection Division offices on the fifth floor of the Wallace State Office Building.

Also, there will be six public hearings at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. The public hearings will be held at 10 a.m. in the following places on the following dates:

- |              |   |
|--------------|---|
| May 4, 1999  | Department of Natural Resources<br>Henry A. Wallace Building<br>Fourth Floor Conference Room<br>502 E. Ninth Street<br>Des Moines, Iowa |
| May 6, 1999  | Buena Vista College<br>Siebens Forum<br>Hanson Room 8<br>Fourth and Grand Avenue<br>Storm Lake, Iowa                                    |
| May 24, 1999 | North Iowa Area Community College<br>Muse-Norris Conference Room<br>500 College Drive<br>Mason City, Iowa                               |
| May 25, 1999 | Community Room<br>(upstairs/back entrance)<br>101 E. Main Street<br>Manchester, Iowa  |

May 26, 1999 Iowa City Public Library  
Room A  
123 S. Linn Street  
Iowa City, Iowa

May 27, 1999 Atlantic Municipal Utilities  
Conference Room  
15 W. Third Street  
Atlantic, Iowa

Any persons who intend to attend a public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code section 17A.3(1)"b" and chapter 455B, division III, part 1.

The following amendments are proposed.

ITEM 1. Amend subrule 43.1(3) as follows:

**43.1(3)** Use of noncentralized treatment devices.

a. *Community PWS.* ~~Public Community public~~ water systems shall not use bottled water, point-of-use (POU) or point-of-entry (POE) devices to achieve permanent compliance with a ~~maximum contaminant level, action level, or treatment technique requirement~~ a *health-based standard* in 567—Chapters 41 and 43.

b. *Noncommunity PWS.* *Noncommunity public water supply systems may be allowed by the department to use point-of-use devices to achieve MCL compliance provided the contaminant does not pose an imminent threat to health (such as bacteria) nor place a sensitive population at risk (such as infants for nitrate or nitrite).*

c. *Reduced monitoring requirements.* *Bottled water, point-of-use, or point-of-entry devices cannot be used to avoid the monitoring requirements of 567—Chapters 41 and 43, but the department may allow reduced monitoring requirements in specific instances.*

b.d. *Bottled water requirements.* The department may require a public water system exceeding a maximum contaminant level, action level, or treatment technique requirement specified in 567—Chapters 41 and 43 to use bottled water as a condition of an interim compliance schedule or as a temporary measure to avoid an unreasonable risk to health. *Any bottled water must, at a minimum, meet the federal Food and Drug Administration bottled water standards, listed in the Code of Federal Regulations, Title 21, Chapter 165.110.* The system must meet the following requirements:

(1) *Monitoring program.* Submit for approval to the department a monitoring program for bottled water. The monitoring program must provide reasonable assurances that the bottled water complies with all the ~~maximum contaminant levels, action levels, or treatment technique requirements~~ *health-based standards* in 567—Chapters 41 and 43. The public water system must monitor a representative sample of bottled water for all contaminants regulated under 567—Chapters 41 and 43 the first quarter that it supplies the bottled water to the public, and annually thereafter. Results of the monitoring program shall be provided to the department annually.

(2) *Certification and monitoring requirements.* The public water system must receive a certification from the bottled water company that the bottled water supplied has been taken from an "approved source"; the bottled water company has conducted monitoring in accordance with 43.1(3)"b"(1); and the bottled water meets MCLs, action levels, or treatment technique requirements as set out in 567—Chapters 41

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

and 43. The public water system shall provide the certification to the department the first quarter after it supplies bottled water and annually thereafter.

(3) *Provision of bottled water to consumers.* The public water supply system is fully responsible for the provision of sufficient quantities of bottled water to every person supplied by the public water system via door-to-door bottled water delivery.

- c. Point-of-use devices. Reserved.
- d. Point-of-entry devices. Reserved.

ITEM 2. Amend subrule 43.1(4) as follows:

43.1(4) Cross-connection control. To prevent backflow or backsiphonage of contaminants into a public water supply, connection shall not be permitted between a public water supply and any other system which does not meet the monitoring ~~or~~ and drinking water standards required by this chapter except as provided below in "a" or "b."

a. *Piping and plumbing systems.* Piping systems or plumbing equipment carrying nonpotable water, contaminated water, stagnant water, liquids, mixtures or waste mixtures shall not be connected to a public water supply unless properly equipped with an antisiphon device or backflow preventer ~~approved by~~ acceptable to the department.

b. *Bulk water loading stations.* Positive separation shall be provided through the use of an air gap separation or an ~~approved~~ a backflow preventer, which is acceptable to the department, at all loading stations for bulk transport tanks.

(1) *Minimum air gap.* The minimum required air gap shall be twice the diameter of the discharge pipe.

(2) *Backflow preventer criteria.* An approved backflow preventer for this application shall be a reduced pressure backflow preventer or an antisiphon device which complies with the standards of the American Water Works Association and has been approved by the Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California.

When, in the opinion of the department, evidence clearly indicates the source of contamination within the system is the result of a cross-connection, the department may require a public water supply to identify and eliminate the connection, and implement a systemwide cross-connection program.

ITEM 3. Adopt the following new subrule:

43.1(5) Requirement for certified operator.

a. CWS and NTNC systems. All community and non-transient noncommunity public water supply systems must have a certified operator in direct responsible charge of the treatment and distribution systems, in accordance with 567—Chapters 40 through 44 and 81.

b. TNC systems. Any transient noncommunity public water supply system which is owned by the state or federal government, such as a state park, state hospital, or interstate rest stop, or is using a groundwater under the direct influence of surface water or surface water source, must have a certified operator in direct responsible charge of the treatment and distribution systems, in accordance with 567—Chapters 40 through 44 and 81. The department may require any TNC to have a certified operator in direct responsible charge.

ITEM 4. Amend rule 567—43.2(455B) as follows:

567—43.2(455B) Permit to operate.

43.2(1) Operation fees.

a. *Annual fee.* A nonrefundable fee for the operation of a public water supply system shall be paid annually. The fee shall be based on the population served. The fee shall be the

greater of \$25 per year or \$0.14 multiplied by the total population served by the public water supply for all community and nontransient noncommunity public water supply systems. The fee shall be \$25 per year for all transient noncommunity water systems. Where a system provides water to another public water supply system (consecutive public water supply system) which is required to have an operation permit, the population of the recipient water supply shall not be counted as a part of the water system providing the water.

b. *Fee notices.* The department will send annual notices to public water supply systems at least 60 days prior to the date that the operation fee is due.

c. *Fee payments.* For the state fiscal year beginning July 1, 1996, and thereafter, the annual operation fee must be paid to the department by September 1 each year.

d. *New public water systems.* The initial operation fee payment for a new public water supply is due with the initial application for the annual operation permit. The amount of the initial yearly payment of the operation fee shall be determined based upon the population served. The operation fee will not be prorated. Annual operation fee payments after obtaining an initial operation permit shall be due by September 1 each year, in accordance with the fee schedule outlined in 43.2(3) "b"(1).

e. *Fee schedule adjustment.* The environmental protection commission may adjust the per capita fee payment by up to +/- \$0.02 per person served so as to achieve the targeted revenue. The environmental protection commission may hold a public hearing concerning the necessity for making a fee schedule adjustment upward or downward for a particular state fiscal year. The extent of the fee adjustment is limited by the intent of 1994 Iowa Acts, Senate File 2314, section 48, and 1995 Iowa Acts, House File 553, section 39. The fee payments will produce revenue amounts of \$350,000 during each fiscal year.

f. *Exempted public water supply systems.* Public water supply systems located on Indian lands are exempt from the fee requirements.

g. *Late fees.* When the owner of a public water supply fails to make timely application or payment of fees, the department will notify the system by a single notice of violation. The department may thereafter issue an administrative order pursuant to Iowa Code section 455B.175(1) or request a referral to the attorney general under Iowa Code section 455B.175(3) as necessary.

~~43.2(1)~~ 43.2(2) Operation permit requirement. Except as provided in 43.2(2) (3) and 43.2(3) (4), no person shall operate any public water supply system or part thereof without, or contrary to any condition of, an operation permit issued by the director.

~~43.2(2)~~ 43.2(3) Application for operation permit. The owner of any public water supply system or part thereof must make application for an operation permit. No such system shall be operated without an operation permit, unless proper application has been made. Upon submission of a completed application form, ~~The~~ the time requirement for having a valid operation permit is automatically extended until the application has either been approved or disapproved by the director.

~~43.2(3)~~ 43.2(4) Application and issuance Operation permit application form issuance.

a. *Operation permit application form.* Application for operation permits shall be made on forms provided by the department, and shall be accompanied by the fee specified in ~~43.2(3) "b."~~ The application for an operation permit shall be filed at least 90 days prior to the date operation is scheduled to begin unless a shorter time is approved by the director.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

The director shall issue or deny operation permits for facilities within 60 days of receipt of a completed application, unless a longer period is required and the applicant is so notified. The director may require the submission of additional information deemed necessary to evaluate the application. If the application is incomplete or otherwise deficient, processing of the application shall not be completed until such time as the applicant has supplied the missing information or otherwise corrected the deficiency.

**b. Operation fees.**

(1) ~~A nonrefundable fee for the operation of a public water supply system shall be paid annually. The fee shall be based on the population served. The fee shall be the greater of \$25 per year or \$0.14 multiplied by the total population served by the public water supply for all community and nontransient noncommunity public water supply systems. The fee shall be \$25 per year for all transient noncommunity water systems. Where a system provides water to another public water supply system (consecutive public water supply system) which is required to have an operation permit, the population of the recipient water supply shall not be counted as part of the water system providing the water.~~

(2) ~~Fee notices. The department will send annual notices to public water supply systems at least 60 days prior to the date that the operation fee is due.~~

(3) ~~First annual fee payment. The annual fee payment for the fiscal year beginning July 1, 1995, and ending June 30, 1996, must be paid to the department by December 25, 1995.~~

(4) ~~Fee payments after July 1, 1996. For the state fiscal year beginning July 1, 1996, and thereafter, the annual operation fee must be paid to the department by September 1 each year.~~

(5) ~~New public water systems. The initial operation fee payment for a new public water supply is due with the initial application for the annual operation permit. The amount of the initial yearly payment of the operation fee shall be determined based upon the population served. The operation fee will not be prorated. Annual operation fee payments after obtaining an initial operation permit shall be due by September 1 each year, in accordance with the fee schedule outlined in 43.2(3)"b"(1).~~

(6) ~~Fee schedule adjustment. The environmental protection commission may adjust the per capita fee payment by up to +/- \$0.02 per person served so as to achieve the targeted revenue. The environmental protection commission will hold a public hearing concerning the necessity for making a fee schedule adjustment upward or downward for a particular state fiscal year. The extent of the fee adjustment is limited by the intent of 1994 Iowa Acts, Senate File 2314, section 48, and 1995 Iowa Acts, House File 553, section 39. The fee payments will produce revenue amounts of \$350,000 during each fiscal year.~~

(7) ~~Exempted public water supply systems. Public water supply systems located on Indian lands are exempt from the fee requirements.~~

**c. Late fees.** ~~When the owner of a public water supply fails to make timely application or payment of fees, the department will notify the system by a single notice of violation. The department may thereafter issue an administrative order pursuant to Iowa Code section 455B.175(1) or request a referral to the attorney general under Iowa Code section 455B.175(3) as necessary.~~

**d. b. Identity of signatories of operation permit applications.** The person who signs the application for an operation permit shall be:

(1) to (4) No change.

**e. c. Appeal.** The denial of a permit, or any permit condition, may be appealed by the applicant to the *environmental protection commission* pursuant to 567—Chapter 7.

~~43.2(4)~~ **43.2(5) Permit Operation permit conditions.**

**a. Operation permit conditions.** Operation permits may contain such conditions as are deemed necessary by the director to ensure compliance with all applicable rules of the department, to ensure that the public water supply system is properly operated and maintained, to ensure that potential hazards to the water consumer are eliminated promptly, and to ensure that the requirements of the Safe Drinking Water Act are met.

**b. Compliance schedule.** Where one or more ~~maximum contaminant levels, treatment techniques, designated health advisory levels, or action levels~~ *health-based standards* cannot be met immediately, a compliance schedule for achieving compliance with standards may be made a condition of the permit. A compliance schedule requiring alterations in accordance with the standards for construction in 43.3(1) and 43.3(2) may also be included for any supply that, in the opinion of the director, contains a potential hazard.

**c. Treatment.** If the department determines that a treatment method identified in 43.3(10) is technically feasible, the department may require the system to install or use that treatment method in connection with a compliance schedule issued under the provisions of 43.2(4) (5)"b." The department's determination shall be based upon studies by the system and other relevant information.

~~43.2(5)~~ **43.2(6) Notification of change in operation permit application conditions.** The owner of a public water supply system shall notify the director within 30 days of any change in conditions identified in the permit application. This notice does not relieve the owner of the responsibility to obtain a construction permit as required by 43.3(455B).

~~43.2(6)~~ **43.2(7) Renewal of operation permits.** *The department may issue operation permits for durations of up to five years. Operation permits must be renewed prior to expiration every three years after initial issuance or following the expiration of an existing two-year permit in order to remain valid after October 1, 1992. The renewal date shall be specified in the permit or in any renewal. Application for renewal must be received by the director, or postmarked, 60 days prior to the renewal date, on forms provided by the department, and shall be accompanied by the fee specified. During the first three-year period beginning January 1, 1993, and ending December 30, 1995, the department may issue permits for periods other than three years to provide for the eased transition from operation permit lengths of two to three years. After the initial transition period as defined above, operation permits will be renewed every three years (conforming to the compliance period as defined in 567—Chapter 40).*

~~43.2(7)~~ **43.2(8) Denial, modification, or suspension of operation permit.** The director may deny renewal of, modify, or suspend or rebate, in whole or in part, any operation permit for good cause. Denial of a new permit, renewal of an existing permit, or modification of a permit, may be appealed to the *environmental protection commission* pursuant to 567—Chapter 7. Suspension or revocation may occur after hearing, pursuant to 567—Chapter 7. Good cause includes the following:

a. to d. No change.

e. Violation of any of the requirements contained in 567—Chapters 41 and 43 40 to 43.



## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

*f. Inability of a system to either achieve or maintain technical, managerial, or financial viability, as determined in 567—Chapter 43.8(455B).*

ITEM 5. Amend subrules 43.3(1) through 43.3(3) as follows:

43.3(1) Standards for public water supplies. Any public water supply that does not meet the drinking water standards contained in 567—Chapters 41 and 43 shall make the alterations in accordance with the standards for construction contained in 43.3(2) necessary to comply with the drinking water standards unless the public water supply has been granted a variance from a ~~maximum contaminant level or treatment technique health-based standard~~ as a provision of its operation permit pursuant to 43.2(455B), provided that the public water supply meets the schedule established pursuant to 43.2(455B). Any public water supply that, in the opinion of the director, contains a potential hazard shall make the alterations in accordance with the standards for construction contained in ~~43.3(2) this rule necessary to eliminate or minimize that hazard.~~

43.3(2) Standards for construction.

a. The standards for a project are ~~the department's "Iowa Water Supply Facilities Design Standards," the Ten States Standards, and the American Water Works Association (AWWA) Standards as adopted through 1992 1998 and 43.3(7) to 43.3(9). Polyvinyl chloride (PVC) pipe manufactured in accordance with ASTM D2241 may also be used in Iowa.~~ To the extent of any conflict between the Ten States Standards ~~or and the American Water Works Association Standards and the "Iowa Water Supply Facilities Design Standards" and 43.3(7) to 43.3(9), the Ten States standards Standards, of the "Iowa Water Supply Facilities Design Standards" 43.3(2), and 43.3(7) to 43.3(9) shall prevail. The maximum allowable pressure for PVC or polyethylene (PE) pipe shall be determined based on a safety factor of 2.5 and a surge allowance of no less than two feet per second (2 fps).~~

b. ~~The chapters of the "Iowa Water Supply Facilities Design Standards" that apply to public water supply system projects and the date of adoption are:~~

<del>Chapter</del>	<del>Date of Adoption</del>
<del>1. Project submittals</del>	<del>January 24, 1979</del>
<del>2. General design considerations</del>	<del>Reserved</del>
<del>3. Source development</del>	<del>April 25, 1979</del>
<del>4. Treatment</del>	<del>Reserved</del>
<del>5. Chemical application</del>	<del>Reserved</del>
<del>6. Pumping facilities</del>	<del>Reserved</del>
<del>7. Finished water storage</del>	<del>April 25, 1979</del>
<del>8. Iowa standards for water supply distribution systems</del>	<del>September 6, 1978</del>

~~c. b. Variance. When engineering justification satisfactory to the director is provided substantially demonstrating that variation from the design standards will result in equivalent or improved effectiveness, such a variation from design standards may be accepted by the director. A variance denial may be appealed to the environmental protection commission pursuant to 567—Chapter 7. Variance requests for projects qualifying for a waiver from the engineering requirement of 43.3(4) may be made without the retained services of a professional engineer.~~

43.3(3) Construction permits. No person shall construct, install or modify any project without first obtaining, or contrary to any condition of, a construction permit issued by the director or by a local public works department authorized to issue permits under 567—Chapter 9 except as provided in 43.3(3)"b," 43.3(4) and 43.3(6). Construction permits are not required for point-of-use treatment devices installed by a

noncommunity water system except those devices required by the department to meet a drinking water standard pursuant to 567—Chapters 41 and 43. *No construction permit will be issued for a new public water supply system without a completed viability assessment, which has been approved by the department, and demonstrates that the system is viable, pursuant to 43.8(455B).*

a. *Construction permit issuance conditions.* A permit to construct shall be issued by the director if the director concludes from the application and specifications submitted pursuant to 43.3(4)"b" and 567—40.4(455B) that the project will comply with the rules of the department.

b. Construction permit application. (1) Application for any project shall be submitted to the department at least 30 days prior to the proposed date for commencing construction or awarding of contracts. This requirement may be waived when it is determined by the department that an imminent health hazard exists to the consumers of a public water supply. Under this waiver, construction, installation, or modification may be allowed by the department prior to review and issuance of a permit if all the following conditions are met:

- ~~1. (1) The construction, installation or modification will alleviate the health hazard;~~
- ~~2. (2) The construction is done in accordance with the standards for construction pursuant to 43.3(2);~~
- ~~3. (3) Plans and specifications are submitted within 30 days after construction;~~
- ~~4. (4) An engineer, registered in the state of Iowa, supervises the construction; and~~
- ~~5. (5) The supplier of water receives approval of this waiver prior to any construction, installation, or modification.~~

~~(2) All construction permit applications shall be exempted from permit fee requirements.~~

ITEM 6. Amend subrule 43.3(7) as follows:

43.3(7) Proposed raw or finished water site approval.

a. Approval required. The site for each proposed raw water supply source or finished water below-ground level storage facility must be approved by the department prior to the submission of plans and specifications.

b. Criteria for approval. A site may be approved by the director if the director concludes that the criteria in this paragraph are met.

(1) *Groundwater source.* A well site must be separated from sources of contamination by at least the distances specified in Table A.

Drainage must be away from the well in all directions for a minimum radius of 15 feet.

After the well site has received preliminary approval from the department, the owner of the proposed public well shall submit proof of legal control of contiguous land, through purchase, lease, easement, ordinance, or other similar means that ensures that the siting criteria for distances of 200 feet or less described in the above table will be maintained for the life of the well. Such control shall also provide for a minimum separation distance of at least 200 feet between a public well and sources of contamination listed in Table A with distances equal to or greater than 200 feet. Proof of legal control should be submitted as part of the construction permit application and shall be submitted prior to issuance of a permit to construct.

When a proposed well is located in an existing well field and will withdraw water from the same aquifer as the existing well or wells, individual separation distances may be waived if substantial historical data is available indicating that no contamination has resulted.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

(2) *Surface water source.* The applicant must submit proof that a proposed surface water source can, through readily available treatment methodology, comply with 567—Chapter 41 and that the raw water source is adequately protected against potential health hazards including, but not limited to, point source discharges, hazardous chemical spills, and the potential sources of contamination listed in Table A.

After a surface water impoundment has received preliminary approval from the department for use as a raw water source, the owner of the water supply system shall submit proof of legal control through ownership, lease, easement, or other similar means, of contiguous land for a distance of 400 feet from the shoreline at the maximum water level. Legal control shall be for the life of the impoundment and shall control location of sources of contamination within the 400-foot distance. Proof of legal control should be submitted as part of the construction permit application and shall be submitted prior to issuance of a permit to construct.

(3) *Below-ground storage facilities.* The minimum separation between a below-ground level finished water storage facility and any source of contamination, listed in Table A as being 50 feet or more, shall be 50 feet. Separation distances listed in Table A as being less than 50 feet shall apply to a below-ground level finished water storage facility.

(4) *Separation distances.* Greater separation distances may be required where necessary to ensure that no adverse effects to water supplies or the existing environment will result. Lesser separation distances may be considered if detailed justification is provided by the applicant's engineer showing that no adverse effects will result from a lesser separation distance, and the regional staff recommends approval of the lesser distance. Such exceptions must be based on special construction techniques or localized geologic or hydrologic conditions.

c. *New source water monitoring.* Water quality monitoring shall be conducted on all new water sources and results submitted to the department prior to placing the new water source into service.

(1) *All sources.* Water samples shall be collected from each new water source and analyzed for all appropriate contaminants as specified in 567—Chapter 41 consistent with the particular water system classification. If multiple new sources are being added, compositing of the samples (within a single system) shall be allowed in accordance with the composite sampling requirements outlined in 567—Chapter 41. *A single sample may be allowed to meet this requirement, if approved by the department.* Subsequent water testing shall be conducted consistent with the water system's water supply operation permit monitoring schedule.

(2) *Groundwater sources.* Water samples collected from groundwater sources in accordance with 43.3(7)"c"(1) shall be conducted at the conclusion of the drawdown/yield test pumping procedure, with the exception of bacteriological monitoring. Bacteriological monitoring must be conducted after disinfection of each new well and subsequent pumping of the chlorinated water to waste. Water samples should also be analyzed for alkalinity, pH, calcium, chloride, copper, hardness, iron, magnesium, manganese, potassium, silica, specific conductance, sodium, sulfate, filterable and nonfilterable solids, and zinc.

(3) *Surface water sources.* Water samples collected from surface water sources in accordance with 43.3(7)"c"(1) should be collected prior to the design of the surface water treatment facility and shall be conducted and analyzed prior to utilization of the source. The samples shall be collected

during June, July, and August. In addition, quarterly monitoring shall be conducted in March, June, September, and December at a location representative of the raw water at its point of withdrawal. Monitoring shall be for turbidity, alkalinity, pH, calcium, chloride, color, copper, hardness, iron, magnesium, manganese, potassium, silica, specific conductance, sodium, sulfate, filterable and nonfilterable solids, carbonate, bicarbonate, algae (qualitative and quantitative), total organic carbon, five-day biochemical oxygen demand, dissolved oxygen, surfactants, nitrogen series (organic, ammonia, nitrite, and nitrate), and phosphate.

ITEM 7. Rescind subrule 43.3(8) and insert in lieu thereof the following new subrule:

**43.3(8)** Drinking water system components. Any drinking water system component which comes into contact with raw, partially treated, or finished water must be suitable for the intended use in a potable water system. The component must meet the current American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 61 specifications, if such specification exists for the particular product, unless approved components are not reasonably available for use, in accordance with guidance provided by the department. If the component does not meet the ANSI/NSF Standard 61 specifications or no specification is available, the person seeking to supply or use the component must prove to the satisfaction of the department that the component is not toxic or otherwise a potential hazard in a potable public water supply system.

ITEM 8. Rescind subrule 43.3(10), paragraphs "a" and "b," and insert in lieu thereof the following new paragraphs:

a. BATs for organic compounds. The department identifies as indicated in the table below either granular activated carbon (GAC), packed tower aeration (PTA), or oxidation (OXID) as the best available technology, treatment technique, or other means available for achieving compliance with the maximum contaminant level for organic contaminants identified in 567—paragraph 41.5(1)"b." For the purposes of setting MCLs for synthetic organic chemicals, any BAT must be at least as effective as granular activated carbon.

ORGANIC CONTAMINANT	GAC	PTA	OXID
Alachlor	x		
Aldicarb	x		
Aldicarb sulfone	x		
Aldicarb sulfoxide	x		
Atrazine	x		
Benzene	x	x	
Benzo(a)pyrene	x		
Carbofuran	x		
Carbon tetrachloride	x	x	
Chlordane	x		
2,4-D	x		
Dalapon	x		
Dibromochloropropane (DBCP)	x	x	

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o-Dichlorobenzene	x	x
p-Dichlorobenzene	x	x
1,2-Dichloroethane	x	x
cis-1,2-Dichloroethylene	x	x
trans-1,2-Dichloroethylene	x	x
1,1-Dichloroethylene	x	x
Dichloromethane		x
1,2-Dichloropropane	x	x
Di(2-ethylhexyl)adipate	x	x
Di(2-ethylhexyl)phthalate	x	
Dinoseb	x	
Diquat	x	
Endothall	x	
Endrin	x	
Ethylene dibromide (EDB)	x	x
Ethylbenzene	x	x
Glyphosate		x
Heptachlor	x	
Heptachlor epoxide	x	
Hexachlorobenzene	x	
Hexachlorocyclopentadiene	x	x
Lindane	x	
Methoxychlor	x	
Monochlorobenzene	x	x
Oxamyl (Vydate)	x	
Pentachlorophenol	x	
Picloram	x	
Polychlorinated biphenyls (PCB)	x	
Simazine	x	
Styrene	x	x
2,4,5-TP (Silvex)	x	
Tetrachloroethylene	x	x
1,2,4-Trichlorobenzene	x	x
1,1,1-Trichloroethane	x	x
1,1,2-Trichloroethane	x	x
Trichloroethylene	x	x
2,3,7,8-TCDD (Dioxin)	x	
Toluene	x	x
Toxaphene	x	

Vinyl chloride		x
Xylene	x	x

b. BATs for inorganic compounds. The department identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for the inorganic contaminants listed in 567—paragraph 41.3(1)“b,” except arsenic and fluoride.

INORGANIC CHEMICAL	BAT(s)
Antimony	2,7
Asbestos	2,3,8
Barium	5,6,7,9
Beryllium	1,2,5,6,7
Cadmium	2,5,6,7
Chromium	2,5,6 <sup>b</sup> ,7
Cyanide	5,7,10
Mercury	2 <sup>a</sup> ,4,6 <sup>a</sup> ,7 <sup>a</sup>
Nickel	5,6,7
Nitrate	5,7,9
Nitrite	5,7
Selenium	1,2 <sup>c</sup> ,6,7,9
Thallium	1,5

Key to BATs

1=Activated Alumina	4=Granular Activated Carbon	7=Reverse Osmosis
2=Coagulation/Filtration	5=Ion Exchange	8=Corrosion Control
3=Direct and Diatomite Filtration	6=Lime Softening	9=Electrodialysis
10=Chlorine		

<sup>a</sup>BAT only if influent Hg concentrations are less than 10 micrograms/liter.

<sup>b</sup>BAT for Chromium III only.

<sup>c</sup>BAT for Selenium IV only.

ITEM 9. Amend subrule 43.3(10), paragraphs “c,” “e,” and “f,” as follows:

c. Requirement to install BAT. The department shall require community water systems and nontransient noncommunity water systems to install and use any treatment method identified in 43.3(10) as a condition for granting an interim contaminant level except as provided in paragraph “d.” If, after the system’s installation of the treatment method, the system cannot meet the maximum contaminant level, the system shall be eligible for a compliance schedule with an interim contaminant level granted under the provisions of 567—subrule 41.10(3) 42.2(455B) and 43.2(455B).

e. Compliance schedule. If the department determines that a treatment method identified in 43.3(10)“a” and “b” is technically feasible, the department may require the system to install or use that treatment method in connection with a compliance schedule issued under the provisions of 567—subrule 41.10(3) 42.2(455B) and 43.2(455B). The de-

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termination shall be based upon studies by the system and other relevant information.

f. Avoidance of unacceptable risk to health (URTH). The department may require a public water system to use bottled water, point-of-use devices, point-of-entry devices or other means as a condition of granting a variance or an exemption, *or issuance of a compliance schedule*, from the requirements of 43.3(10) to avoid an unreasonable risk to health.

ITEM 10. Amend rule 567—43.5(455B) as follows:

**567—43.5(455B) Filtration and disinfection for surface water and influenced groundwater public water supply systems.**

**43.5(1) Applicability/general requirements.**

- a. No change.
- b. No change.

(1) Preliminary review. The department shall conduct a preliminary evaluation of information on the source provided by the public water supply to determine if the source is an obvious surface water (i.e., pond, lake, stream, etc.) or groundwater under the direct influence of surface water. The source shall be evaluated during that period of highest susceptibility to influence from surface water. The preliminary evaluation may include a review of surveys, reports, geological information of the area, physical properties of the source, and a review of departmental and public water system records. If the source is identified as a surface water, no additional evaluation shall be conducted. If the source is a groundwater and identified as a deep well, it shall be classified as a groundwater not under the direct influence of surface water and no additional evaluation shall be conducted, unless through direct knowledge or documentation the source does not meet the requirements of 43.5(1)"b"(2). The deep well shall then be evaluated in accordance with 43.5(1)"b"(3). If the source is a shallow well, the source shall be evaluated in accordance with 43.5(1)"b"(2). If the source is a spring, infiltration gallery, ~~Raney radial collector well~~, or any other subsurface source, it shall be evaluated in accordance with 43.5(1)"b"(3).

(2) Well source evaluation. Shallow wells greater than 50 feet in lateral distance from a surface water source shall be evaluated for direct influence of surface water through a review of departmental or public water system files in accordance with 43.5(1)"b"(2)"1," ~~first unnumbered paragraph~~, and 43.5(1)"b"(2)"2." Sources that meet the criteria shall be considered to be not under the direct influence of surface water. No additional evaluation will be required. Shallow wells 50 feet or less in lateral distance from a surface water shall be in accordance with 43.5(1)"b"(3) and (4).

1. Well construction criteria. The well shall be constructed so as to include *the following*:

- ~~A surface sanitary seal~~ *The well shall be properly grouted using bentonite clay, concrete, or other acceptable material.*
  - The well casing shall penetrate a confining bed.
  - The well casing shall be perforated or screened only below a confining bed.
  - *In the case of a shallow driven sandpoint well, the department may consider the well to be not under the direct influence of surface water, on an individual basis.*

2. and 3. No change.

4. *Further evaluation.* Wells that do not meet all the requirements listed shall require further evaluation in accordance with 43.5(1)"b"(3) and (4).

(3) and (4) No change.

c. *Compliance.* A public water system using a surface water source or a groundwater source under the direct influence of surface water is considered to be in compliance with the requirements of this subrule if it meets the filtration requirements in 43.5(3) and the disinfection requirements in 43.5(2) in accordance with the effective dates specified within the respective subrules.

d. *Certified operator requirement.* Each public water system using a surface water source or a groundwater source under the direct influence of surface water must be operated by a certified operator who meets the requirements of 567—Chapter 81.

**43.5(2) No change.**

a. *Disinfection treatment criteria.* The disinfection treatment must be sufficient to ensure that the total treatment processes of that system achieve at least 99.9 percent (3-log) inactivation or removal of *Giardia lamblia* cysts and at least 99.99 percent (4-log) inactivation or removal of viruses, acceptable to the department.

b. *Disinfection system.* The disinfection system must include:

(1) and (2) No change.

c. *Disinfectant residual entering system.* The residual disinfectant concentration in the water entering the distribution system, measured as specified in 567—paragraphs 41.7(2)"c" and "e," cannot be less than 0.3 mg/l free residual *or 1.5 mg/l total residual chlorine* for more than four hours.

d. No change.

**43.5(3) No change.**

**43.5(4) Analytical and monitoring requirements.**

a. Analytical requirements. Only the analytical method(s) specified in this paragraph, or otherwise approved by the department, may be used to demonstrate compliance with the requirements of 43.5(2) and 43.5(3). Measurements for pH, temperature, turbidity, and residual disinfectant concentrations must be conducted by a Grade II, III or IV operator meeting the requirements of 567—Chapter 81, any person under the supervision of a Grade II, III or IV operator meeting the requirements of 567—Chapter 81, or a laboratory certified by the department to perform analysis under 567—Chapter 83. *For consecutive public water supplies from a surface water or groundwater under the direct influence of surface water system, the disinfectant concentration analyses must be conducted by a certified operator who meets the requirements of 567—Chapter 81.* Measurements for heterotrophic plate count bacteria must be conducted by a laboratory certified by the department to do such analysis. ~~Until laboratory certification criteria are developed for the analysis of heterotrophic plate count bacteria, any laboratory certified for total coliform analysis by the department is certified for heterotrophic plate count bacteria analysis unless notified otherwise by the department.~~ The procedures shall be performed in accordance with 567—Chapters 41 and 83 as listed below and the referenced publications.

(1) to (5) No change.

b. Monitoring requirements. A public water system that uses a surface water source or groundwater source under the influence of surface water must monitor in accordance with this paragraph or some interim requirements required by the department, until filtration is installed.

(1) to (4) No change.

1. to 3. No change.

4. Routine monitoring results shall be provided as part of the monthly operation reports in accordance with 567—40.3(455B) and 43.7(3) 42.4(3).

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ITEM 11. Rescind rule 567—43.7(455B) and insert in lieu thereof the following new rule:

**567—43.7(455B) Lead and copper treatment techniques.****43.7(1) Corrosion control.**

a. Applicability of corrosion control treatment steps to small, medium-size and large water systems. (Corrosion control treatment compliance dates.) Systems shall complete the applicable corrosion control treatment requirements by the following deadlines:

(1) Population >50,000. Large systems (serving greater than 50,000 persons) shall complete the corrosion control treatment steps specified in 43.7(1)"d," unless it is deemed to have optimized corrosion control under 43.7(1)"b"(2) or (3).

(2) Population <50,001. Small systems (serving less than or equal to 3,300 persons) and medium-size systems (serving greater than 3,300 and less than or equal to 50,000 persons) shall complete the corrosion control treatment steps specified in 43.7(1)"e," unless it has optimized corrosion control under 43.7(1)"b"(1), (2), or (3).

b. Optimum corrosion control. A public water supply system has optimized corrosion control and is not required to complete the applicable corrosion control treatment steps identified in this subrule if the system satisfies one of the following criteria:

(1) A small or medium-size water supply system has optimized corrosion control if the system meets the lead and copper action levels during each of two consecutive six-month monitoring periods.

(2) Any public water supply system may be deemed to have optimized corrosion control treatment if the system demonstrates it has conducted activities equivalent to the corrosion control steps applicable to such system under this subrule. If the department makes this determination, it shall provide the water supply system with written notice explaining the basis for its decision and shall specify the water quality control parameters representing optimal corrosion control in accordance with 43.7(2)"f." A system shall provide the department with the following information in order to support a determination under this paragraph:

1. The results of all test samples collected for each of the water quality parameters in 43.7(2)"c"(3);

2. A report explaining the test methods used by the water system to evaluate the corrosion control treatments listed in 43.7(2)"c"(1), the results of all tests conducted, and the basis for the system's selection of optimal corrosion control treatment;

3. A report explaining how corrosion control was installed and how it is being maintained to ensure minimal lead and copper concentrations at consumers' taps; and

4. The results of tap water samples collected in accordance with 567—paragraph 41.4(1)"c" at least once every six months for one year after corrosion control has been installed.

(3) Any water system has optimized corrosion control if it submits results of tap water monitoring conducted in accordance with 567—paragraph 41.4(1)"c" and source water monitoring conducted in accordance with 567—paragraph 41.4(1)"e" that demonstrates for two consecutive six-month monitoring periods that the difference between the 90th percentile tap water lead level computed under 567—paragraph 41.4(1)"b"(3) and the highest source water lead concentration, is less than the Practical Quantitation Level for lead specified in 567—paragraph 41.4(1)"g."

c. Recommence corrosion control. Any small or medium-size water system that is required to complete the corrosion control steps due to its exceedance of the lead or cop-

per action level may cease completing the treatment steps whenever the system meets both action levels during each of two consecutive monitoring periods conducted pursuant to 567—paragraph 41.4(1)"c" and submits the results to the department. If any such water system thereafter exceeds the lead or copper action level during any monitoring period, the system shall recommence completion of the applicable treatment steps, beginning with the first treatment step which was not previously completed in its entirety. The department may require a system to repeat treatment steps previously completed by the system where it is determined that this is necessary to implement properly the treatment requirements of this rule. The department will notify the system in writing of such a determination and explain the basis for its decision. The requirement for any small or medium-size system to implement corrosion control treatment steps in accordance with 43.7(1)"e" (including systems deemed to have optimized corrosion control under 43.7(1)"b"(1)) is triggered whenever any small or medium-size system exceeds the lead or copper action level.

d. Treatment steps and deadlines for large systems. Except as provided in 43.7(1)"b"(2) or (3), large systems shall complete the following corrosion control treatment steps (described in the referenced portions of 43.7(1)"b," subrule 43.7(2), and 567—paragraphs 41.4(1)"c" and "d") by the dates indicated below.

(1) Step 1. The system shall conduct initial monitoring pursuant to 567—paragraph 41.4(1)"c"(4)"1" and 567—paragraph 41.4(1)"d"(2) during two consecutive six-month monitoring periods by January 1, 1993.

(2) Step 2. The system shall complete corrosion control studies pursuant to 43.7(2)"c" by July 1, 1994.

(3) Step 3. The department will designate optimal corrosion control treatment within six months of receiving the corrosion control study results (by January 1, 1995).

(4) Step 4. The system shall install optimal corrosion control treatment by January 1, 1997.

(5) Step 5. The system shall complete follow-up sampling pursuant to 567—paragraph 41.4(1)"c"(4)"2" and 567—paragraph 41.4(1)"d"(3) by January 1, 1998.

(6) Step 6. The department will review installation of treatment and designate optimal water quality control parameters pursuant to 43.7(2)"f" by July 1, 1998.

(7) Step 7. The system shall operate in compliance with optimal water quality control parameters delineated by the department and continue to conduct tap sampling.

e. Treatment steps and deadlines for small and medium-size systems. Except as provided in 43.7(2), small and medium-size systems shall complete the following corrosion control treatment steps (described in subrule 43.7(2) and 567—paragraphs 41.4(1)"c" and "d") by the indicated time periods listed below.

(1) Step 1. The system shall conduct initial tap sampling pursuant to 567—paragraph 41.4(1)"c"(4)"1" and 567—paragraph 41.4(1)"d"(2) until the system either exceeds the lead or copper action level or becomes eligible for reduced monitoring under 567—paragraph 41.4(1)"c"(4)"4." A system exceeding the lead or copper action level shall recommend optimal corrosion control treatment under 43.7(2)"a" within six months after it exceeds one of the action levels.

(2) Step 2. Within 12 months after a system exceeds the lead or copper action level, the department may require the system to perform corrosion control studies under 43.7(2)"b." If the system is not required to perform such studies, the department will specify optimal corrosion control treatment under 43.7(2)"d" as follows: for medium-size

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systems, within 18 months after such system exceeds the lead or copper action level, and, for small systems, within 24 months after such system exceeds the lead or copper action level.

(3) Step 3. If a system is required to perform corrosion control studies under Step 2, the system shall complete the studies (under 43.7(2)"c") within 18 months after such studies are required to commence.

(4) Step 4. If the system has performed corrosion control studies under Step 2, the department will designate optimal corrosion control treatment under 43.7(2)"d" within six months after completion of Step 3.

(5) Step 5. The system shall install optimal corrosion control treatment under 43.7(2)"e" within 24 months after such treatment is designated.

(6) Step 6. The system shall complete follow-up sampling pursuant to 567—paragraph 41.4(1)"c"(4)"2" and 567—paragraph 41.4(1)"d"(3) within 36 months after optimal corrosion control treatment is designated.

(7) Step 7. The department will review the system's installation of treatment and designate optimal water quality control parameters pursuant to 43.7(2)"f" within six months after completion of Step 6.

(8) Step 8. The system shall operate in compliance with the department-designated optimal water quality control parameters under 43.7(2)"f" (and continue to conduct tap sampling as per 567—paragraph 41.4(1)"c"(4)"3" and 567—paragraph 41.4(1)"d"(4)).

43.7(2) Description of corrosion control treatment requirements. Each public water supply system shall complete the corrosion control treatment requirements described below which are applicable to such systems under 43.7(1).

a. Public water supply system recommendation regarding corrosion control treatment. Based upon the results of lead and copper tap monitoring and water quality parameter monitoring, small and medium-size water systems exceeding the lead or copper action level shall recommend installation of one or more of the corrosion control treatments listed in 43.7(2)"c" which the system believes constitute optimal corrosion control for that system. The department may require the system to conduct additional water quality parameter monitoring in accordance with 567—paragraph 41.4(1)"d"(2) to assist in reviewing the system's recommendation.

b. Department decision to require studies of corrosion control treatment (applicable to small and medium-size systems). The department may require any small or medium-size system that exceeds the lead or copper action level to perform corrosion control studies under 43.7(2)"c" to identify optimal corrosion control treatment for the system.

c. Performance of corrosion control studies.

(1) Any public water supply system performing corrosion control studies shall evaluate the effectiveness of each of the following treatments and, if appropriate, combinations of the following treatments to identify the optimal corrosion control treatment: alkalinity and pH adjustment; calcium hardness adjustment; and the addition of a phosphate or silicate-based corrosion inhibitor at a concentration sufficient to maintain an effective residual concentration in all test tap samples.

(2) The water system shall evaluate each of the corrosion control treatments using either pipe rig/loop tests, metal coupon tests, partial-system tests, or analyses based on documented analogous treatments with other systems of similar size, water chemistry and distribution system configuration.

(3) The public water supply system shall measure the following water quality parameters in any tests conducted under this paragraph before and after evaluating the corrosion control treatments listed above:

1. Lead;
2. Copper;
3. pH;
4. Alkalinity;
5. Calcium;
6. Conductivity;
7. Orthophosphate (when an inhibitor containing a phosphate compound is used);
8. Silicate (when an inhibitor containing a silicate compound is used);
9. Water temperature.

(4) The public water supply system shall identify all chemical or physical constraints that limit or prohibit the use of a particular corrosion control treatment and outline such constraints with the following: documentation showing that a particular corrosion control treatment has adversely affected other water treatment processes when used by another water system with comparable water quality characteristics; or documentation demonstrating that the water system has previously attempted to evaluate a particular corrosion control treatment and has found that the treatment is ineffective or adversely affects other water quality treatment processes.

(5) The water system shall evaluate the effect of the chemicals used for corrosion control treatment on other water quality treatment processes.

(6) On the basis of an analysis of the data generated during each evaluation, the water system shall recommend in writing to the department the treatment option that the corrosion control studies indicate constitutes optimal corrosion control treatment for that system. The water system shall provide a rationale for its recommendation along with all supporting documentation required by 43.7(2)"c"(1) through (5).

d. Department designation of optimal corrosion control treatment.

(1) Based upon consideration of available information including, where applicable, studies performed under 43.7(2)"c" and a system's recommended treatment alternative, the department will either approve the corrosion control treatment option recommended by the public water supply system, or designate alternative corrosion control treatment(s) from among those listed in 43.7(2)"c." The department will consider the effects that additional corrosion control treatment will have on water quality parameters and on other water quality treatment processes (when designating optimal corrosion control treatment).

(2) The department will notify the public water supply system of its decision on optimal corrosion control treatment in writing and explain the basis for this determination. If the department requests additional information to aid its review, the public water supply system shall provide the information.

e. Installation of optimal corrosion control. Each public water supply system shall properly install and operate throughout its distribution system the optimal corrosion control treatment designated under 43.7(2)"d."

f. Department review of treatment and specification of optimal water quality control parameters.

(1) The department will evaluate the results of all lead and copper tap samples and water quality parameter samples submitted by the public water supply system and determine whether the system has properly installed and operated the

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optimal corrosion control treatment designated in 43.7(2)"d." Upon reviewing the results of tap water and water quality parameter monitoring by the public water supply system, both before and after the system installs optimal corrosion control treatment, the department will designate the following:

1. A minimum value or a range of values for pH measured at each entry point to the distribution system;

2. A minimum pH value, measured in all tap samples. Such value shall be equal to or greater than 7.0 unless meeting a pH level of 7.0 is not technologically feasible or is not necessary for the public water supply system to optimize corrosion control;

3. If a corrosion inhibitor is used, a minimum concentration or a range of concentrations for the inhibitor, measured at each entry point to the distribution system and in all tap samples, necessary to form a passivating film on the interior walls of the pipes of the distribution system;

4. If alkalinity is adjusted as part of optimal corrosion control treatment, a minimum concentration or a range of concentrations for alkalinity, measured at each entry point to the distribution system and in all tap samples; or

5. If calcium carbonate stabilization is used as part of corrosion control, a minimum concentration or a range of concentrations for calcium, measured in all tap samples.

(2) The values for the applicable water quality control parameters listed above shall be those which reflect optimal corrosion control treatment for the public water supply system. The department may designate values for additional water quality control parameters determined by the department to reflect optimal corrosion control for the system. The department will notify the system in writing of these determinations and explain the basis for its decisions.

g. Continued operation and monitoring. All public water supply systems shall maintain water quality parameter values at or above minimum values or within ranges designated by the department under 43.7(2)"f" in each sample collected under 567—paragraph 41.4(1)"d"(4). If the water quality parameter value of any sample is below the minimum value or outside the range designated, the public water supply system is out of compliance. As specified in 567—paragraph 41.4(1)"d"(4), the public water supply system may take a confirmation sample for any water quality parameter value no later than three days after the first sample. If a confirmation sample is taken, the result must be averaged with the first sampling result and the average must be used for any compliance determinations under this paragraph.

h. Modification of department treatment decisions. A determination of the optimal corrosion control treatment under 43.7(2)"d" or optimal water quality control parameters under 43.7(2)"f" may be modified. A request for modification by a public water supply system or other interested party shall be in writing, explain why the modification is appropriate, and provide documentation. The department may modify its determination where it concludes that such change is necessary to ensure that the public water supply system continues to optimize corrosion control treatment. A revised determination will be made in writing, which will set forth the new treatment requirements, explain the basis for the decision, and provide an implementation schedule for completing the treatment modifications.

43.7(3) Source water treatment requirements. Public water supply systems shall complete the applicable source water monitoring and treatment requirements, as described in the referenced portions of 43.7(3)"b," and in 567—paragraphs 41.4(1)"c" and "e," by the following deadlines.

a. Deadlines for completing source water treatment steps.

(1) Step 1. A public water supply system exceeding the lead or copper action level shall complete lead and copper source water monitoring under 567—paragraph 41.4(1)"e"(2) and make a written treatment recommendation to the department within six months after exceeding the lead or copper action level.

(2) Step 2. The department will make a determination regarding source water treatment pursuant to 43.7(3)"b"(2) within six months after submission of monitoring results under Step 1.

(3) Step 3. If installation of source water treatment is required, the system shall install the treatment pursuant to 43.7(3)"b"(3) within 24 months after completion of Step 2.

(4) Step 4. The public water supply system shall complete follow-up tap water monitoring under 567—paragraph 41.4(1)"c"(4)"2" and source water monitoring under 567—paragraph 41.4(1)"e"(3) within 36 months after completion of Step 2.

(5) Step 5. The department will review the system's installation and operation of source water treatment and specify maximum permissible source water levels under 43.7(3)"b"(4) within six months after completion of Step 4.

(6) Step 6. The public water supply system shall operate in compliance with the specified maximum permissible lead and copper source water levels under 43.7(3)"b"(4) and continue source water monitoring pursuant to 567—paragraph 41.4(1)"e"(4).

b. Description of source water treatment requirements.

(1) System treatment recommendation. Any system which exceeds the lead or copper action level shall recommend in writing to the department the installation and operation of one of the source water treatments listed in 43.7(3)"b"(2). A system may recommend that no treatment be installed based upon a demonstration that source water treatment is not necessary to minimize lead and copper levels at users' taps.

(2) Source water treatment determinations. The department will complete an evaluation of the results of all source water samples submitted by the public water supply system to determine whether source water treatment is necessary to minimize lead or copper levels in water delivered to user taps. If the department determines that treatment is needed, the department will require installation and operation of the source water treatment recommended by the public water supply system or require the installation and operation of another source water treatment from among the following: ion exchange, reverse osmosis, lime softening or coagulation/filtration. If the department requests additional information to aid in its review, the water system shall provide the information by the date specified in its request. The department will notify the system in writing of its determination and set forth the basis for its decision.

(3) Installation of source water treatment. Public water supply systems shall properly install and operate the source water treatment designated by the department under 43.7(3)"b"(2).

(4) Department review of source water treatment and specification of maximum permissible source water levels. The department will review the source water samples taken by the water supply system both before and after the system installs source water treatment and determine whether the public water supply system has properly installed and operated the designated source water treatment. Based upon its review, the department will designate maximum permissible

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lead and copper concentrations for finished water entering the distribution system. Such levels shall reflect the contaminant removal capability of the treatment (properly operated and maintained). The department will notify the public water supply system in writing and explain the basis for its decision.

(5) Continued operation and maintenance. Each public water supply system shall maintain lead and copper levels below the maximum permissible concentrations designated by the department at each sampling point monitored in accordance with 567—paragraph 41.4(1)“e.” The system is out of compliance with this paragraph if the level of lead or copper at any sampling point is greater than the maximum permissible designated concentration.

(6) Modification of treatment decisions. The department may modify its determination of the source water treatment under 43.7(3)“b”(6), or maximum permissible lead and copper concentrations for finished water entering the distribution system under 43.7(3)“b”(4). A request for modification by a public water supply system or other interested party shall be in writing, explain why the modification is appropriate, and provide supporting documentation. The department may modify its determination where it concludes that such change is necessary to ensure that the system continues to minimize lead and copper concentrations in source water. A revised determination will be made in writing, set forth the new treatment requirements, explain the basis for the decision, and provide an implementation schedule for completing the treatment modifications.

#### 43.7(4) Lead service line replacement requirements.

a. Applicability. Public water supply systems that fail to meet the lead action level in tap samples taken pursuant to 567—paragraph 41.4(1)“c”(4)“2” after installing corrosion control or source water treatment (whichever sampling occurs later) shall replace lead service lines in accordance with the requirements of this subrule. If a system is in violation of 43.7(1) and 43.7(3) for failure to install source water or corrosion control treatment, the department may require the system to commence lead service line replacement under this subrule after the date by which the system was required to conduct monitoring under 567—paragraph 41.4(1)“c”(4)“2” has passed.

b. Lead service line replacement schedule. A public water supply system shall replace annually at least 7 percent of the initial number of lead service lines in its distribution system. The initial number of lead service lines is the number of lead lines in place at the time the replacement program begins. The system shall identify the initial number of lead service lines in its distribution system based upon a materials evaluation, including the evaluation required under 567—paragraph 41.4(1)“c”(1). The first year of lead service line replacement shall begin on the date the action level was exceeded in tap sampling referenced in 43.7(4)“a.”

c. Exemption. A public water supply system is not required to replace an individual lead service line if the lead concentration in all service line samples from that line, taken pursuant to 567—paragraph 41.4(1)“c”(2)“3,” is less than or equal to 0.015 mg/l.

d. Lead service line control. A public water supply system shall replace the entire service line (up to the building inlet) unless it demonstrates to the satisfaction of the department that it controls less than the entire service line. In such cases, the system shall replace the portion of the line which the department determines is under the system’s control. The system shall notify the user served by the line that the system will replace the portion of the service line under its

control and shall offer to replace the building owner’s portion of the line, but is not required to bear the cost of replacing the building owner’s portion of the line. For buildings where only a portion of the lead service line is replaced, the water system shall inform the resident(s) that the system will collect a first flush tap water sample after partial replacement of the service line is completed if the resident(s) so desires. In cases where the resident(s) accepts the offer, the system shall collect the sample and report the results to the resident(s) within 14 days following partial lead service line replacement.

e. Lead service line control—department review. A public water supply system is presumed to control the entire lead service line (up to the building inlet) unless the system demonstrates to the satisfaction of the department in a letter submitted under 567—paragraph 42.4(2)“e”(4) that it does not have any of the following forms of control over the entire line (as defined by state statutes, municipal ordinances, public service contracts or other applicable legal authority): authority to set standards for construction, repair, or maintenance of the line, authority to replace, repair, or maintain the service line, or ownership of the service line. The department will review the information supplied by the system and determine whether the system controls less than the entire service line and, in such cases, will determine the extent of the system’s control. The determination will be in writing and it must explain the basis underlying the decision.

f. Lead service line replacement schedule. The department may require a public water supply system to replace lead service lines on a shorter schedule than that required by this subrule, taking into account the number of lead service lines in the system, where such a shorter replacement schedule is feasible. The department will make this determination in writing and notify the system of its finding within six months after the system is triggered into lead service line replacement based on monitoring referenced in 43.7(4)“a.”

g. Cessation of lead service line replacement. Any public water supply system may cease replacing lead service lines whenever first draw samples collected pursuant to 567—paragraph 41.4(1)“c”(2)“2” meet the lead action level during each of two consecutive monitoring periods and the system submits the results. If the first draw tap samples collected in any such water system thereafter exceed the lead action level, the system shall recommence replacing lead service lines, as detailed in 43.7(4)“b.”

h. Reporting requirements. To demonstrate compliance with 43.7(4)“a” through “d,” a system shall report the information specified in 567—paragraph 42.4(2)“e.”

ITEM 12. Rescind rule 567—43.8(455B) and insert in lieu thereof the following **new** rule:

#### 567—43.8(455B) Viability assessment.

43.8(1) Definitions specific to viability assessment.

“New system” for viability assessment purposes includes public water supply systems which are newly constructed after the effective date of this rule, as well as systems which do not currently meet the definition of a PWS, but which expand their infrastructure and thereby grow to become a PWS. Systems not currently meeting the definition of a PWS and which add additional users and thereby become a PWS without constructing any additional infrastructure are not “new systems” for the purposes of this subrule.

“Nonviable system” for viability assessment purposes means a system lacking the technical, financial, and managerial ability to comply with 567—Chapters 40 through 43 and 81.



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“Significant noncompliance (SNC)” for viability assessment purposes means the failure to comply with any drinking water standard as adopted by the state of Iowa as designated by the department.

“Viability” for viability assessment purposes is the ability to remain in compliance insofar as the requirements of the federal Safe Drinking Water Act and 567—Chapters 40 through 43 and 81.

“Viable system” for viability assessment purposes means a system with the technical, financial, and managerial ability to comply with applicable drinking water standards adopted by the state of Iowa.

**43.8(2) Applicability and purpose.** These rules apply to all new and existing public water supplies, including the following: new systems commencing operation after October 1, 1999; systems deemed to be in significant noncompliance with the primary drinking water standards; DWSRF applicants; and existing systems. The purpose of the viability assessment program is to ensure the safety of the public drinking water supplies and ensure the viability of new public water supply systems upon commencement of operation. The department may assess public notification requirements and administrative penalties to any public water supply system which fails to fulfill the requirements of this rule.

**43.8(3) Contents of a viability assessment.** The viability assessment must address the areas of technical, financial, and managerial viability for a public water supply system. The assessment must include evaluation of the following areas at a minimum, and the public water supply system may be required to include additional information as directed by the department. The viability of a system should be forecast for a 20-year period.

a. Technical viability.

- (1) Supply sources and facilities
- (2) Treatment
- (3) Infrastructure (examples: pumping, storage, distribution)

b. Financial viability.

- (1) Capital and operating costs
- (2) Revenue sources
- (3) Contingency plans

c. Managerial viability.

- (1) Operation
- (2) Maintenance
- (3) Management
- (4) Administration

**43.8(4) New systems.**

a. Submission of system viability assessment. New public water supply systems (including community, nontransient noncommunity systems, and transient noncommunity systems) commencing operation after the effective date of this rule are required to submit a completed system viability assessment for review by the department, prior to obtaining a construction permit. The viability assessment may be submitted with the application for a construction permit. The department may reject receipt or delay review of the construction plans and specifications until an adequate viability assessment is provided. If the department finds, upon review and approval of the viability assessment, that the PWS will be viable, a construction permit will be issued in accordance with 567—Chapters 40 and 43. Prior to beginning operation, a public water supply operation permit must be obtained in accordance with 43.2(455B) and 567—40.5(455B).

b. Review of the viability assessment. If the department declines to approve the viability assessment as submitted by

the applicant, or if the department finds that the PWS is not viable, approval of construction and operation permit applications will be denied. If the viability assessment is conditionally approved, construction and operation permits will be issued, with conditions and a schedule to achieve compliance specified in the operation permit.

**43.8(5) Existing systems.**

a. Submission of system viability assessment. Any community, nontransient noncommunity, or transient noncommunity water system which operated prior to October 1, 1999, and was regulated as a public water system by the department shall be considered an existing system. Any system which does not currently meet the definition of a PWS, but which expands their infrastructure and thereby grows to become a PWS is considered a new system. Systems not currently meeting the definition of a PWS and which add additional users and thereby become a PWS without constructing any additional infrastructure are considered existing systems for the purposes of this subrule. All PWSs should complete a viability assessment. However, only those existing PWSs which meet one or more of the following criteria are required to complete a viability assessment for the department’s review and approval.

(1) Systems applying for DWSRF loan funds.

(2) Systems categorized as being in significant noncompliance by the department, due to their history of failure to comply with drinking water standards.

(3) Systems identified by the department via a sanitary survey as having technical, managerial, or financial problems as evidenced by such conditions as poor operational control, a poor state of repair or maintenance, vulnerability to contamination, or inability to maintain adequate distribution system operating pressures.

(4) Systems which have been unable to retain a certified operator in accordance with 567—Chapter 81.

b. Review of viability assessments for systems required to submit an assessment. If the assessment is incomplete and does not include all of the required elements, the supply will be notified in writing and will be given an opportunity to modify and resubmit the assessment within the time period specified by the department. If the system fails to resubmit a completed viability assessment as specified by the department, the department may find that the system is not viable. If the submitted assessment is complete, the department will either indicate that the system is viable or not viable after the assessment review process. The system will be notified of the results of the evaluation by the department.

c. Review of voluntarily submitted viability assessments. It is recommended that all existing systems complete the viability assessment and submit it to the department. Voluntarily submitted assessments may be reviewed upon request and will be exempt from any requirements to modify the assessment if it is not approved, or from a determination that the system is not viable, providing the system does not meet any of the criteria for mandatory completion of a viability assessment as set forth in 43.8(4)“a” above.

**43.8(6) Systems which are determined to be not viable.**

a. Applicability. The following applies to community, nontransient noncommunity, and transient noncommunity systems:

(1) Systems applying for DWSRF loan funds must be viable, or the loan funds must be used to assist the system in attaining viable status. If a system making a loan application is found to be not viable, and loan funds will not be sufficient or available to ensure viability, then the situation must be

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corrected to the department's satisfaction prior to qualification to apply for loan funds.

(2) Systems which meet the department's criteria of significant noncompliance are not considered viable. The viability assessment completed by the public water supply and the most recent sanitary survey results will be evaluated by the department to assist the system in returning to and remaining in compliance, which would achieve viability. Required corrective actions will be specified in the system's operation permit and will include a compliance schedule. Field office inspections will be conducted on an as-needed basis to assist the system in implementing the required system improvements.

(3) Systems experiencing technical, managerial, or financial problems as noted by department in the sanitary survey will be considered not viable. The viability assessment completed by the public water supply will be evaluated by the department to assist the system in attaining viability, and any required corrective actions will be specified in the system's operation permit.

(4) Systems unable to retain a certified operator will be considered not viable. All community and nontransient non-community water systems, and transient noncommunity water systems as denoted by the department, are required to have a certified operator who meets the requirements of 567—Chapter 81. The viability assessment completed by the public water supply will be used to determine the source of the problem, and required corrective actions will be specified in the system's operation permit.

**43.8(7) Revocation or denial of operation or construction permit.**

a. Revocation or denial of an operation permit. Failure to correct the deficiencies regarding viability, as identified in accordance with a compliance schedule set by the department, may result in revocation or denial of the system's operation permit. If the department revokes or denies the operation permit, the owner of the system must negotiate an alternative arrangement with the department for providing treatment or water supply services within 30 days of receipt of the notification by the department unless the owner of the supply appeals the decision to the department. The public water supply is required to provide water that continually meets all health-based standards during the appeal process.

b. Denial of new construction permits for an existing system. In addition to the criteria provided in 567—Chapters 40 through 44, new construction permits for water system improvements may be denied until the system makes the required corrections and attains viable status unless the proposed project is necessary to attain viability.

c. Failure to conform to approved construction plans and specifications, or to comply with the requirements of 567—Chapters 40 to 44. Failure of a project to conform to approved construction plans and specifications, or failure to comply with the requirements of 567—Chapters 40 to 44, constitutes grounds for the director to withhold the applicable construction and operation permits. The system is then responsible for ensuring that the identified problem with the project is rectified so that permits may be issued. Once an agreement for correcting the problem is reached between the department and the system, the department will issue the appropriate permits according to the provisions of the agreement. If an agreement cannot be reached within a reasonable time period, the permit shall be denied.

d. Contents of the notification denying the permit. The notification of denial or withholding approval of the operation or construction permit will state the department's reasons for withholding or denying permit approval.

**43.8(8) Appeals.**

a. Request for formal review of determination of viability. A person or entity who disagrees with the decision regarding the viability of a public water supply system may request a formal review of the action. A request for review must be submitted in writing to the director by the owner or their designee within 30 days of the date of notification by the department of the viability decision.

b. Appeal of denial of operation or construction permit. A decision to deny an operation or construction permit may be appealed by the applicant to the environmental protection commission pursuant to 567—Chapter 7. The appeal must be made in writing to the director within 30 days of receiving the notice of denial by the owner of the public water supply.

ITEM 13. Rescind **567—Chapter 43, Table A**, and insert in lieu thereof the following **new Table A**:

TABLE A: SEPARATION DISTANCES FROM WELLS

SOURCE OF CONTAMINATION		REQUIRED DISTANCE FROM WELL, IN FEET								
		5	10	25	50	75	100	200	400	1000
<b>WASTEWATER STRUCTURES</b>										
POINT OF DISCHARGE TO GROUND SURFACE	Well house floor drains	A								
	Water treatment plant wastes				A					
	Sanitary & industrial discharges								A	
SEWERS AND DRAINS	Well house floor drains to surface	A-EWM	A-WM	A-WM	A-SP					
	Well house floor drains to sewers			A-WM	A-WM	A-SP	A-SP			
	Water plant wastes			A-WM	A-WM	A-SP	A-SP			
	Sanitary & storm sewers, drains			A-WM	A-WM	A-SP	A-SP			
	Sewer force mains					A-WM	A-WM	A-WM	A-SP	A-SP

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SOURCE OF CONTAMINATION		REQUIRED DISTANCE FROM WELL, IN FEET								
		5	10	25	50	75	100	200	400	1000
LAND DISPOSAL OF WASTES	Land application of solid wastes						D	S		
	Irrigation of wastewater						D	S		
Concrete vaults & septic tanks							D	S		
Mechanical wastewater treatment plants								D	S	
Cesspools & earth pit privies								D	S	
Soil absorption fields								D	S	
Lagoons									D	S
<b>CHEMICALS</b>										
Chemical application to ground surface							D	S		
CHEMICAL AND MINERAL STORAGE	Above ground						D	S		
	On or under ground							D	S	
<b>ANIMALS</b>										
Animal pasturage					A					
Animal enclosure							D	S		
ANIMAL WASTES	Land application of solids						D	S		
	Land application of liquid or slurry						D	S		
	Storage tank						D	S		
	Solids stockpile							D	S	
	Storage basin or lagoon								D	S
Earthen silage storage trench or pit							D	S		
<b>MISCELLANEOUS</b>										
Basements, pits, sumps			A							
Flowing streams or other surface water bodies					A					
Cisterns					D		S			
Cemeteries								A		
Private wells								D	S	
Solid waste disposal sites										A

A: All wells

D: Deep wells

S: Shallow wells

EWM: Water main pipe specifications encased in 4" of concrete

SP: Pipe of sewer pipe specifications

WM: Pipe of water main specifications

## ITEM 14. Rescind 567—Chapter 43, Table B.

**ARC 8909A****ENVIRONMENTAL PROTECTION COMMISSION[567]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby gives Notice of Intended Action to adopt Chapter 55,

"Aquifer Storage and Recovery: Criteria and Conditions for Authorizing Storage, Recovery, and Use of Water," Iowa Administrative Code.

New definitions for "aquifer storage and recovery," "contiguous," "displacement zone," "drawdown," "limited registration," "permit," "permittee," "receiving aquifer," "recovered water," "stored water," "treated water," and "zone of influence" are added. Technical additions mandated by statute for the practice of aquifer storage and recovery and the clarification of legal rights and obligations affecting permit holders are specified.

Any interested person may submit written suggestions or comments concerning the proposed rules through May 27, 1999. Such written materials should be submitted to Michael K. Anderson, P.E., Department of Natural Resources, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319-0034; fax (515)281-8895.

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Persons are also invited to present oral or written comments at 10 a.m. at any of the six public hearings which will be held:

- May 4, 1999 Department of Natural Resources  
Henry A. Wallace Building  
Fourth Floor Conference Room  
502 E. Ninth Street  
Des Moines, Iowa
- May 6, 1999 Buena Vista College  
Siebens Forum  
Hanson Room 8  
Fourth and Grand Avenue  
Storm Lake, Iowa
- May 24, 1999 North Iowa Area Community College  
Muse-Norris Conference Room  
500 College Drive  
Mason City, Iowa
- May 25, 1999 Community Room (upstairs/use back  
entrance)  
101 E. Main Street  
Manchester, Iowa
- May 26, 1999 Iowa City Public Library  
Room A  
123 S. Linn Street  
Iowa City, Iowa
- May 27, 1999 Atlantic Municipal Utilities  
Conference Room  
15 West Third Street  
Atlantic, Iowa

Any persons who intend to attend a public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

Copies of these proposed rules may be obtained from Emmett Deets, Records Center, Department of Natural Resources, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319-0034.

These rules may impact small business.

These rules are intended to implement Iowa Code sections 455B.261, 455B.265 and 455B.269.

The following chapter is proposed.

Adopt new 567—Chapter 55 as follows:

#### CHAPTER 55

#### AQUIFER STORAGE AND RECOVERY: CRITERIA AND CONDITIONS FOR AUTHORIZING STORAGE, RECOVERY, AND USE OF WATER

**567—55.1(455B) Statutory authority.** The authority for the department of natural resources to permit persons to inject, store, and recover treated water for potable use is given by Iowa Code sections 455B.261, 455B.265 and 455B.269. This permit requirement applies to any aquifer storage and recovery (ASR) system, including projects involving border streams. The person or water system seeking an aquifer storage and recovery permit must review the criteria for ASR permits and contact the department if a permit is required.

**567—55.2** Reserved.

**567—55.3(455B) Purpose.** The aquifer storage and recovery rules are intended to describe aquifer storage and recovery, including defining the affected area within the aquifer, creating a permit program with technical criteria for evaluating ASR projects, and incorporating technical additions for

the practice of treated water recovery. Legal rights and obligations affecting ASR permit holders are defined.

**567—55.4(455B) Definitions.** The following definitions shall apply to this chapter:

“Aquifer storage and recovery (ASR)” means the injection and storage of treated water in an aquifer through a permitted well during times when treated water is available and withdrawal of the treated water from the same aquifer through the same well during times when treated water is needed.

“Contiguous” means directly adjacent or touching along all or part of one side of a legally defined piece of property. Tracts of land involved in the same water supply and separated only by separators such as roads, railroads, or bike trails are deemed contiguous tracts.

“Displacement zone” means the three-dimensional area of dispersion into which treated water is injected for storage, subject to later recovery.

“Drawdown” means the decrease in water level at a pumping well due to the action of the pump.

“Limited registration” means a one-year written authorization for a nonrecurring use of water for the purpose of forecasting and testing the ASR well system, to include cyclic test pumping as necessary.

“Permit” means a written authorization issued to a permittee by the department for the storage of treated water in an existing aquifer or the subsequent withdrawal of treated water from an existing aquifer. The permit specifies the quantity, duration, location, and instantaneous rate of this storage or withdrawal.

“Permittee” means a water supply system which obtains a permit from the department authorizing the injection of and possession by storage of treated water in an aquifer, withdrawal of this water at a later date, and the actual beneficial use of the water.

“Receiving aquifer” means the aquifer into which treated water is injected under terms of an ASR permit.

“Recovered water” means water which is recovered from storage within the displacement zone under terms of an ASR permit.

“Stored water” means injected treated potable water which is stored in a receiving aquifer within the displacement zone under terms of an ASR permit.

“Treated water” for the purposes of this chapter means water which has been physically, chemically, or biologically treated to meet national primary and secondary drinking water standards and is fit for human consumption as defined in 567—Chapters 40 to 43, Iowa Administrative Code.

“Zone of influence” means a circular area surrounding a pumping water well where the water table has been measurably lowered due to the action of the pump.

#### **567—55.5(455B) Application processing.**

##### **55.5(1) Application.**

a. Initial application for approval of an aquifer storage and recovery (ASR) project. A permit shall be required for the storage of all treated water in an aquifer for later recovery for potable uses. New permit applications (a request for a new permit, as distinguished from modification or renewal of an existing permit) shall be made on a form obtained from the department. An application form must be submitted by or on behalf of the water supply system owner, lessee, easement holder, or option holder of the area where the water is to be stored and recovered from an aquifer. An application must be accompanied by a map portraying:

- (1) The points of injection and withdrawal,

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(2) The immediate vicinity (topography) of the receiving aquifer,

(3) Any production, test or other observation wells within the aquifer, and

(4) The area of water storage.

The application must also include a description of the land where wells are located and water will be injected, withdrawn and used, oriented as to quarter section, section, township, and range. One application will be adequate for all uses on contiguous tracts of land. A water supply construction permit issued pursuant to 567—Chapter 43 will also be required for all injection/recovery wells.

b. Limited registration. The department's response to an initial application will be to issue a limited registration to initiate an ASR pretesting program pursuant to paragraph 55.6(1)"a"; only after approval of and completion of an ASR pretesting program with appropriate public notification pursuant to subrule 55.5(3) and proper evaluation of the test results will the department issue an ASR permit.

c. A request for modification or renewal of a permit shall be made in a similar manner. This application does not need to reiterate map and location information as previously submitted to the department (unless the information has changed). The limited registration requirement for aquifer pretesting does not apply to modified or renewed ASR permit requests (unless required by the department).

55.5(2) Application fee. A nonrefundable fee in the form of a credit card, check, or money order in the amount of \$200 payable to the Department of Natural Resources must accompany an application for a permit (and limited registration for aquifer pretesting) for aquifer storage and recovery. A \$200 fee must accompany an application for modification or renewal of an ASR permit.

55.5(3) Published notice—applicant limited registration. The department will issue a limited registration allowing the applicant to conduct test pumping of an ASR site pursuant to paragraph 55.6(1)"a." The applicant shall first publish notice of intent to test the injection and water pumpage/recovery equipment prior to receiving the limited registration. Publication shall be in a form and manner acceptable to the department, in the newspaper of largest circulation in the county where the ASR project is located, and proof of publication shall be submitted to the department. The department will then issue the limited registration, and the applicant shall notify contiguous landowners by U.S. mail of the receipt of the limited registration and the intent to test an ASR site.

55.5(4) Published notice—departmental intent to issue a final ASR permit. Before issuance of a final ASR permit, the department shall publish notice of proposed decision to issue an ASR permit or deny the ASR application. Publication shall be in the newspaper of largest circulation in the county where the ASR project is located. This publication shall summarize the department's findings on whether the application conforms to relevant criteria as outlined in subrule 55.6(1). An engineering or hydrogeological summary report prepared by department staff may be attached to the published summary of findings. Copies of the proposed decision shall be mailed to the applicant, any person who commented, and any other person who requests a copy of the decision. The decision shall be accompanied by a certification of the date of mailing. A proposed decision becomes the final decision of the department unless a timely notice of appeal is filed in accordance with 55.5(6).

55.5(5) Form of department decision. The decision on an application shall be a permit or denial letter issued by the de-

partment. Each permit shall include appropriate standard and special conditions consistent with Iowa Code sections 455B.261 to 455B.274 and 455B.281 and 567—Chapters 52 to 55. The decision may incorporate by reference and attach the summary report described in 55.5(4). Each decision shall include the following:

a. Determinations as to whether the project satisfies all relevant criteria not addressed in an attached summary report.

b. An explanation of the purpose for imposing each special condition.

c. An explanation of consideration given to all comments submitted pursuant to 55.5(3) and 55.5(4) unless the comments are adequately addressed in the attached summary report.

55.5(6) Appeal of department decision. Any person aggrieved by an initial ASR permit decision may appeal the action. The person must submit a request for appeal in writing to the director within 30 days of the date of issuance of the final decision made by the department. A decision by the director on an appeal may be further appealed to the environmental protection commission (EPC). The form of appeal and appeal procedures are governed by 567—Chapter 7. The department shall mail a copy of the notice of appeal to each person who commented on the application.

55.5(7) ASR permit public hearing. Reserved.

#### 567—55.6(455B) Aquifer storage and recovery technical evaluation criteria.

55.6(1) Requirements. Injections into aquifers for the purpose of treated water storage, and subsequent withdrawals from the receiving aquifers intended for potable uses shall be subject to the following requirements:

a. Aquifer pretesting. Procurement of a limited registration for aquifer pretesting as outlined in subrule 55.5(1). The limited registration shall be for the period of one year and may be renewed at the discretion of the department should the project require more than one year to be completed. The limited registration shall allow initial aquifer testing for determining the feasibility of aquifer storage and recovery, including placement of pumping and storage/extraction equipment. The testing approach shall be designed to provide information as needed to evaluate the ultimate capacity anticipated for the ASR project and provide assurance that the ASR site shall not restrict other uses of the aquifer. The testing program shall include injection rates and schedules, water storage volumes, recovery rates and schedule, and a final testing report.

b. Engineering report. An engineering evaluation of the technical feasibility of the proposed water injection and the probable percentage of recovery of treated water when pumped for recovery shall be submitted to the department. The engineering report shall include preliminary information from conceptual evaluations and aquifer pretesting such as:

- (1) Injection rates and schedules,
- (2) Water storage volumes,
- (3) The length of time the injected water will be stored,
- (4) The projected recovery rate,
- (5) Water quality data necessary to demonstrate the percentage of recovered water and that the water meets national drinking water standards,
- (6) Water level monitoring data including the location of observation wells, if any,
- (7) A plan detailing what to do with the recovered water if the intended use is not possible, and
- (8) A final testing protocol.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

If the report can demonstrate by field test results or by a conceptual or mathematical hydrogeologic modeling that the injection, storage, and subsequent recovery will not adversely affect nearby users, the ASR project may be permitted after review by the department. A displacement zone containing the stored volume of water will not be allowed if it adversely affects another user's zone of influence. If the department finds through hydrogeologic modeling or during pretesting that the proposed displacement zone may impact the zone of influence of another user's existing well, additional testing will be required. The department may require the applicant to construct observation wells between the ASR site and nearby wells and may designate project-specific monitoring and reporting requirements at the observation wells.

c. Hydrogeologic evaluation. Hydrogeologic investigation of the site to evaluate potential quantitative and qualitative impacts to the aquifer, including changes to localized aquifer geochemistry, shall be part of the engineering report. Preliminary hydrogeologic information shall include:

- (1) The local geology,
- (2) A hydrogeologic flow model of the areal flow patterns,
- (3) A description of the aquifer targeted for storage,
- (4) Estimated flow direction and rate of movement,
- (5) Both permitted and private wells within the area affected by ASR wells, including best estimates of respective zones of influence,
- (6) Basis for estimating the displacement zone,
- (7) Anticipated changes to the receiving aquifer geochemistry due to the proposed ASR testing and use, and
- (8) Potable water quantity recovery estimates.

d. Protection of nearby existing water uses. The aquifer storage and recovery permit applicant shall demonstrate that the ASR site shall not restrict other uses of the aquifer by nearby water use permittees. An ASR applicant shall conduct and submit an inventory of nearby wells. The department, after considering the rate and amount of the ASR injections and withdrawals and the characteristics of the aquifer, will determine the extent of the inventory and the appropriate radius from the proposed ASR site. The department shall provide a map specifying the area in which the inventory is needed and forms specifying information to be gathered. The ASR permit applicant shall make a good-faith effort in obtaining available information from public records to identify nearby landowners and occupants and from drilling contractors identified by a landowner or occupant who responds to the inventory. Well interference conflicts arising from the proposed ASR site/project shall be resolved as outlined in 567—Chapter 54 or as otherwise specified by the department. Water recovery from an ASR site will not be permitted to any user other than the ASR permittee.

e. MCL exceedance limitation. No permit may allow injected water to contain contaminants in excess of the maximum contaminant levels (MCLs) established by the department in 567—Chapters 40 to 43. Chemicals associated with disinfection of the water may be injected into the aquifer up to the standards established under 567—Chapters 40 to 43 or as otherwise specified by the department.

f. Reporting and record keeping. The permittee shall maintain a monthly record of injection and recovery, including the total number of hours of injection and recovery and the total metered quantity injected and recovered. The records must be submitted to the department annually. Project records including water quality testing records must be kept by the applicant for a period of five years. Water quality

monitoring shall be at the frequency required by 567—Chapters 40 to 43 and as identified in the water system's public water supply operation permit. The applicant shall keep project records for a period of three years after termination of an ASR project and closure of the recovery wells.

g. Follow-up analysis by permittee. Reserved.

h. Vacating a permit for failure to construct and nonuse. The department may vacate the permit if the applicant fails to construct injection and water pumpage/recovery and ancillary equipment within three years of issuance of the permit (or subsequent permit modifications or renewals). The permit may also be vacated if the applicant does not use the storage system within three years of acquisition of the permit. A site abandonment plan including the physical removal of injection and water recovery equipment and the abandonment of all injection/recovery and observation wells pursuant to 567—Chapter 39 will be required of the applicant if the permit is vacated. A permittee whose permit is vacated may request a formal review of the action. The permittee must submit a request for review in writing to the director within 30 days of the date of notification of the final decision made by the department. A decision by the director in a formal review case may be further appealed to the environmental protection commission (EPC).

i. Mechanical integrity. Other conditions that are necessary to ensure adequate protection of water supplies may be imposed for mechanical integrity checks of the injection and treated water recovery well.

j. Revocation. The department may revoke or modify a permit to prevent or mitigate injury to other water users or otherwise protect aquifer water quality. The department may, based upon valid scientific data, further restrict certain chemicals in the injection source water if the department finds the constituents will interfere with or pose a threat to the maintenance of the water resources of the state for present or future beneficial uses.

k. Nonpotable uses. Reserved.

55.6(2) Duration of permit, conditions of permit, and applicant property rights. Permits for aquifer storage and recovery shall be issued for 20 years.

a. Conditions of permit. The permit will specify the maximum allowable injection rate at each well, the maximum allowable annual quantitative storage volume, and the maximum allowable instantaneous water withdrawal rate at each well.

b. Property of permittee. The department shall not authorize withdrawals of treated water from an aquifer storage and recovery site by anyone other than the permittee during the period of the permit and each subsequent renewal permit. Treated water injected into a receiving aquifer (and thereby comprising the "displacement zone") as part of an ASR permit is the property of the permittee. Treated water which is recovered from storage within a displacement zone under terms of a permit shall be referred to as "recovered water" and shall be the property of the permittee. If a permit is revoked or otherwise surrendered, the ownership of the injected water within the aquifer (the water considered as "property") reverts to the state of Iowa.

c. Restrictions on other wells within displacement zone. Existing wells within the displacement zone shall be plugged pursuant to 567—Chapter 39. No new private water wells, injection/withdrawal wells, observation wells, or public water supply wells shall be permitted by any governmental entity within the ASR displacement zone while the ASR permit is in effect.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

These rules are intended to implement Iowa Code sections 455B.261, 455B.265 and 455B.269.

## ARC 8910A

ENVIRONMENTAL PROTECTION  
COMMISSION[567]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 83, "Laboratory Certification," Iowa Administrative Code.

Chapter 83 is amended to include: minor grammatical changes; reordering of the paragraphs so that the various environmental program areas always appear in the same order (water supply, wastewater, and underground storage tank); new authority to suspend or revoke certification; definitions; applicability to private water and wastewater systems, as is consistent with Chapters 47 and 69; possibility of third-party accreditation; removal of the initial wastewater program startup provisions, as that program is underway; requirement that laboratories be appropriately certified prior to compliance sample analysis and data reporting; clarification of terms and requirements; certification of the University Hygienic Laboratory as IDNR's appraisal authority; new EPA language for performance evaluation sample providers; addition of "suspended certification" category; clarification of provisional, suspended, and revoked certification criteria and procedures; and administrative order authority.

Any interested person may make written suggestions or comments on these proposed amendments prior to May 27, 1999. Such written materials should be directed to Diane Moles, Water Supply Section, Department of Natural Resources, Wallace State Office Building, 502 E. Ninth Street, Des Moines, Iowa 50319-0034; fax (515)281-8895. Persons who wish to convey their views orally should contact the Water Supply Section at (515)281-8863 or at the Environmental Protection Commission offices on the fifth floor of the Wallace State Office Building.

Also, there will be six public hearings at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules. The public hearings will be held at 10 a.m. in the following places on the following dates:

- May 4, 1999 Department of Natural Resources  
Henry A. Wallace Building  
Fourth Floor Conference Room  
502 E. Ninth Street  
Des Moines, Iowa
- May 6, 1999 Buena Vista College  
Siebens Forum  
Hanson Room 8  
Fourth and Grand Avenue  
Storm Lake, Iowa

- May 24, 1999 North Iowa Area Community College  
Muse-Norris Conference Room  
500 College Drive  
Mason City, Iowa
- May 25, 1999 Community Room  
(upstairs/back entrance)  
101 E. Main Street  
Manchester, Iowa
- May 26, 1999 Iowa City Public Library  
Room A  
123 S. Linn Street  
Iowa City, Iowa
- May 27, 1999 Atlantic Municipal Utilities  
Conference Room  
15 West Third Street  
Atlantic, Iowa

Any persons who intend to attend a public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code section 17A.3(1)"b" and chapter 455B, division III, part 1. The following amendments are proposed.

ITEM 1. Amend rule 567—83.1(455B) as follows:

**567—83.1(455B) Authority, purpose, and applicability.**

**83.1(1) Authority.** Pursuant to Iowa Code sections ~~section 455B.113 and 455B.114~~, a laboratory certification program is required for laboratories performing analyses of samples which are required to be submitted to the department as a result of Iowa Code provisions, rules, operation permits, or administrative orders. *Pursuant to Iowa Code section 455B.114, the department may suspend or revoke the certification of a laboratory upon determination of the department that the laboratory no longer fulfills one or more of the requirements for certification.*

**83.1(2) Purpose.** The purpose of these rules is to provide the procedures for laboratories to use to apply for certification, to establish laboratory certification fees, *to maintain certification*, and to provide the appropriate methods and references for evaluating laboratory competence including the requirements for laboratories to become certified.

**83.1(3) Applicability to environmental program areas.**  
a. *Water supply (drinking water).* The requirements of this chapter apply to all laboratories conducting drinking water analyses *(with the exception of the University of Iowa Hygienic Laboratory)* pursuant to 567—Chapters 40, 41, 42, and 43, and 47 *(with the exception of the University of Iowa Hygienic Laboratory)*. Routine, on-site monitoring for pH, turbidity, and chlorine residual and on-site operation and maintenance-related analytical monitoring are excluded from this requirement.

b. *Underground storage tanks.* The requirements of this chapter *also* apply to all laboratories conducting underground storage tank analyses *(with the exception of the University of Iowa Hygienic Laboratory)* for petroleum constituents pursuant to 567—Chapter 135 *(with the exception of the University of Iowa Hygienic Laboratory)*. Routine on-site monitoring conducted by or for underground storage tank owners for leak detection or a nonregulatory purpose are excluded from this requirement.

c. *Wastewater.* The requirements of this chapter *also* apply to all laboratories conducting analyses of wastewater, groundwater or sewage sludge *(with the exception of the*

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

University of Iowa Hygienic Laboratory) pursuant to 567—Chapters 63, and 67, and 69 (with the exception of the University of Iowa Hygienic Laboratory). Routine on-site monitoring for pH, temperature, dissolved oxygen, total residual chlorine and other pollutants that must be analyzed immediately upon sample collection, settleable solids, physical measurements such as flow and cell depth, and operational monitoring tests specified in 567—subrule 63.3(4) are excluded from this requirement.

ITEM 2. Amend rule 567—83.2(455B) as follows:

**567—83.2(455B) Definitions.**

*“Certified” means a laboratory demonstrates to the satisfaction of the department its ability to consistently produce valid data within the acceptance limits as specified within the department’s requirements for certification and meets the minimum requirements of this chapter and all applicable regulatory requirements. A laboratory may be certified for an analyte, an analytical series, or an environmental program area, except in the UST program area, where certification for individual analytes is not allowed.*

*“Environmental program area” means the water supply (drinking water) program, underground storage tank program, or wastewater program pursuant to 83.1(3).*

*“Manual for the Certification of Laboratories Analyzing Environmental Samples for the Iowa Department of Natural Resources” (1996) (1999) (Iowa Manual) is incorporated by reference in this chapter.*

1. Chapter 1 of the manual *Iowa Manual* pertains to certification of laboratories analyzing samples of drinking water and incorporates by reference the “Manual for the Certification of Laboratories Analyzing Drinking Water,” 4th edition, March 1997, EPA document 815-B-97-001, 570/9-90-008, April 1990, and its supplements EPA 570/9-90-008A, October 1991, and EPA 814B-92-0002, September 1992.

2. Chapter 2 of the *Iowa Manual* pertains to laboratories analyzing samples for the underground storage tank program.

3. Chapter 3 of the *Iowa Manual* pertains to laboratories analyzing samples for the department’s wastewater and sewage sludge disposal programs.

*“Performance evaluation sample (PE)” means a reference sample provided to a laboratory for the purpose of demonstrating that a laboratory can successfully analyze the sample within limits of performance specified by the department. The true value of the concentration of the reference material is unknown to the laboratory at the time of analysis.*

*“Provisional certification” means a laboratory has deficiencies, which must be corrected within the specified time frames listed in 83.7(2) “d,” but demonstrates to the satisfaction of the department its ability to consistently produce valid data within the acceptance limits as specified within the department’s certification requirements.*

*“Revoked certification” means a laboratory no longer fulfills the requirements of this chapter, and certification is revoked by the director upon determination of the director that the laboratory no longer fulfills the requirements for certification (455B.114).*

*“Suspended certification” means a temporary suspension of certification for a laboratory, conditional upon meeting the time frames in 83.7(4) “d” for the correction of the deficiency.*

*“Temporary certification” means short-termed transitional certification granted in certain circumstances when*

*the department implements certification in a new environmental program area.*

ITEM 3. Amend subrule 83.3(1) as follows:

**83.3(1) Application forms.** Application for laboratory certification, *other than for temporary certification*, shall be made on forms provided by the department and shall be accompanied by the *nonrefundable* fee specified in 83.3(2). The application for certification or renewal of certification shall be made at least 60 days prior to the *certification expiration date when certification or renewal is desired*. The department may require submission of additional information necessary to evaluate the application. ~~If the application is incomplete or deficient, evaluation of the application (and lab appraisal) will not be completed until such time as the applicant has supplied the missing information or corrected the deficiency. All required documentation must be supplied to the department prior to the on-site visit. Failure to submit a complete application may result in denial of the renewal.~~

ITEM 4. Amend subrule 83.3(2) as follows:

**83.3(2) Fees and expenses.**

a. A nonrefundable fee for the administration, completion of on-site laboratory surveys and assessments, and enforcement of laboratory certification requirements shall be paid with the certification application.

(1) *The on-site visit will not be conducted and certification* ~~Certification~~ will not be issued until the fees and expenses are paid *and all other certification requirements are met. The fee for certification will not be refunded if an on-site visit is not performed.*

(2) Out-of-state laboratories will be responsible for paying the expenses of an on-site visit, *in addition to the standard certification fee*, if required, and the department or its agent will bill the out-of-state laboratory directly for the expenses.

(3) *When a laboratory’s certification is changed to “provisional” or “suspended” and the period for correcting deficiencies extends beyond the certification period, the laboratory must continue to pay the required fees in order to maintain its certification status.*

(4) *Any laboratory requiring additional on-site visits is responsible for paying the expenses of the additional on-site visits. The department or its agent will bill the laboratory directly for these expenses. The laboratory certification fees shall be increased by \$300 per visit in those cases where multiple on-site visits are necessary.*

b. Certification in multiple environmental program areas. Where a laboratory is certified for the same analyte in more than one environmental program area, the laboratory must meet all the applicable certification requirements in addition to the payment of the fees.

b. c. The applicable fees shall be based on the type of analytical service provided as follows: *The fee for certification of a single analyte, or for any analyses not covered in subparagraphs (1) to (4) below, shall be \$300.*

(1) Water supply laboratory certification fees.

1. The fee for microbiological analyses including total coliform, fecal coliform, E. coli, heterotrophic bacteria, ~~virus~~ *viruses*, algae, diatoms, rotifers, and ~~giardia~~ *Giardia* shall be \$600. Laboratories may also be certified for fluoride, nitrate and nitrite with no additional fee (when they are certified for microbiological analyses) providing they are not seeking certification for any other inorganic analyte.

2. The fee for inorganic analyses including nitrate, nitrite, fluoride, arsenic, sodium, and other inorganics shall be \$1,200. However, a laboratory certified to conduct inorganic



## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

analyses under the wastewater program ~~can~~ may be certified to conduct inorganic analyses under the water supply program for an additional \$300 (\$1,500 total).

3. The fee for volatile organic chemical analyses such as benzene, ~~vinyl chloride, trichloroethylene, chloroform, and toluene and trichloroethylene~~ shall be \$1,200. However, a laboratory certified to conduct analyses for volatile organic chemicals under the wastewater program ~~can~~ may be certified to conduct analyses for ~~synthetic volatile~~ synthetic organic compounds under the water supply program for an additional \$600 (\$1,800 total).

4. The fee for synthetic (*nonvolatile*) organic chemical analyses, ~~other than for volatile organic chemicals, such as atrazine and pentachlorophenol, alachlor, 2-4 D, 2-4-5 TP, and lindane~~ shall be \$1,200. However, a laboratory certified to conduct analyses for synthetic organic chemicals under the wastewater program ~~can~~ may be certified to conduct analyses for synthetic organic chemicals under the water supply program for an additional \$600 (\$1,800 total).

5. The fee for chemical analyses for dioxins shall be \$600.

6. The fee for asbestos fiber analyses shall be \$300.

7. The fee for analyses of radionuclides shall be \$300. However, a laboratory certified to conduct radionuclide analyses under the wastewater program may be certified to conduct the same analyses for the water supply program for an additional \$100 (\$400 total).

8. *The fee for certification of Information Collection Rule (ICR) parameters shall be \$300.*

(2) Underground storage tank laboratory certification fees. The fee for analyses for petroleum constituents using methods OA-1 and OA-2 shall be \$1,200. However, a laboratory certified to conduct analyses for petroleum constituents under the wastewater *or water supply* program ~~can~~ may be certified to conduct the same analyses for the underground storage tank program for an additional \$300 (\$1,500 total).

(3) Wastewater program laboratory certification fees.

1. The fee for analyses of basic wastewater constituents which includes biochemical oxygen demand (BOD), carbonaceous biochemical oxygen demand (CBOD), total suspended solids (TSS), and ammonia nitrogen (NH<sub>3</sub>) shall be \$300.

2. The fee for microbiological analyses shall be \$600.

3. The fee for effluent toxicity analyses shall be \$600.

4. The fee for inorganic analyses shall be \$300 per analyte to a maximum of \$1,200. However, a laboratory certified to conduct inorganic analyses under the water supply program ~~can~~ may be certified to conduct inorganic analyses under the wastewater program for an additional \$300 (\$1,500 total).

5. The fee for synthetic (*nonvolatile*) organic chemical analyses, ~~other than volatile organic chemicals~~, shall be \$1,200. However, a laboratory certified to conduct analyses for synthetic organic chemicals under the water supply program ~~can~~ may be certified to conduct analyses for synthetic organic chemicals under the wastewater program for an additional \$600 (\$1,800 total).

6. The fee for volatile organic chemical analyses shall be \$1,200. However, a laboratory certified to conduct analyses for volatile organic chemicals under the water supply program ~~can~~ may be certified to conduct analyses for volatile organic compounds under the wastewater program for an additional \$600 (\$1,800 total).

7. The fee for analyses for petroleum products using methods OA-1 or OA-2 shall be \$1,200. However, a labora-

tory certified to conduct analyses for petroleum constituents under the underground storage tank program ~~can~~ may be certified to conduct the same analyses for the wastewater program for an additional \$300 (\$1,500 total).

8. The fee for analyses of radionuclides shall be \$300. However, a laboratory certified to conduct radionuclide analyses under the water supply program may be certified to conduct the same analyses for the wastewater program for an additional \$100 (\$400 total).

(4) The fee for certification of a single analyte, or for any analyses not covered by subparagraphs (1) to (3), shall be \$300.

~~e. The fee for certification shall not be reduced if an on-site visit is not performed.~~

~~d. The laboratory certification fees shall be increased by \$300 per visit in those cases where multiple on-site visits or multiple samples of unknown contaminants (for laboratory performance testing) are necessary.~~

~~e. d. Payment of fees. Fees shall be paid by bank draft, check, or money order, or other means acceptable to the department, made payable to the Iowa Department of Natural Resources. Purchase orders are not an acceptable form of payment.~~

ITEM 5. Amend subrule 83.3(3) as follows:

**83.3(3) Reciprocity.** Reciprocal certification of out-of-state laboratories by Iowa, and of Iowa laboratories by other states or accreditation providers, is encouraged. A laboratory must meet all Iowa certification criteria and pay all applicable fees, pursuant to 567—Chapter 83. Any laboratory which is granted reciprocal certification in Iowa using primary certification from another state or provider is required to report any change in certification status from the accrediting state or provider to the department within 14 days of notification.

~~a. Out-of-state laboratories. However, where~~ Where an out-of-state laboratory has received an on-site visit within its own state, the fee for certification shall not be reduced if an on-site visit is not performed by Iowa.

~~b. Third-party accreditation. The department may accept third-party accreditation from national accreditation providers on an individual basis.~~

ITEM 6. Rescind and reserve rule 567—83.4(455B).

ITEM 7. Amend rule 567—83.5(455B) as follows:

**567—83.5(455B) Procedures for certification of new laboratories or changes in certification.** Laboratories that wish to become certified to conduct testing for an analyte or a method after the deadline for initial certification has passed, and any laboratory seeking initial certification, shall follow the procedures specified in 83.6(455B) for laboratory recertification. For changes in certification, the relevant fee must accompany the application where appropriate.

ITEM 8. Amend subrule 83.6(1) as follows:

**83.6(1)** Laboratories must use the approved methodology for all analyses, the results of which are to be submitted to the department. A laboratory may not analyze and report data from samples collected for an environmental program area until certified in that area.

ITEM 9. Amend subrule 83.6(2) as follows:

**83.6(2)** Certified laboratories must satisfactorily analyze ~~performance evaluation samples~~ PEs at least once per year every 12 months for each analyte by each method for which the laboratory wishes to retain certification unless a PE ~~performance evaluation~~ sample is not available for the particu-

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

lar analyte or method. Results must be submitted to the ~~University of Iowa Hygienic Laboratory~~ Iowa department of natural resources or as otherwise directed, along with a statement of the method used within 30 days of receipt from the vendor provider. The laboratory must maintain records of all PE samples for 10 years.

ITEM 10. Amend subrule 83.6(3) as follows:

**83.6(3)** Laboratories must notify the department, in writing, within 30 days of major changes in essential personnel, equipment, laboratory location facilities, or other major change which might alter or impair analytical capability. Examples of a major change in essential personnel are the loss or replacement of the laboratory supervisor, or a trained and experienced analyst is no longer available to analyze a particular parameter for which certification has been granted.

ITEM 11. Amend subrule 83.6(4) as follows:

**83.6(4)** Site visits.

(1) Certification of the University of Iowa Hygienic Laboratory (UHL), as the designee of the department for appraisal authority, is the responsibility of the UHL quality assurance officer. The quality assurance officer reports directly to the office of the director and operates independently of all areas of the laboratory generating data to ensure complete objectivity in the evaluation of laboratory operations. The quality assurance officer will schedule a biennial on-site inspection of the UHL and review results for acceptable performance. Inadequacies or unacceptable performance shall be reported by the quality assurance officer to the UHL and the department for correction. The department shall be notified if corrective action is not taken.

(2) Laboratories must consent to a periodic site visit by the department or its designee, normally at least every two years. However, an on-site visit may be conducted more frequently if the laboratory undergoes a major change which may alter or impair analytical capability, fails a performance evaluation PE sample analysis, or if the department questions an aspect of data submitted which is not satisfactorily resolved.

ITEM 12. Amend subrule 83.6(5) as follows:

**83.6(5)** Period of validity. Certification shall be valid for a period not to exceed two years from the date of issuance, except in the case of reciprocal certification of an out-of-state laboratory. Reciprocal certification shall be valid for a period equal to that of the resident state in which the laboratory is certified, but shall not exceed two years. Certification shall remain in effect provided a laboratory that has submitted a timely and complete application, for renewal shall maintain certification until certification is either renewed or revoked.

ITEM 13. Amend subrule 83.6(6) as follows:

**83.6(6)** Reporting requirements.

Laboratories may not analyze or report sample results for any analyte, analytical series, or environmental program area until the initial certification status of "certified" or "temporary" has been granted by the department. Any data generated before certification status is granted will be considered invalid for compliance purposes. A laboratory with "provisional" status may analyze and report analyses for compliance purposes.

A certified laboratory may contract analyses to another certified laboratory. The responsibility lies with the primary certified laboratory contracting for services to verify the sec-

ondary contracting laboratory is certified by the department and to ensure reporting requirements and deadlines are met.

a. Water supply program.

(1) Certified laboratories must report to the department, or its designee such as the University Hygienic Laboratory, all analytical test results for all public water supplies, using forms provided or approved by the department or by electronic means acceptable to the department. If a public water supply is required by the department to collect and analyze a sample for an analyte not normally required by 567—Chapters 41 and 43, the laboratory testing for that analyte must also be certified and report the results of that analyte to the department. It is the responsibility of the laboratory to correctly assign and track the sample identification number as well as source/entry point data for all reported samples.

1. The following are examples of sample types for which data results must be reported:

- Routine: a regular sample which includes samples collected for compliance purposes from such locations as the source/entry point and in the distribution system, at various sampling frequencies;

- Repeat: a sample which must be collected after a positive result from a routine or previous repeat total coliform sample, per 567—41.2(455B);

- Confirmation: a sample which verifies a routine sample, normally used in determination of compliance with a health-based standard, such as nitrate;

- Special: a nonroutine sample, such as raw, plant, and troubleshooting samples;

- Maximum residence time: a sample which is collected at the maximum residence time location in the distribution system, usually for total trihalomethane measurement; and

- Replacement: a sample which replaces a missed sample from a prior monitoring period resulting in a monitoring violation.

2. The following additional types of data must be reported to the department:

- Monthly Operation Report (MOR) data which has been specifically required by the department to demonstrate compliance with public health standards;

- Chemical results not required to be analyzed but which are detected during analysis, such as detection of a synthetic organic chemical during a routine analysis of that related analytical series for compliance reporting; and

- Raw water sampling results specifically covered by 567—Chapters 40 to 43 for new surface water or groundwater sources, or reconstruction of groundwater sources.

3. The following are examples of data results that are not required to be reported by the laboratory to the department:

- Routine MOR data;

- Distribution samples for the Total Coliform Rule for water main repair or installation; or

- Results for contaminants that are not required by the department to be analyzed, which are below detection level.

4. The sample type cannot be changed after submittal to the laboratory, without approval by the department. The prescreening, splitting, or selective reporting of compliance samples is not allowed.

(2) Certified laboratories must report all analytical results to the public water supply for which the analyses were performed.

(3) Analytical results must be reported to and received by the department's designee by the seventh day of the month following the month in which the samples were analyzed.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

(4) In addition to the monthly reporting of the analytical results, the following results must be reported within 24 hours of the completion of the analysis to the department by facsimile transmission (fax) or other method acceptable to the department, and to the public water supply for which the analyses were conducted:

1. Results of positive coliform bacteria samples and their associated repeat and follow-up samples.

2. Results of any contaminant which exceeds public drinking water standards (maximum contaminant level, treatment technique, or health advisory), and any subsequent confirmation samples, excluding lead and copper.

a. b. Underground storage tank program. Certified laboratories must report to the person requesting the analysis and include the information required in 567—subrule 135.10(2) in their laboratory report.

b. Water supply program. Certified laboratories must report to the department, or an approved designee, on forms provided by the department or by means of a digital electronic computer format acceptable to the department, all analytical test results for public water supplies. Certified laboratories must also report all analytical results to the supplier of water for which the analysis was performed. Results must be reported by the seventh day of the month following the month in which the samples were analyzed except for positive coliform bacteria samples and their associated repeat and follow-up samples. Results of these samples must be reported to the department, and the supplier of water for whom they were analyzed, within 24 hours of analysis. Samples of nitrate and nitrite which exceed the maximum contaminant level (MCL) must also be reported to the department and the supplier of water within 24 hours of the analysis.

c. Wastewater program. Certified laboratories must report to the person requesting the analysis and include the information required in 567—paragraphs 63.2(2)“b” to “e” in their laboratory report.

ITEM 14. Amend subrule 83.6(7) as follows:

**83.6(7)** Performance evaluation (PE) and acceptance limits. All PE samples must be obtained from EPA; a provider accredited by EPA, the National Environmental Laboratory Accreditation Program (NELAP) or National Institute of Standards and Technology (NIST); or other provider acceptable to the department. All PE samples must have statistical acceptance limits. Certain environmental program areas may have specific PE requirements, as follows.

a. Underground storage tank program. Achieve quantitative results on annual performance evaluation samples that are within plus or minus 20 percent of the true value for individual compounds (i.e., benzene, ethylbenzene, toluene, xylene by OA-1) and plus or minus 40 percent of the true value for multicomponent materials (i.e., gasoline, diesel fuel, motor oil by either OA-1 or OA-2).

b. a. Water supply program. In addition to the analytes specifically listed in 83.6(7)“a,” PE samples are required for certification of the unregulated and discretionary compounds listed in 567—Chapter 41, using statistical acceptance limits determined by the PE sample provider.

(1) Volatile organic chemical (VOC) performance evaluation PE—laboratory certification. Analysis for volatile organic chemicals VOCs shall only be conducted by laboratories that are certified by EPA or the department or its authorized designee according to the following conditions. To receive approval to conduct analyses for the VOC contaminants in 567—subparagraph 41.5(1)“b”(1), except for vinyl chloride, the laboratory must:

1. Analyze performance evaluation PE samples provided by EPA, the department, or its designee, at least once a year which include those substances provided by EPA Environmental Monitoring Systems Laboratory or equivalent samples provided by the department or its authorized designee.

2. Achieve the quantitative acceptance limits for at least 80 percent of the regulated organic chemicals included in the PE sample listed in 567—subparagraph 41.5(1)“b”(1), except for vinyl chloride.

3. Achieve quantitative results on the performance evaluation PE samples that are within plus or minus 20 percent of the actual amount of the substances when the actual amount is greater than or equal to 0.010 mg/l.

4. Achieve quantitative results on the performance evaluation PE samples that are within plus or minus 40 percent of the actual amount of the substances when the actual amount is less than 0.010 mg/l.

5. Achieve a VOC method detection limit of 0.0005 mg/l.

(2) To receive approval for vinyl chloride, the laboratory must:

1. Analyze performance evaluation PE samples which include vinyl chloride provided by EPA, Environmental Monitoring Systems Laboratory or equivalent samples provided by the department, or its authorized designee, at least once a year.

2. Achieve quantitative results on the performance evaluation PE samples that are within plus or minus 40 percent of the actual amount of vinyl chloride.

3. Achieve a method detection limit of 0.0005 mg/l.

(3) Synthetic organic chemicals (SOCs) performance evaluations PEs—laboratory certification. Analysis under this paragraph shall only be conducted by laboratories that have been certified by EPA or the department or its authorized designee. To receive approval to conduct analyses for the SOC contaminants in 567—subparagraph 41.5(1)“b”(2) the laboratory must:

1. Analyze performance evaluation PE samples which include those substances provided by EPA, Environmental Monitoring Systems Laboratory or equivalent samples provided by the department, or its authorized designee, at least once a year.

2. Achieve For each contaminant that has been included in the PE sample, achieve quantitative results on the analyses that are within the following acceptance limits:

## ACCEPTANCE LIMITS

Contaminant	(Acceptance Limit in percent)
DBCP	(+ or -) 40
EDB	(+ or -) 40
Alachlor	(+ or -) 45
Aldicarb	2 standard deviations
Aldicarb Sulfoxide	2 standard deviations
Aldicarb Sulfone	2 standard deviations
Atrazine	(+ or -) 45
Benzo(a)pyrene	2 standard deviations
Carbofuran	(+ or -) 45

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Chlordane	(+ or -) 45
2,4-D	(+ or -) 50
Dalapon	2 standard deviations
Dibromochloropropane (DBCP)	(+ or -) 40
Di(2-ethylhexyl)adipate	2 standard deviations
Di(2-ethylhexyl)phthalate	2 standard deviations
Dinoseb	2 standard deviations
Diquat	2 standard deviations
Endothall	2 standard deviations
Endrin	(+ or -) 30
Ethylene dibromide (EDB)	(+ or -) 40
Glyphosate	2 standard deviations
Heptachlor	(+ or -) 45
Heptachlor epoxide	(+ or -) 45
Hexachlorobenzene	2 standard deviations
Hexachlorocyclopentadiene	2 standard deviations
Lindane	(+ or -) 45
Methoxychlor	(+ or -) 45
Oxamyl	2 standard deviations
Pentachlorophenol	(+ or -) 50
Picloram	2 standard deviations
Polychlorinated biphenyls (PCBs as decachlorobiphenyl)	0 - 200
Picloram	2 standard deviations
Simazine	2 standard deviations
2,3,7,8-TCDD (Dioxin)	2 standard deviations
2,4,5-TP (Silvex)	(+ or -) 50
Toxaphene	(+ or -) 45
Aldicarb	2 standard deviations
Aldicarb Sulfoxide	2 standard deviations
Aldicarb Sulfone	2 standard deviations
Pentachlorophenol	(+ or -) 50
2,3,7,8-TCDD (Dioxin)	2 standard deviations
2,4-D	(+ or -) 50
2,4,5-TP (Silvex)	(+ or -) 50

(4) Inorganic chemical ~~performance evaluations~~ PE—laboratory certification. Analysis under this paragraph shall be conducted only by laboratories that have been certified by EPA or the department or its authorized designee. To receive approval to conduct analyses for antimony, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate, nitrite, selenium and thallium, the laboratory must:

1. Analyze ~~performance evaluation~~ PE samples which include those substances provided by EPA, Environmental Monitoring Systems Laboratory or equivalent samples provided by the department, or its designee, at least once a year.
2. Achieve For each contaminant that has been included in the PE sample, achieve quantitative results on the analyses that are within the following acceptance limits:

## ACCEPTANCE LIMITS

Contaminant	Acceptance Limit
Antimony	(+ or -) 30% at greater than or equal to 0.006 mg/l
Asbestos	2 standard deviations based on study statistics
Barium	(+ or -) 15% at greater than or equal to 0.15 mg/l
Beryllium	(+ or -) 15% at greater than or equal to 0.001 mg/l
Cadmium	(+ or -) 20% at greater than or equal to 0.002 mg/l
Chromium	(+ or -) 15% at greater than or equal to 0.01 mg/l
Cyanide	(+ or -) 25% at greater than or equal to 0.1 mg/l
Fluoride	(+ or -) 10% at greater than or equal to 1 to 10 mg/l
Mercury	(+ or -) 30% at greater than or equal to 0.0005 mg/l
Nickel	(+ or -) 15% at greater than or equal to 0.01 mg/l
Nitrate	(+ or -) 10% at greater than or equal to 0.4 mg/l
Nitrite	(+ or -) 15% at greater than or equal to 0.4 mg/l
Selenium	(+ or -) 20% at greater than or equal to 0.01 mg/l
Thallium	(+ or -) 30% at greater than or equal to 0.002 mg/l

(5) Lead and copper PE—laboratory certification. To obtain certification to conduct analyses for lead and copper, laboratories must:

1. Analyze PE samples which include lead and copper provided by EPA, the department, or its designee, at least once a year; and
2. Achieve quantitative acceptance limits as follows:
  - Lead: plus or minus 30 percent of the actual amount in the PE sample when the actual amount is greater than or equal to 0.005 mg/l. The practical quantitation level or PQL for lead is 0.005 mg/l; and
  - Copper: plus or minus 10 percent of the actual amount in the PE sample when the actual amount is greater than or equal to 0.050 mg/l. The practical quantitation level or PQL for copper is 0.050 mg/l;
3. Achieve method detection limits as follows:
  - Lead: 0.001 mg/l (only if source water compositing is done); and
  - Copper: 0.001 mg/l or 0.020 mg/l when atomic absorption direct aspiration is used (only if source water compositing is done);
4. Be currently certified by EPA or the department to perform analyses to the specifications described in 567—paragraph 41.4(1) "g."
  - a. Underground storage tank program. A laboratory must achieve quantitative results on PE samples every 12 months within plus or minus 20 percent of the true value for

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*individual compounds (i.e., benzene, ethylbenzene, toluene, xylene by OA-1) and plus or minus 40 percent of the true value for multicomponent materials (i.e., gasoline, diesel fuel, motor oil by either OA-1 or OA-2).*

c. Wastewater program. Achieve acceptable quantitative results on ~~annual performance evaluation~~ PE samples every 12 months that are equivalent to those used in the Water Pollution (WP) proficiency program, or the Discharge Monitoring Report Quality Assurance (DMRQA) program, both of which are administered by EPA or its designee.

ITEM 15. Rescind rule 567—83.7(455B) and insert in lieu thereof the following new rule:

**567—83.7(455B) Criteria and procedure for provisional, suspended, and revoked laboratory certification.**

**83.7(1) Provisional certification criteria.**

a. The department may downgrade certification to “provisional” status based on cause. The reasons for which a laboratory may be downgraded to “provisionally certified” status include, but are not limited to, the following list.

(1) Failure to analyze a performance evaluation (PE) sample annually within Iowa acceptance limits;

(2) Failure to notify the department within 30 days of changes in essential personnel, equipment, laboratory facilities or other major change which might impair analytical capability;

(3) Failure to satisfy the department that the laboratory is maintaining the required standard of quality based on an on-site visit;

(4) Failure to report compliance data in a timely manner to the department or the client, thereby preventing timely compliance with environmental program regulations.

b. The department may assess an administrative penalty for a laboratory’s failure to comply with the laboratory certification or reporting requirements.

c. A laboratory will not be granted provisional certification by the department for contaminants which pose an acute risk to human health, including nitrate, nitrite, fecal coliform bacteria, and Escherichia coli bacteria.

**83.7(2) Provisional certification procedure.**

a. Notification to the laboratory. If a laboratory is subject to downgrading to “provisional” status on the basis of 83.7(1), the department will notify the laboratory or owner in writing of the downgraded status. Certification may be downgraded to provisional for an analyte, a related analytical series, an environmental program area, or the entire laboratory.

b. Reporting. A provisionally certified laboratory may continue to analyze samples for compliance purposes, but must notify the laboratory’s IDNR-regulated clientele and other state certifying agencies of the change in laboratory certification status. If there is cause to question the quality of the data generated by the laboratory, the department may suspend the laboratory’s ability to submit data to the department for any or all analytes, pursuant to 83.7(3), which includes suspension of the ability of the laboratory’s client to report the data of questionable quality to the department.

c. Right to appeal. There is no appeal for this process, as it does not affect a laboratory’s ability to analyze and report to the department.

d. Correction of deficiencies.

(1) If a laboratory failed to analyze a PE sample within acceptance limits, the laboratory has 60 days from receipt of the notification of the failure to identify and correct the problem to the department’s satisfaction, and analyze a second PE sample. If the laboratory fails to analyze this second sam-

ple within acceptance limits and has had acceptable PE sample results within the last year, the department will downgrade the laboratory to “provisionally certified” status and notify the laboratory in writing.

(2) Once the department notifies a laboratory in writing that it has been downgraded to “provisionally certified” status, the laboratory must correct the problem within the following time frames, unless a written extension is obtained from the department. If the problem is not corrected, the laboratory is subject to suspension or revocation for that analyte, related analytical series, environmental program area, or the entire laboratory.

1. Unacceptable PE sample result within two months of notification.

2. Procedural deficiency within three months of notification.

3. Administrative deficiency within three months of notification.

4. Minor equipment deficiency within three months of notification. Examples of a minor equipment deficiency are inadequate analytical balances or incubators.

(3) The laboratory shall review the problems cited and, within the time period designated by the department, specify in writing to the department the corrective actions being taken, including an appropriate implementation schedule. The department shall consider the adequacy of the response and notify the laboratory of its certification status in a timely basis by mail, and may follow up to ensure corrective actions have been taken.

e. Reinstatement. Certification will be reinstated when the laboratory can demonstrate that all conditions for laboratory certification have been met to the satisfaction of the department and that the deficiencies which resulted in provisional certification status have been corrected. This may include an on-site visit, successful analysis of unknown samples, or any other measure that the department deems appropriate.

**83.7(3) Suspended certification criteria.**

a. The department may downgrade certification to “suspended” status based on cause. The reasons for which a laboratory may be downgraded to “suspended” status include, but are not limited to, the following list.

(1) Failure to analyze a PE sample annually for contaminants which pose an acute risk to human health, including nitrate, nitrite, fecal coliform bacteria, and Escherichia coli bacteria, or which pose an imminent risk to the environment;

(2) Failure to analyze a PE sample annually within Iowa acceptance limits for contaminants which pose an acute risk to human health, including nitrate, nitrite, fecal coliform bacteria, and Escherichia coli bacteria, or which pose an imminent risk to the environment;

(3) Failure to correct previously identified deficiencies, which resulted in “provisional” certification status, within the prescribed time frames of 83.7(2)“d”;

(4) Failure to analyze a PE sample within Iowa acceptance limits when there is not a reliable history of successful PE sample analysis within the past 12 months;

(5) Failure to satisfy the department that the laboratory is producing accurate data.

b. Administrative penalty. The department may assess an administrative penalty for a laboratory’s failure to comply with the laboratory certification or reporting requirements.

c. Emergency suspension. The department may suspend certification without providing notice and opportunity to the laboratory to be heard if the department finds that the public health, safety, or welfare imperatively requires emer-

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

agency action, and incorporates a finding to that effect in its administrative order, pursuant to 561—subrule 7.16(6).

**83.7(4) Suspended certification procedure.**

a. Notification to the laboratory. If a laboratory is subject to downgrading to “suspended” status on the basis of 83.7(3), the department will notify the laboratory or owner in writing of its intent to suspend certification in accordance with 561—7.16(17A,455A). Certification may be suspended for an analyte, a related analytical series, an environmental program area, or the entire laboratory.

b. Reporting. Once the suspension is effective, a laboratory must immediately discontinue analysis and reporting of compliance samples, may not analyze or report samples for compliance with departmental standards, and must notify the laboratory’s Iowa regulated clientele and other state certifying agencies of the change of the laboratory certification status. Any results generated during the period of suspension may not be used for compliance purposes by the department.

c. Right to appeal.

(1) The laboratory may appeal this decision by filing a written notice of appeal and request an administrative hearing with the department director within 30 days of receipt of the notice of suspension of certification. Contested case procedures under 561—Chapter 7 shall govern administration of the appeal.

The appeal must identify the specific portion(s) of the department action being appealed and be supported with a statement of the reason(s) for the challenge and must be signed by a responsible official from the laboratory such as the president or owner for a commercial laboratory, or the laboratory supervisor in the case of a municipal laboratory, or the laboratory director for a state laboratory.

(2) If no timely notice of appeal is filed, suspension is effective 30 days after receipt of the notice of suspension unless an emergency suspension order is in effect.

d. Correction of deficiencies.

(1) If a laboratory failed to analyze a PE sample within acceptance limits, the laboratory has 30 days from receipt of the notification of the failure to identify and correct the problem to the department’s satisfaction. If the laboratory fails to analyze this second sample within acceptance limits, the department will downgrade the laboratory to “suspended” status and notify the laboratory in writing.

(2) Once the department notifies a laboratory in writing that it has been downgraded to suspended status, the laboratory must correct the problem within the following timetable, unless a written extension is obtained from the department. If the problem is not corrected, the laboratory is subject to revocation for that analyte, related analytical series, environmental program area, or the entire laboratory.

1. Unacceptable PE sample result within two months of notification.

2. Procedural deficiency within three months of notification.

3. Administrative deficiency within three months of notification.

4. Minor equipment deficiency within three months of notification. Examples of a minor equipment deficiency are inadequate analytical balances or incubators.

5. Major equipment deficiency within six months of notification. An example of a major equipment deficiency would be the inability of existing complex analytical equipment to produce acceptable results, such as a chromatograph or spectrophotometer.

(3) The laboratory shall review the problems cited and, within the time period designated by the department, specify in writing to the department the corrective actions being taken including an appropriate implementation schedule. The department shall consider the adequacy of the response and notify the laboratory of its certification status in a timely basis by mail, and may follow up to ensure corrective actions have been taken.

e. Reinstatement.

(1) Fee.

1. The laboratory will not be required to pay an additional fee if recertification affects an analyte or related analytical series, provided that:

◦ The laboratory is currently certified for other analytes, or

◦ A fee was paid within the two-year certification period for that related analytical series and the laboratory is certified for other parameters within that related analytical series.

2. A fee will be required if suspension affects a related analytical series effectively deleting that fee group from certification (such as all microbiological parameters in SDWA-MICRO), an environmental program area, or the entire laboratory. A fee will also be required if an additional on-site visit is required.

(2) Certification will be reinstated when the laboratory can demonstrate all conditions for laboratory certification have been met to the department’s satisfaction and, in particular, that the deficiencies which produced the suspension have been corrected. This may include an on-site visit, successful analysis of unknown samples, or any other measure that the department deems appropriate.

**83.7(5) Revoked certification criteria.**

a. A laboratory may have its certification revoked for cause including, but not limited to, any of the following reasons.

(1) For laboratories of any status, failure to analyze a PE sample within Iowa acceptance limits;

(2) Failure to satisfy the department that the laboratory has corrected deficiencies identified during the on-site visit within three months for a procedural or administrative deficiency or within six months for an equipment deficiency;

(3) Submission of a PE sample to another laboratory for analysis and reporting the data as its own;

(4) Falsification of data or other deceptive practices;

(5) Failure to use required analytical methodology for analyses submitted to the department;

(6) Failure to satisfy the department that the laboratory is maintaining the required standard of quality based on the on-site visit.

(7) Persistent failure to report compliance data to the regulated client or the department in a timely manner, thereby preventing compliance with state regulations and endangering public health.

(8) Subverting compliance with state regulations by actions such as changing the sample type for a noncompliance sample to a compliance sample after submission to the laboratory, allowing compliance samples to be changed to other noncompliance sample types, or selective reporting of split sample results.

b. The department may either downgrade or revoke certification based on cause.

c. Emergency revocation. The department may revoke certification without providing notice and opportunity to the laboratory to be heard if the department finds that the public health, safety, or welfare imperatively requires emergency

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action, and incorporates a finding to that effect in its administrative order, pursuant to 561—subrule 7.16(6).

**83.7(6) Revoked certification procedure.**

a. Notification to the laboratory. If a laboratory is subject to revocation on the basis of 83.7(5), the department will notify the party in writing of its intent to revoke certification in accordance with 561—7.16(17A,455A). Certification may be revoked for an analyte, a related analytical series, an environmental program area, or the entire laboratory.

b. Reporting. A laboratory must notify the laboratory's IDNR-regulated clientele and other state certifying agencies, to which the notice of revocation is pertinent, of the department's intent to revoke certification, within 30 days of receipt of the notice.

c. Right to appeal. There is no appeal process for revocation of an analyte or a related analytical series unless the analyte(s) represents an entire environmental program area, such as underground storage tank parameters, or the entire laboratory.

(1) For an environmental program area or for the entire laboratory, the laboratory may appeal this decision by filing a written notice of appeal and request for an administrative hearing with the department director within 30 days of receipt of the notice of revocation of certification. Contested case procedures under 561—Chapter 7 shall govern further administration of the appeal.

The appeal must identify the specific portion(s) of the department action being appealed and be supported with a statement of the reason(s) for the challenge and must be signed by a responsible official from the laboratory such as the president or owner for a commercial laboratory, or the laboratory supervisor in the case of a municipal laboratory, or the laboratory director for a state laboratory.

(2) If no timely notice of appeal is filed within the 30-day time period, revocation is effective 30 days after receipt of the notice of intent.

d. Reinstatement. A laboratory which has had its certification revoked may apply for certification in accordance with 83.3(455B) once the deficiencies have been corrected.

## ARC 8907A

ENVIRONMENTAL PROTECTION  
COMMISSION[567]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code chapters 455B and 455D, the Environmental Protection Commission hereby gives Notice of Intended Action to rescind Chapter 105, "Yard Waste Disposal and Solid Waste Composting Facilities," and to adopt a new Chapter 105, "Organic Materials Composting Facilities," Iowa Administrative Code.

This new chapter is intended to clarify the existing rules by removing numerous references to other chapters of the Iowa Administrative Code and incorporating all organic materials composting facility rules in the new Chapter 105. A 20-member advisory committee was formed to revise the yard waste disposal and solid waste composting facilities

rules to provide operators more flexibility in designing compost facilities while maintaining protection for the environment. The advisory committee consisted of numerous Department stakeholders, including business and industry, state agencies, federal agencies, solid waste organizations, non-profit organizations, educators, and local governments. Rules focusing on best management practices in composting have been developed.

Any interested person may make written suggestions or comments on the proposed rules on or before April 27, 1999. Written comments should be directed to Jeff Geerts, Waste Management Assistance Division, Department of Natural Resources, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319-0034; fax (515)281-8895.

Also, there will be a public hearing on April 27, 1999, at 10 a.m. in the Fifth Floor West Conference Room of the Wallace State Office Building at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

Any persons who intend to attend a public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

This amendment is intended to implement Iowa Code chapters 455B and 455D.

The following amendment is proposed.

Rescind 567—Chapter 105 and adopt the following **new** chapter in lieu thereof:

## CHAPTER 105

## ORGANIC MATERIALS COMPOSTING FACILITIES

**567—105.1(455B,455D) General.** This chapter shall apply to the composting of solid wastes. Composting is the controlled biological decomposition of organic matter under aerobic conditions resulting in a stable, innocuous final product. Composting facilities may include vermicomposting, turned windrows, aerated static piles, aerated in-vessel systems, or other methods approved by the department. A composting facility is defined as all related receiving, processing, production, curing, and storage areas and necessary roads, buildings, equipment, litter control devices, pollution control devices, fire control devices, landscaping, gates, personnel and maintenance facilities, sewer and water lines, and process water. Composting facilities existing as of the adoption date of these rules must comply with the requirements of this chapter within one year or by the permit renewal date whichever is later.

**105.1(1)** Two types of composting are allowed:

a. Yard waste composting. Yard waste composting involves only yard waste, defined as vegetative matter such as grass clippings, leaves, garden waste, brush, and trees, and any clean wood waste free of coatings and preservatives necessary as bulking agent. Use of any other materials as bulking agent shall require prior approval by the department. Yard waste composting facilities are exempt from having a permit if operated in conformance with 567—105.3(455B, 455D) and 567—105.4(455B,455D).

b. Solid waste composting. Solid waste composting involves any organic material in addition to or other than yard waste. No one shall construct or operate a solid waste composting facility without first obtaining a permit from the department. On-farm composting of dead animals generated on site is exempt from having a permit if operated in conformance with 567—105.9(455B,455D). Solid waste composting facilities involving municipal sewage sludge shall also

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operate in conformance with 567—Chapter 67, Iowa Administrative Code.

**105.1(2)** Burial of yard waste at a sanitary landfill is prohibited. Acceptance of yard waste by a hauling firm or at a transfer station for burial at a sanitary landfill is also prohibited. However, yard waste which has been separated at its source from other solid waste may be accepted by a sanitary landfill for the purposes of soil conditioning or composting. Yard waste accepted by a sanitary landfill for the purposes of soil conditioning shall only be used on finished areas of the landfill that have received the final earthen cover. Burning of yard waste at a sanitary landfill or transfer station is prohibited.

**105.1(3)** Each city and county shall, by ordinance, require persons within the city or county to separate yard waste from other solid waste generated. Municipalities which provide for collection of solid waste shall also provide for separate collection of yard waste.

**567—105.2(455B,455D) Exemptions.** The following projects are exempt from this chapter.

**105.2(1)** Yard waste composted and used on the same premises where it originated. This composting shall not create a nuisance.

**105.2(2)** Household organic waste composted and used on the same premises where it originated. This composting shall not create a nuisance.

**105.2(3)** Composting facilities involving only animal manure, animal bedding, or crop residues and any clean wood waste free of coatings and preservatives necessary as bulking agent. This composting shall not create a nuisance. Use of any other materials as bulking agent shall require prior approval by the department. If animal manure or animal bedding is mixed with other solid wastes for the purpose of composting or if the finished compost is offered for sale, this chapter shall apply.

**567—105.3(455B,455D) General requirements for all composting facilities except dead animal composting facilities.**

**105.3(1)** The composting facility must be 500 feet from any existing habitable residence at the time of facility construction.

**105.3(2)** Access to the facility shall be restricted and a gate shall be provided at the entrance to the facility and left locked when an attendant or operator is not on duty.

**105.3(3)** Emergency access shall be provided to the facility. Fire lanes shall be maintained to provide access for fire-fighting equipment.

**105.3(4)** The facility shall have a permanent sign posted at the entrance specifying:

- a. Name of operation,
- b. Operating hours,
- c. Name and telephone number of the responsible official,
- d. Materials which are accepted, and
- e. Name and telephone number of emergency contact person.

**105.3(5)** Solid waste shall be unloaded at the composting facility only when an operator is on duty.

**105.3(6)** Solid waste which cannot be composted or which is removed during processing shall be disposed of in accordance with the Iowa Administrative Code.

**105.3(7)** Measures shall be taken to prevent water from running onto the facility from adjacent land and to prevent water from running off the composting facility.

**105.3(8)** Facilities shall be designed, constructed, and maintained so as to avoid or minimize ponding of water or liquids. Any ponding that does occur shall be corrected within 48 hours through routine facility maintenance.

**105.3(9)** The operating area for composting shall be surrounded with appropriate barriers to prevent litter from blowing beyond the operating area. At the conclusion of each day of operation, any litter strewn beyond the confines of the operating area shall be collected and stored in covered leakproof containers or properly disposed.

**105.3(10)** Solid waste materials shall be managed through the entire process in accordance with best management practices, to minimize and prevent conditions such as odors, dust, and vectors which may create nuisance conditions.

**105.3(11)** Storage of finished compost shall be limited to 12 months.

**105.3(12)** If finished compost is offered for sale as a soil conditioner or fertilizer, the compost must be registered by the department of agriculture and land stewardship under Iowa Code chapter 200, Iowa fertilizer law. Sale shall be in compliance with all applicable federal and state laws and local ordinances and regulations.

**105.3(13)** Compost shall not be applied to land or sold or given away unless the concentration of human-made inert materials such as glass, metal, and plastic are less than 1.5 percent by dry weight. Compost shall not be applied to land or sold or given away unless the size of any human-made inert materials is less than 13 mm.

**105.3(14)** The composting facility shall obtain an NPDES permit as required in 567—Chapter 64.

**567—105.4(455B,455D) Specific requirements for yard waste composting facilities.**

**105.4(1)** Before opening a yard waste composting facility, the waste management assistance division and the field office of the department serving the composting facility's location shall be notified in writing of the following:

- a. The location of the composting facility,
- b. Legal description of the facility,
- c. Landowner's name, telephone number, and mailing address,
- d. Responsible party's name, telephone number, and mailing address,
- e. Annual capacity of the facility,
- f. Source of the yard waste and any necessary bulking agent, and
- g. Method of composting to be employed.

**105.4(2)** An all-weather surface must be used for receiving and for access to the facility. The all-weather surface shall be made of materials that will permit accessibility during periods of inclement weather.

**105.4(3)** The area of the composting facility must be large enough for the volume of yard waste composted.

**105.4(4)** Yard waste to be composted must be taken out of containers. Yard waste may be left in bags only if the bags are biodegradable.

**105.4(5)** Aerobic conditions shall be maintained at all times in accordance with best management practices.

**105.4(6)** Reporting. An annual report summarizing the records required in 105.4(6)“a” to “c” shall be submitted to the waste management assistance division of the department and the field office of the department serving the composting facility's location by July 31 of each year. The report shall summarize the records from the fiscal year beginning July 1 of the preceding calendar year and ending June 30 of the current year. The records required in 105.4(6)“a” to “c” shall be



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condensed into monthly totals and an annual total of the following:

- a. Amount of yard waste and any necessary bulking agent accepted in tons,
- b. Amount of finished compost removed from the facility in tons, and
- c. How the compost removed from the facility was used, in tons per use.

These records shall be maintained for a period of two years after last use of the compost facility. These records shall be maintained at the facility for inspection and evaluation by the department at any time during normal operating hours.

**567—105.5(455B,455D) Permit requirements for solid waste composting facilities.** Application for a permit to construct and operate a solid waste composting facility shall be made on Form 50 (542-1542) and submitted to the department's Des Moines central office. This permit is issued under the authority of Iowa Code section 455B.305 for sanitary disposal projects which comply with the requirements of this chapter. A comprehensive solid waste management plan, completed in accordance with 567 IAC 101.4(455B,455D), shall be submitted to and approved by the waste management assistance division of the department before a permit can be issued.

This application must be accompanied by an operating plan encompassing, at a minimum, the design plans, specifications and additional information required by this chapter. Such permits are issued for a period of three years and are renewable for a period of three years.

If an application for a solid waste composting facility permit is found not to be in full compliance with this chapter, the applicant will be notified of that fact and of the specific deficiencies. If the deficiencies are not corrected within 30 days following such notification, the application may be returned as incomplete without prejudice to the applicant's right to reapply. The applicant may be granted, upon request, an additional 30 days to complete the application.

**105.5(1)** A permit application for a new facility shall include a completed Form 50 (542-1542) and a map or aerial photograph. This map or aerial photograph shall identify:

1. The boundaries of the facility,
2. Wells, streams, creeks, rivers and ponds,
3. North or other principal compass points,
4. Zoning and land use within one-half mile,
5. Haul routes to and from the facility with load limits or other restrictions,
6. Homes and buildings within one-half mile,
7. Section lines or other legal boundaries, and
8. Any nearby runway used or planned to be used by turbojet or piston-type aircraft at FAA-certified airports.

**105.5(2)** Design requirements. Design documents must be prepared by a certified licensed professional engineer registered in the state of Iowa (Iowa Code chapter 542B) and must include the following:

- a. Detailed engineering drawings of the facility showing all roads, buildings, and equipment to be installed, litter control devices, pollution control devices, fire control devices, landscaping, gates, personnel and maintenance facilities, sewer and water lines, and process water, and indicating dimensions, details, and capacities of the proposed receiving, processing, production, curing, and storage areas.

- b. Design calculations justifying the size of the composting areas. The areas for composting must be adequate for the volume of solid waste being composted.

- c. Descriptions, specifications, and capacities of proposed equipment to be used in composting.

- d. Flow diagram of all operating steps.

- e. Composition of the operating surface. Receiving, processing, production, and curing must take place on a constructed, impervious base that can support the load of the equipment used under all weather conditions. The permeability coefficient of the base must be less than  $1 \times 10^{-7}$  cm/sec (0.00028 feet/day). Storage areas for finished compost must be made of materials that will permit accessibility during periods of inclement weather.

- f. Dimensions, details, and capacities of storm water management systems to prevent run-on and runoff from the composting facility. The storm water management systems must be designed to collect and store all runoff water from the proposed receiving, processing, production, curing, and storage areas resulting from a 25-year, 24-hour precipitation event. Storm water management systems must meet applicable federal and state storm water regulations and shall not discharge to surface waters except as allowed by an NPDES permit.

**105.5(3)** Operating requirements. The operating plan shall provide the following:

- a. Method of composting.
- b. Duration of composting with a time frame for receiving, processing, production, curing, and storage.

- c. Description of storage of raw materials including quantity and types. All materials received must be incorporated into the composting process within 24 hours of receipt unless storage of these materials is specified in the plan and approved by the department.

- d. Description of the types, amounts, and sources of wastes to be received and processed daily. Prior to the facility's expanding the amount or types of materials accepted, the facility shall make a request in writing and obtain approval from the department for an amendment to the permit.

- e. Description of the aeration method and the aeration frequency to be used to maintain aerobic conditions at all times in accordance with best management practices.

- f. Description of the methods to prevent, minimize, manage, and monitor odors.

- g. Description of the methods to prevent, minimize, manage, and monitor dust.

- h. Description of the methods to prevent, minimize, manage, and monitor flies, rodents and other vermin.

- i. Description of the specific procedures to be followed in case of equipment breakdown, maintenance downtime, and fire in equipment, composting material or buildings to include methods to be used to remove or dispose of accumulated waste and burned and damaged material.

- j. Plans for using or marketing the finished compost.

- k. Method(s) of disposing of collected storm water.

- l. Method(s) of maintaining storm water management systems to maintain design volume and to locate and repair leaks in the system.

- m. Description of the monitoring, sampling, and analysis procedures and schedule for testing the composting process and product including sampling frequency, sample size and number, and sample locations. Sample collection, preservation, and analysis must be done in a manner which ensures valid and representative results. The department may inspect the facility and perform testing on the composting process and product at any time. Unless otherwise proposed in the operating plan and authorized in the permit, the permit holder shall test at a minimum:

- (1) Twice weekly temperature readings of compost piles, batches, and windrows. Compost must be held at a temperature above 55 degrees Celsius (131 degrees Fahrenheit) for

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

at least two weeks for the purpose of pathogen destruction. Other time periods may be approved by the department.

(2) Weekly moisture levels of compost piles, batches, and windrows.

(3) Weekly oxygen or CO<sub>2</sub> concentrations of compost piles, batches, and windrows.

(4) Testing of the finished product. Compost shall not be applied to land or sold or given away unless the concentrations of human-made inert materials comply with 105.3(13) and the concentrations of all metals are less than the following:

Metal	Concentration mg/kg dry weight
Arsenic (As)	41
Cadmium (Cd)	39
Copper (Cu)	1500
Lead (Pb)	300
Mercury (Hg)	17
Nickel (Ni)	420
Selenium (Se)	36
Zinc (Zn)	2800

**105.5(4)** Application for permit renewal must be made on Form 50 (542-1542) and must be received at the department's Des Moines office at least 90 days before the expiration date of the existing permit. The renewal application shall include any proposed changes to the design or operation of the facility, a revised closure plan if necessary, and a confirmation that a revised subsequent comprehensive plan has been approved.

The department shall conduct an inspection of the composting facility following receipt of the application for renewal. Following the inspection, the permit holder shall be notified of all measures needed to bring the composting facility into conformance with the permit and these rules.

A permit shall be renewed when a complete application has been received and all corrective measures have been completed.

If an application for a solid waste composting facility permit renewal is found to be incomplete by the department, the applicant will be notified of that fact and of the specific deficiencies. If the deficiencies in the application have not been corrected within 30 days following the notification, the application may be denied.

**567—105.6(455B,455D) Record keeping and reporting requirements for solid waste composting facilities.**

**105.6(1)** Record keeping. The following records shall be maintained at the facility at all times and shall be submitted to the department upon request:

a. Analytical results described in 105.5(3)"m." These results shall be recorded on a department-approved reporting form.

b. Types and weight of waste accepted at the facility daily and annually, in tons.

c. Weight of compost removed from the facility daily and annually, in tons.

d. How the compost removed from the facility was used, in tons per use.

e. A copy of the plan, the permit, annual reports, and the current storm water pollution prevention plan.

**105.6(2)** Reporting. An annual report summarizing the records required in 105.6(1)"a" to "d" shall be submitted to the solid waste section and the waste management assistance division of the department by July 31 of each year. The re-

port shall summarize the records from the fiscal year beginning July 1 of the preceding calendar year and ending June 30 of the current year. The records required in 105.6(1)"b" to "d" shall be condensed into monthly totals and an annual total.

**567—105.7(455B,455D) Closure requirements for solid waste composting facilities.** For each composting facility, a closure plan shall be submitted to the department containing a description of the steps necessary to close the facility. A permit shall not be issued unless the closure plan is approved.

**105.7(1)** An updated closure plan, including a schedule for closure, shall be submitted to the department at least 60 calendar days prior to the proposed termination date for the facility.

**105.7(2)** Unless an alternative schedule is approved by the department, within 14 calendar days of the facility's ceasing operation, all waste and unfinished and finished compost shall be removed from the site.

**567—105.8(455B,455D) Operator certification for solid waste composting facilities.** Solid waste composting facility operators shall be trained, tested, and certified by a department-approved certification program upon adoption of such a program by the department. The person responsible for daily operation of the facility shall be certified.

**567—105.9(455B,455D) Specific requirements for on-farm composting of dead animals generated on site.** The waste management assistance division and the field office of the department serving the composting facility's location shall be notified in writing before initiating on-farm composting. On-farm composting of dead animals generated on site is exempt from having a permit if the following operating requirements are met.

**105.9(1)** Dead animals are incorporated into the composting process within 24 hours of death and covered with sufficient animal manure, animal bedding, or crop residues and any clean wood waste free of coatings and preservatives necessary as bulking agent to prevent access by domestic or wild animals.

**105.9(2)** Composting is done in a manner that prevents formation and release of runoff and controls odors, flies, rodents and other vermin.

**105.9(3)** Dead animals are not removed from composting until all flesh, internal organs, and other soft tissue are fully decomposed.

**105.9(4)** Storage of finished compost shall be limited to 12 months and must be applied to crop or pasture land at rates consistent with crop nutrient requirements.

**105.9(5)** Composter construction shall utilize weather- and rot-resistant materials capable of supporting composting operations without damage. Although not mandatory, a roof over the composter is recommended to prevent excess moisture accumulation that can lead to production of undesirable odors and leachate.

**105.9(6)** Composting must be done on an impervious weight-bearing surface located outside of wetlands or the 100-year flood plain and at least 100 feet from private wells, 200 feet from public wells, 50 feet from property lines, 500 feet from neighboring residences, and 100 feet from flowing or intermittent streams, lakes, or ponds.

These rules are intended to implement Iowa Code sections 455B.304 and 455D.9.

## ARC 8861A

GENERAL SERVICES  
DEPARTMENT[401]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3(1)"b" and 18.4, the Department of General Services hereby gives Notice of Intended Action to amend Chapter 1, "Organization and Operation," and to adopt Chapter 17, "Declaratory Orders," Chapter 18, "Petitions for Rule Making," Chapter 19, "Agency Procedure for Rule Making," and Chapter 20, "Contested Cases," Iowa Administrative Code.

These amendments revise the Department's rules governing agency procedures for rule making, petitions for rule making, contested cases and declaratory orders.

The Seventy-seventh General Assembly passed amendments to the Iowa Administrative Procedure Act in 1998 Iowa Acts, chapter 1202. A task force from the Attorney General's Office drafted amendments to the Uniform Rules on Agency Procedure. The Department's proposed amendments adopt by reference the amended Uniform Rules. With these revisions, the Department's rules will be in compliance with 1998 Iowa Acts, chapter 1202. The major changes governing the rule-making process in 1998 Iowa Acts, chapter 1202, which are to be effective July 1, 1999, are as follows:

- The requirement for an economic impact statement if requested by members of the Administrative Rules Review Committee (ARRC) is deleted and replaced with a requirement for a regulatory analysis if requested by ARRC or the Administrative Rules Coordinator. In addition, if the rule would have a substantial impact on small business, a request for a fiscal impact statement may also be made by at least 25 persons provided that each represents a small business, or an organization representing at least 25 small businesses.

- The ARRC, the Administrative Rules Coordinator, a political subdivision, a state agency, 25 persons signing one request, or an association having not less than 25 members may request the Department to conduct a formal review of a specified rule to determine whether the rule should be repealed or amended or a new rule adopted instead. If the Department has not conducted such a review of the specified rule within a period of five years prior to the filing with the Department of that written request, the Department shall prepare within a reasonable time a written report with respect to the rule summarizing the Department's findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the rule's effectiveness, including a summary of data supporting the conclusions reached; written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule (i.e., requests for exceptions to policy) tendered to the Department or granted by the Department; and alternative solutions regarding the subject matter of the criticisms and the reasons they were rejected or the changes made in the rule in response to those criticisms and the reasons for the changes. A copy of the report is sent to the ARRC and the Administrative Rules Coordinator.

- The current law regarding declaratory rulings is deleted and replaced with declaratory orders. The purpose is the same, but requirements are more specific than in current law. Rules are added to provide for petitions for intervention.

Consideration will be given to all written data, views, and arguments thereto received by the Director's Office, Department of General Services, Hoover State Office Building, Des Moines, Iowa 50319-0104, on or before April 27, 1999.

These amendments are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 25B.6.

The following amendments are proposed.

ITEM 1. Rescind and reserve rule 401—1.4(18).

ITEM 2. Adopt the following new chapters:

CHAPTER 17  
DECLARATORY ORDERS

**401—17.1(17A) Adoption by reference.** The department of general services hereby adopts the declaratory orders chapter of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(designate agency)", insert "department of general services".

2. In lieu of the words "(designate office)", insert "Office of the Director, Department of General Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104".

3. In lieu of the words "(AGENCY NAME)", insert "DEPARTMENT OF GENERAL SERVICES".

4. In lieu of the words "\_\_\_\_ days (15 or less)", insert "15 days".

5. In lieu of the words "\_\_\_\_ days" in subrule 17.3(1), insert "5 days".

6. In lieu of the words "(designate official by full title and address)", insert "Director, Department of General Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104".

7. In lieu of the words "(specify office and address)", insert "Office of the Director, Department of General Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104".

8. In lieu of the words "(agency name)", insert "department of general services".

9. In lieu of the words "(designate agency head)", insert "director".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

CHAPTER 18  
PETITIONS FOR RULE MAKING

**401—18.1(17A) Adoption by reference.** The department of general services hereby adopts the petitions for rule making chapter of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(designate office)", insert "office of the director, department of general services".

2. In lieu of the words "(AGENCY NAME)", insert "DEPARTMENT OF GENERAL SERVICES".

3. In lieu of the words "(designate official by full title and address)", insert "Director, Department of General Ser-

## GENERAL SERVICES DEPARTMENT[401](cont'd)

vices, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

## CHAPTER 19

## AGENCY PROCEDURE FOR RULE MAKING

**401—19.1(17A) Adoption by reference.** The department of general services hereby adopts the agency procedure for rule making chapter of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(commission, board, council, director)", insert "director".
2. In lieu of the words "(specify time period)", insert "one year".
3. In lieu of the words "(identify office and address)", insert "Office of the Director, Department of General Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104".
4. In lieu of the words "(designate office and telephone number)", insert "the director at (515)242-6118".
5. In lieu of the words "(designate office)", insert "Office of the Director, Department of General Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104".
6. In lieu of the words "(specify the office and address)", insert "Office of the Director, Department of General Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104".
7. In lieu of the words "(agency head)", insert "director".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

## CHAPTER 20

## CONTESTED CASES

**401—20.1(17A) Adoption by reference.** The department of general services hereby adopts the contested cases chapter of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(agency name)", insert "department of general services".
2. In lieu of the words "(designate official)", insert "director".
3. In subrule 20.3(2) delete the words "or by (specify rule number)".
4. In lieu of the words "(agency specifies class of contested case)", insert "department contested cases".
5. In lieu of the words "(specify office and address)", insert "Office of the Director, Department of General Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104".
6. In lieu of the words "(designate office)", insert "department of general services".
7. In lieu of the words "(agency to designate person to whom violations should be reported)", insert "director".
8. In lieu of the words "(board, commission, director)", insert "director".
9. In lieu of the words "(the agency)", insert "department of general services".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

ARC 8864A

HUMAN SERVICES  
DEPARTMENT[441]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 75, "Conditions of Eligibility," appearing in the Iowa Administrative Code.

These amendments make the following changes to policy governing the SSI-related Medicaid program:

- The general rule that except as otherwise provided, SSI-related Medicaid recipients must be eligible for the Supplemental Security Income (SSI) program administered by the United States Social Security Administration is clarified. This general rule is required by federal Medicaid statutes and regulations which the Department is directed to follow by Iowa Code section 249A.3.

References to the sources of SSI policy are also added. These SSI materials are not being adopted by reference by these amendments, since they must be followed by the Department of Human Services pursuant to federal Medicaid statutes and regulations and Iowa Code section 249A.3 directing the Department to administer eligibility for Medical Assistance pursuant to federal requirements, but the references thereto are being added for informational purposes.

- The table used by SSI for determining the value of life estates and remainder interests is incorporated into the rules.

Issues have been raised recently about the valuations of life estates and remainder interests for the purposes of SSI-related Medicaid eligibility. SSI-related Medicaid eligibility policy is tied to SSI policy and procedures on valuation of resources based on federal law and current state rules at 441 Iowa Administrative Code 75.13(2). SSI policy and procedures are established by federal statute, federal regulations, and the federal Social Security Administration's Program Operations Manual System (POMS). The POMS provides a table for valuation of life estates and remainder interests. The source of this table is federal Department of Internal Revenue regulations adopted in 1984. The Internal Revenue regulations have since been amended to provide a different method for evaluating life estates and remainder interests for which the valuation date is on or after April 30, 1989. However, the SSI program continues to use the table adopted in 1984, as provided in the POMS. These amendments clarify the applicability and sources of SSI policy in general and the use of the table provided in the POMS in particular.

As provided in the POMS with respect to any interest in real property, the holder of a life estate or remainder interest can present evidence that the value of the life estate or remainder interest is different than that provided by the table.

Some attorneys have questioned the use of the POMS table, as opposed to a table in the Iowa Code. Federal law requires the Department to determine eligibility for SSI-related Medicaid based on eligibility for the SSI program.

- A condition is added to the hardship exception for persons who would otherwise be ineligible for Medicaid payment for certain services due to a transfer of assets for

## HUMAN SERVICES DEPARTMENT[441](cont'd)

less than fair market value. The condition provides that the hardship exception will apply only if the application of the penalty would deprive the person of food, clothing, shelter, medical care, or other necessities of life, such that the person's health or life would be endangered.

This change incorporates a current requirement contained in the Health Care Financing Administration's State Medicaid Manual into rules.

- References are eliminated to the last date of eligibility, April 1, 1994, for the conditional eligibility group that was eliminated October 1, 1993. The reference to the date of the federal SSI regulations on the conditional eligibility policy is also eliminated as unnecessary, given that the conditional eligibility policy is not adopted by reference by these amendments but is specifically excluded from consideration.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before April 28, 1999.

These amendments are intended to implement Iowa Code section 249A.4.

The following amendments are proposed.

ITEM 1. Amend subrule 75.13(2) as follows:

**75.13(2) SSI-related Medicaid.** ~~Medicaid eligibility for persons who are 65 years of age or older, blind, or disabled shall be determined using the eligibility requirements in effect governing the Supplemental Security Income (SSI) program in conjunction with the policies found in 441—Chapters 75 and 76 Except as otherwise provided in this rule and in 441—Chapters 75 and 76, persons who are 65 years of age or older, blind, or disabled are eligible for Medicaid only if eligible for the Supplemental Security Income (SSI) program administered by the United States Social Security Administration. The statutes, regulations, and policy governing eligibility for SSI are found in Title XVI of the Social Security Act (42 U.S.C. Sections 1381 to 1383f), in the federal regulations promulgated pursuant to Title XVI (20 CFR Sections 416.101 to 416.2227), and in Part 5 of the Program Operations Manual System published by the United States Social Security Administration. The Program Operations Manual System is available at Social Security Administration offices in Ames, Burlington, Carroll, Cedar Rapids, Clinton, Creston, Davenport, Decorah, Des Moines, Dubuque, Fort Dodge, Iowa City, Marshalltown, Mason City, Oskaloosa, Ottumwa, Sioux City, Spencer, Storm Lake, and Waterloo, or through the Department of Human Services, Division of Medical Services, Hoover State Office Building, Des Moines, Iowa 50319-0114.~~

~~Income~~ For SSI-related Medicaid eligibility purposes, income shall be considered prospectively.

Income that a person contributes to a trust as specified at 75.24(3)“b” shall not be considered for purposes of determining eligibility for SSI-related Medicaid.

For purposes of determining eligibility for SSI-related Medicaid, the SSI conditional eligibility process ~~at 20 CFR 416.1240 to 416.1245 as amended to March 21, 1990, by which a client may receive SSI benefits while attempting to sell excess resources, found at 20 CFR 416.1240 to 416.1245, is not considered an eligibility methodology. Persons found eligible for Medicaid prior to October 1, 1993, based on the SSI conditional eligibility process as an eligibility methodology may continue to be eligible for Medicaid on that basis until no later than April 1, 1994.~~

*In the absence of other evidence, the value of a life estate or remainder interest in property shall be determined using the following table by multiplying the fair market value of the entire underlying property (including all life estates and all remainder interests) by the life estate or remainder interest decimal corresponding to the age of the individual who owns the life estate or remainder interest.*

*If a Medicaid applicant or recipient disputes the value determined using the following table, the applicant or recipient may submit other evidence and the value of the life estate or remainder interest shall be determined based on the preponderance of all the evidence submitted to or obtained by the department, including the value given by the following table.*

<u>Age</u>	<u>Life Estate</u>	<u>Remainder</u>
0	.97188	.02812
1	.98988	.01012
2	.99017	.00983
3	.99008	.00992
4	.98981	.01019
5	.98938	.01062
6	.98884	.01116
7	.98822	.01178
8	.98748	.01252
9	.98663	.01337
10	.98565	.01435
11	.98453	.01547
12	.98329	.01671
13	.98198	.01802
14	.98066	.01934
15	.97937	.02063
16	.97815	.02185
17	.97700	.02300
18	.97590	.02410
19	.97480	.02520
20	.97365	.02635
21	.97245	.02755
22	.97120	.02880
23	.96986	.03014
24	.96841	.03159
25	.96678	.03322
26	.96495	.03505
27	.96290	.03710
28	.96062	.03938
29	.95813	.04187
30	.95543	.04457
31	.95254	.04746
32	.94942	.05058
33	.94608	.05392
34	.94250	.05750
35	.93868	.06132
36	.93460	.06540
37	.93026	.06974

## HUMAN SERVICES DEPARTMENT[441](cont'd)

38	.92567	.07433	88	.30859	.69141
39	.92083	.07917	89	.29526	.70474
40	.91571	.08429	90	.28221	.71779
41	.91030	.08970	91	.26955	.73045
42	.90457	.09543	92	.25771	.74229
43	.89855	.10145	93	.24692	.75308
44	.89221	.10779	94	.23728	.76272
45	.88558	.11442	95	.22887	.77113
46	.87863	.12137	96	.22181	.77819
47	.87137	.12863	97	.21550	.78450
48	.86374	.13626	98	.21000	.79000
49	.85578	.14422	99	.20486	.79514
50	.84743	.15257	100	.19975	.80025
51	.83674	.16126	101	.19532	.80468
52	.82969	.17031	102	.19054	.80946
53	.82028	.17972	103	.18437	.81563
54	.81054	.18946	104	.17856	.82144
55	.80046	.19954	105	.16962	.83038
56	.79006	.20994	106	.15488	.84512
57	.77931	.22069	107	.13409	.86591
58	.76822	.23178	108	.10068	.89932
59	.75675	.24325	109	.04545	.95455
60	.74491	.25509			
61	.73267	.26733			
62	.72002	.27998			
63	.70696	.29304			
64	.69352	.30648			
65	.67970	.32030			
66	.66551	.33449			
67	.65098	.343902			
68	.63610	.363690			
69	.62086	.37914			
70	.60522	.39478			
71	.58914	.41086			
72	.57261	.42739			
73	.55571	.44429			
74	.53862	.46138			
75	.52149	.47851			
76	.51441	.49559			
77	.48742	.51258			
78	.47049	.52951			
79	.45357	.54643			
80	.43569	.56341			
81	.41967	.58033			
82	.40295	.59705			
83	.38642	.61358			
84	.36998	.63002			
85	.35359	.64641			
86	.33764	.66236			
87	.32262	.67738			

ITEM 2. Amend subrule 75.23(5), paragraph "d," as follows:

d. The denial of eligibility would work an undue hardship. Undue hardship shall exist only ~~where both~~ when all of the following conditions are met:

(1) *Application of the transfer of asset penalty would deprive the individual of food, clothing, shelter, medical care, or other necessities of life, such that the individual's health or life would be endangered.*

(2) The person who transferred the resource or the person's spouse has exhausted all means including legal remedies and consultation with an attorney to recover the resource.

(3) The person's remaining available resources (after the attribution for the community spouse) are less than the monthly statewide average cost of nursing facility services to a private pay resident. ~~The, counting the value of all resources is counted~~ except for:

1. The home if occupied by a dependent relative or if a ~~doctor~~ licensed physician verifies that the person is expected to return home.

2. Household goods.

3. A vehicle required by the client for transportation.

4. Funds for burial of \$4,000 or less.

Hardship will not be found if the resource was transferred to a person who was handling the financial affairs of the client or to the spouse or children of a person handling the financial affairs of the client unless the client demonstrates that payments cannot be obtained from the funds of the person who handled the financial affairs to pay for nursing facility services.

## ARC 8906A

HUMAN SERVICES  
DEPARTMENT[441]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 514I.5(8), the Department of Human Services proposes to amend Chapter 86, "Healthy and Well Kids in Iowa (HAWK-I) Program," appearing in the Iowa Administrative Code.

These amendments revise policy governing eligibility for the HAWK-I Program.

A child must be uninsured to qualify for the HAWK-I Program. A child who has been enrolled in an employer-sponsored health plan in the six months prior to the month of application but who is no longer enrolled in an employer-sponsored health plan is not eligible to participate in the HAWK-I Program for six months from the last date of coverage unless the coverage ended for one of the reasons established by legislation at Iowa Code section 514I.5(8)"m" and incorporated in rules governing the program.

One of those exceptions provides that the six-month waiting period will not be imposed if dependent coverage was terminated due to an extreme economic hardship on the part of either the employee or the employer. These amendments add a definition of extreme economic hardship on the part of the employee.

Section 4901 of the Social Security Act establishing this program provides that the total annual aggregate cost sharing with respect to all targeted low-income children in the family may not exceed 5 percent of the family's gross income for the year involved. Based on this established criteria, "extreme economic hardship" is being defined to mean that the employee's share of the premium for providing employer-sponsored dependent coverage exceeded 5 percent of the family's gross income.

These amendments also update Iowa Code references.

The substance of these amendments is also Adopted and Filed Emergency and is published herein as **ARC 8916A**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before April 28, 1999.

These amendments are intended to implement Iowa Code section 514I.5(8)"m."

## ARC 8859A

PERSONS WITH DISABILITIES  
DIVISION[431]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 216A.76, the Commission of Persons With Disabilities hereby gives Notice of Intended Action to amend Chapter 1, "Organization," and adopt Chapter 4, "Petitions for Rule Making," Chapter 5, "Agency Procedure for Rule Making," and Chapter 6, "Declaratory Orders," Iowa Administrative Code.

The amendments to Chapter 1 strike old terminology and update division telephone numbers. Chapters 4, 5 and 6 govern petitions for rule making, procedures for rule making, and declaratory orders.

The Seventy-seventh General Assembly passed amendments to the Iowa Administrative Procedure Act in 1998 Iowa Acts, chapter 1202. The Attorney General's Office drafted amendments to the Uniform Rules on Agency Procedure to implement the amendments to the Iowa Administrative Procedure Act. The Commission is adopting the uniform rules which become effective July 1, 1999.

Any interested person may make written suggestions or comments on these proposed amendments on or before April 27, 1999. Such written materials should be directed to the Administrator, Division of Persons with Disabilities, Iowa Department of Human Rights, Lucas State Office Building, First Floor, Des Moines, Iowa 50319; fax (515) 242-6119.

Persons are also invited to present oral or written suggestions or comments at a public hearing which will be held on April 27, 1999, at 10 a.m. in the Director's Conference Room, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319. At the hearing, persons will be asked to confine their remarks to the subjects of the amendments.

Any persons who intend to attend a public hearing and have special requirements such as hearing or mobility impairments should contact the Division of Persons with Disabilities and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 216A.76.

The following amendments are proposed.

ITEM 1. Amend subrule 1.2 (1) as follows:

1.2(1) Location. The office for the division of persons with disabilities is located in the Department of Human Rights, First Floor, Lucas State Office Building, Des Moines, Iowa 50319. The telephone number is ~~(515) 281-5969~~ (515)242-6172 or (888)219-0471 (v/tty). The hours of operation are 8 a.m. to 4:30 p.m., Monday through Friday.

ITEM 2. Amend subrule 1.2(3), paragraph "b," as follows:

b. Consultant(s). The consultants provide technical services related to disability in the areas of employment, independent living, physical access, housing, transportation, rec-

## PERSONS WITH DISABILITIES DIVISION[431](cont'd)

reation, and equal opportunity. The consultants act as liaisons with elected officials, governmental agencies, human resource professionals, and local groups in order to clarify the needs of persons with disabilities and to establish and maintain the plans and programs dealing with disabilities. The consultants analyze and report data obtained on programs, issues and services relating to disability issues. The consultants provide education, information and referral services to citizens.

ITEM 3. Adopt the following new chapters:

CHAPTER 4  
PETITIONS FOR RULE MAKING

**431—4.1(17A) Adoption by reference.** The division of persons with disabilities hereby adopts the petitions for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(designate office)", insert "division of persons with disabilities, department of human rights".
2. In lieu of the words "(AGENCY NAME)", insert "DIVISION OF PERSONS WITH DISABILITIES".
3. In lieu of the words "(designate official by full title and address)", insert "Administrator, Division of Persons with Disabilities, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

CHAPTER 5  
AGENCY PROCEDURE FOR RULE MAKING

**431—5.1(17A) Adoption by reference.** The division of persons with disabilities hereby adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(commission, board, council, director)", insert "administrator".
2. In lieu of the words "(specify time period)", insert "one year".
3. In lieu of the words "(identify office and address)", insert "Division of Persons with Disabilities, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
4. In lieu of the words "(designate office and telephone number)", insert "the administrator at (515)281-8725 voice/tty".
5. In lieu of the words "(designate office)", insert "Division of Persons with Disabilities, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
6. In lieu of the words "(specify the office and address)", insert "Division of Persons with Disabilities, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
7. In lieu of the words "(agency head)", insert "administrator".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

CHAPTER 6  
DECLARATORY ORDERS

**431—6.1(17A) Adoption by reference.** The division of persons with disabilities hereby adopts the declaratory orders segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(designate agency)", insert "division of persons with disabilities".
2. In lieu of the words "(designate office)", insert "Division of Persons with Disabilities, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
3. In lieu of the words "(AGENCY NAME)", insert "DIVISION OF PERSONS WITH DISABILITIES".
4. In lieu of the words "\_\_\_\_ days (15 or less)", insert "10 days".
5. In lieu of the words "\_\_\_\_ days" in subrule 6.3(1), insert "20 days".
6. In lieu of the words "(designate official by full title and address)", insert "Administrator, Division of Persons with Disabilities, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
7. In lieu of the words "(specify office and address)", insert "Division of Persons with Disabilities, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
8. In lieu of the words "(agency name)", insert "division of persons with disabilities".
9. In lieu of the words "(designate agency head)", insert "administrator".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

**ARC 8891A**

**PROFESSIONAL LICENSURE  
DIVISION[645]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 158.15, the Board of Barber Examiners hereby gives Notice of Intended Action to amend Chapter 20, "Barber Examiners," and to rescind Chapter 23, "Agency Procedure for Rule Making," Chapter 24, "Petitions for Rule Making," Chapter 25, "Declaratory Rulings," and Chapter 26, "Child Support Non-compliance," Iowa Administrative Code.

The amendments rescind chapters and rules that are found under the Professional Licensure Division to cover all examining boards in the Division. Rule 645—20.212(272C) is rescinded and a new rule is adopted.

Any interested person may make written comments on the proposed amendments not later than April 28, 1999, addressed to Marge Bledsoe, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

There will be a public hearing on April 28, 1999, from 9 to 11 a.m. in the Professional Licensure Conference Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075. Persons may present their views at the public



## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

hearing either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

The Board has determined that the amendments will have no impact on small business within the meaning of 1998 Iowa Acts, chapter 1202, section 10.

These amendments are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapters 158 and 272C.

The following amendments are proposed.

ITEM 1. Rescind and reserve rules **645—20.201(272C)** to **645—20.211(272C)**.

ITEM 2. Rescind **645—20.212(272C)** and adopt the following **new** rule in lieu thereof:

**645—20.212(272C) Grounds for discipline.** The board may impose any of the disciplinary sanctions set forth in rule **645—13.1(272C)**, including civil penalties in an amount not to exceed \$1000, when the board determines that a licensee is guilty of any of the following acts or offenses:

1. Fraud in procuring a license.
2. Professional incompetency.
3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.
4. Habitual intoxication or addiction to the use of drugs.
5. Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice within a profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.
6. Fraud in representations as to skill or ability.
7. Use of untruthful or improbable statements in advertisements.
8. Willful or repeated violations of the provisions of Iowa Code chapter 147.
9. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.
10. Involuntary commitment for treatment of mental illness, drug addiction or alcoholism.
11. Practicing the profession while the license is suspended.
12. Suspension or revocation of license by another state.
13. Negligence by the licensee in the practice of the profession, which is a failure to exercise due care including negligent delegation to or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.
14. Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.
15. Practice outside the scope of a license.
16. Obtaining, possessing, or attempting to obtain or possess a controlled substance without lawful authority; or selling, prescribing, giving away, or administering controlled substances.
17. Verbally or physically abusing clients.
18. False or misleading advertising.
19. Betrayal of a professional confidence.

20. Falsifying clients' records.
21. Failure to report a change of name or address within 30 days after it occurs.
22. Submission of a false report of continuing education or failure to submit the annual report of continuing education.
23. Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.
24. Failure to comply with a subpoena issued by the board.
25. Failure to report to the board as provided in rule **645—20.212(272C)** any violation by another licensee of the reasons for disciplinary action as listed in this rule.

ITEM 3. Rescind and reserve rules **645—20.213(272C)** and **645—20.300(28A)**.

ITEM 4. Rescind and reserve **645—Chapter 23**, "Agency Procedure for Rule Making," **645—Chapter 24**, "Petitions for Rule Making," **645—Chapter 25**, "Declaratory Rulings," **645—Chapter 26**, "Child Support Non-compliance," **645—Chapter 27**, "Impaired Practitioner Review Committee," and **645—Chapter 29**, "Public Records and Fair Information Practices."

## ARC 8890A

PROFESSIONAL LICENSURE  
DIVISION[645]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Behavioral Science Examiners hereby gives Notice of Intended Action to amend Chapter 31, "Continuing Education and Disciplinary Process," and to rescind Chapter 32, "Contested Cases," Chapter 33, "Child Support Non-compliance," Chapter 34, "Impaired Practitioner Review Committee," Chapter 36, "Petitions For Rule Making," Chapter 37, "Declaratory Rulings," Chapter 38, "Agency Procedure for Rule Making," and Chapter 39, "Public Records and Fair Information Practices," Iowa Administrative Code.

The amendments rescind chapters and rules that are found under the Professional Licensure Division to cover all examining boards in the Division.

Any interested person may make written comments on the proposed amendments not later than April 28, 1999, addressed to Marge Bledsoe, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

There will be a public hearing on April 28, 1999, from 9 to 11 a.m. in the Professional Licensure Conference Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075. Persons may present their views at the public hearing either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

and to confine their remarks to the subject of the amendments.

The Board has determined that the amendments will have no impact on small business within the meaning of 1998 Iowa Acts, chapter 1202, section 10.

These amendments are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 147.76 and chapter 272C.

The following amendments are proposed.

ITEM 1. Rescind and reserve rules **645—31.7(147,154D,272C)** and **645—31.11(147,154D,272C)** to **645—31.20(147,154D,272C)**.

ITEM 2. Rescind and reserve **645—Chapter 32**, "Contested Cases," **645—Chapter 33**, "Child Support Noncompliance," **645—Chapter 34**, "Impaired Practitioner Review Committee," **645—Chapter 36**, "Petitions for Rule Making," **645—Chapter 37**, "Declaratory Rulings," **645—Chapter 38**, "Agency Procedure for Rule Making," and **645—Chapter 39**, "Public Records and Fair Information Practices."

## ARC 8889A

PROFESSIONAL LICENSURE  
DIVISION[645]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 157.14, the Board of Cosmetology Arts and Sciences Examiners hereby gives Notice of Intended Action to amend Chapter 65, "Disciplinary Procedures for Cosmetology Arts and Sciences Licensees," and to rescind Chapter 66, "Agency Procedure for Rule Making," Chapter 67, "Petitions for Rule Making," Chapter 68, "Declaratory Rulings," Chapter 69, "Public Records and Fair Information Practices," Chapter 70, "Child Support Noncompliance," and Chapter 71, "Impaired Practitioner Review Committee," Iowa Administrative Code.

The amendments rescind chapters and rules that are found under the Professional Licensure Division to cover all examining boards in the Division.

Any interested person may make written comments on the proposed amendments not later than April 28, 1999, addressed to Marge Bledsoe, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

There will be a public hearing on April 28, 1999, from 9 to 11 a.m. in the Professional Licensure Conference Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075. Persons may present their views at the public hearing either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

The Board has determined that the amendments will have no impact on small business within the meaning of 1998 Iowa Acts, chapter 1202, section 10.

These amendments are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 157.14 and chapter 272C.

The following amendments are proposed.

ITEM 1. Rescind and reserve rules **645—65.1(272C)** to **645—65.11(272C)**.

ITEM 2. Rescind and reserve rules **645—65.13(272C)** and **645—65.101(272C)**.

ITEM 3. Rescind and reserve **645—Chapter 66**, "Agency Procedure for Rule Making," **645—Chapter 67**, "Petitions for Rule Making," **645—Chapter 68**, "Declaratory Rulings," **645—Chapter 69**, "Public Records and Fair Information Practices," **645—Chapter 70**, "Child Support Noncompliance," and **645—Chapter 71**, "Impaired Practitioner Review Committee."

## ARC 8888A

PROFESSIONAL LICENSURE  
DIVISION[645]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Dietetic Examiners hereby gives Notice of Intended Action to amend Chapter 80, "Board of Dietetic Examiners," and to rescind Chapter 86, "Agency Procedure for Rule Making," Chapter 87, "Petitions for Rule Making," Chapter 88, "Declaratory Rulings," Chapter 89, "Public Records and Fair Information Practices," Chapter 90, "Child Support Noncompliance," and Chapter 91, "Impaired Practitioner Review Committee," Iowa Administrative Code.

The amendments rescind the chapters that are found under the Professional Licensure Division and cover all examining boards in the Division.

Any interested person may make written comments on the proposed amendments not later than April 28, 1999, addressed to Marge Bledsoe, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

There will be a public hearing on April 28, 1999, from 9 to 11 a.m. in the Professional Licensure Conference Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075. Persons may present their views at the public hearing either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

The Board has determined that the amendments will have no impact on small business within the meaning of 1998 Iowa Acts, chapter 1202, section 10.

These amendments are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapters 147, 152A, and 272C.

The following amendments are proposed.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 1. Rescind and reserve rules **645—80.200(152A)** to **645—80.213(152A,272C)**.

ITEM 2. Rescind and reserve rules **645—80.215(152A,272C)** to **645—80.219(152A,272C)**.

ITEM 3. Rescind and reserve **645—Chapter 86**, "Agency Procedure for Rule Making," **645—Chapter 87**, "Petitions for Rule Making," **645—Chapter 88**, "Declaratory Rulings," **645—Chapter 89**, "Public Records and Fair Information Practices," **645—Chapter 90**, "Child Support Noncompliance," and **645—Chapter 91**, "Impaired Practitioner Review Committee."

**ARC 8885A****PROFESSIONAL LICENSURE  
DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Mortuary Science Examiners hereby gives Notice of Intended Action to amend Chapter 101, "Board of Mortuary Science Examiners," and to rescind Chapter 102, "Declaratory Rulings," Chapter 103, "Petitions for Rule Making," Chapter 104, "Agency Procedure for Rule Making," Chapter 109, "Public Records and Fair Information Practices," Chapter 114, "Impaired Practitioner Review Committee," Chapter 115, "Child Support Noncompliance," Iowa Administrative Code.

The amendments rescind the chapters that are found under the Professional Licensure Division and cover all examining boards in the Division.

Any interested person may make written comments on the proposed amendments not later than April 28, 1999, addressed to Marge Bledsoe, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

There will be a public hearing on April 28, 1999, from 9 to 11 a.m. in the Professional Licensure Conference Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075. Persons may present their views at the public hearing either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

The Board has determined that the amendments will have no impact on small business within the meaning of 1998 Iowa Acts, chapter 1202, section 10.

These amendments are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapters 147, 156, and 272C.

The following amendments are proposed.

ITEM 1. Rescind and reserve rules **645—101.201(272C)** to **645—101.209(272C)** and **645—101.211(272C)**.

ITEM 2. Amend rule **645—101.212(272C)** as follows:

**645—101.212(272C) Method of discipline: licensed funeral director Grounds for discipline.** The board has the authority to impose the following disciplinary sanctions:

1. ~~Revoke a license.~~
2. ~~Suspend a license until further order of the board or for a specified period.~~
3. ~~Prohibit permanently, until further order of the board, or for a specified period, the engaging in specified procedures, methods or acts.~~
4. ~~Place a license on probation.~~
5. ~~Require additional education or training.~~
6. ~~Require reexamination.~~
7. ~~Impose civil penalties not to exceed \$1,000.~~
8. ~~Issue a citation or warning.~~
9. ~~Impose other sanctions allowed by law as may be appropriate.~~

ITEM 3. Amend subrule 101.212(1), introductory paragraph, as follows:

**101.212(1)** The board may impose any of these the disciplinary sanctions set forth in rule **645—13.1(272C)**, including civil penalties in an amount not to exceed \$1000, when the board determines that the licensee is guilty of the following acts or offenses:

ITEM 4. Rescind and reserve **645—Chapter 102**, "Declaratory Rulings," **645—Chapter 103**, "Petitions for Rule Making," **645—Chapter 104**, "Agency Procedure for Rule Making," **645—Chapter 109**, "Public Records and Fair Information Practices," **645—Chapter 114**, "Impaired Practitioner Review Committee," and **645—Chapter 115**, "Child Support Noncompliance."

**ARC 8887A****PROFESSIONAL LICENSURE  
DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Examiners for the Licensing and Regulation of Hearing Aid Dealers hereby gives Notice of Intended Action to amend Chapter 120, "Board of Examiners for the Licensing and Regulation of Hearing Aid Dealers," and to rescind Chapter 121, "Declaratory Rulings," Chapter 122, "Petitions for Rule Making," Chapter 123, "Agency Procedure for Rule Making," Chapter 124, "Child Support Noncompliance," Chapter 125, "Impaired Practitioner Review Committee," and Chapter 129, "Public Records and Fair Information Practices," Iowa Administrative Code.

The amendments rescind chapters and rules that are found under the Professional Licensure Division to cover all examining boards in the Division.

Any interested person may make written comments on the proposed amendments not later than April 28, 1999, addressed to Marge Bledsoe, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

There will be a public hearing on April 28, 1999, from 9 to 11 a.m. in the Professional Licensure Conference Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075. Persons may present their views at the public hearing either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

The Board has determined that the amendments will have no impact on small business within the meaning of 1998 Iowa Acts, chapter 1202, section 10.

These amendments are intended to implement Iowa Code chapter 17A as amended by the 1998 Iowa Acts, chapter 1202, and Iowa Code chapters 147, 154A, and 272C.

The following amendments are proposed.

ITEM 1. Rescind and reserve rules **645—120.201(272C)** to **645—120.211(272C)**, **645—120.213(272C)** and **645—120.300(21)**.

ITEM 2. Rescind and reserve **645—Chapter 121**, "Declaratory Rulings," **645—Chapter 122**, "Petitions for Rule Making," **645—Chapter 123**, "Agency Procedure for Rule Making," **645—Chapter 124**, "Child Support Noncompliance," **645—Chapter 125**, "Impaired Practitioner Review Committee," and **645—Chapter 129**, "Public Records and Fair Information Practices."

**ARC 8886A**

## PROFESSIONAL LICENSURE DIVISION[645]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Massage Therapy Examiners hereby gives Notice of Intended Action to amend Chapter 131, "Continuing Education and Disciplinary Procedures," and to rescind Chapter 136, "Petitions for Rule Making," Chapter 137, "Declaratory Rulings," Chapter 138, "Agency Procedure for Rule Making," and Chapter 139, "Public Records and Fair Information Practices," Iowa Administrative Code.

The amendments rescind chapters that are found under the Professional Licensure Division to cover all examining boards in the Division.

Any interested person may make written comments on the proposed amendments not later than April 28, 1999, addressed to Marge Bledsoe, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

There will be a public hearing on April 28, 1999, from 9 to 11 a.m. in the Professional Licensure Conference Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075. Persons may present their views at the public hearing either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

The Board has determined that the amendments will have no impact on small business within the meaning of 1998 Iowa Acts, chapter 1202, section 10.

These amendments are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapters 147, 152C and 272C.

The following amendments are proposed.

ITEM 1. Rescind and reserve rules **645—131.6(152C)** to **645—131.16(152C)**.

ITEM 2. Amend paragraph **131.17(2)"k"** as follows:

k. Failure to pay any civil penalties assessed pursuant to rule ~~131.11~~ **131.17(152C)** or ~~131.12~~ **131.17(152C)**.

ITEM 3. Rescind and reserve **645—Chapter 136**, "Petitions for Rule Making," **645—Chapter 137**, "Declaratory Rulings," **645—Chapter 138**, "Agency Procedure for Rule Making," and **645—Chapter 139**, "Public Records and Fair Information Practices."

**ARC 8884A**

## PROFESSIONAL LICENSURE DIVISION[645]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Examiners for Nursing Home Administrators hereby gives Notice of Intended Action to amend Chapter 141, "Licensure of Nursing Home Administrators," and to rescind Chapter 144, "Child Support Noncompliance," Chapter 145, "Impaired Practitioner Review Committee," Chapter 146, "Petitions for Rule Making," Chapter 147, "Public Records and Fair Information Practices," Chapter 148, "Declaratory Rulings," Iowa Administrative Code.

The amendments rescind the chapters that are found under the Professional Licensure Division and cover all examining boards in the Division.

Any interested person may make written comments on the proposed amendments not later than April 28, 1999, addressed to Marge Bledsoe, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

There will be a public hearing on April 28, 1999, from 9 to 11 a.m. in the Professional Licensure Conference Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075. Persons may present their views at the public hearing either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

The Board has determined that the amendments will have no impact on small business within the meaning of 1998 Iowa Acts, chapter 1202, section 10.

These amendments are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapters 147, 155, and 272C.

The following amendments are proposed.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 1. Amend rule 645—141.12(147,155,272C), introductory paragraph, as follows:  
**645—141.12(147,155,272C) Sanctions, license denial, suspension and revocation Grounds for discipline.** The board may deny an initial or renewal application, or invoke sanctions of citation and warning, probation, suspension or revocation of a nursing home administrator's license for the following reasons: impose any of the disciplinary sanctions set forth in rule 645—13.1(272C) including civil penalties in an amount not to exceed \$1000, when the board determines that a licensee is guilty of any of the following acts or offenses:

ITEM 2. Rescind and reserve rule 645—141.13(155).

ITEM 3. Rescind and reserve 645—Chapter 144, "Child Support Noncompliance," 645—Chapter 145, "Impaired Practitioner Review Committee," 645—Chapter 146, "Petitions for Rule Making," 645—Chapter 147, "Public Records and Fair Information Practices," and 645—Chapter 148, "Declaratory Rulings."

## ARC 8883A

PROFESSIONAL LICENSURE  
DIVISION[645]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Optometry Examiners hereby gives Notice of Intended Action to amend Chapter 180, "Board of Optometry Examiners," and to rescind Chapter 186, "Agency Procedure for Rule Making," Chapter 187, "Declaratory Rulings," Chapter 188, "Petitions for Rule Making," Chapter 189, "Public Records and Fair Information Practices," Chapter 190, "Child Support Noncompliance," and Chapter 191, "Impaired Practitioner Review Committee," Iowa Administrative Code.

The amendments rescind chapters that are found under the Professional Licensure Division to cover all examining boards in the Division.

Any interested person may make written comments on the proposed amendments not later than April 28, 1999, addressed to Marge Bledsoe, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

There will be a public hearing on April 28, 1999, from 9 to 11 a.m. in the Professional Licensure Conference Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075. Persons may present their views at the public hearing either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

The Board has determined that the amendments will have no impact on small business within the meaning of 1998 Iowa Acts, chapter 1202, section 10.

These amendments are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapters 147, 180 and 272C.

The following amendments are proposed.

ITEM 1. Rescind and reserve rules 645—180.101(272C) to 645—180.114(272C).

ITEM 2. Rescind and reserve rules 645—180.116(272C) to 645—180.122(272C) and 645—180.300(21).

ITEM 3. Rescind and reserve 645—Chapter 186, "Agency Procedure For Rule Making," 645—Chapter 187, "Declaratory Rulings," 645—Chapter 188, "Petitions for Rule Making," 645—Chapter 189, "Public Records and Fair Information Practices," 645—Chapter 190, "Child Support Noncompliance," and 645—Chapter 191, "Impaired Practitioner Review Committee."

## ARC 8880A

PROFESSIONAL LICENSURE  
DIVISION[645]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy Examiners hereby gives Notice of Intended Action to amend Chapter 200, "Physical Therapy Examiners," Chapter 201, "Occupational Therapy Examiners," and Chapter 202, "Physical Therapy Assistants," and to rescind Chapter 204, "Impaired Practitioner Review Committee," Chapter 205, "Child Support Noncompliance," Chapter 206, "Petitions for Rule Making," Chapter 207, "Declaratory Rulings," Chapter 208, "Agency Procedure for Rule Making," and Chapter 209, "Public Records and Fair Information Practices," Iowa Administrative Code.

The amendments rescind chapters that are found under the Professional Licensure Division to cover all examining boards in the Division.

Any interested person may make written comments on the proposed amendments not later than April 28, 1999 addressed to Marge Bledsoe, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

There will be a public hearing on April 28, 1999, from 9 to 11 a.m. in the Professional Licensure Conference Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075. Persons may present their views at the public hearing either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

The Board has determined that the amendments will have no impact on small business within the meaning of 1998 Iowa Acts, chapter 1202, section 10.

These amendments are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapters 147, 148A, 148B, and 272C.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

The following amendments are proposed.

ITEM 1. Rescind and reserve rules **645—201.18(272C)** to **645—201.23(272C)**.

ITEM 2. Amend rule **645—201.24(272C)**, introductory paragraph, as follows:  
**645—201.24(272C) Grounds for discipline.** The board may impose any of the disciplinary sanctions set forth in rule **201.22(272C) 645—13.1(272C)**, including civil penalties in an amount not to exceed \$1000, when the board determines that a licensee is guilty of any of the following acts or offenses.

ITEM 3. Rescind and reserve rules **645—201.25(272C)** and **645—201.26(21,272C)**.

ITEM 4. Rescind and reserve rules **645—202.16(272C)** to **645—202.22(272C)**.

ITEM 5. Amend rule **645—202.23(272C)**, introductory paragraph, as follows:  
**645—202.23(272C) Grounds for discipline.** The board may impose any of the disciplinary sanctions set forth in rule **645—200.21 645—13.1(272C)**, including civil penalties in an amount not to exceed \$1000, when the board determines that a licensee is guilty of any of the following acts or offenses.

ITEM 6. Amend subrule **202.23(14)** as follows:  
**202.23(14)** Failure to report to the board as provided in Iowa Code section **272C.9** any violation by a physical therapist of the reasons for disciplinary action as listed in rule **202.20 645—13.1(272C)**.

ITEM 7. Rescind and reserve rules **645—202.25(272C)** and **645—202.26(272C)**.

ITEM 8. Rescind and reserve **645—Chapter 204**, "Impaired Practitioner Review Committee," **645—Chapter 205**, "Child Support Noncompliance," **645—Chapter 206**, "Petitions for Rule Making," **645—Chapter 207**, "Declaratory Rulings," **645—Chapter 208**, "Agency Procedure for Rule Making," and **645—Chapter 209**, "Public Records and Fair Information Practices."

**ARC 8881A****PROFESSIONAL LICENSURE  
DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Podiatry Examiners hereby gives Notice of Intended Action to amend Chapter 220, "Podiatry Examiners," and to rescind Chapter 225, "Impaired Practitioner Review Committee," Chapter 226, "Child Support Noncompliance," Chapter 227, "Petitions for Rule Making," Chapter 228, "Agency Procedure for Rule Making," Chapter 229, "Public Records and Fair Information Practices," and Chapter 230, "Declaratory Rulings," Iowa Administrative Code.

The amendments rescind chapters that are found under the Professional Licensure Division to cover all examining boards in the Division.

Any interested person may make written comments on the proposed amendments not later than April 28, 1999, addressed to Marge Bledsoe, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

There will be a public hearing on April 28, 1999, from 9 to 11 a.m. in the Professional Licensure Conference Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075. Persons may present their views at the public hearing either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

The Board has determined that the amendments will have no impact on small business within the meaning of 1998 Iowa Acts, chapter 1202, section 10.

These amendments are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapters 147, 149 and 272C.

The following amendments are proposed.

ITEM 1. Rescind and reserve rules **645—220.201(272C)** to **645—220.211(272C)**.

ITEM 2. Rescind and reserve rules **645—220.213(272C)** and **645—220.300(21)**.

ITEM 3. Rescind and reserve **645—Chapter 225**, "Impaired Practitioner Review Committee," **645—Chapter 226**, "Child Support Noncompliance," **645—Chapter 227**, "Petitions for Rule Making," **645—Chapter 228**, "Agency Procedure for Rule Making," **645—Chapter 229**, "Public Records and Fair Information Practices," and **645—Chapter 230**, "Declaratory Rulings."

**ARC 8879A****PROFESSIONAL LICENSURE  
DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Respiratory Care Examiners hereby gives Notice of Intended Action to amend Chapter 260, "Respiratory Care Practitioners," and to rescind Chapter 261, "Impaired Practitioner Review Committee," Chapter 262, "Child Support Noncompliance," and Chapter 269, "Public Records and Fair Information Practices," Iowa Administrative Code.

The amendments rescind chapters that are found under the Professional Licensure Division to cover all examining boards in the division.

Any interested person may make written comments on the proposed amendments not later than April 28, 1999, addressed to Marge Bledsoe, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

There will be a public hearing on April 28, 1999, from 9 to 11 a.m. in the Professional Licensure Conference Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075. Persons may present their views at the public hearing either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

The Board has determined that the amendments will have no impact on small business within the meaning of 1998 Iowa Acts, chapter 1202, section 10.

These amendments are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapters 147, 152B and 272C.

The following amendments are proposed.

ITEM 1. Rescind and reserve rules **645—260.18(152B)** to **645—260.27(152B,272C)**.

ITEM 2. Amend rule **645—260.28(152A,272C)**, introductory paragraph, as follows:

**645—260.28(152A,272C) Grounds for discipline.** The board may impose any of the disciplinary sanctions set forth in rule ~~260.29(152A,272C)~~ **645—13.1(272C)**, including civil penalties in an amount not to exceed \$1000, when the board determines that the licensee is guilty of any of the following acts or offenses:

ITEM 3. Amend rule **645—260.28(152A,272C)**, numbered paragraph "13," as follows:

13. Unethical practices, including:

- Betraying a professional confidence;
- Falsifying patient records;
- Engaging in a professional conflict of interest;
- Misappropriation of funds;
- ~~Violation of rule 260.32(152B,272C).~~

ITEM 4. Rescind and reserve rule **645—260.28(152A,272C)**, numbered paragraph "32."

ITEM 5. Rescind and reserve rules **645—260.30(152B,272C)** to **645—260.34(152B,272C)**.

ITEM 6. Rescind and reserve **645—Chapter 261**, "Impaired Practitioner Review Committee," **645—Chapter 262**, "Child Support Noncompliance," and **645—Chapter 269**, "Public Records and Fair Information Practices."

**ARC 8878A**

**PROFESSIONAL LICENSURE  
DIVISION[645]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Speech Pathology and Audiology Examiners hereby gives Notice of Intended Action to amend Chapter 301, "Speech Pathology and Audiology Continuing Education and Disciplinary Procedures," and to rescind Chapter 303, "Agency Procedure for Rule Making," Chapter 304, "Petitions for Rule Making," Chapter 305, "Declaratory Rul-

ings," Chapter 306, "Child Support Noncompliance," Chapter 307, "Impaired Practitioner Review Committee," and Chapter 309, "Public Records and Fair Information Practices," Iowa Administrative Code.

The amendments rescind chapters that are found under the Professional Licensure Division to cover all examining boards in the Division.

Any interested person may make written comments on the proposed amendments not later than April 28, 1999, addressed to Marge Bledsoe, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

There will be a public hearing on April 28, 1999, from 9 to 11 a.m. in the Professional Licensure Conference Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075. Persons may present their views at the public hearing either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

The Board has determined that the amendments will have no impact on small business within the meaning of 1998 Iowa Acts, chapter 1202, section 10.

These amendments are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, Chapter 1202, and Iowa Code chapters 147 and 272C.

The following amendments are proposed.

ITEM 1. Rescind and reserve rules **645—301.101(272C)** to **645—301.111(272C)**.

ITEM 2. Amend rule **645—301.112(272C)** as follows:

**645—301.112(272C) Method of discipline. Grounds for discipline.**

~~301.112(1) The board has the authority to impose the following disciplinary sanctions: may impose any of the disciplinary sanctions set forth in 645—13.1(272C), including civil penalties in an amount not to exceed \$1000, when the board determines that a licensee is guilty of any of the following acts or offenses:~~

- ~~1. Revoke a license.~~
- ~~2. Suspend a license until further order of the board or a specified period.~~
- ~~3. Prohibit permanently, until further order of the board, or for a specific period, the engaging in specified procedures, methods or acts.~~
- ~~4. Place a license on probation.~~
- ~~5. Require additional education or training.~~
- ~~6. Require reexamination.~~
- ~~7. Impose civil penalties not to exceed \$1,000.~~
- ~~8. Issue a citation or warning.~~
- ~~9. Impose other sanctions allowed by law as may be appropriate.~~

~~301.112(1) The board may impose any of these disciplinary sanctions when the board determines that the licensee is guilty of the following acts or offenses:~~

a. to h. No change.

**301.112(2) to 301.112(13)** No change.

ITEM 3. Rescind rule **645—301.113(272C)**.

ITEM 4. Rescind and reserve **645—Chapter 303**, "Agency Procedure for Rule Making," **645—Chapter 304**, "Petitions for Rule Making," **645—Chapter 305**, "Declaratory Rulings," **645—Chapter 306**, "Child Support Noncompliance," **645—Chapter 307**, "Impaired Practitioner Review Committee," and **645—Chapter 309**, "Public Records and Fair Information Practices."

## ARC 8882A

## PROFESSIONAL LICENSURE DIVISION[645]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Physician Assistant Examiners hereby gives Notice of Intended Action to amend Chapter 325, "Physician Assistants," and to rescind Chapter 326, "Child Support Noncompliance," and Chapter 327, "Impaired Practitioner Review Committee," Iowa Administrative Code.

The amendments rescind chapters that are found under the Professional Licensure Division to cover all examining boards in the Division.

Any interested person may make written comments on the proposed amendments not later than April 28, 1999, addressed to Marge Bledsoe, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

There will be a public hearing on April 28, 1999, from 9 to 11 a.m. in the Professional Licensure Conference Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075. Persons may present their views at the public hearing either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

The Board has determined that the amendments will have no impact on small business within the meaning of 1998 Iowa Acts, chapter 1202, section 10.

These amendments are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapters 147, 148C and 272C.

The following amendments are proposed.

ITEM 1. Amend rule 645—325.11(148C,272C), catchwords, as follows:

**645—325.11(148C,272C) Discipline—denial, suspension, revocation. Grounds for discipline.**

ITEM 2. Rescind and reserve subrules 325.11(1) and 325.11(2).

ITEM 3. Amend subrule 325.11(3), introductory paragraph, as follows:

**325.11(3) Grounds for disciplinary action.** The board may impose any of the discipline set forth above *in rule 645—13.1(272C)* when the board determines the licensee is guilty of the following:

ITEM 4. Rescind and reserve rules 645—325.12(272C) to 645—325.14(148C).

ITEM 5. Rescind and reserve 645—Chapter 326, "Child Support Noncompliance," and 645—Chapter 327, "Impaired Practitioner Review Committee."

## ARC 8895A

## PUBLIC SAFETY DEPARTMENT[661]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 692.10, the Department of Public Safety hereby proposes to amend Chapter 11, "Identification Section of the Division of Criminal Investigation," Iowa Administrative Code.

Iowa Code chapter 692 regulates access to Iowa criminal history records and, in combination with federal law, to national criminal history files maintained by the Federal Bureau of Investigation. Access to national criminal history checks until recently was limited by federal law to criminal justice agencies and to non-criminal justice agencies only in circumstances in which a national criminal history check was explicitly allowed by state law. This provision has been relaxed so that non-criminal justice agencies involved in care of children, the elderly, or the disabled may obtain national criminal history information in the absence of a specific authorization or requirement in state law to do so. All criminal history records checks for non-criminal justice purposes are required to go through the Iowa Division of Criminal Investigation. The amendments proposed herein align relevant provisions of Chapter 11 of the administrative rules of the Department of Public Safety with the revised provisions of federal law. In addition, information about on-line access to forms to request criminal history information is added.

These amendments were previously Adopted and Filed Emergency as **ARC 8790A** in the March 24, 1999, Iowa Administrative Bulletin and became effective upon filing on March 1, 1999. Because these proposed amendments are already in effect, the Department is proposing to rescind the Adopted and Filed Emergency amendments and adopt the identical language through the normal rule-making process in order to allow for public comment.

A public hearing will be held on May 3, 1999, at 9:30 a.m. in the Third Floor Conference Room, West Half, Wallace State Office Building, 900 East Grand, Des Moines, Iowa 50319. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Plans and Research Bureau, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by mail, by telephone at (515)281-5524, or by electronic mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us), at least one day prior to the public hearing. Any written comments or information regarding these proposed amendments may be directed to the Plans and Research Bureau by mail or electronic mail at the addresses indicated at least one day prior to the public hearing or may be submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Plans and Research Bureau by telephone or in person at the Bureau office at least one day prior to the public hearing.

The following amendments are proposed.



## PUBLIC SAFETY DEPARTMENT[661](cont'd)

ITEM 1. Amend rule 661—11.2(17A,690,692) by rescinding the definitions of "Authorized agency," "Employee," "Fee," "Fitness determination," "National record check," "Qualified entity," and "Volunteer" and inserting in lieu thereof the following new definitions:

"Authorized agency" means a division or office of the state of Iowa designated by a state to report, receive, or disseminate information under Iowa state law, administrative rule or Public Law 103-209.

"Employee" means a person who provides services to a qualified entity and is compensated for those services.

"Fee" means any cost associated with conducting a state or national criminal history record check.

"Fitness determination" means an analysis of criminal history information to determine whether or not it disqualifies an individual from holding a particular position either as an employee or a volunteer.

"National record check" means a criminal history record check from the FBI that is fingerprint-based and transmitted through the state central repository.

"Qualified entity" means a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, that provides child care or child care placement services, including a business or organization that licenses or certifies others to provide child care or child care placement services. This definition also applies to organizations which provide care to the elderly or the disabled.

"Volunteer" means a person who provides services to a qualified entity without compensation.

ITEM 2. Amend rule 661—11.5(690,692) by rescinding the rule and adopting in lieu thereof the following new rule:

**661—11.5(690,692) Review of record.** Any individual or that individual's attorney, acting with written authorization from the individual, may review or obtain a copy of the individual's criminal history record during normal business hours at the headquarters of the division in the Wallace State Office Building in Des Moines or by submitting a request on a form provided by the department of public safety. A copy of this request form may be obtained by writing to Identification Section, Division of Criminal Investigation, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by telephoning the identification section at (515)281-8706 or by sending a request by electronic mail to [cchinfo@dps.state.ia.us](mailto:cchinfo@dps.state.ia.us). The request form may also be downloaded from the division's Web site at <http://www.state.ia.us/government/dps/dci/>. The completed request form must be notarized, if submitted by mail, and accompanied by a set of the fingerprints of the individual whose criminal history record is being requested, along with submission of the fee established in rule 661—11.15(692). After the record check has been completed, the fingerprints submitted for verification shall be returned, upon request, or destroyed.

ITEM 3. Rescind rule 661—11.21(692) and adopt in lieu thereof the following new rule:

**661—11.21(692) Criminal history checks for qualified entities.**

11.21(1) The department of public safety may process requests for national criminal history record checks for a qualified entity.

11.21(2) All qualified entities requesting criminal history record checks shall be required to pay any applicable state and federal fees associated with non-criminal justice record

checks. The qualified entity is responsible for such fees whether the qualified entity requests or receives the information directly or through an agency authorized to make fitness determinations as provided in subrule 11.21(3).

11.21(3) Any public entity which has been duly authorized by statute or administrative rule to conduct fitness determinations of volunteers or employees of a qualified entity may receive state and national criminal history checks in order to do so.

ARC 8877A

## REGENTS BOARD[681]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 262.9(3) and 262.9(16), the Board of Regents hereby gives Notice of Intended Action to amend Chapter 11, "Administrative Procedures," Chapter 12, "University of Iowa Procedures," Chapter 13, "Iowa State University of Science and Technology Procedures," Chapter 14, "The University of Northern Iowa," Chapter 15, "Iowa Braille and Sight Saving School," Chapter 16, "Iowa School for the Deaf," and to adopt Chapter 18, "Declaratory Orders," Chapter 19, "Procedure for Rule Making," and Chapter 20, "Contested Cases," Iowa Administrative Code.

These amendments bring the Board's rules on administrative rule making, declaratory orders and contested cases into conformance with 1998 Iowa Acts, chapter 1202, which amended the Iowa Administrative Procedure Act.

The amendment to Chapter 11 clarifies the purpose of the chapter by creating a new title and rescinds rules 11.2(262) through 11.5(262) which are replaced by new Chapters 18, 19, and 20.

The amendment to Chapter 12 clarifies the purpose of the chapter by creating a new title and rescinds rules 12.2(262) through 12.5(262) which are replaced by new Chapters 18, 19, and 20.

The amendment to Chapter 13 clarifies the purpose of the chapter by creating a new title and rescinds rules 13.2(262) through 13.5(262) which are replaced by new Chapters 18, 19, and 20.

The amendment to Chapter 14 clarifies the purpose of the chapter by creating a new title.

The amendment to Chapter 15 clarifies the purpose of the chapter by creating a new title and rescinds rules 15.2(262) through 15.5(262) which are replaced by new Chapters 18, 19, and 20.

The amendment to Chapter 16 clarifies the purpose of the chapter by creating a new title and rescinds rules 16.2(262) through 16.5(262) which are replaced by new Chapters 18, 19, and 20.

Consideration will be given to all written suggestions or comments on the proposed amendments received on or before April 27, 1999. Comments should be addressed to Charles Wright, Office of the Board of Regents, 100 Court Avenue, Des Moines, Iowa 50319, or faxed to (515) 281-6420. E-mail may be sent to [ckwright@iastate.edu](mailto:ckwright@iastate.edu).

## REGENTS BOARD[681](cont'd)

These amendments are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202. The following amendments are proposed.

ITEM 1. Amend **681—Chapter 11** as follows:  
Amend the chapter title as follows:

CHAPTER 11  
~~ADMINISTRATIVE PROCEDURES~~ *BOARD OF  
REGENTS ORGANIZATION AND GENERAL RULES*

Rescind rules **681—11.2(262)** through **11.5(262)**.

ITEM 2. Amend **681—Chapter 12** as follows:  
Amend the chapter title as follows:

CHAPTER 12  
~~UNIVERSITY OF IOWA PROCEDURES~~  
*ORGANIZATION AND GENERAL RULES*

Rescind rules **681—12.2(262)** through **12.5(262)**.

ITEM 3. Amend **681—Chapter 13** as follows:  
Amend the chapter title as follows:

CHAPTER 13  
~~IOWA STATE UNIVERSITY OF SCIENCE AND  
TECHNOLOGY PROCEDURES~~ *ORGANIZATION AND  
GENERAL RULES*

Rescind rules **681—13.2(262)** through **13.5(262)**.

ITEM 4. Amend **681—Chapter 14**, title, as follows:

CHAPTER 14  
~~THE UNIVERSITY OF NORTHERN IOWA~~  
*ORGANIZATION AND GENERAL RULES*

ITEM 5. Amend **681—Chapter 15** as follows:  
Amend the chapter title as follows:

CHAPTER 15  
~~IOWA BRAILLE AND SIGHT SAVING SCHOOL~~  
*ORGANIZATION AND GENERAL RULES*

Rescind rules **681—15.2(262)** through **15.5(262)**.

ITEM 6. Amend **681—Chapter 16** as follows:  
Amend the chapter title as follows:

CHAPTER 16  
~~IOWA SCHOOL FOR THE DEAF~~ *ORGANIZATION AND  
GENERAL RULES*

Rescind rules **681—16.2(262)** through **16.5(262)**.

ITEM 7. Adopt new Chapter 18 as follows:

CHAPTER 18  
**DECLARATORY ORDERS**

**681—18.1(17A) Petition for declaratory order.** Any person may file a petition with the board of regents for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board of regents at the office of the Board of Regents, 100 Court Avenue, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The board of regents shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board of regents with an extra copy for this purpose. The petition must be

typewritten or legibly handwritten in ink and must substantially conform to the following form:

**BOARD OF REGENTS**

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	}	<b>PETITION FOR DECLARATORY ORDER</b>
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The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

**681—18.2(17A) Assignment to regent institution.**

**18.2(1)** In matters which relate exclusively or primarily to one of the universities or schools under the governance of the board of regents, the board of regents will normally assign action on declaratory orders to the president or superintendent of the affected institution. The president or superintendent, or the president or superintendent's designee, shall assume all powers of the board of regents to handle and rule on petitions for declaratory orders. Assignment may be made by the executive director of the board of regents and will normally occur within five days of filing of the petition.

**18.2(2)** Upon assignment of a petition to a president or superintendent, the term "board of regents" in this chapter shall refer to the president or superintendent. Pleadings and documents related to such petitions shall be filed with the president or superintendent, or as designated in writing to the parties, and the documents may be revised to reflect that the matter is before the affected institution.

**18.2(3)** A party adversely affected by an adverse declaratory order issued by a regent institution may seek review of the order under 681—subrule 11.1(4).

**681—18.3(17A) Notice of petition.** Within 15 days after receipt of a petition for a declaratory order, the board of regents shall give notice of the petition to all persons not served by the petitioner pursuant to rule 18.7(17A) to whom notice is re-

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quired by any provision of law. The board of regents may also give notice to any other persons.

**681—18.4(17A) Intervention.**

**18.4(1)** Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 25 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

**18.4(2)** Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the board of regents.

**18.4(3)** A petition for intervention shall be filed at the office of the Board of Regents, 100 Court Avenue, Des Moines, Iowa 50319, or, in the case of a matter assigned to an institution, to the person and address indicated in the notice of assignment of the petition. Such a petition is deemed filed when it is received by that office. The board of regents will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BOARD OF REGENTS

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	}	PETITION FOR INTERVENTION
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The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address and telephone number of the intervenor and intervenor's representative and a statement indicating the person to whom communications should be directed.

**681—18.5(17A) Briefs.** The petitioner or any intervenor may file a brief in support of the position urged. The board of regents may request a brief from the petitioner, any intervenor or any other person concerning the questions raised.

**681—18.6(17A) Inquiries.** Inquiries concerning the status of a declaratory order proceeding may be made to the Executive Director of the Board of Regents, 100 Court Avenue, Des

Moines, Iowa 50319, or, in the case of a matter assigned to an institution, to the person and address indicated in the notice of assignment of the petition.

**681—18.7(17A) Service and filing of petitions and other papers.**

**18.7(1)** When service required. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

**18.7(2) Filing—when required.** All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Board of Regents, 100 Court Avenue, Des Moines, Iowa 50319, or, in the case of a matter assigned to an institution, to the person and address indicated in the notice of assignment of the petition. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board of regents or, in the case of a matter assigned to an institution, the president or superintendent.

**18.7(3) Method of service, time of filing, and proof of mailing.** Method of service, time of filing, and proof of mailing shall be as provided by rule 681—20.12(17A).

**681—18.8(17A) Action on petition.**

**18.8(1)** Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the executive director, the president or superintendent or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

**18.8(2)** The date of issuance of an order or of a refusal to issue an order is as defined in rule 681—20.2(17A).

**681—18.9(17A) Refusal to issue order.**

**18.9(1)** The board of regents shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board of regents to issue an order.
3. The board of regents does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other board of regents or judicial proceeding that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a decision already made.

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9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

10. The petitioner requests the board of regents to determine whether a statute is unconstitutional on its face.

11. The petitioner requests the board of regents to issue a preliminary determination in any academic matter, such as sufficiency of academic performance or whether or how a particular grade or degree may or will be awarded to an individual.

12. The petitioner requests a determination of a matter being considered in an internal grievance, disciplinary hearing or investigatory process underway at the board of regents or a regent institution.

13. The petitioner requests a determination regarding a purchasing transaction, a grant or a contract of the board of regents or regent institution.

14. The petitioner requests a determination regarding a personnel matter, including but not limited to layoff, program reorganization and benefits matters.

15. The petitioner requests a determination regarding the provision of medical care to a patient or animal at medical or veterinary facilities operated by a regent institution.

16. The petitioner requests a determination of a matter subject to collective bargaining or a matter required to be addressed under the terms of any collective bargaining agreement.

**18.9(2)** A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

**18.9(3)** Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

**681—18.10(17A) Contents of declaratory order—effective date.** In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

**681—18.11(17A) Copies of orders.** A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

**681—18.12(17A) Effect of a declaratory order.** A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the board of regents, the petitioner, and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board of regents. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

ITEM 8. Adopt new Chapter 19 as follows:

**CHAPTER 19  
PROCEDURE FOR RULE MAKING**

**681—19.1(17A) Applicability.** Except to the extent otherwise expressly provided by statute, all rules adopted by the board of regents are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

**681—19.2(17A) Advice on possible rules before notice of proposed rule adoption.** In addition to seeking information by other methods, the board of regents may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)“a,” solicit comments from the public on a subject matter of possible rule making by the board of regents by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

**681—19.3(17A) Public rule-making docket.**

**19.3(1)** Docket maintained. The board of regents shall maintain a current public rule-making docket. The board of regents designates its director of legal affairs, human resources and information technology as its agency rules coordinator. Persons interested in information about rules being considered by the board of regents should contact the following office:

Board of Regents  
Legal Affairs  
100 Court Avenue  
Des Moines, IA 50319

Persons interested in information about rules being considered at each regent institution should contact the following offices:

University of Iowa  
Office of University Relations  
5 Old Capitol  
Iowa City, IA 52242

Iowa State University  
University Legal Services  
305 Beardshear Hall  
Ames, IA 50010

University of Northern Iowa  
Office of the Operations Auditor  
242 Gilchrist Hall  
Cedar Falls, IA 50614

Iowa School for the Deaf  
Superintendent  
Council Bluffs, IA 51503

Iowa Braille and Sight Saving School  
Superintendent  
Vinton, IA 52349

**19.3(2)** Anticipated rule making. The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed “anticipated” from the time a draft of proposed rules is distributed for internal discussion within the board of regents between the board of regents and one or more regent institutions. For each anticipated rule-making proceeding the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the board of regents for subsequent proposal under the provisions of Iowa Code section 17A.4(1)“a,” the name and address of board of regents personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the board of regents of

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that possible rule. The board of regents may also include in the docket other subjects upon which public comment is desired.

**19.3(3) Pending rule-making proceedings.** The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1)"a," to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule becoming effective. For each rule-making proceeding, the docket shall indicate:

- a. The subject matter of the proposed rule;
- b. A citation to all published notices relating to the proceeding;
- c. Where written submissions on the proposed rule may be inspected;
- d. The time during which written submissions may be made;
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;
- f. Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons, has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis, or statement may be inspected;
- g. The current status of the proposed rule and any board of regents determinations with respect thereto;
- h. Any known timetable for board of regents decisions or other action in the proceeding;
- i. The date of the rule's adoption;
- j. The date of the rule's filing, indexing, and publication;
- k. The date on which the rule will become effective; and
- l. Where the rule-making record may be inspected.

**681—19.4(17A) Notice of proposed rule making.**

**19.4(1) Contents.** At least 35 days before the adoption of a rule the board of regents shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rule;
- b. The specific legal authority for the proposed rule;
- c. Except to the extent impracticable, the text of the proposed rule;
- d. Where, when, and how persons may present their views on the proposed rule; and
- e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the board of regents shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the board of regents for the resolution of each of those issues.

**19.4(2) Incorporation by reference.** A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 19.12(2) of this chapter.

**19.4(3) Copies of notices.** Persons desiring to receive copies of future Notices of Intended Action by subscription must file, with the board of regents, a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the board of regents shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the board of regents for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of one year.

**681—19.5(17A) Public participation.**

**19.5(1) Written comments.** For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the office of the Board of Regents, 100 Court Avenue, Des Moines, Iowa 50319, or the person designated in the Notice of Intended Action.

**19.5(2) Oral proceedings.** The board of regents may, at any time, schedule an oral proceeding on a proposed rule. The board of regents shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the board of regents by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

- a. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.
- b. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

c. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

**19.5(3) Conduct of oral proceedings.**

a. **Applicability.** This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)"b" as amended by 1998 Iowa Acts, chapter 1202, section 8, or this chapter.

b. **Scheduling and notice.** An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

c. **Presiding officer.** The board of regents, a member of the board of regents, or another person designated by the board of regents who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the board of regents does not preside, the presiding officer shall prepare a memorandum for consideration by the board summarizing the contents of the presenta-

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tions made at the oral proceeding unless the board determines that such a memorandum is unnecessary because the board will personally listen to or read the entire transcript of the oral proceeding. The board delegates to its executive director authority to conduct oral proceedings. The executive director may delegate to regent institution officials the responsibility to conduct proceedings relating to rules of that regent institution.

d. Conduct of proceeding. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the board of regents at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the board of regents decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the board of regents.

(6) The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

19.5(4) Additional information. In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the board of regents may obtain information concerning a proposed rule through

any other lawful means deemed appropriate under the circumstances.

19.5(5) Accessibility. The board of regents shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the office of the Board of Regents, 100 Court Avenue, Des Moines, Iowa 50319, telephone (515)281-3934, in advance to arrange access or other needed services.

## 681—19.6(17A) Regulatory analysis.

19.6(1) Definition of small business. A "small business" is defined in 1998 Iowa Acts, chapter 1202, section 10(7).

19.6(2) Mailing list. Small businesses or organizations of small businesses may be registered on the board of regents small business impact list by making a written application addressed to the office of the Board of Regents, 100 Court Avenue, Des Moines, Iowa 50319. The application for registration shall state:

a. The name of the small business or organization of small businesses;

b. Its address;

c. The name of a person authorized to transact business for the applicant;

d. A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact;

e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The board of regents may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The board of regents may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

19.6(3) Time of mailing. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the board of regents shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the board of regents shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

19.6(4) Qualified requesters for regulatory analysis—economic impact. The board of regents shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2a), after a proper request from:

a. The administrative rules coordinator; or

b. The administrative rules review committee.

19.6(5) Qualified requesters for regulatory analysis—business impact. The board of regents shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b), after a proper request from:

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- a. The administrative rules review committee;
- b. The administrative rules coordinator;
- c. At least 25 or more persons who sign the request provided that each represents a different small business; or
- d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

**19.6(6)** Time period for analysis. Upon receipt of a timely request for a regulatory analysis the board of regents shall adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10(4).

**19.6(7)** Contents of request. A request for a regulatory analysis is made when it is mailed or delivered to the board of regents. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10(1).

**19.6(8)** Contents of concise summary. The contents of the concise summary shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(4,5).

**19.6(9)** Publication of a concise summary. The board of regents shall make available to the maximum extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10(5).

**19.6(10)** Regulatory analysis contents—rules review committee or rules coordinator. When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2a), unless a written request expressly waives one or more of the items listed in the section.

**19.6(11)** Regulatory analysis contents—substantial impact on small business. When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b).

**681—19.7(17A,25B) Fiscal impact statement.**

**19.7(1)** A proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

**19.7(2)** If the board of regents determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the board of regents shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

**681—19.8(17A) Time and manner of rule adoption.**

**19.8(1)** Time of adoption. The board of regents shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the board of regents shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

**19.8(2)** Consideration of public comment. Before the adoption of a rule, the board of regents shall consider fully all of the written submissions and oral submissions received in

that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

**19.8(3)** Reliance on board of regents expertise. Except as otherwise provided by law, the board of regents may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

**681—19.9(17A) Variance between adopted rule and published notice of proposed rule adoption.**

**19.9(1)** The board of regents shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and

b. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and

c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

**19.9(2)** In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the board of regents shall consider the following factors:

a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;

b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and

c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

**19.9(3)** The board of regents shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the board of regents finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within 3 days of its issuance.

**19.9(4)** Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the board of regents to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

**681—19.10(17A) Exemptions from public rule-making procedures.**

**19.10(1)** Omission of notice and comment. To the extent the board of regents for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the board of regents may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The board of regents shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

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**19.10(2) Categories exempt.** The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class:

a. Rules relating to the care of patients or animals at medical or veterinary facilities operated by a regent institution, including rules regarding visitation and conduct of visitors at such facilities;

b. Rules relating to safety as applied to visitors in research laboratories, research farms and other research facilities;

c. Rules relating to the provision of educational services to persons not usually considered students, but who receive services like those available to students, such as conference attendees, persons receiving outreach and extension services, athletic camp attendees, persons taking academic tests or receiving academic evaluation, and persons attending special academic programs tailored to persons not enrolled as students;

d. Specific rules relating to safety or crowd management at ceremonial, celebratory, athletic, artistic, musical and similar events at a regent institution as long as the institution has adopted by formal rule making the general rules of conduct at such events; and

e. Rules relating to the use by the general public of the regent institutions' computing equipment, networks, software, electronic information resources, databases and the like.

**19.10(3) Public proceedings on rules adopted without them.** The board of regents may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 19.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the board of regents shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 19.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the board of regents may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 19.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

**681—19.11(17A) Concise statement of reasons.**

**19.11(1) General.** When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the board of regents shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the office of the Board of Regents, 100 Court Avenue, Des Moines, Iowa 50319. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

**19.11(2) Contents.** The concise statement of reasons shall contain:

a. The reasons for adopting the rule;

b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;

c. The principal reasons urged in the rule-making proceeding for and against the rule, and the board of regents' reasons for overruling the arguments made against the rule.

**19.11(3) Time of issuance.** After a proper request, the board of regents shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

**681—19.12(17A) Contents, style, and form of rule.**

**19.12(1) Contents.** Each rule adopted by the board of regents shall contain the text of the rule and, in addition:

a. The date the board of regents adopted the rule;

b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the board of regents in its discretion decides to include such reasons;

c. A reference to all rules repealed, amended, or suspended by the rule;

d. A reference to the specific statutory or other authority authorizing adoption of the rule;

e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;

f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the board of regents in its discretion decides to include such reasons; and

g. The effective date of the rule.

**19.12(2) Incorporation by reference.** The board of regents may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the board of regents finds that the incorporation of its text in the board of regents proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the board of regents proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The board of regents may incorporate such matter by reference in a proposed or adopted rule only if the board makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from the board of regents, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The board of regents shall retain permanently a copy of any materials incorporated by reference in a rule of the board of regents.

If the board of regents adopts standards by reference to another publication, it shall provide a copy of the publication containing the standards to the administrative rules coordinator for deposit in the state law library and may make the standards available electronically.

**19.12(3) References to materials not published in full.** When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or other-



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wise inexpedient, the board of regents shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the board of regents. The board of regents will provide a copy of that full text at actual cost upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

At the request of the administrative code editor, the board of regents shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

19.12(4) Style and form. In preparing its rules, the board of regents shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

**681—19.13(17A) Board of regents rule-making record.**

19.13(1) Requirement. The board of regents shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

19.13(2) Contents. The board of regents rule-making record shall contain:

a. Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of board of regents submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the board of regents public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

c. All written petitions, requests, and submissions received by the board of regents, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the board of regents and considered by the board in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the board of regents is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the board of regents shall identify in the record the particular materials deleted and state the reasons for that deletion;

d. Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

e. A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;

f. A copy of the rule and any concise statement of reasons prepared for that rule;

g. All petitions for amendment or repeal or suspension of the rule;

h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general;

i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(4), and any board of regents response to that objection;

j. A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and

k. A copy of any executive order concerning the rule.

19.13(3) Effect of record. Except as otherwise required by a provision of law, the board of regents rule-making record required by this rule need not constitute the exclusive basis for board of regents action on that rule.

19.13(4) Maintenance of record. The board of regents shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action or the date of any written criticism as described in 19.13(2)“g,” “h,” “i,” or “j.”

681—19.14(17A) Filing of rules. The board of regents shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the board of regents shall use the standard form prescribed by the administrative rules coordinator.

**681—19.15(17A) Effectiveness of rules prior to publication.**

19.15(1) Grounds. The board of regents may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The board of regents shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

19.15(2) Special notice. When the board of regents makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b”(3), the board shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule’s indexing and publication. The term “all reasonable efforts” requires the board of regents to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the board of regents of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its index-

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ing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)"b"(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of this subrule.

**681—19.16(17A) General statements of policy.**

**19.16(1) Compilation, indexing, public inspection.** The board of regents shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(10)"a,""c,""f,""g,""h," and "k." Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(7)"f," or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

**19.16(2) Compilation at each regent institution.** Each regent institution shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(10)"a,""c,""f,""g,""h," and "k." Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(7)"f," or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

**19.16(3) Enforcement of requirements.** A general statement of policy subject to the requirements of this subrule shall not be relied on by the board of regents to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 19.16(1) or, with respect to a general statement of policy adopted by a regent institution, until the requirements of subrule 19.16(2) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

**681—19.17(17A) Review of rules by board of regents.**

**19.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the board of regents to conduct a formal review of a specified rule.** Upon approval of that request by the administrative rules coordinator, the board of regents shall conduct a formal review of a specified rule to determine whether a new rule should be adopted or the rule should be amended or repealed. The board of regents may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

**19.17(2) In conducting the formal review, the board of regents shall prepare, within a reasonable time, a written report summarizing its findings, its supporting reasons, and any proposed course of action.** The report must include a concise statement of the board of regents' findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by

the board of regents or granted by the board of regents. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the board of regents' report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

**681—19.18(17A) Waiver or variances from rule.**

**19.18(1) Applicability.** Waiver or variance from board of regents rules may be requested but only in the event that:

a. The board of regents has exclusive rule-making authority to promulgate the rule from which waiver or variance is requested or has final decision-making authority over a contested case in which waiver or variance is requested; and

b. No federal or state statute or rule otherwise controls the grant of a waiver or variance from the rule from which waiver or variance is requested.

**19.18(2) Authority.** The board of regents, the president or superintendent of a regent institution, or designee, or the presiding officer as part of the decision in a contested case, may grant a waiver of, or variance of, or variance from, all or part of a rule to the extent allowed by these rules.

**19.18(3) Compliance with law.** No waiver or variance may be granted from a requirement that is imposed by state or federal statute. Any waiver or variance must be consistent with state or federal statute.

**19.18(4) Criteria.** A waiver or variance under this chapter may be granted only upon a showing that:

a. The waiver or variance will not harm other persons and will not adversely affect the public interest; and

b. There are exceptional circumstances which justify an exception to the general rule to the extent that the requester is unable to comply with the particular rule without undue hardship or compliance with the particular rule would be unnecessarily and unreasonably costly and serve no public benefit.

**19.18(5) Request.** All requests for waiver or variance must be in writing and shall include the following information:

a. The name, address, and telephone number of the person requesting the waiver or variance and the person's representative, if any;

b. The specific rule from which a waiver or variance is requested;

c. The nature of the waiver or variance requested, including any alternative means or other proposed condition or modification proposed to achieve the purpose of the rule;

d. An explanation of the reason for the waiver or variance, including all material facts relevant to the grant of the waiver or variance in question;

e. Any information known to the requester regarding the board of regents, or any regent institution's, treatment of similar cases;

f. The name, address and telephone number of any person(s) with knowledge of the matter with respect to which the waiver or variance is requested; and

g. Any necessary release of information authorizing persons with knowledge to disclose relevant information necessary to a decision.

**19.18(6) With whom filed.** A request for waiver or variance which pertains to a rule applicable to only a specific regent institution shall be submitted to the president or superintendent of that institution. A request for waiver or variance which pertains to a matter involving more than one regent institution, or the board of regents or its staff, shall be sub-

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mitted to the Executive Director, Board of Regents, 100 Court Avenue, Des Moines, Iowa 50319. A request for waiver or variance which pertains to a pending contested case shall be filed in the contested case proceedings.

**19.18(7) Ruling.** Rulings on requests shall be in writing. The ruling shall include the reason for granting or denying the request and, if approved, the time period during which the waiver or variance is effective. Rulings on a waiver or variance shall be made in the following manner:

a. Requests submitted to the president or superintendent of a regent institution shall be decided by the president or superintendent, or designee.

b. Requests submitted to the board of regents shall be decided by the board, unless the board determines that the request was inappropriately submitted to it, in which case it shall forward the request to the appropriate decision maker as designated by these rules.

c. Requests submitted in a contested case shall be decided by the presiding officer in the contested case proceeding.

**19.18(8) Public availability.** All final rulings in response to requests for waiver or variances shall be indexed and available to members of the public at the offices listed below:

Board of Regents  
Legal Affairs  
100 Court Avenue  
Des Moines, IA 50319

University of Iowa  
Office of University Relations  
5 Old Capitol  
Iowa City, IA 52242

Iowa State University  
University Legal Services  
305 Beardshear Hall  
Ames, IA 50010

University of Northern Iowa  
Office of the Operations Auditor  
242 Gilchrist Hall  
Cedar Falls, IA 50614

Iowa School for the Deaf  
Superintendent  
Council Bluffs, IA 51503

Iowa Braille and Sight Saving School  
Superintendent  
Vinton, IA 52349

**19.18(9) Conditions.** The board of regents, or other designated decision maker allowed pursuant to these rules, may condition the grant of a waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

**19.18(10) Voiding or cancellation.** A waiver or variance is void if the material facts upon which the request is based are not true or if material facts have been withheld. The decision maker may at any time cancel a waiver or variance upon appropriate notice and hearing if it is determined that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute, or the requester has failed to comply with conditions set forth in the waiver or variance approval.

**19.18(11) Violations.** Violation of conditions in the waiver or variance approval is the equivalent of violation of the

particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

**19.18(12) Appeals.** Any request for an appeal from a decision on a waiver or variance request made by the board of regents, the president or superintendent of a regent institution, or designee, shall be in accordance with the procedures provided in Iowa Code chapter 17A.

Any request for an appeal from a decision by the presiding officer in a contested case proceeding which grants or denies a waiver or variance shall be made pursuant to the procedures provided in rule 681—20.26(17A) or rule 20.27(17A), as applicable.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

ITEM 9. Adopt new Chapter 20 as follows:

#### CHAPTER 20 CONTESTED CASES

**681—20.1(17A) Scope and applicability.** This chapter applies to contested case proceedings conducted by the board of regents.

**681—20.2(17A) Definitions.** Except where otherwise specifically defined by law:

“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 1998 Iowa Acts, chapter 1202, section 14.

“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 in the order.

“Party” means each person or the regent institution or board of regents named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

“Presiding officer” means the administrative law judge, the board of regents or subcommittee of the board of regents.

“Proposed decision” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the board of regents did not preside.

**681—20.3(17A) Time requirements.**

**20.3(1)** Time shall be computed as provided in Iowa Code subsection 4.1(34).

**20.3(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 shall afford all parties an opportunity to be heard or to file written arguments.

**681—20.4(17A) Requests for contested case proceeding.**

Any person claiming an entitlement to a contested case proceeding 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 of regents or regent institution action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific agency action which is disputed, and 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, and include a short and plain statement of the issues of material fact in dispute.

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**681—20.5(17A) Notice of hearing.**

**20.5(1) Delivery.** Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure; or
- b. Certified mail, return receipt requested; or
- c. First-class mail; or
- d. Publication, as provided in the Iowa Rules of Civil Procedure; or
- e. In the case of a student residing in facilities of a regent institution, by leaving a copy in the student's mailbox at the student's residence hall or apartment.

**20.5(2) Contents.** The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted. If the board of regents or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;
- e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the board of regents or the regent institution and of parties' counsel where known;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Reference to the procedural rules governing informal settlement;
- h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer; and
- i. Notification of the time period in which a party may request, pursuant to 1998 Iowa Acts, chapter 1202, section 15(1), and rule 20.6(17A), that the presiding officer be an administrative law judge.

**681—20.6(17A) Presiding officer.**

**20.6(1)** 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 and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the board of regents head or members of the board of regents.

**20.6(2)** The board of regents may deny the request only upon a finding that one or more of the following apply:

- a. Neither the board of regents nor any officer of the board of regents under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.
- b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- c. An administrative law judge with the qualifications identified in subrule 20.6(4) is unavailable to hear the case within a reasonable time.
- d. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

f. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

g. The request was not timely filed.

h. The request is not consistent with a specified statute.

**20.6(3)** The board of regents or its executive director shall 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 20.6(4), the parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

**20.6(4)** An administrative law judge assigned to act as presiding officer in a case involving discipline or discharge of a faculty member at one of the universities, or discipline or discharge of a student for academic dishonesty at one of the universities shall have the following technical expertness unless waived by the board of regents: an advanced degree showing scholarly achievement, such as a doctor of philosophy degree, or knowledge of academic traditions and methods of teaching and research at institutions of higher education in the United States.

**20.6(5)** Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the board of regents, or in a case involving a matter arising from a regent institution, the president or superintendent of that institution. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

**20.6(6)** Unless otherwise provided by law, the board of regents, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

**681—20.7(17A) Waiver of procedures.** Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board of regents, in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest. When a regent institution provides for procedures for handling contested case matters in any handbook or policy guide, the board of regents and the regent institutions consent to the use of the procedures therein and waive these rules. If a party does not consent to the use of the institutional procedures, or has elected use of formal proceedings under the Iowa administrative procedure Act (Iowa Code chapter 17A) instead of institutional procedures, the board of regents will normally not waive the provisions of this chapter.

**681—20.8(17A) Telephone proceedings.** The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. The presiding officer, for good cause, and upon request of a party, may permit the party to present witness testimony by telephone or remote video so long as the parties and their representatives have substantially the same opportunity to hear and observe the witness testimony.

**681—20.9(17A) Disqualification.**

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**20.9(1)** A presiding officer or other person shall 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 that (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 in the decision making in that case.

**20.9(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 general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 20.9(3) and 20.23(9).

**20.9(3)** In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

**20.9(4)** If a party asserts disqualification on any appropriate ground, including those listed in subrule 20.9(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(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 shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that

effect. A party asserting disqualification may seek an interlocutory appeal under rule 20.24(17A) and seek a stay under rule 20.29(17A).

**681—20.10(17A) Consolidation—severance.**

**20.10(1)** Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where (a) the matters at issue 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.

**20.10(2)** Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

**681—20.11(17A) Pleadings.**

**20.11(1)** Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

**20.11(2) Petition.**

a. Any petition required in a contested case proceeding shall be filed, within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

- (1) The persons or entities on whose behalf the petition is filed;
- (2) The particular provisions of statutes and rules involved;
- (3) The relief demanded and the facts and law relied upon for such relief; and
- (4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

**20.11(3)** Answer. An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

**20.11(4)** Amendment. Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

**681—20.12(17A) Service and filing of pleadings and other papers.**

**20.12(1)** When service required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the

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state or the board of regents, simultaneously with their filing. Except for the original 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.

**20.12(2) Service—how made.** Service upon a party represented by an attorney shall 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 complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

**20.12(3) Filing—when required.** After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the presiding officer, at the address provided in notices to the parties. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the board of regents or, in the case of a matter arising from one of the regent institutions, the president's or superintendent's office of the regent institution.

**20.12(4) Filing—when made.** Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board of regents or as appropriate, the president's or superintendent's office, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

**20.12(5) Proof of mailing.** Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or 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 (office and address) 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)

**681—20.13(17A) Discovery.**

**20.13(1) Discovery procedures applicable in civil actions** are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

**20.13(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 shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 20.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

**20.13(3)** Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

**681—20.14(17A) Subpoenas.****20.14(1) Issuance.**

a. A board of regents subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the sched-

uled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

**20.14(2) Motion to quash or modify.** The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

**681—20.15(17A) Motions.**

**20.15(1)** No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

**20.15(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 rules of the board of regents or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

**20.15(3)** The presiding officer may schedule oral argument on any motion.

**20.15(4)** Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days (or other time period designated by the board of regents) prior to the date of 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 of regents or an order of the presiding officer.

**20.15(5)** Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 237 and shall 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.

Motions for summary judgment must be filed and served at least 30 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 10 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 20.28(17A) and appeal pursuant to rules 20.26(17A) and 20.28(17A).

**681—20.16(17A) Prehearing conference.** Prehearing conferences may be ordered at the discretion of the presiding officer.

**681—20.17(17A) Continuances.** Unless otherwise provided, applications for continuances shall be made to the presiding officer.

**20.17(1)** A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days (or other time period designated by the board of regents) before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a 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

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continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The board of regents may waive notice of such requests for a particular case or an entire class of cases.

**20.19(2)** In determining whether to grant a continuance, the presiding officer may consider:

- a. Prior continuances;
- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

**681—20.18(17A) Withdrawals.** A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with board of regents rules. Unless otherwise provided, a withdrawal shall be with prejudice.

**681—20.19(17A) Hearing procedures.**

**20.19(1)** The presiding officer presides at the hearing and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

**20.19(2)** All objections shall be timely made and stated on the record.

**20.19(3)** Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

**20.19(4)** Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

**20.19(5)** The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

**20.19(6)** Witnesses may be sequestered during the hearing.

**20.19(7)** The presiding officer shall conduct the hearing in the following manner:

- a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;
- b. The parties shall be given an opportunity to present opening statements;
- c. Parties shall present their cases in the sequence determined by the presiding officer;
- d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;
- e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

**20.19(8)** As provided by rule 20.8(17A), witness testimony may be taken by telephone or remote video at the discretion of the presiding officer.

**681—20.20(17A) Evidence.**

**20.20(1)** The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

**20.20(2)** Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

**20.20(3)** Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit 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, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

**20.20(4)** The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

**20.20(5)** Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall 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 shall 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.

**20.20(6)** Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

**681—20.21(17A) Default.**

**20.21(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.

**20.21(2)** Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

**20.21(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 agency 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 rule 20.26(17A) or 20.27(17A). 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 per-

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sonal knowledge of each such fact, which affidavit(s) must be attached to the motion.

**20.21(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.

**20.21(5)** Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall 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.

**20.21(6)** "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

**20.21(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 20.24(17A).

**20.21(8)** If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

**20.21(9)** A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues except, unless the defaulting party has appeared, it cannot exceed the relief demanded.

**20.21(10)** A default decision may provide either that the default decision 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 20.29(17A).

**681—20.22(17A) Ex parte communication.**

**20.22(1)** Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the 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. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the board of regents or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 20.9(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.

**20.22(2)** Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

**20.22(3)** Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

**20.22(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 shall be provided in compliance with rule 20.12(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

**20.22(5)** Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

**20.22(6)** The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 20.22(1).

**20.22(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 20.17(17A).

**20.22(8)** Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. 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. If the presiding officer determines that disqualification is not warranted, such documents shall 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.

**20.22(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.20(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.

**20.22(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 of regents. Violation of ex parte communication prohibitions by board of regents personnel shall be reported to the executive director of the board of regents for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

**681—20.23(17A) Recording costs.** Upon request, the board of regents shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the



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record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

**681—20.24(17A) Interlocutory appeals.** Upon written request of a party or on its own motion, the board of regents may review an interlocutory order of the presiding officer. In determining whether to do so, the board of regents shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the board of regents at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within five days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

**681—20.25(17A) Final decision.**

**20.25(1)** When the board of regents presides over the reception of evidence at the hearing, its decision is a final decision.

**20.25(2)** When the board of regents does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the board of regents without further proceedings unless there is an appeal to, or review on motion of, the president, the superintendent or the board of regents within the times provided in rules 20.26(17A) and 20.27(17A).

**681—20.26(17A) Appeals and review—actions by regent institution.**

**20.26(1)** Appeal by party. Any adversely affected party may appeal a proposed decision in a case involving an appeal of action or proposed action by a regent institution, to the president or superintendent of the regent institution within 20 days after issuance of the proposed decision.

**20.26(2)** Review. The president or superintendent of the regent institution may initiate review of a proposed decision on the president or superintendent's own motion at any time within 20 days following the issuance of such a decision.

**20.26(3)** Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the president or superintendent. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

**20.26(4)** Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 10 days of service of the notice of appeal. The president or superintendent may either remand a case to the presiding officer for further hearing or may preside at the taking of additional evidence.

**20.26(5)** Scheduling. The president or superintendent shall issue a schedule for consideration of the appeal.

**20.26(6)** Briefs and arguments. Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The president or superintendent has the discretion to resolve the appeal on the briefs or provide an opportunity for oral argument. The president or superintendent may shorten or extend the briefing period as appropriate.

**681—20.27(17A) Appeals to the board of regents.**

**20.27(1)** Appeal by party. Any adversely affected party may appeal the president or superintendent's decision to the board of regents within 10 days after issuance of the decision. In the case of an appeal of initial action by the board of regents, any adversely affected party may appeal the proposed order of a presiding officer to the board of regents within 20 days after issuance of the proposed decision.

**20.27(2)** Review. The board of regents may initiate review of the president or superintendent's decision or a proposed decision involving an appeal of board of regents action on its own motion at any time within 20 days following the issuance of such a decision.

**20.27(3)** Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board of regents. In cases of appeals of action by an institution, a copy of the notice shall be sent to the president or superintendent of the regent institution. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

**20.27(4)** Requests to present additional evidence. In a case which has not been reviewed by a regent institution president or superintendent, a party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 10 days of service of the notice of appeal. The board of regents, or its executive director, may remand a case to the president or superintendent for further hearing or it may preside at the taking of additional evidence.

**20.27(5)** Scheduling. The board of regents, or its executive director, shall issue a schedule for consideration of the appeal.

**20.27(6)** Briefs and arguments. Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The board of regents has the discretion to resolve the appeal on the briefs or provide an opportunity for oral ar-

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gument. The board of regents, or its executive director, may shorten or extend the briefing period as appropriate.

**681—20.28(17A) Applications for rehearing.**

**20.28(1)** By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

**20.28(2)** Content of application. The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the board of regents decision on the existing record and whether, on the basis of the grounds enumerated in subrule 20.26(4), the applicant requests an opportunity to submit additional evidence.

**20.28(3)** Time of filing. The application shall be filed with the board of regents within 20 days after issuance of the final decision.

**20.28(4)** Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board of regents shall serve copies on all parties.

**20.28(5)** Disposition. Any application for a rehearing shall be deemed denied unless the board of regents grants the application within 20 days after its filing.

**681—20.29(17A) Stays of board of regents actions.**

**20.29(1)** When available.

a. Any party to a contested case proceeding may petition the board of regents for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board of regents. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The board of regents may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the board of regents 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.

**20.29(2)** When granted. In determining whether to grant a stay, the presiding officer or board of regents shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

**20.29(3)** Vacation. A stay may be vacated by the issuing authority upon application of the board of regents or any other party.

**681—20.30(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. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

**681—20.31(17A) Emergency adjudicative proceedings.**

**20.31(1)** Necessary 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 of regents may is-

sue a written order in compliance with Iowa Code section 17A.18 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 of regents by emergency adjudicative order. Before issuing an emergency adjudicative order the board of regents shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the board of regents 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 of regents is necessary to avoid the immediate danger.

**20.31(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 in the board of regents' decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are 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 of regents;

(3) Certified mail to the last address on file with the board of regents;

(4) First-class mail to the last address on file with the board of regents; or

(5) Fax 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 of regents orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the board of regents shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

**20.31(3)** Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the board of regents shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

**20.31(4)** Completion of proceedings. After the issuance of an emergency adjudicative order, the board of regents shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger. Issuance of a written emergency adjudicative order shall include notification of the date on which board of regents proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further board of regents proceedings to a later date will be granted only in compelling circumstances upon application in writing.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

## ARC 8893A

## SECRETARY OF STATE[721]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 47.1 and 52.5, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 22, "Alternative Voting Systems," Iowa Administrative Code.

There are four major changes to this chapter. Reports from independent test authorities on the performance of voting equipment are designated as confidential records because they contain trade secrets, as defined by Iowa Code section 22.7 and Iowa Code chapter 550. Chapter 22 is also amended to include instructions for the public testing of voting equipment. Tabulation instructions and procedures for two voting systems are included: an amendment to the provisions for the MicroVote Absentee Voting System and new instructions for using the Fidlar & Chambers' punchcard absentee voting system.

Any interested person may make written suggestions or comments on the proposed amendments on or before Tuesday, April 27, 1999. Written comments should be sent to the Director of Elections, Office of the Secretary of State, Second Floor, Hoover State Office Building, Des Moines, Iowa 50319-0138; fax (515)242-5953. Anyone who wishes to comment orally may telephone the Director of Elections at (515)281-5823 or visit the office on the second floor of the Hoover State Office Building.

There will be a public hearing on Tuesday, April 27, 1999, at 1:30 p.m. at the Office of the Secretary of State, Second Floor, Hoover State Office Building. Persons may comment orally or in writing. Persons who speak at the hearing will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Persons planning to attend the hearing shall notify the Director of Elections by telephone at (515) 281-5823 or by fax (515)242-5953 no later than 4:30 p.m. on Monday, April 26, 1999.

These amendments are intended to implement Iowa Code section 52.5.

The following amendments are proposed.

ITEM 1. Amend subrule 22.5(3) to read as follows:

**22.5(3)** Report of an accredited independent test authority certifying that the system is in compliance with the Federal Election Commission's Performance and Test Standards for Punchcard, Marksense, and Direct Recording Electronic Voting Systems. *Copies of these reports are confidential records as defined by Iowa Code section 22.7 and Iowa Code chapter 550. Independent test authority reports shall be available to the secretary of state, deputy secretary of state, director of elections, and any other person designated by the secretary of state to have a bona fide need to review the report. No other person shall have access to the reports and no copies shall be made. All independent test authority reports shall be marked "CONFIDENTIAL" and shall also be accompanied by a list of those persons who are authorized to examine the report. The reports shall be kept in a locked cabinet.*

ITEM 2. Amend 721—Chapter 22 by adopting the following **new** rules:

**721—22.40(52) Public testing of voting machines.** All voting machines shall be tested publicly before use at any election, as required by Iowa Code section 52.9.

**22.40(1)** The machine shall be inspected to determine that the machine has been prepared properly for the election at which it will be used. The following information shall be verified:

a. Each machine has the correct ballot labels or strips for the election and the precinct in which it will be used.

b. All ballot strips or labels are aligned with the correct levers or buttons.

c. All counters are set at zero before the beginning of the test.

**22.40(2)** The machine shall be tested to determine the following:

a. The lever or button to be used to cast votes for each candidate operates correctly.

b. The voter cannot cast votes for more candidates for any office than the number to be elected.

c. The voter may change any vote cast (except a write-in vote) before pressing the button or lever to record the voter's ballot.

d. All unassigned buttons or levers are locked out or will not operate to cast votes.

e. The machine records all votes cast and no others.

f. The voter may cast as many write-in votes for each office on the ballot as there are positions to be filled. The write-in mechanism works correctly.

g. For primary elections: The voter may cast votes for the candidates of only one political party.

h. For general elections: The straight party mechanism casts one vote for each candidate of the designated political party and casts no other votes. The voter may override a straight party vote by removing a vote cast for any candidate and then may vote for another candidate.

**22.40(3)** Following the test the machine shall be inspected to determine that:

a. All counters have been returned to zero.

b. All required locks or seals are in place.

c. The machine is ready for operation at the polls.

**721—22.41(52) Public testing of optical scan systems.** All automatic tabulating equipment shall be tested before use at any election, as required by Iowa Code sections 52.35 and 52.38.

**22.41(1)** The equipment shall be inspected to determine whether it has been prepared properly for the election at which it will be used. The following information shall be verified:

a. The correct program cartridge is in place for the election and the precinct or precincts in which it will be used.

b. The appropriate ballots are available for the test of each automatic tabulating device to be used in the election.

c. All counters are set at zero before beginning the test.

**22.41(2)** Each automatic tabulating device shall be tested to determine the following:

a. The device and its programs will accurately tabulate votes for each candidate and question on the ballot.

b. Votes cast for more candidates for any office than the number to be elected will result in the rejection of all votes cast for that office on that ballot. Votes properly cast for other offices on the same ballot shall be counted.

c. The tabulating equipment records all votes cast and no others.

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d. The voter may cast as many write-in votes for each office on the ballot as there are positions to be filled. The write-in votes are reported correctly.

e. For primary elections: The tabulating equipment accurately records votes cast for all political parties.

f. For general elections: The straight party votes are recorded as one vote for each candidate of the designated political party, and no other votes are recorded. The voter may override a straight party vote by voting for any candidate not associated with that political party. For offices to which more than one person will be elected, if a voter has chosen to override a straight party vote, only the candidates whose names are marked shall receive votes.

22.41(3) Following the test, the tabulating equipment shall be inspected to determine that:

- a. All counters have been returned to zero.
- b. All required locks or seals are in place.
- c. The automatic tabulating equipment is ready for operation at the election.

22.41(4) Test deck submitted by observers. Any person who is present at the public test may mark ballots to be used to test the voting equipment. The following conditions apply:

- a. Not more than ten ballots may be submitted by any person.
- b. Only official ballots provided by the commissioner at the test shall be used. The commissioner may provide sample ballots or photocopies of sample ballots to anyone upon request.
- c. The preparer shall provide a written tally of the test deck.
- d. The results of the machine tabulation shall be printed and compared with the preparer's tally. If there are differences, the cause of the discrepancy shall be determined. If the cause of the discrepancy cannot be determined and corrected, the program or equipment shall not be used at the election.

e. The test decks, the preparer's tally, and the printed results of the test shall be kept with the records of the election and preserved as required by Iowa Code section 50.19.

ITEM 3. Amend rule 721—22.461(52), introductory paragraph, and subrule 22.461(1) to read as follows:

**721—22.461(52) MicroVote Absentee Voting System.** This system uses a three-piece ballot including a ballot card with a write-in section on the back, ballot guide, and secrecy envelope with write-in ballot. The following rules for the use of the MicroVote Absentee Voting System are prescribed.

22.461(1) The ballot card is used by the voter to indicate the voter's choices. The ballot card has numbered voting targets printed on card stock and is marked with a pencil. Also included on the ballot card is a box marked "For Official Use Only." This box is used for coding to indicate the precinct and rotation of the ballot, if any. Before being sent to the voter, any numbered stubs shall be removed from the ballot card. *Space to receive write-in votes shall be printed on one side of the ballot card. Instructions in substantially the following form shall be printed above the spaces for write-in votes:*

*"To vote for a person whose name is not listed in the ballot guide, blacken the numbered rectangle on this ballot card that corresponds to the line on which you wish to write in. Write the person's name, the office title, and the corresponding number in a space below. Vote for no more than the number indicated under the title of the office on the ballot, including your write-in votes."*

Name \_\_\_\_\_  
Office \_\_\_\_\_ Position # \_\_\_\_\_

*[Similar spaces for at least eleven offices shall be included.]*

ITEM 4. Amend subrule 22.461(2), paragraph "b," to read as follows:

b. The ballot guide shall include instructions in substantially the following form:

Notice to Voter: On this ballot guide find the position number printed next to the name of each candidate for whom you wish to vote.

position # ◊ 1 CANDIDATE NAME

Blacken the oval next to rectangle with the same number on the official ballot card. Use only a #2 pencil. To write in a vote for a person whose name is not listed in this guide, mark the appropriate oval rectangle on the ballot card, and write the office title and write-in position number and the person's name inside the secrecy envelope in the write-in section on the back of the ballot card.

ITEM 5. Amend subrule 22.461(3) to read as follows:

22.461(3) The secrecy envelope is used to conceal the voter's marks and to provide a space for write-in votes. The envelope shall be made of opaque paper and shall be large enough to cover all areas of the ballot card that are used by voters to indicate their choices. ~~Space to receive write-in votes shall be printed inside the secrecy envelope so that the votes are hidden when the flap is closed.~~ The secrecy envelope shall include brief instructions on the outside of the envelope in substantially the following form:

1. ~~On the outside of the envelope:~~ "Secrecy envelope: After you have voted, enclose the ballot card in this envelope. ~~To write in a vote for someone whose name is not on the ballot, see inside.~~"

2. ~~Inside the envelope:~~ "Write in vote. To vote for a person whose name is not listed in the ballot guide, mark the appropriate oval on the ballot card, and write the office title, write in position number and the person's name in a space below. Vote for no more than the number indicated under the title of the office on the ballot, including your write-in votes."

Name \_\_\_\_\_  
Office \_\_\_\_\_ Position # \_\_\_\_\_

*[Similar spaces for at least twenty offices shall be included.]*

ITEM 6. Amend subrules 22.461(4) through 22.461(8) to read as follows:

22.461(4) Write-in votes. To vote for a person whose name is not listed in the ballot guide, the voter shall mark the appropriately numbered write-in voting target for the office on the ballot card and write the office title, position number and person's name in spaces provided inside the secrecy envelope on the ballot card.

22.461(5) Tabulation procedures. As the absentee and special precinct board opens the affidavit envelopes containing absentee ballots cast using the MicroVote Absentee Voting System, they shall remove the secrecy envelopes containing the ballot cards from the affidavit envelope initially ~~taking care not to separate the ballot cards from the secrecy envelopes.~~

~~a. Each secrecy envelope shall be examined then remove each ballot card and examine it for write-in votes. When a write-in vote is discovered, a serial number shall immediately be stamped or written on both the ballot card and the secrecy~~

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~~by envelope. Secrecy envelopes~~ *Ballot cards* containing write-in votes cast at the primary election shall also be labeled with the party name.

b. The ballot card shall be inspected by two precinct officials, not members of the same political party, who shall determine if the number of votes cast for the office for which the voter has cast a write-in vote exceeds the number of votes allowed for the office. If the total number of votes cast on the ballot card and the number of write-in votes cast do not ex-

ceed the allowable number of votes for that office, the ballot card shall be separated from the secrecy envelope and processed. The write-in votes shall be counted as indicated by the voter. *If there are more votes cast for an office than the number of positions to be filled, no votes for that office shall be counted.*

**22.461(6)** Precinct election officials shall refer to the following chart to help determine how to tabulate votes cast which do not comply with all instructions.

**Tabulation Guide for MicroVote Absentee Voting System**

Secrecy Envelope Write-in Vote			Ballot Card Position		Write-in makes office over-voted?	Count write-in vote?	Comments
Office	Pos. #	Name	marked	not marked			
✓	✓	✓	✓		no	yes	1. Preferred method.
✓	✓	✓		✓	no	yes	
✓	✓	✓	✓		yes	no	
✓	✓	✓		✓	yes	no, but ☐	2. But, count other votes for that office.
✓	✓	no	✓ or	✓	no	no	3. If there is no name, there is nothing to count.
✓	blank/wrong	✓	✓		no	yes	4. If the office is clearly identifiable.
✓	blank/wrong	✓		✓	no	yes	4. If the office is clearly identifiable.
✓	blank/wrong	✓	✓		yes	no	
✓	blank/wrong	✓		✓	yes	no, but ☐	2. But, count other votes for that office.
	✓	✓	✓		no	yes	
	✓	✓		✓	no	yes	
	✓	✓	✓		yes	no	
	✓	✓		✓	yes	no, but ☐	2. But, count other votes for that office.
		✓	✓		no	yes, if ☐	6. If there is only one write-in vote.
		✓	✓		yes	no	
		✓		✓	no	yes, if ☐	7. If there is only one office on the ballot.

**22.461(7)** Instructions to the voter shall be enclosed with every absentee ballot in substantially the following form:

**STATE OF IOWA  
ABSENTEE VOTING INSTRUCTIONS  
for use with the MicroVote Absentee Voting System**

**READ ALL INSTRUCTIONS CAREFULLY BEFORE VOTING!**

**WARNING:** Do not mark, fold or punch your ballot except as outlined in these instructions. If your ballot is not properly marked, your vote cannot be counted.

**The main points:**

- ☐ Vote in secrecy; use a #2 pencil.
- ☐ Complete, sign and date the affidavit.
- ☐ Seal the ballot inside the affidavit envelope.
- ☐ Return the ballot on time:  
By mail before election day, or  
Deliver to Auditor by 9 \_\_ p.m. \_\_/\_\_/\_\_.

**YOUR BALLOT PACKET CONTAINS**

- "Official Ballot" card (with numbered ovals rectangles and space for write-in votes, if desired).
- Printed paper ballot guide showing offices and candidates (for information only).

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• Secrecy envelope to enclose "Official Ballot" card and to cast write-in votes, if desired.

- Affidavit envelope.
- Return envelope.

**IF YOU SPOIL YOUR BALLOT**

- Put the ballot and other materials in return envelope.
- Write "SPOILED BALLOT" on the return envelope.
- Mail or take the entire packet to the auditor. A new

packet will be sent to you.

**IF YOU NEED HELP TO VOTE**

If you are blind, cannot read, or cannot mark your own ballot because you are disabled, you may choose someone to help you vote. However, these people **cannot** help you vote:

- your employer.
- an agent of your employer.
- an officer or agent of your union.

**MARKING YOUR BALLOT**

1. **Vote in secrecy.** Mark your ballot so that no one else will know how you voted, unless you need help to vote.

2. **Study the ballot guide carefully before voting on the "Official Ballot" card.** Marks cannot be erased without spoiling the ballot.

3. **Use a #2 pencil.** Marks made by other pens or pencils might not be seen by the machine that counts the votes. Do not use a red pen or red pencil.

4. **Voting for candidates.** After you have decided who you want to vote for, find the position number printed next to the candidate's name.

position # **▶** 1 CANDIDATE NAME

Then on the "**Official Ballot**" card fill in the oval next to that rectangle with the same number. For some offices you may vote for more than one person. Watch for instructions under each office title that say, "Vote for no more than \_\_\_\_."

5. **Write-in votes.** If you want to vote for a person whose name is not listed in the ballot guide:

a. Write the office, position number and the name of the person in the space provided inside the secrecy envelope on the back of the ballot card, AND

b. Mark the appropriately numbered oval rectangle next to the write-in position following the names of the candidates for the office for which you wish to write in a vote on the "**Official Ballot**" card. Marking an oval a rectangle without writing a name will not spoil the rest of the ballot.

6. **Overvoting.** If you mark more ovals rectangles for an office than the number of people that can be elected, your vote for that office will not be counted.

7. **No extra marks.** Make no marks on the ballot card except the marks you make to vote.

**RETURNING YOUR BALLOT**

This ballot must be returned to the county auditor even if you don't vote.

1. **Affidavit.** After marking your ballot card,
  - a. Read the affidavit on the affidavit envelope,
  - b. Fill in all of the information requested, and
  - c. Sign your name.
  - d. Be sure to include today's date.

**✍ Your ballot will not be counted if you don't complete and sign the affidavit.**

2. **Use the secrecy envelope.** Do not fold the ballot card; place it in the secrecy envelope. Do not return the paper ballot listing offices and candidates.

3. Put the secrecy envelope containing the ballot card in the affidavit envelope.

4. **Securely seal the affidavit envelope.** Your ballot will not be counted if the affidavit envelope is not sealed, or if the envelope has been opened and resealed.

5. Enclose the affidavit envelope in the envelope addressed to the county auditor.

6. **Postmark before election day.** If you mail your ballot, the envelope must be postmarked no later than the day before the election.

7. Return postage for this ballot is \_\_\_\_.

8. **Personal delivery.** You may also return your ballot in person, or send it back to the auditor with someone you trust. If the ballot is not mailed, it must be received by the auditor no later than 9 \_\_\_\_ p.m. on election day. Do not return the ballot to a polling place; it will not be counted if you do.

**IF YOUR BALLOT IS REJECTED BEFORE THE BALLOT ENVELOPE IS OPENED, YOU WILL BE NOTIFIED OF THE REASON.**

**22.461(8)** In addition to the instructions provided above, the following information shall be inserted in the instructions provided to voters at the general election:

a. Voting on questions. To vote in favor of a question, blacken the oval rectangle with the same number that appears next to the word "YES" in the question listed in the ballot guide. To vote against a question, blacken the oval rectangle with the same number as the word "NO."

b. Voting on judges. To vote to keep a judge in office, blacken the oval rectangle on the ballot card with the same number as the one next to the word "YES" opposite the judge's name listed in the ballot guide. To vote to remove a judge from office, blacken the oval rectangle with the same number as the word "NO."

c. Straight party voting. To vote for all of the candidates of a political party, blacken the oval rectangle on the ballot card with the same number as the one next to the name of that party. You can override a straight party vote by voting for a candidate of another party. If you can vote for more than one person for an office, you must mark all of your choices if you are splitting your vote between candidates of two or more parties.

ITEM 7. Amend 721—Chapter 22 by adopting the following new rule:

**721—22.462(52) Fidler & Chambers' Absentee Voting System.** This system uses a three-piece ballot including a ballot card, specimen ballot, and a Styrofoam back to catch the punches. The following subrules for the use of the Fidler & Chambers' Absentee Voting System are prescribed.

**22.462(1)** The ballot card. The voter punches the ballot card to indicate the voter's choices. The ballot card has numbered voting targets printed on card stock and is punched with a wire punch. Ballot cards are coded to indicate the precinct and rotation of the ballot, if any, by punching a specified location at the bottom of the card.

**22.462(2)** The specimen ballot is a list showing the text of public measures, office titles and candidate names and the voting target numbers to be punched on the ballot card. The order of offices, candidates, public measures and judges shall be determined by the applicable provisions of Iowa Code chapters 43 and 49 and rule 721—22.102(52) IAC. The specimen ballot shall include the same code numbers as the appropriate ballot card. The specimen ballot shall also include position numbers for write-in votes for each office. The number of write-in positions shall equal the number of persons to be elected to each office.

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a. The specimen ballot shall include a heading in substantially the following form:

[Election Name] Specimen ballot  
[County Name]

Name and Date of Election, and a facsimile of the commissioner's signature.

b. The specimen ballot shall include instructions in substantially the following form:

Notice to Voter: On this specimen ballot find the position number printed next to the name of each candidate for whom you wish to vote.

position # **1 CANDIDATE NAME**

Punch the black dot above the same number on the official ballot card. Use only the enclosed wire punch. To write in a vote for a person whose name is not listed in this guide, punch the appropriate black dot on the ballot card, and write the office title and write-in position number and the person's name on the security cover attached to your ballot card.

**22.462(3)** The security cover is used to conceal the voter's marks and to provide a space for write-in votes. This shall be attached to the ballot card. The security cover and the ballot card shall be separated by a perforation to permit removal of the security cover after the write-in votes have been examined by the precinct election officials charged with counting the ballots.

On the side of the security cover that will be visible when the cover is properly folded shall be printed the following notice: "Security Cover—After you have voted, fold the security cover over the voting area so that this notice appears on the outside.

"Write-in vote. To vote for a person whose name is not listed in the specimen ballot, mark the appropriate oval on the ballot card, and write the office title, write-in position number and the person's name in a space below. Vote for no more than the number indicated under the title of the office on the ballot, including your write-in votes.

Office \_\_\_\_\_ Position # \_\_\_\_\_  
Name \_\_\_\_\_

[Similar spaces for at least twenty offices shall be included.]"

**22.462(4)** Write-in votes. To vote for a person whose name is not listed in the specimen ballot, the voter shall punch the appropriately numbered black dot for the office on the ballot card and write the office title, write-in position number and person's name in spaces provided on the security cover.

**22.462(5)** Tabulation procedures. As the absentee and special precinct board opens the secrecy envelope containing an absentee ballot cast using the Fidler & Chambers' Absentee Voting System, they shall remove the ballot card taking care not to separate the ballot card from the security cover.

a. Each security cover shall be examined for write-in votes. When a write-in vote is discovered, a serial number shall immediately be stamped or written on both the ballot card and the security cover. A security cover containing write-in votes cast at the primary election shall also be labeled with the name of the political party of the voter.

b. The ballot card shall be inspected by two precinct officials, not members of the same political party, who shall determine if the number of votes cast for each office for which the voter has cast a write-in vote exceeds the number of votes allowed for that office. If the total number of votes cast on the ballot card and the number of write-in votes cast do not exceed the allowable number of votes for each office, the ballot card shall be separated from the security cover and processed. The write-in votes shall be counted as indicated by the voter. For any office for which the write-in votes exceed the allowable number of votes for that office the precinct election officials shall not count any write-in votes for that office and shall refer to the tabulation guide in 22.462(6) to determine how to proceed.

**22.462(6)** Precinct election officials shall refer to the following chart to help determine how to tabulate votes cast which do not comply with all instructions.

Tabulation Guide for Fidler & Chambers' Absentee Voting System

Security cover, Write-in Vote			Ballot Card Position Number		Write-in makes office over-voted?	Count write-in vote?	Comments
Office	Pos. #	Name	marked	not marked			
✓	✓	✓	✓		no	yes	1. Preferred method.
✓	✓	✓		✓	no	yes	
✓	✓	✓	✓		yes	no	
✓	✓	✓		✓	yes	no, but ☞	2. Count other votes for that office.
✓	✓	no	✓ or	✓	no	no	3. If there is no name, there is nothing to count.
✓	blank/ wrong	✓	✓		no	yes	4. If the office is clearly identifiable.
✓	blank/ wrong	✓		✓	no	yes	4. If the office is clearly identifiable.
✓	blank/ wrong	✓	✓		yes	no	
✓	blank/ wrong	✓		✓	yes	no, but ☞	2. But, count other votes for that office.

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Security cover, Write-in Vote			Ballot Card Position Number		Write-in makes office over-voted?	Count write-in vote?	Comments
Office	Pos. #	Name	marked	not marked			
	✓	✓	✓		no	yes	
	✓	✓		✓	no	yes	
	✓	✓	✓		yes	no	
	✓	✓		✓	yes	no, but <input type="checkbox"/>	2. But, count other votes for that office.
		✓	✓		no	yes, if <input type="checkbox"/>	6. If there is only one write-in vote.
		✓	✓		yes	no	
		✓		✓	no	yes, if <input type="checkbox"/>	7. If there is only one office on the ballot.

22.462(7) Instructions to the voter shall be enclosed with every absentee ballot in substantially the following form:

**STATE OF IOWA**

**ABSENTEE VOTING INSTRUCTIONS**

for use with the Fidler & Chambers' Absentee Voting System

**READ ALL INSTRUCTIONS CAREFULLY BEFORE VOTING!**

**WARNING:** Do not mark, fold or punch your ballot except as outlined in these instructions. If your ballot is not properly marked, your vote cannot be counted.

**The main points:**

- Vote in secrecy; use only the enclosed wire punch.
- Do not detach the security cover from the ballot card.
- Complete, sign and date the affidavit.
- Seal the ballot inside the affidavit envelope.
- Return the ballot on time:  
By mail, postmark before election day, or  
Deliver to Auditor by \_\_\_ p.m. \_\_/\_\_/\_\_.

**YOUR BALLOT PACKET CONTAINS**

- "Official Ballot" card (with numbered black dots and security cover).
- Printed specimen ballot showing offices and candidates (for information only).
- Secrecy envelope to enclose "Official Ballot" card.
- Affidavit envelope.
- Return envelope.

**IF YOU SPOIL YOUR BALLOT**

- Put the ballot and other materials in return envelope.
- Write "SPOILED BALLOT" on the return envelope.
- Mail or take the entire packet to the auditor. A new packet will be sent to you.

**IF YOU NEED HELP TO VOTE**

If you are blind, cannot read, or cannot mark your own ballot because you are disabled, you may choose someone to help you vote. However, these people **cannot** help you vote:

- your employer
- an agent of your employer
- an officer or agent of your union.

**MARKING YOUR BALLOT**

1. **Vote in secrecy.** Mark your ballot so no one else will know how you voted, unless you need help to vote.

2. **Study the specimen ballot carefully before voting on the "Official Ballot" card.** Your votes cannot be changed without spoiling the ballot.

3. **Use only the enclosed wire punch.** Do not use a pen or pencil.

4. **Unfold the security cover** and place the voting area of the ballot card over the foam backing.

5. **Voting for candidates.** After you have decided for whom you want to vote, find the position number printed next to the candidate's name.

position # **1** CANDIDATE NAME

Then on the "Official Ballot" card punch out the black dot above that number. For some offices you may vote for more than one person. Watch for instructions under each office title that say, "Vote for no more than \_\_\_."

6. **Write-in votes.** If you want to vote for a person whose name is not listed on the specimen ballot:

- a. Write the office, position number and the name of the person in the space provided inside the **security cover**, AND
- b. Punch out the appropriately numbered black dot on the "Official Ballot" card. Punching a dot without writing a name will not spoil the rest of the ballot.

7. **Overvoting.** If you punch more dots for an office than the number of people that can be elected, your vote for that office will not be counted.

8. **No extra marks.** Make no marks on the ballot card except the punches you make to vote.

**RETURNING YOUR BALLOT**

**This ballot must be returned to the county auditor even if you don't vote.**

- 1. **Affidavit.** After marking your ballot card,
  - a. Read the affidavit on the affidavit envelope,
  - b. Fill in all of the information requested, and
  - c. Sign your name.
  - d. Be sure to include today's date.

**Your ballot will not be counted if you don't complete and sign the affidavit.**

2. **Use the secrecy envelope.** Fold the security cover over the ballot card; place it in the secrecy envelope.

- 3. **Do not return:**
  - a. Specimen ballot listing offices and candidates.
  - b. Wire punch.
  - c. Styrofoam backing.

4. Put the secrecy envelope containing the ballot card in the affidavit envelope.



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5. **Securely seal the affidavit envelope.** Your ballot will not be counted if the affidavit envelope is not sealed, or if the envelope has been opened and resealed.

6. Enclose the affidavit envelope in the envelope addressed to the county auditor.

7. **Postmark before election day.** If you mail your ballot, the envelope must be postmarked no later than the day before the election.

8. Return postage for this ballot is \_\_\_\_.

9. **Personal delivery.** You may also return your ballot in person, or send it back to the auditor with someone you trust. If the ballot is not mailed, it must be received by the auditor no later than   p.m. on election day. Do not return the ballot to a polling place; it will not be counted if you do.

**IF YOUR BALLOT IS REJECTED BEFORE THE  
BALLOT ENVELOPE IS OPENED, YOU WILL BE  
NOTIFIED OF THE REASON.**

**22.462(8)** In addition to the instructions provided above, the following information shall be inserted in the instructions provided to voters at the general election:

a. Voting on questions. To vote in favor of a question, punch out the black dot above the same number that appears next to the word "YES" in the question listed on the specimen ballot. To vote against a question, punch out the black dot with the same number as the word "NO."

b. Voting on judges. To vote to keep a judge in office, punch out the black dot on the ballot card with the same number as the one next to the word "YES" opposite the judge's name listed on the specimen ballot. To vote to remove a judge from office, punch out the black dot with the same number as the word "NO."

c. Straight party voting. To vote for all of the candidates of a political party, punch out the black dot on the ballot card with the same number as the one next to the name of that political party. You can override a straight party vote by voting for a candidate of another party. If you can vote for more than one person for an office, you must punch all of your choices if you are splitting your vote between candidates of two or more parties.

This rule is intended to implement Iowa Code sections 52.5 and 52.35.

## ARC 8862A

### STATUS OF AFRICAN-AMERICANS, DIVISION ON THE[434]

#### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 216A.143, the Commission on the Status of African-Americans hereby gives Notice of Intended Action to adopt Chapter 3, "Petitions for Rule Making," Chapter 4, "Agency Procedure for Rule Making," Chapter 5, "Declaratory Orders," and Chapter 6, "Contested Cases," Iowa Administrative Code.

Chapters 3 to 6 will govern petitions for rule making, procedures for rule making, declaratory orders and contested cases.

The Seventy-seventh General Assembly passed amendments to the Iowa Administrative Procedure Act in 1998 Iowa Acts, chapter 1202. The Attorney General's Office drafted amendments to the Uniform Rules on Agency Procedure to implement the amendments to the Iowa Administrative Procedure Act. The Commission is adopting the uniform rules which become effective July 1, 1999.

Any interested person may make written suggestions or comments on these proposed rules on or before April 27, 1999. Such written materials should be directed to the Administrator, Division on the Status of African-Americans, Department of Human Rights, Lucas State Office Building, First Floor, Des Moines, Iowa 50319; fax (515)242-6119.

Persons are also invited to present oral or written suggestions or comments at a public hearing which will be held on April 27, 1999, at 10 a.m. in the Director's Conference Room, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319. At the hearing, persons will be asked to confine their remarks to the subjects of the rules.

Any persons who intend to attend a public hearing and have special requirements such as hearing or mobility impairments should contact the Status of African-Americans Commission of Iowa and advise of specific needs.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 216A.141.

The following rules are proposed.

Adopt the following new chapters:

#### CHAPTER 3 PETITIONS FOR RULE MAKING

**434—3.1(17A) Adoption by reference.** The division on the status of African-Americans hereby adopts the petitions for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(designate office)", insert "division on the status of African-Americans, department of human rights".

2. In lieu of the words "(AGENCY NAME)", insert "DIVISION ON THE STATUS OF AFRICAN-AMERICANS".

3. In lieu of the words "(designate official by full title and address)", insert "Administrator, Division on the Status of African-Americans, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

#### CHAPTER 4 AGENCY PROCEDURE FOR RULE MAKING

**434—4.1(17A) Adoption by reference.** The division on the status of African-Americans hereby adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(commission, board, council, director)", insert "administrator".

2. In lieu of the words "(specify time period)", insert "one year".

## STATUS OF AFRICAN-AMERICANS, DIVISION ON THE[434](cont'd)

3. In lieu of the words "(identify office and address)", insert "Division on the Status of African-Americans, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".

4. In lieu of the words "(designate office and telephone number)", insert "the administrator at (515)281-7283".

5. In lieu of the words "(designate office)", insert "Division on the Status of African-Americans, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".

6. In lieu of the words "(specify the office and address)", insert "Division on the Status of African-Americans, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".

7. In lieu of the words "(agency head)", insert "administrator".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

### CHAPTER 5 DECLARATORY ORDERS

**434—5.1(17A) Adoption by reference.** The division on the status of African-Americans hereby adopts the declaratory orders segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(designate agency)", insert "division on the status of African-Americans".

2. In lieu of the words "(designate office)", insert "Division on the Status of African-Americans, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".

3. In lieu of the words "(AGENCY NAME)", insert "DIVISION ON THE STATUS OF AFRICAN-AMERICANS".

4. In lieu of the words "\_\_\_\_ days (15 or less)", insert "10 days".

5. In lieu of the words "\_\_\_\_ days" in subrule 6.3(1), insert "20 days".

6. In lieu of the words "(designate official by full title and address)", insert "Administrator, Division on the Status of African-Americans, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".

7. In lieu of the words "(specify office and address)", insert "Division on the Status of African-Americans, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".

8. In lieu of the words "(agency name)", insert "division on the status of African-Americans".

9. In lieu of the words "(designate agency head)", insert "administrator".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

### CHAPTER 6 CONTESTED CASES

**434—6.1(17A) Adoption by reference.** The division on the status of African-Americans hereby adopts the contested cases segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(agency name)", insert "division on the status of African-Americans, department of human rights".

2. In lieu of the words "(designate official)", insert "administrator".

3. In subrule 7.3(2) delete the words "or by (specify rule number)".

4. In lieu of the words "(agency specifies class of contested case)", insert "division contested cases".

5. In lieu of the words "(specify office and address)", insert "Division on the Status of African-Americans, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".

6. In lieu of the words "(designate office)", insert "division on the status of African-Americans".

7. In lieu of the words "(agency to designate person to whom violations should be reported)", insert "administrator".

8. In lieu of the words "(board, commission, director)", insert "administrator".

9. In lieu of the words "(the agency)", insert "division on the status of African-Americans".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

### NOTICE—USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

March 1, 1998 — March 31, 1998	7.50%
April 1, 1998 — April 30, 1998	7.50%
May 1, 1998 — May 31, 1998	7.75%
June 1, 1998 — June 30, 1998	7.75%
July 1, 1998 — July 31, 1998	7.75%
August 1, 1998 — August 31, 1998	7.50%
September 1, 1998 — September 30, 1998	7.50%
October 1, 1998 — October 31, 1998	7.25%
November 1, 1998 — November 30, 1998	6.75%
December 1, 1998 — December 31, 1998	6.50%
January 1, 1999 — January 31, 1999	6.75%
February 1, 1999 — February 28, 1999	6.75%
March 1, 1999 — March 31, 1999	6.75%
April 1, 1999 — April 30, 1999	7.00%

## ARC 8912A

ECONOMIC DEVELOPMENT,  
IOWA DEPARTMENT OF [261]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby rescinds Chapter 72, "Use of Marketing Logo," Iowa Administrative Code, and adopts a new Chapter 72 with the same title.

The IDED Board adopted these rules on March 18, 1999.

The new chapter reflects the adoption by the Board of a new marketing logo, establishes eligibility requirements, and describes application procedures.

These rules are also published herein under Notice of Intended Action as ARC 8911A to allow public comment.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable and contrary to the public interest because delaying implementation would result in missed opportunities to market the logo to large audiences. The companies, distributors, restaurants, and other interested groups with which the Department is working to implement the "A Taste of Iowa" marketing program have numerous promotional events scheduled in March, April and May. They want to be able to introduce the new logo on their products at these events. The Department cannot approve applications and enter into licensing agreements for logo usage until the rules are in effect. In order to allow sufficient time for licensees to make preparations to introduce the logo at scheduled trade and association events, the Department finds that it is in the public interest to adopt emergency rules for this program.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b," that the normal effective date of the rules, 35 days after publication, should be waived and the rules be made effective on March 19, 1999.

The agency is taking the following steps to notify potentially affected parties of the effective date of the rule: publishing the final rules in the Iowa Administrative Bulletin, providing free copies on request, and having copies available wherever requests for information about the program are likely to be made.

These rules are intended to implement Iowa Code section 15.108(2b).

These rules became effective March 19, 1999.

The following chapter is adopted.

Rescind 261—Chapter 72 and adopt in lieu thereof the following new chapter:

CHAPTER 72  
USE OF MARKETING LOGO

## 261—72.1(15) Purpose and limitation.

72.1(1) Purpose. The purpose of the marketing logo program is to aid in the promotion and marketing of Iowa products and services. The IDED board has approved the following logo to market and promote Iowa products and services: A Taste of Iowa. A person shall not use this logo or advertise it or attach it to any promotional literature, manufactured article or agricultural product without the approval of the department. The department will consult, as appropriate, with the advisory committee concerning program design, promotion and administration.

72.1(2) Limitation. By authorizing eligible applicants to use the marketing logo, the department, the IDED board and the state do not provide any guarantee or warranty regarding the product or service or its quality. Businesses that use the marketing logo expressly agree not to represent that the logo suggests any department, IDED board or state approval of the product or service.

## 261—72.2(15) Definitions.

"Advertisement" means any written, printed, verbal or graphic representation, or combination thereof, of any product with the purpose of influencing consumer opinion as to the characteristics, qualities or image of the commodity, food, feed, or fiber except labeling information as required by any government.

"Advisory committee" means the advisory committee appointed by the director to advise the department on how to promote and administer the A Taste of Iowa program.

"A Taste of Iowa program" or "program" means the promotional certification program authorized by these rules.

"Director" means the director of IDED.

"Label" means any written, printed, or graphic design that is placed on, or in near proximity to, any product whether in the natural or processed state or any combination thereof.

"License" means the written agreement through which IDED grants authorization to use the A Taste of Iowa logo.

"Person" means any natural person, corporation, partnership, association, or society.

"Processed" means any significant change in the form or identity of a raw product through, by way of example but not limited to, breaking, milling, shredding, condensing, cutting or tanning.

"Produced in Iowa" means:

1. For processed products, 50 percent or more of the product by weight or wholesale value was grown, raised or processed in Iowa.

2. For raw products, 100 percent of the product by weight, if sold by weight, by measure, if sold by measure, by number, if sold by count, was grown or raised in Iowa.

"Product" means any agricultural commodity, processed food, feed, fiber, or combinations thereof.

"Promotion" or "promotional" means any enticements, bonuses, discounts, premiums, giveaways, or similar encouragements that influence consumers' opinions regarding a product.

261—72.3(15) Guidelines. Before an applicant will be granted authorization to use the marketing logo, an applicant shall comply with the following guidelines to demonstrate to the department that the product or service is manufactured, processed or originates in Iowa:

72.3(1) Eligible applicants. Eligible applicants are those:

a. Companies whose products are manufactured, processed or originate within the state of Iowa; or

b. Service-oriented firms including, but not limited to, financial, wholesalers and distribution centers whose products qualify under paragraph "a" above.

72.3(2) Criteria. An applicant shall meet the following criteria to be eligible to use the marketing logo in conjunction with a designated product or service:

a. The company shall have a credible reputation as confirmed by the local chamber of commerce, the better business bureau, the regional coordinating council, or a local economic development group. The department may also contact the consumer protection, farm or other appropriate division of the Iowa attorney general's office or other state or federal agencies for information about the company.

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

b. The applicant's product or service shall be manufactured or processed or shall originate in Iowa.

c. Any applicant that has participated in the A Taste of Iowa program and whose license to use the logo was terminated by the department is ineligible to reapply for program participation for a period of five years from the date of termination.

d. The company shall furnish a signed and completed application on forms provided by the department. The application shall include, but not be limited to, the following:

(1) A description of the product(s) or service(s) for which the logo is sought.

(2) Information confirming that the applicant's product or service is manufactured or processed or originates in Iowa.

(3) A description of the distribution area for the product or service.

(4) Warranty or guarantee statements covering the product or service, if available.

(5) Copies of promotional literature or brochures, if available.

(6) A statement describing how the logo is to be used and on what product(s) or service(s).

(7) Any other information about the product or service as requested by the department.

**261—72.4(15) Review and approval of applications.**

72.4(1) Applications shall be reviewed by department staff to determine if the applicant has satisfactorily demonstrated that the product or service meets the eligibility requirements of these rules. Applicants shall, upon request and at no charge to the department, agree to provide product samples.

72.4(2) Following review of the application, department staff shall submit recommendations for approval or denial to the director. The director shall make the final decision to approve or deny an application.

**261—72.5(15) Licensing agreement; use of logo.**

72.5(1) Licensing agreement. An approved applicant shall enter into a licensing agreement with the department as a condition of using the A Taste of Iowa logo. The terms of the agreement shall include, but not be limited to, duration of the license and any renewal options; conditions of logo usage; identification of product(s) or service(s) authorized to use the logo; an agreement to hold harmless and indemnify the department, the state, its officers or employees; an agreement to notify the department of any litigation, product recall, or investigation by a state or federal agency regarding the product or service utilizing the logo; and an acknowledgment that the state is not providing a guarantee or warranty concerning the safety, fitness, merchantability, or use of the applicant's product or service.

72.5(2) Use of logo. Upon notification of approval and execution of a licensing agreement with the department, the applicant may use the logo on its product, package or promotional materials until notified by the department to discontinue its use. The department shall furnish the approved applicant with a copy of the "official reproduction sheet" of camera-ready logo copy from which the company can reproduce the logo. The licensee shall follow the graphic standards as provided to the licensee and incorporated in the license agreement.

**261—72.6(15) Denial or suspension of use of logo.**

72.6(1) Denial. The department may deny permission to use the label or trademark if the department reasonably believes that the applicant's planned use (or for licensees, if the

planned or actual use) would adversely affect the use of the label or trademark as a marketing tool for Iowa products or its use would be inconsistent with the marketing objectives of the department.

72.6(2) Suspension. The department may suspend permission to use the label or trademark for the same reasons stated in subrule 72.6(1), prior to an evidentiary hearing which shall be held within a reasonable period of time following the suspension.

**261—72.7(15) Request for hearing.**

72.7(1) Filing deadline. An applicant who is denied permission to use the marketing logo or a licensee that has received notice of suspension of permission to use the marketing logo may request a hearing concerning the denial or suspension. A request for a hearing shall be filed with the department within 20 days of receipt of the denial or suspension notice. Requests for hearing shall be submitted in writing by personal service or by certified mail, return receipt requested, to: A Taste of Iowa, International Division, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

72.7(2) Contents of request for hearing. A request for a hearing shall contain the following information:

a. The date of filing of the request;

b. The name, address and telephone number of the party requesting the hearing and, if represented by counsel, the name, address and telephone number of the petitioner's attorney;

c. A clear statement of the facts, including the reasons the requesting party believes the denial or suspension of permission to use the marketing logo should be reconsidered; and

d. The signature of the requesting party.

72.7(3) Informal settlement. Individuals are encouraged to meet informally with department representatives to resolve issues related to a denied application or suspension of authorization to use the logo. If settlement is reached, it shall be in writing and is binding on the agency and the individual.

72.7(4) Hearing procedures. If an informal resolution is not reached, the department will follow the procedures outlined in the uniform rules on agency procedure governing contested cases located in the first volume of the Iowa Administrative Code.

**261—72.8(15) Requests for information.** Information about the logo marketing program may be obtained by contacting: A Taste of Iowa, International Division, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4743.

These rules are intended to implement Iowa Code section 15.108(2)"b."

[Filed Emergency 3/19/99, effective 3/19/99]

[Published 4/7/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/99.

ARC 8916A

HUMAN SERVICES  
DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 5141.5(8), the Department of Human Services hereby amends Chapter

## HUMAN SERVICES DEPARTMENT[441](cont'd)

86, "Healthy and Well Kids in Iowa (HAWK-I) Program," appearing in the Iowa Administrative Code.

These amendments revise policy governing eligibility for the HAWK-I Program.

A child must be uninsured to qualify for the HAWK-I Program. A child who has been enrolled in an employer-sponsored health plan in the six months prior to the month of application but who is no longer enrolled in an employer-sponsored health plan is not eligible to participate in the HAWK-I Program for six months from the last date of coverage unless the coverage ended for one of the reasons established by legislation at Iowa Code section 514I.5(8)"m" and incorporated in rules governing the program.

One of those exceptions provides that the six-month waiting period will not be imposed if dependent coverage was terminated due to an extreme economic hardship on the part of either the employee or the employer. These amendments add a definition of extreme economic hardship on the part of the employee.

Section 4901 of the Social Security Act establishing this program provides that the total annual aggregate cost sharing with respect to all targeted low-income children in the family may not exceed 5 percent of the family's gross income for the year involved. Based on this established criteria, "extreme economic hardship" is being defined to mean that the employee's share of the premium for providing employer-sponsored dependent coverage exceeded 5 percent of the family's gross income.

These amendments also update Iowa Code references.

The Department of Human Services finds that notice and public participation are unnecessary and impracticable. The HAWK-I Program was implemented January 1, 1999. Iowa Code section 514I.5(8)"m"(9) requires the Department to define "extreme economic hardship" by rule. This definition is needed to operate the program and it is impracticable to follow the regular rule-making process at this time. Comment on the update of the Iowa Code references is unnecessary. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department finds that these amendments confer a benefit on the public. Adoption of this definition will define what constitutes an "extreme economic hardship" on the part of the employee and will allow some children to access the program without a waiting period. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2).

These amendments are also published herein under Notice of Intended Action as **ARC 8906A** to allow for public comment.

The HAWK-I Board adopted these amendments March 19, 1999.

These amendments are intended to implement Iowa Code section 514I.5(8)"m."

These amendments became effective April 1, 1999.

The following amendments are adopted.

ITEM 1. Amend **441—Chapter 86** by changing the parenthetical implementation statute "77GA, ch1196" to "514I" wherever it appears.

ITEM 2. Amend subrule **86.2(4)**, paragraph "a," subparagraph (9), as follows:

(9) Dependent coverage was terminated due to an extreme economic hardship on the part of either the employee or the employer.

*Extreme economic hardship for employees shall mean that the employee's share of the premium for providing*

*employer-sponsored dependent coverage exceeded 5 percent of the family's gross annual income.*

ITEM 3. Amend the implementation clause following **441—Chapter 86** as follows:

These rules are intended to implement ~~1998 Iowa Acts, chapter 1196~~ Iowa Code chapter 514I.

[Filed Emergency 3/22/99, effective 4/1/99]

[Published 4/7/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/99.

**ARC 8873A****PUBLIC HEALTH  
DEPARTMENT[641]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 135.11(19), the Department of Public Health hereby rescinds Chapter 76, "Maternal and Child Health Program," Iowa Administrative Code, and adopts a new chapter with the same title.

The purpose of adopting new Chapter 76 is to update the language and definitions for consistency with the federal guidelines for Title V, Maternal and Child Health Program, and the state insurance program for children entitled HAWK-I. The rules include but are not limited to the program explanation, definitions, explanation of services, eligibility and procedures for individuals to become clients.

The Department provided an opportunity for its local contractors, Medicaid staff of the Department of Human Services, and internal staff of the Department of Public Health to review the proposed new chapter prior to submitting Notice of Intended Action published in the January 13, 1999, Iowa Administrative Bulletin as **ARC 8613A**.

A public hearing was held February 2, 1999, utilizing 14 sites on the Iowa Communication Network (ICN). Twenty persons attended the public hearing and a few provided comments. Three individuals provided written comments prior to the hearing. A responsiveness summary has been prepared by the Department and filed with the Administrative Rules Coordinator. A copy of the summary is available upon request from the Department.

In response to comments received, the following changes were made to the Notice of Intended Action:

The third unnumbered paragraph of 76.1(135) was changed to include parents and service provider representatives of children with special health care needs. The chair of the family services bureau grantee committee, or the designee of the chair, was added as an ex-officio member of the MCH advisory council.

Paragraph 76.5(3)"i" was changed to include reimbursement for qualified midlevel practitioners providing medical care.

Paragraph 76.6(2)"a" was changed to make income guidelines the same as those established for the state's Title XXI program.

Paragraph 76.6(2)"g" was changed to reflect the change in 76.6(2)"a."

Subrule 76.6(4) was changed to allow a family planning (Title XIX) agency to verify the pregnancy of an individual applying for the prenatal program.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

A new paragraph "d" was added to 76.15(5) to clarify that services provided by personnel employed by MCH contract agencies are not reimbursable.

The State Board of Health met March 10, 1999, and approved the rescission of Chapter 76 and the adoption of the new chapter.

Pursuant to Iowa Code section 17A.5(2), the new chapter became effective upon filing on March 10, 1999. The Department finds that the new chapter confers a benefit on recipients of Title V services.

These rules became effective March 10, 1999.

These rules are intended to implement Iowa Code section 135.11.

The following amendment is adopted.

Rescind 641—Chapter 76 and adopt the following new chapter in lieu thereof:

## CHAPTER 76

## MATERNAL AND CHILD HEALTH PROGRAM

**641—76.1(135) Program explanation.** The maternal and child health (MCH) programs are operated by the Iowa department of public health as the designated state agency pursuant to an agreement with the federal government. The majority of the funding available is from the Title V, MCH services block grant, administered by the Health Resources and Services Administration within the United States Department of Health and Human Services.

The purpose of the program is to promote the health of mothers and children by ensuring or providing access to quality maternal and child health services (especially for low-income families or families with limited availability of health services); to reduce infant mortality and the incidence of preventable diseases and handicapping conditions; to increase the number of children appropriately immunized against disease; and to facilitate the development of community-based systems of health care for children and their families. The program promotes family-centered, community-based coordinated care, including care coordination services for children with special health care needs.

The department's family services bureau enters into contracts with selected private nonprofit or public agencies for the provision of prenatal, postpartum, and child health services. The types of services provided by these contracts are infrastructure building, population-based services, enabling services, and direct health services. The department contracts with the University of Iowa department of pediatrics' child health specialty clinics to provide services to children with special health care needs.

The MCH advisory council assists in the development of the state plan for MCH, including children with special health care needs and family planning. The advisory council assists with assessment of need, prioritization of services, establishment of objectives, and encouragement of public support for MCH and family planning programs. In addition, the advisory council advises the director regarding health and nutrition services for women and children, supports the development of special projects and conferences and advocates for health and nutrition services for women and children. The director appoints the council membership. Membership shall include parents and service provider representatives of children with special health care needs. The council membership shall also include the chairs, or designees, of the department's advisory committee for perinatal guidelines, the Iowa council on chemically exposed in-

fants and children, and the birth defects advisory committee to ensure coordination of their respective issues and priorities. The chair of the family services bureau grantee committee or the designee of the chair may serve as an ex-officio member of the council.

The Iowa council on chemically exposed infants and children (CCEIC) defined in Iowa Code chapter 235C serves as a subcommittee to the MCH advisory council. The CCEIC assists in developing and implementing policies to reduce the likelihood that infants will be born chemically exposed and to assist those who are born chemically exposed to grow and develop in a safe environment.

**641—76.2(135) Adoption by reference.** Federal requirements contained in the Omnibus Reconciliation Act of 1989 (Public Law 101-239), Title V, MCH services block grant shall be the rules governing the Iowa MCH program and are incorporated by reference herein.

The department finds that certain rules should be exempted from notice and public participation as being a very narrowly tailored category of rules for which notice and public participation are unnecessary as provided in Iowa Code section 17A.4(2). Such rules shall be those that are mandated by federal law governing the Iowa MCH program where the department has no option but to adopt such rules as specified and where federal funding for the MCH programs is contingent upon the adoption of the rules.

Copies of the federal legislation adopted by reference are available from Chief, Family Services Bureau, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**641—76.3(135) Rule coverage.** These rules cover agencies contracting with the department to provide community-based MCH public health services and to receive funds from the department for that purpose. The contract agencies conduct essential public health services directed toward the maternal and child health populations consistent with the state's MCH services block grant state plan. The state plan is developed and administered by the family services bureau of the department. Other programs funded by the Iowa legislature from MCH services block grant are not included in these rules.

**641—76.4(135) Definitions.**

"Applicant" means a private nonprofit or public agency that seeks a contract with the department to provide MCH services.

"Care coordination" means a process of linking the service system to the recipient and organizing the various elements in order to achieve a successful outcome.

"Client" means an individual who receives MCH services through a contract agency.

"Contract agency" means a private nonprofit or public agency that has a contract with the department to provide MCH services and receives funds from the department for that purpose.

"Core public health functions" means the functions of community health assessment, policy development, and assurance.

1. Assessment: regular collection, analysis, interpretation, and communication of information about health conditions, risks, and assets in a community.

2. Policy development: development, implementation, and evaluation of plans and policies, for public health in general and priority health needs in particular, in a manner that

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

incorporates scientific information and community values and is in accordance with state public health policy.

3. Assurance: ensuring, by encouragement, regulation, or direct action, that programs and interventions that maintain and improve health are carried out.

"Dental health education" means basic dental health information about dental disease, prevention, oral hygiene and other anticipatory guidance.

"Department" means the Iowa department of public health.

"DHHS" means the United States Department of Health and Human Services.

"DIA" means the Iowa department of inspections and appeals.

"Direct health services" means those services generally delivered one-on-one between a health professional and a client in an office or clinic.

"Director" means the director of the Iowa department of public health.

"Enabling services" means services that allow or provide for access to and the derivation of benefits from, the array of basic health care services and include activities such as outreach, case management, health education, transportation, translation, home visiting, smoking cessation, nutrition, support services, and others.

"Essential public health services" means those activities carried out by public health entities and their contractors that fulfill the core public health functions in the promotion of maternal and child health.

"Family," for the purpose of establishing eligibility, means a group of two or more persons related by birth, marriage or adoption or residing together and functioning as one socioeconomic unit. For the purpose of these rules, a pregnant woman is considered as two individuals when calculating the number of individuals in the family. If a pregnant woman is expecting multiple births, the family size is thereby increased by the number expected in the multiple birth.

"Family planning" means the promotion of reproductive and family health by the prevention of and planning for pregnancy, and reproductive health education.

"HAWK-I" means healthy and well kids in Iowa and is the child health insurance program in Iowa as authorized in Title XXI of the Social Security Act.

"HCFA" means the DHHS, Health Care Finance Administration.

"Health education" means services provided by a health professional to include instruction about normal anatomy and physiology, growth and development, safety and injury prevention, signs or symptoms indicating need for medical care, and other anticipatory guidance topics.

"Health professional" means an individual who possesses specialized knowledge in a health or social science field or is licensed to provide health care.

"Health services" means services provided through MCH contract agencies.

"Informing" means the act of advising families of the services available through the EPSDT/Care for Kids program, explaining what to expect at screening, and providing information about health resources in the community.

"Infrastructure building" means activities directed at improving and maintaining the health status of all clients by providing support for the development and maintenance of comprehensive health services systems including development and maintenance of health services standards or guidelines, training, data, and planning systems.

"MCH services" means essential services provided by MCH contract agencies.

"Medicaid" means the Medicaid program authorized in the Social Security Act and funded through the Iowa department of human services from the DHHS.

"Nutrition counseling" means nutrition screening and education appropriate to the needs of the client, and referral to a licensed dietitian if indicated.

"OMB" means the United States Department of the Treasury, Office of Management and Budget.

"Oral health counseling" means services to assess oral health status and to provide education appropriate to the needs of the client and referral to a dentist if indicated.

"Parenting education" means educational services for parents or expectant parents provided by health professionals to include care of infants and children, normal development, discipline, and other topics as appropriate.

"Performance standards" means criteria or indicators of the quality of service provided or the capability of a contract agency to provide services in a cost-effective or efficient manner as defined in "Performance Standards, Maternal and Child Health Contractors, Family Services Bureau."

"Pharmacist" means a person currently licensed to practice pharmacy under Iowa Code chapter 155.

"Physician" means a person currently licensed to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy under Iowa Code chapters 148 and 150A.

"Population-based services" means preventive interventions and personal health services, developed for and available to the entire MCH population of the state rather than for individuals in a one-on-one situation. Disease prevention, health promotion, and statewide outreach are major components.

"Prenatal and postpartum care" means those types of services as recognized by the American College of Obstetricians and Gynecologists.

"Program income" means gross income earned by the contract agency from activities in which part or all of the cost is either borne as a direct cost by the funds received from the department or counted as a direct cost toward meeting cost-sharing or matching requirements of the contract agency. "Program income" includes but is not limited to such income in the form of fees for services, third-party reimbursements, and proceeds from sales of tangible, personal or real property.

"Psychosocial counseling" means services provided to include individual and family social assessment, counseling, and referral.

"Title V" means Title V of the Social Security Act and the federal requirements contained in the Omnibus Reconciliation Act of 1989 (Public Law 101-239) which address the Maternal and Child Health program.

"Title X" means the program authorized in the federal regulations found in 42 CFR Subpart A, Part 59, published in the Federal Register on June 3, 1980, and the Program Guidelines for Project Grants for Family Planning Services.

"Title XIX" means the Medicaid program authorized in the Social Security Act and funded through the Iowa department of human services from the DHHS.

"Title XXI" means the child health insurance program authorized in the Social Security Act and implemented in Iowa as the HAWK-I program as administered by the Iowa department of human services.

"Well-child health care" means those types of services as recognized by the latest edition of the American Academy of Pediatrics, Guidelines for Health Supervision.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

"WIC" means the Special Supplemental Nutrition Program for Women, Infants and Children, funded through the department from the United States Department of Agriculture.

**641—76.5(135) MCH services.** The following services shall be provided by contract agencies:

**76.5(1) Infrastructure building services.**

a. Community assessment activities to identify population-based health conditions, risks, and assets in the community.

b. Analysis of health data to determine community population-based health status, health system utilization and community resources.

c. Support for a method of data collection, analysis, and dissemination.

d. Community planning activities to promote family and community health initiatives based on scientific, economic, and political factors.

e. Promotion of regulations, standards, and contracts that protect the public's health and safety.

f. Monitoring and evaluating the effectiveness, accessibility and quality of personal health and population-based services in the community.

g. Supporting innovative initiatives to gain new insights and solutions to family and community health-related needs.

**76.5(2) Population-based services.**

a. Immunization.

b. Injury prevention.

c. Outreach and public education.

d. Counseling for families who have lost a child to sudden infant death syndrome.

e. Childhood lead poisoning screening.

**76.5(3) Enabling services.**

a. Care coordination.

b. Informing.

c. Outreach services to families and children who do not access a regular and continuous source of care (medical home).

d. Coordination of local systems of care for improving access to health services.

e. Access to translation services.

f. Access to transportation.

g. Family support activities.

h. Referral or enrollment of families in health insurance for public insurance plans.

i. Reimbursement of diagnostic and therapeutic services for children subject to the following conditions.

(1) Eligible services include:

1. Physician or midlevel practitioner services provided for treatment of acute illness and physician or midlevel practitioner prescribed treatments necessary to treat an acute condition.

2. Physician services provided for diagnosis.

3. Diagnostic tests to include laboratory tests and x-rays.

4. Prescription drugs necessary to treat an acute condition.

(2) Coverage for diagnosis and therapeutic services for children is restricted:

1. To clients eligible for MCH direct care and enabling services as specified in rule 641—76.6(135).

2. By the amount of funds available to the department.

(3) Coverage is not available for the following diagnostic and therapeutic services:

1. Services covered by another private or public funding source.

2. Services provided as a result of an injury or accident.

3. Treatment or follow-up of a chronic disease or condition.

4. Hospital inpatient or surgical services, including surgical diagnostic procedures.

**76.5(4) Direct health services.** Direct health services may be provided to meet identified community needs. The following preventive direct health services may be supported by MCH program funds to the extent the comprehensive community assessment documents that the services are not otherwise available from health professionals within the community.

a. Child health.

(1) Informing.

(2) Care coordination.

(3) Nutrition counseling.

(4) Psychosocial counseling.

(5) Parenting education.

(6) Health education.

(7) Well-child health services include routine, ambulatory well-child care.

b. Prenatal and postpartum services.

(1) Care coordination.

(2) Risk assessment.

(3) Psychosocial assessment and counseling.

(4) Nutrition assessment and counseling.

(5) Health education.

(6) Routine, ambulatory prenatal medical care, postpartum exams, and family planning services.

c. Dental health—maternal and child.

(1) Dental screening.

(2) Dental treatment services through referral.

(3) Dental health education.

**641—76.6(135) Client eligibility criteria.** The certification process to determine eligibility for direct health care under the program shall include the following requirements:

**76.6(1) Age.**

a. Prenatal program—no age restrictions.

b. Child health care services—birth through 20 years of age.

**76.6(2) Income.**

a. Income guidelines will be the same as those established for the state's Title XXI program. Guidelines are published annually by DHHS. Department income guidelines will be adjusted following any change in DHHS guidelines.

b. Income information will be provided by the individual, who will attest in writing to the accuracy of the information contained in the application.

c. Proof of Title XIX or Title XXI (HAWK-I) eligibility will automatically serve in lieu of an application.

d. All income of family members as defined by DHHS poverty guidelines will be used in calculating the individual's gross income for purposes of determining initial and continued eligibility.

e. Income will be calculated as follows:

(1) Annual income will be estimated based on the individual's income for the past three months unless the individual's income will be changing or has changed, or

(2) In the case of self-employed families the past year's income tax return (adjusted gross income) will be used in estimating annual income unless a change has occurred.

(3) Terminated income will not be considered.

f. Individuals will be screened for eligibility for Title XIX and Title XXI (HAWK-I). If an individual's income falls within the eligibility guidelines for Title XIX and Title XXI (HAWK-I), the individual should be referred to the



## PUBLIC HEALTH DEPARTMENT[641](cont'd)

Iowa department of human services or other enrollment source to apply for coverage. Pregnant women shall be considered for Title XIX presumptive eligibility. Children shall be considered for Title XIX eligibility to the extent these activities are approved by the Iowa department of human services.

g. An individual whose income is above the poverty level established by Title XXI and below 300 percent of the federal poverty guidelines will qualify for services on a sliding fee scale, as determined by the local agency's cost for the service. The department provides annual guidelines. An individual whose income is at or above 300 percent will qualify for services at full fee.

h. Eligibility determinations must be performed at least once annually. Should the individual's circumstances change in a manner which affects third-party coverage or Title XIX/Title XXI eligibility, eligibility determinations shall be completed more frequently.

**76.6(3) Residency.** Individuals must be currently residing in Iowa.

**76.6(4) Pregnancy.** An individual applying for the prenatal program shall have verification of pregnancy by an independent health provider, by the maternal health contract agency, or by a family planning (Title X) agency.

**641—76.7(135) Client application procedures for MCH services.**

**76.7(1)** A person desiring direct health services under this program or the parent or guardian of a minor desiring such care shall apply to a contract agency using a Health Services Application, Form 470-2927, or the alternate form authorized by the HAWK-I board.

**76.7(2)** The contract agency shall verify the following information to apply for MCH services under this program:

a. The information requested on the application form under "Household Information."

b. Income information for all family members or proof of eligibility for Title XIX (Medicaid) or Title XXI (HAWK-I).

c. Information about health insurance coverage.

d. The signature of the individual or responsible adult, dated and witnessed.

e. For pregnant women, denial of benefits under Title XIX (Medicaid) due to economic or categorical ineligibility.

**76.7(3)** If an individual has completed a Health Services Application, Form 470-2927, within the last year and the form accurately documents the current financial and family status, the MCH contract agency shall accept a copy of that application and determine eligibility without requiring completion of any other application form.

**76.7(4)** If an individual indicates on the Health Services Application, Form 470-2927, that the individual also wishes to apply for WIC or Medicaid or HAWK-I, the contract agency shall forward the appropriate copy to the indicated agency within two working days.

**76.7(5)** The contract agency shall determine the eligibility of the family and the percent of the cost of care that is the family's responsibility. The individual shall be informed in writing of eligibility status prior to incurring costs for care.

**76.7(6)** Once an individual has been determined to be eligible, the individual shall report any changes in income, family composition, or residency to the contract agency within 30 days from the date the change occurred.

**641—76.8(135) Right to appeal—client.**

**76.8(1)** Right of appeal. Individuals applying for MCH services and clients receiving MCH services shall have the

right to appeal whenever a decision or action of the department or contract agency results in the denial of participation, suspension, or termination from the approved MCH program. Notification of the denial of participation, suspension or termination shall be made in writing and shall state the basis for the action. All hearings shall be conducted in accordance with these rules.

**76.8(2)** Notification of appeal rights and right to hearing. Individuals applying for MCH services shall be notified of the right to appeal and the procedures for requesting a hearing at the time of application for MCH services. Information about the appeal and hearing process shall be provided in writing and shall be immediately available at maternal and child health centers. A health professional shall be available to explain the method by which an appeal or hearing is requested and the manner in which the appeal and hearing will be conducted.

**76.8(3)** Request for hearing. A request for a hearing is a written expression by an individual or the individual's parent, guardian, or other representative that an opportunity to present the individual's case is desired. The request shall be filed with the contract agency within 60 days from the date the individual receives notice of the decision or action which is the subject of appeal.

**76.8(4)** Receipt of benefits during appeal. Individual applicants, who are denied program benefits due to a finding of ineligibility, shall not receive benefits during the administrative appeal period. Clients who are involuntarily suspended or terminated from the MCH program shall continue to receive program benefits during the administrative appeal period.

**76.8(5)** Hearing officer. The hearing officer shall be impartial, shall not have been directly involved in the initial determination of the action being contested, and shall not have a personal stake in the decision. Hearing officers may be contract agency directors, health professionals, community leaders, or any impartial citizen. If prior to the hearing, the appealing party objects to a contract agency director serving as the hearing officer in a case involving the director's own agency, another hearing officer shall be selected and, if necessary, the hearing shall be rescheduled as expeditiously as possible. Contract agencies may seek the assistance of the Chief, Family Services Bureau, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, in the appointment of a hearing officer.

**76.8(6)** Notice of hearing. The hearing officer shall schedule the time, place and date of the hearing as expeditiously as possible. Parties shall receive notice of the hearing at least ten days in advance of the scheduled hearing. The hearing shall be accessible to the party requesting the hearing. The hearing shall be scheduled within three weeks from the date the contract agency received the request for a hearing or as soon as possible thereafter, unless a later date is agreed upon by the parties.

**76.8(7)** Conduct of hearing. The party requesting the hearing or the party's representative shall have the opportunity to:

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

b. Be represented by an attorney or other person at the party's own expense;

c. Bring witnesses;

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

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

f. Advance arguments without undue interference.

**76.8(8) Decision.** Decisions of the hearing officer shall be in writing and shall be based on evidence presented at the hearing. The decision shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and pertinent regulations or policy. The decision shall be issued within 90 days of the receipt of the request for the hearing, unless a longer period is agreed upon by the parties.

**76.8(9) Appeal of decision to the department.** A party receiving an unfavorable decision may file an appeal with the department. Such appeals must be filed within 15 days of the mailing date of the hearing decision. Appeals shall be sent to the Division Director, Family and Community Health, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**76.8(10) Contested case.** Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the DIA pursuant to the rules adopted by the DIA regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information, which may be provided by the aggrieved party, shall also be provided to the DIA.

**76.8(11) Hearing.** Parties shall receive notice of the hearing in advance. The administrative law judge shall schedule the time, place and date of the hearing so that the hearing is held as expeditiously as possible. The hearing shall be conducted according to the procedural rules of the DIA found in 481—Chapter 10, Iowa Administrative Code.

**76.8(12) Decision of administrative law judge.** The administrative law judge's decision shall be issued within 60 days from the date of request for hearing. When the administrative law judge makes a proposed decision and order, it shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final decision without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in subrule 76.8(13).

**76.8(13) Appeal to the director.** Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

**76.8(14) Record of hearing.** Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

- a. All pleadings, motions and rules.
- b. All evidence received or considered and all other submissions by recording or transcript.
- c. A statement of all matters officially noticed.
- d. All questions and offers of proof, objections and rulings thereon.
- e. All proposed findings and exceptions.
- f. The proposed decision and order of the administrative law judge.

**76.8(15) Decision of director.** An appeal to the director shall be based on the record of the hearing before the admin-

istrative law judge. The decision and order of the director becomes the department's final decision upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

**76.8(16) Exhausting administrative remedies.** It is not necessary to file an application for the rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final decision of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

**76.8(17) Petition for judicial review.** Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the director by certified mail, return receipt requested, or by personal service. The address is Director, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**76.8(18) Benefits after decision.** If a final decision is in favor of the person requesting a hearing and benefits were denied or discontinued, benefits shall begin immediately and continue pending further review should an appeal to district court be filed. If a final decision is in favor of the contract agency, benefits shall be terminated, if still being received, as soon as administratively possible after the issuance of the decision. Benefits denied during an administrative appeal period may not be awarded retroactively following a final decision in favor of a person applying for MCH services.

**641—76.9(135) Grant application procedures for contract agencies.** Private nonprofit or public agencies seeking to provide community-based Title V-MCH public health services shall file a letter of intent to make application to the department no later than April 1 of the competitive year. Applications shall be to administer MCH services for a specified project period, as defined in the request for proposal, with an annual continuation application. The contract period shall be from October 1 to September 30 annually. All materials submitted as part of the grant application are considered public records in accordance with Iowa Code chapter 22, after a notice of award is made by the department. Notification of the availability of funds and grant application procedures will be provided in accordance with the department rules found in 641—Chapter 176.

Contract agencies are selected on the basis of the grant applications submitted to the department. The department will consider only applications from private nonprofit or public agencies. In the case of competing applications, the contract will be awarded to the applicant that scores the highest number of points in the review. Copies of review criteria are available from: Chief, Family Services Bureau, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**641—76.10(135) Funding levels for contract agencies.** The amount of funds available to each contract agency on an annual basis shall be determined by the department using a methodology based upon dollars available, number of clients enrolled, and selected needs criteria. A contract agency will receive four dollars of the available funds from the department for each one dollar of matching funds up to but not to exceed the total available funds for that contract agency.

**641—76.11(135) Contract agency performance.** Contract agencies are required to provide services in accordance with these rules.

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**76.11(1) Performance standards.** The department shall establish performance standards that contract agencies shall meet in the provision of services. The performance standards are published in the document "Performance Standards, Maternal and Child Health Contractors, Family Services Bureau." The performance standards are included in the contract agency MCH program grant application packet each year. Copies of the performance standards are available from the Chief, Family Services Bureau, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. Contract agencies that do not meet the performance standards shall not be eligible for continued funding as an MCH contract agency unless the contract agency has secured a waiver.

**76.11(2) Contract agency review.** The department shall review contract agency operations through the use of reports and documents submitted, state-generated data reports, chart audits, on-site and clinic visits for evaluation and technical assistance.

**76.11(3) Exception.** A contract agency that does not meet a performance standard may be granted an exception for up to one year in order to improve performance. Such an exception must be requested in writing. If granted, the approval for the exception will include the conditions necessary for the successful completion of the standard, a time frame, and additional reporting requirements. The procedures for applying and approving of an exception are outlined in the "Performance Standards, Maternal and Child Health Contractors, Family Services Bureau."

**641—76.12(135) Reporting.** Completion of grant applications, budgets, expenditure reports, performance standards reports, and data forms shall be performed by contract agencies in compliance with the contract with the department.

**641—76.13(135) Fiscal management.** All contract agencies are required to meet fiscal management policies.

**76.13(1) Last pay.** MCH grant funds are considered last pay. Title XIX and other third-party payers are to be billed first if other resources cover the service.

**76.13(2) Program income.** Program income shall be used for allowable costs of the MCH program. Program income shall be used before using the funds received from the department. Excess program income may be retained to build a three-month operating capital. Program income shall be used during the current fiscal year or the following fiscal year. Five percent of unobligated program income may be used by the contract agency for special purposes or projects provided such use furthers the mission of the MCH program and does not violate state or federal rules governing the program.

**76.13(3) Advances.** A contract agency may request an advance of up to one-sixth of its contract at the beginning of a contract year. The amount of any advance will be deducted prior to the end of the fiscal year.

**76.13(4) Local share.** Contract agencies are required to match the MCH funds received from the department at a minimum rate of one dollar of local match for every four dollars received from the department. Sources that may be used for match are reimbursement for service from third parties such as insurance and Title XIX, client fees, local funds from nonfederal sources, or in-kind contributions. In-kind contributions must be documented in accordance with generally accepted accounting principles.

**76.13(5) Subcontracts.** Contract agencies may subcontract a portion of the project activity to another entity provided such subcontract is approved by the department. Sub-

contract agencies must follow the same rules, procedures, and policies as required of the contract agency by these rules and contract with the department. The contract agency is responsible for ensuring the compliance of the subcontract. Subcontract agencies may not subcontract these project activities with other entities.

**641—76.14(135) Audits.** Every two years, each contract agency shall undergo financial audit of the MCH program. The audit shall be conducted in compliance with OMB Circular A-133 Audits of States, Local Governments, and Non-Profit Organizations. Each audit shall cover all unaudited periods through the end of the previous grant year. The department's audit guide should be followed to ensure an audit which meets federal and state requirements.

**641—76.15(135) Diagnosis and therapeutic services for children.** Diagnosis and therapeutic services for children are paid directly to the provider following authorization by the contract agency.

**76.15(1) Distribution of funds.** Funds will be reserved for each contract agency based upon percentage of children eligible for the service, poverty indicators and the contract agency's past utilization of the program. Funds will be reserved at the department to cover services that exceed expected costs.

**76.15(2) Restriction on expenditure.** If the funds reserved are expended before the end of a contract year, further authorizations for payment cannot be made.

**76.15(3) Redistribution of funds.** Funds may be redistributed among contract agencies based upon utilization.

**76.15(4) Authorization for coverage.** Authorization is required before providers submit bills to the department for payment. Contract agencies authorize the use of funds by determining the child's eligibility, if the service meets the definition of coverage and if funds are available.

a. Each authorization is to include specific information about the reason for referral.

b. Prior authorization of the department is needed to authorize payment for services that would constitute extended treatment or treatment exceptions.

**76.15(5) Payment to providers.** Payments to providers will be made under the following conditions:

a. Authorization information must accompany the claim.

b. Claims must be submitted within 60 days of the date of service on an HCFA 1500, UB92 or Universal Claim Form. When other financial or medical resources are available to the client, the department may approve all or partial payment of an eligible unpaid claim.

c. Payment shall be based upon Title XIX rates to the extent current Title XIX rate information is available to the department.

d. Services provided by personnel employed by MCH contract agencies are not reimbursable.

**641—76.16(135) Denial, suspension, revocation or reduction of contracts with contract agencies.** The department may deny, suspend, revoke or reduce contracts with contract agencies in accord with applicable federal regulations or contractual relationships. Notice of such action shall be in writing.

**641—76.17(135) Right to appeal—contract agency.** Contract agencies may appeal the denial of a contract or the suspension, revocation or reduction of an existing contract.

**76.17(1) Appeal.** The appeal shall be made in writing to the department within ten days of receipt of notification of

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

the adverse action. Notice is to be addressed to the Division Director, Family and Community Health Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**76.17(2)** Contested case. Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the DIA pursuant to the rules adopted by the DIA regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information, which may be provided by the aggrieved party, shall also be provided to the DIA.

**76.17(3)** Hearing. Parties shall receive notice of the hearing in advance. The administrative law judge shall schedule the time, place and date of the hearing so that the hearing is held as expeditiously as possible. The hearing shall be conducted according to the procedural rules of the DIA found in 481—Chapter 10.

**76.17(4)** Decision of administrative law judge. The administrative law judge's decision shall be issued within 60 days from the date of request for hearing. When the administrative law judge makes a proposed decision and order, it shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final decision without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in subrule 76.17(5).

**76.17(5)** Appeal to the director. Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

**76.17(6)** Record of hearing. Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

- a. All pleadings, motions and rules;
- b. All evidence received or considered and all other submissions by recording or transcript;
- c. A statement of all matters officially noticed;
- d. All questions and offers of proof, objections and rulings thereon;
- e. All proposed findings and exceptions; and
- f. The proposed decision and order of the administrative law judge.

**76.17(7)** Decision of director. An appeal to the director shall be based on the record made at the hearing. The decision and order of the director becomes the department's final decision upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

**76.17(8)** Exhausting administrative remedies. It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final decision of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A. Petition for judicial review must be filed within 30 days after decision becomes final.

These rules are intended to implement Iowa Code section 135.11.

[Filed Emergency After Notice 3/10/99, effective 3/10/99]  
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/99.

## ARC 8915A

ECONOMIC DEVELOPMENT,  
IOWA DEPARTMENT OF [261]

## Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby adopts amendments to Chapter 59, "Enterprise Zones," Iowa Administrative Code.

This amendment revises the definition of "full-time" to accommodate businesses that operate on a traditional full-time workweek of 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year (including paid holidays, vacations and other paid leave) and allows flexibility to those businesses that operate on full-time schedules which do not fit the traditional definition.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 8697A** on February 10, 1999. A public hearing was held on March 2, 1999. No comments were received from the public.

The proposed amendment which revised the definition of "full-time" was adopted by the IDED Board on March 18, 1999. The amendments which would have revised the zone certification process and removed the definition of "board" were not adopted.

This amendment is intended to implement Iowa Code sections 15E.191 to 15E.196.

This amendment will become effective on May 12, 1999. The following amendment is adopted.

Amend rule **261—59.2(15E)**, definition of "Full-time," as follows:

"Full-time" means the employment of one person:

1. ~~For~~ For 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations and other paid leave, or

2. *The number of hours or days per week currently established by schedule, custom, or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.*

[Filed 3/19/99, effective 5/12/99]

[Published 4/7/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/99.

## ARC 8899A

EDUCATIONAL EXAMINERS  
BOARD [282]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby adopts amendments to Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

The amendments create an endorsement for all science and provide greater flexibility for districts in hiring staff to fill vacancies in grades 9-12. This would be in addition to all of the science endorsements currently available.

Notice of Intended Action was published in the January 27, 1999, Iowa Administrative Bulletin as **ARC 8633A**. A

public hearing on the proposed amendments was held on February 26, 1999. One person appeared at the public hearing.

Paragraph 14.21(17)"a" has been changed from "6 hours in chemistry, 6 hours in physics" to "12 hours in physical sciences";

Paragraph 14.21(17)"h" was changed from "Grades 5-9" to "Grades 5-8"; and

Subparagraph 14.21(17)"h"(1) was changed to add 6 hours in physical sciences as an option to 6 hours in physics.

These amendments will become effective July 1, 2000.

These amendments are intended to implement Iowa Code chapter 272.

The following amendments are adopted.

Amend subrule 14.21(17) as follows:

**14.21(17) Science.**

~~a. Science—basic. K-6. Completion of 24 semester hours in science to include coursework in biological and physical sciences.~~

*a. Science—basic. K-6. Completion of at least 24 semester hours in science to include 12 hours in physical sciences, 6 hours in biology, and 6 hours in earth/space sciences.*

(1) *Competencies.*

1. *Understand the nature of scientific inquiry, its central role in science, and how to use the skills and processes of scientific inquiry.*

2. *Understand the fundamental facts and concepts in major science disciplines.*

3. *Be able to make conceptual connections within and across science disciplines, as well as to mathematics, technology, and other school subjects.*

4. *Be able to use scientific understanding when dealing with personal and societal issues.*

(2) *Reserved.*

b. Biological. 7-12. Completion of 24 semester hours in biological science or 30 semester hours in the broad area of science to include 15 semester hours in biological science.

c. Chemistry. 7-12. Completion of 24 semester hours in chemistry or 30 semester hours in the broad area of science to include 15 semester hours in chemistry.

d. Earth science. 7-12. Completion of 24 semester hours in earth science or 30 semester hours in the broad area of science to include 15 semester hours in earth science.

~~e. General science. 7-12. Completion of 24 semester hours in science to include coursework in biological science, chemistry and physics.~~

f. Physical science. 7-12. Completion of 24 semester hours in physical sciences to include coursework in physics, chemistry, and earth science.

g. Physics. 7-12. Completion of 24 semester hours in physics or 30 semester hours in the broad area of science to include 15 semester hours in physics.

*h. All science I. Grades 5-8. The holder of this endorsement must also hold the middle school endorsement listed under 14.20(15).*

*(1) Required coursework. Completion of at least 24 semester hours in science to include 6 hours in chemistry, 6 hours in physics or physical sciences, 6 hours in biology, and 6 hours in the earth/space sciences.*

(2) *Competencies.*

1. *Understand the nature of scientific inquiry, its central role in science, and how to use the skills and processes of scientific inquiry.*

2. *Understand the fundamental facts and concepts in major science disciplines.*

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3. *Be able to make conceptual connections within and across science disciplines, as well as to mathematics, technology, and other school subjects.*

4. *Be able to use scientific understanding when dealing with personal and societal issues.*

i. *All science II. Grades 9-12.*

(1) *Required coursework.*

1. *Completion of one of the following endorsement areas listed under 14.21(17): biological 7-12 or chemistry 7-12 or earth science 7-12 or physics 7-12.*

2. *Completion of at least 12 hours in each of the other three endorsement areas.*

(2) *Competencies.*

1. *Understand the nature of scientific inquiry, its central role in science, and how to use the skills and processes of scientific inquiry.*

2. *Understand the fundamental facts and concepts in major science disciplines.*

3. *Be able to make conceptual connections within and across science disciplines, as well as to mathematics, technology, and other school subjects.*

4. *Be able to use scientific understanding when dealing with personal and societal issues.*

[Filed 3/19/99, effective 7/1/00]

[Published 4/7/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/99.

**ARC 8897A****EDUCATIONAL EXAMINERS BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby adopts amendments to Chapter 19, "Coaching Authorization," Iowa Administrative Code.

The amendments add a requirement to the existing coaching authorization for those who initially apply for this authorization, or for those who renew this authorization, to require that an applicant complete a course relating to knowledge and understanding of professional ethics and legal responsibilities of coaches, and clarify the language in this chapter by noting that the fee for a coaching authorization or for the renewal of a coaching authorization is \$50. This fee change was effective September 16, 1998.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 16, 1998, as **ARC 8576A**. A public hearing was held on January 14, 1999. No one attended the hearing. Fifteen responses were received. All responses were positive regarding the ethics requirement, however, 14 of the responses suggested changing the date to July 1, 2000. The Board has accommodated the suggested changes from the written responses.

In addition to changing the date to July 1, 2000, changes to the Notice include incorporating ethics and legal responsibilities into the theory of coaching course requirement and increasing the contact hours for that course from 10 to 15 contact hours, and allowing for a one-year extension of a coaching authorization to allow applicants sufficient time to access the new requirement of July 1, 2000.

The Board of Educational Examiners adopted these amendments on February 5, 1999.

These amendments will become effective July 1, 2000.

These amendments are intended to implement Iowa Code chapter 272.

The following amendments are adopted.

ITEM 1. Amend rule 282—19.1(272) by adopting a **new** subrule as follows:

**19.1(5)** Beginning on or after July 1, 2000, each applicant for an initial coaching authorization shall have successfully completed one semester hour or 15 contact hours in a course relating to the theory of coaching which must include at least 5 contact hours relating to the knowledge and understanding of professional ethics and legal responsibilities of coaches.

ITEM 2. Amend rule 282—19.2(272) as follows:

**282—19.2(272) Validity.** The coaching authorization shall be valid for five years, and it shall expire five years from the date of issuance. The fee for the issuance of the coaching authorization shall be ~~\$25~~ \$50.

ITEM 3. Amend rule 282—19.5(272) as follows:

**282—19.5(272) Renewal.** The authorization may be renewed upon application, ~~\$25~~ \$50 renewal fee, and verification of successful completion of five planned renewal activities/courses related to athletic coaching approved in accordance with guidelines approved by the board of educational examiners. *Beginning on or after July 1, 2000, each applicant for the renewal of a coaching authorization shall have completed one renewal activity/course relating to the knowledge and understanding of professional ethics and legal responsibilities of coaches. A one-year extension of the holder's coaching authorization will be issued if all requirements for the renewal of the coaching authorization have not been met. This extension is not renewable. The cost of the one-year extension shall be \$10.*

[Filed 3/19/99, effective 7/1/00]

[Published 4/7/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/99.

**ARC 8900A****ENVIRONMENTAL PROTECTION COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455A.6(6) and 455B.173(13), the Environmental Protection Commission hereby amends Chapter 22, "Controlling Pollution," Chapter 23, "Emission Standards for Contaminants," Chapter 65, "Animal Feeding Operations," Chapter 68, "Commercial Septic Tank Cleaners," Chapter 70, "Scope of Title—Definitions—Forms—Rules of Practice," and Chapter 72, "Criteria for Approval," Iowa Administrative Code.

Notice of Intended Action was published in the December 30, 1998, Iowa Administrative Bulletin as **ARC 8595A**. Four public hearings were held and comments were accepted through January 22, 1999. A number of comments were received.

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These amendments update the rules and implement the changes required by the 1998 Iowa Acts, chapter 1209, that regulate animal feeding operations in Iowa.

1998 Iowa Acts, chapter 1209 (also known as House File 2494), also required the Department to consult with representatives of the Animal Agriculture Consulting Organization (AACO), formed by previous legislation, in the development of these rules. The Department met with AACO on numerous occasions prior to the Notice of Intended Action and consulted with AACO following the hearings in the development of the department's recommendations to the Environmental Protection Commission.

Item 5 includes revisions and new provisions in Chapter 65. Due to the extensive nature of amendments to Chapter 65, this filing includes the entire chapter.

A responsiveness summary was prepared addressing by subject area all comments received. This document is available from the Iowa Department of Natural Resources and has been filed with the Administrative Rules Coordinator.

The adopted rules differ slightly from the amendments published in the Notice of Intended Action. The responsiveness summary discusses variations from the Notice of Intended Action and includes the specific wording. In addition, the Environmental Protection Commission adopted several changes from the recommendations in the responsiveness summary at its March 15, 1999, meeting.

The Environmental Protection Commission adopted these amendments at its March 15, 1999, meeting.

These amendments are intended to implement Iowa Code chapter 455J; Iowa Code sections 455B.104, 455B.110, 455B.134(3)"e," 455B.161 to 455B.165, 455B.171 to 455B.188, 455B.191, and 455B.200 to 455B.206; and 1998 Iowa Acts, chapter 1209, sections 41 and 44 to 47.

These amendments will become effective on May 12, 1999.

The following amendments are adopted.

ITEM 1. Amend subrule 22.1(3), introductory paragraph, as follows:

22.1(3) Construction permits. The owner or operator of a new or modified stationary source shall apply for a construction permit unless a conditional permit is required by Iowa Code chapter 455B or subrule 22.1(4) or requested by the applicant in lieu of a construction permit. ~~The owner or operator of any anaerobic lagoon shall apply for a construction permit.~~ Two copies of the a construction permit application for a new or modified stationary source shall be presented or mailed to Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322. ~~The owner or operator of any new or modified industrial anaerobic lagoon or a new or modified anaerobic lagoon for an animal feeding operation other than a small operation as defined in rule 567—65.1(455B) shall apply for a construction permit. Two copies of a construction permit application for an anaerobic lagoon shall be presented or mailed to Department of Natural Resources, Water Quality Bureau, Henry A. Wallace Building, 502 East Ninth Street, Des Moines, Iowa 50319.~~

ITEM 2. Amend subrule 22.1(3), paragraph "c," subparagraph (3), as follows:

(3) In the case of an animal feeding operation, the animal capacity, the type of animal, the method of feeding, and the methods of waste collection and disposal information required in rule 567—65.15(455B);

ITEM 3. Amend subrule 22.3(2) as follows:

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(1) or 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 rule 567—65.15(455B).*

ITEM 4. Rescind subrule 23.5(1) and adopt the following new subrule in lieu thereof:

23.5(1) Applications for construction permits for animal feeding operations using anaerobic lagoons shall meet the requirements of rules 567—65.9(455B) and 65.15(455B) to 65.17(455B).

ITEM 5. Amend 567—Chapter 65, with the exception of Appendix A, as follows:

567—65.1(455B) Definitions. In addition to the definitions in Iowa Code sections 455B.101 and 455B.171 and Iowa Code section 455B.161, the following definitions shall apply to this chapter:

"Abandoned animal feeding operation structure" means the animal feeding operation structure has been razed, removed from the site, filled in with earth, or converted to uses other than an animal feeding operation structure so that it cannot be put back into service without significant construction activity.

"Adjacent" means, for the purpose of determining separation distance requirements pursuant to 65.11(455B), that two or more animal confinement feeding operations are adjacent if they have animal feeding operation structures that are separated at their closest points by distances not greater less than the following:

1. 1,250 feet for confinement feeding operations having ~~an~~ with animal weight capacity of less than 1,250,000 pounds for animals other than bovine, or less than 4,000,000 pounds for bovine.

2. 1,500 feet for confinement feeding operations having ~~an~~ with animal weight capacity of ~~from 1,250,000 or more~~ pounds for animals other than bovine, but to less than 2,000,000 pounds for animals other than animals kept in a swine farrow-to-finish operation or bovine; kept in a confinement feeding operation, from 1,250,000 pounds to or less than 2,500,000 pounds for a swine in a farrow-to-finish operation; or 4,000,000 ~~or more~~ pounds but to less than 6,000,000 pounds for bovine.

3. 2,500 feet for confinement feeding operations having ~~an~~ with animal weight capacity of 2,000,000 or more pounds for animals other than animals kept in a swine farrow-to-finish operation or bovine kept in a confinement feeding operation; 2,500,000 or more pounds for a swine in a farrow-to-finish operation; or 6,000,000 or more pounds for bovine.

4. These distances shall only be used to determine that two or more animal confinement feeding operations are adjacent if the animal feeding operation structure is constructed after March 20, 1996.

5. To determine if two or more animal confinement feeding operations are adjacent, the animal weight capacity of each individual operation shall be used. If two or more animal confinement feeding operations are not in the same animal weight capacity category, the greater animal weight capacity shall be used to determine the separation distance. ~~The distance shall be measured from the closest points of the two animal feeding operations.~~

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

*"Adjacent" means, for the purpose of determining whether a permit is required pursuant to 65.7(455B), that two or more confinement feeding operations are adjacent if they have animal feeding operation structures that are separated at their closest points by less than the following:*

1. 1,250 feet for confinement feeding operations with combined animal weight capacity less than 625,000 pounds for animals other than bovine, or less than 1,600,000 pounds for bovine.

2. 2,500 feet for confinement feeding operations with combined animal weight capacity of 625,000 or more pounds for animals other than bovine, or 1,600,000 or more pounds for bovine.

3. These distances shall only be used to determine that two or more confinement feeding operations are adjacent if the animal feeding operation structure is constructed or expanded on or after May 21, 1998.

*"Aerobic structure" means an animal feeding operation structure other than an egg washwater storage structure which employs 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.*

*"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, boring, augering, jetting, washing, or coring 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.*

*"Anaerobic lagoon" means an impoundment used in conjunction with an animal feeding operation, if the primary function of the impoundment is to store and stabilize organic wastes, the impoundment is designed to receive wastes on a regular basis, and the impoundment's design waste loading rates provide that the predominant biological activity is anaerobic. An anaerobic lagoon does not include any of the following:*

1. A confinement feeding operation structure.

2. A runoff control basin which collects and stores only precipitation-induced runoff from an animal feeding operation in which animals are confined to areas which are unroofed or partially roofed and in which no crop, vegetation, or forage growth or residue cover is maintained during the period in which animals are confined in the operation.

3. An anaerobic treatment system which includes collection and treatment facilities for all off gases.

*"Animal" means a domesticated animal belonging to the bovine, porcine, ovine, caprine, equine, or avian species.*

*"Animal capacity" means the maximum number of animals which the owner or operator will confine in an animal feeding operation at any one time. 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 animal feeding operation structure."*

*"Animal feeding operation" 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. An animal feeding operation does not include a livestock market. Open feedlots and confinement feeding operations are considered to be separate animal feeding operations.*

1. For purposes of water quality regulation, Iowa Code section 455B.171 provides that two or more animal feeding operations under common ownership or management are deemed to be a single animal feeding operation if they are adjacent or utilize a common area or system for manure disposal. For purposes of the separation distances in Iowa Code section 455B.162, Iowa Code section 455B.161 provides that two or more animal feeding operations under common ownership or management are deemed to be a single animal feeding operation if they are adjacent or utilize a common system for manure storage. The distinction is due to regulation of animal feeding operations for water quality purposes under the federal Clean Water Act. The Code of Federal Regulations at 40 CFR §122.23 (1995) sets out the requirements for an animal feeding operation and requires that two or more animal feeding operations under common ownership be considered a single operation if they adjoin each other or if they use a common area or system for manure disposal. However, this federal regulation does not control regulation of animal feeding operations for the purposes of the separation distances in Iowa Code section 455B.162, and therefore the definition is not required by federal law to include common areas for manure disposal.

2. To determine if two or more animal feeding operations are deemed to be one animal feeding operation, the first test is whether the animal feeding operations are under common ownership or management. If they are not under common ownership or management, they are not one animal feeding operation. For purposes of water quality regulation, the second test is whether the two animal feeding operations 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 animal feeding operation. For purposes of the separation distances in Iowa Code section 455B.162, the second test is whether the two animal feeding operations 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 animal feeding operation.

*"Animal feeding operation structure" means an anaerobic lagoon, formed manure storage structure, egg washwater storage structure, earthen manure storage basin, or confinement building.*

*"Animal unit" means a unit of measurement used to determine the animal capacity of an animal feeding operation, based upon the product of multiplying the number of animals in each species by the following:*

1. Slaughter and feeder cattle	1.0
2. Mature dairy cattle	1.4
3. Butcher and breeding swine, over 55 pounds	0.4
4. Swine between 15 and 55 pounds	0.1
5. Sheep or lambs	0.1
6. Horses	2.0
7. Turkeys	0.018
8. Broiler or layer chickens	0.01

*"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*



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*weight capacity* means the product of multiplying the maximum number of animals which the owner or operator confines in an animal feeding operation at any one time animal capacity by the average weight during a production cycle. For operations with more than one species, the animal weight capacity is determined for each species and is then divided by the applicable construction permit requirement threshold for that species. The resulting figures for each species in the animal feeding operation should then be totaled, and if the total is not greater than 1.0 (100%), the applicable construction permit requirement threshold is not met and the operation would not need a construction permit of the operation is the sum of the animal weight capacities for all species.

EXAMPLE 1. Bill wants to construct an animal a confinement feeding operation with two confinement buildings and an earthen manure storage basin. The capacity of each building will be 900 market hogs. The hogs enter the building at 40 pounds and leave at 250 pounds. The average weight during the production cycle is then 145 pounds for that animal feeding this operation. The animal weight capacity of the operation is 145 pounds multiplied by 1800 for a total of 261,000 pounds.

EXAMPLE 2. Howard is planning to build an animal a confinement feeding operation with eight confinement buildings and an egg washwater storage lagoon. The capacity of each building will be 125,000 laying hens. The hens enter the building at around 2.5 pounds and leave at around 3.5 pounds. The average weight during the production cycle for these laying hens is 3.0 pounds. Manure will be handled in dry form. The animal weight capacity of the operation is 3.0 pounds multiplied by 1,000,000 for a total of 3,000,000 pounds.

EXAMPLE 3. Carol has an animal feeding operation with four confinement buildings with below floor formed concrete manure storage tanks and one open feedlot. One confinement building is a farrowing building with a capacity of 72 sows. One confinement building is a nursery building with a capacity of 1,450 pigs. The open feedlot contains 425 sows. Two of the confinement buildings are finishing buildings with a capacity of 1,250 market hogs. The farrowing building contains 72 sows at an average weight of 400 pounds for an animal weight capacity of 28,800 pounds. The nursery building contains 1,450 pigs with an average weight over the production cycle of 25 pounds for an animal weight capacity of 36,250 pounds. The two finishing building contains buildings contain 2,500 market hogs (combined) with an average weight over the production cycle of 150 pounds for an animal weight capacity of 375,000 pounds. The open feedlot contains 425 sows with an average weight of 400 pounds for an animal weight capacity of 170,000 pounds. The confinement feeding operation has an total animal weight capacity of the confinement feeding operation is 440,050 pounds. The open feedlot has an animal weight capacity of 170,000 pounds. The weights of the animals in open lots are not included in the calculation of the animal weight capacity of the confinement feeding operation.

"Applicant" means the person applying for a construction or operation permit for an animal feeding operation. The applicant shall be the owner or owners of the animal feeding operation.

"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 or 566A. A cemetery does not include a pioneer

cemetery where there have been six or fewer burials in the preceding fifty years.

"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 applicator" means a person who engages in the business of and charges a fee for applying manure on the land of another person.

"Common management" means significant control by a person of the management of the day-to-day operations of each of two or more animal feeding operations.

"Common ownership" means the ownership of an animal feeding operation as a sole proprietor, or a majority ownership interest held by a person, in each of two or more animal 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.

"Confinement building" means a building used in conjunction with a confinement feeding operation to house animals.

"Confinement feeding operation" means an animal feeding operation in which animals are confined to areas which are totally roofed.

"Confinement feeding operation structure" means a formed manure storage structure, egg washwater storage structure, earthen manure storage basin, or confinement building. A confinement feeding operation structure does not include an anaerobic lagoon.

"Confinement site" means a site where there is located a manure storage structure which is part of a confinement feeding operation, other than a small animal feeding operation.

"Confinement site manure applicator" means a person who applies manure stored at a confinement site other than a commercial manure applicator.

"Construction permit" means a written approval of the department to construct an animal feeding operation structure.

"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 animal feeding operation 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. Covered Cover shall include an organic or inorganic material which current scientific research shows reduces detectable

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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.

"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, or a cistern, abandoned well, unplugged agricultural drainage well, agricultural drainage well surface tile inlet, drinking water well, lake, or a farm pond or privately owned lake as defined in Iowa Code section 462A.2. A designated area does not include a terrace tile inlet or surface tile inlet other than an agricultural drainage well surface tile inlet.

"Discontinued animal feeding operation" means an animal feeding operation whose structures have been abandoned or whose use has been discontinued as evidenced by the removal of all animals and the owner or operator does not intend to resume its use for a period of 12 months or more has no immediate plans to repopulate.

"Discontinued animal feeding operation structure" means an animal feeding operation 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.

"Earthen manure storage basin" means an earthen cavity, either covered or uncovered, which, 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 which, on a regular basis, receives manure discharges from a confinement animal feeding operation if accumulated manure from the basin is completely removed at least twice each year and which 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 educational 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 confinement feeding operation initiated by the department or the attorney general to enforce the provisions of Iowa Code chapter 455B or rules adopted pursuant to the chapter. An enforcement action begins when the department issues an administrative order to the person, when the department notifies a person in writing of intent to recommend referral or the commission refers the action to the attorney general pursuant to Iowa Code section 455B.141 or 455B.191, or when the attorney general institutes proceedings pursuant to section 455B.112, whichever occurs first. An enforcement action is pending until final resolution of the action by satisfaction of an administrative order; rescission or other final resolution

of an administrative order or satisfaction of a court order, for which all administrative and judicial appeal rights are exhausted, expired, or waived.

"Formed manure storage structure" means a structure, either covered or uncovered, used to store manure from a confinement feeding operation, 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 manure storage structure 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 top of the lowest point of animal feeding operation structure's berm or the lowest external outlet from a formed manure storage structure.

"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 manure storage indemnity fund created in Iowa Code section 455J.2.

"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.

"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.

"Low-pressure irrigation system" means spray irrigation equipment which discharges manure from a maximum height of 9 feet in a downward direction, and which utilizes spray nozzles which discharge manure at a maximum pressure of 25 pounds per square inch.

"Major water source" means a lake, reservoir, river or stream located within the territorial limits of the state, any marginal river area adjacent to the state which can support 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 the end of this chapter.

"Man-made manure drainage system" means a drainage ditch, flushing system, or other drainage device which was

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constructed by ~~man~~ *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.

"Manure storage structure" means an aerobic structure, anaerobic lagoon, earthen manure storage basin, or formed manure storage structure *used to store manure as a part of a confinement feeding operation*. Manure storage structure does not include an egg washwater storage structure.

"New animal feeding operation" means an animal feeding operation whose construction was begun after July 22, 1987, or whose operation is resumed after having been discontinued for a period of 12 months or more.

"Nonpublic water supply" means a water system that has fewer than 15 service connections or serves fewer than 25 people, or one that has more than 15 service connections or serves more than 25 people for less than 60 days a year.

"Open feedlot" means an unroofed or partially roofed animal feeding operation in which no crop, vegetation, or forage growth or residue cover is maintained during the period that animals are confined in the operation.

"Operation permit" means a written permit of the department authorizing the operation of a manure control facility or part of one.

"Owner" means *the person who has title to the property where the animal feeding operation is located or the person who has title to the animal feeding operation structures. It does not include a person who has a lease to use the land where the animal feeding operation is located or to use the animal feeding operation structures.*

"Permanent vegetation cover" means land which is maintained in perennial vegetative cover consisting of grasses, legumes, or both, and includes, but is not limited to, pastures, grasslands or forages.

"Public use area" means that portion of land owned by the United States, the state, or a political subdivision with facilities which 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, shelter houses, playground equipment, lakes as listed in Table 2 at the end of this chapter, and swimming beaches. It does not include a highway, road right-of-way, *cemetery*, 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 which are used primarily in connection with such system. A public water supply system is either a "community water system" or a "noncommunity water system."

"Qualified operation" means *a confinement feeding operation constructed or expanded under a construction permit issued on or after May 31, 1995, and which has an animal weight capacity of 2,000,000 or more pounds for animals other than animals kept in a swine farrow-to-finish op-*

*eration or bovine kept in a confinement feeding operation; a swine farrow-to-finish operation having an animal weight capacity of 2,500,000 or more pounds; or a confinement feeding operation having an animal weight capacity of 8,000,000 or more pounds for bovine.*

"Release" means *an actual, imminent or probable discharge of manure from an animal feeding operation structure to surface water, groundwater, drainage tile line or intake, or to a designated area resulting from storing, handling, transporting or land-applying manure.*

"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 animal feeding operation, which is *meets all of the following criteria at the location of the intended residence:*

1. ~~used~~ *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 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.*

~~In the absence of evidence to the contrary, a house or building that has not been occupied by humans for more than six months in the last two years is presumed not to be a residence. A residence must exist at the time an applicant submits an application for a construction permit to the department or at the time construction of the animal feeding operation structure begins if a construction permit is not required.~~

"Restricted spray irrigation equipment" means *spray irrigation equipment which disperses manure through an orifice at a rate of 80 pounds per square inch or more.*

"Runoff control basin" means an impoundment designed and operated to collect and store runoff from an open feedlot.

"School" means *an educational institution.*

"Secondary containment barrier" means *a structure used to retain accidental manure overflow from a manure storage structure.*

"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.

"Small animal feeding operation" means an animal feeding operation which has an animal weight capacity of

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200,000 pounds or less for animals other than bovine, or 400,000 pounds or less for bovine.

"Solids settling facility" means a basin, terrace, diversion, or other structure which is designed and operated to remove settleable solids from open feedlot runoff.

"Spray irrigation equipment" means mechanical equipment used for the aerial application of manure, *if the equipment which receives manure from the a manure storage structure during application via hoses or piping a pipe or hose connected to the structure, and which includes a type of equipment which may also be customarily used for artificial aerial application of water to aid the growing of general farm crops.*

"Swine farrow-to-finish operation" means a confinement feeding operation in which porcine are produced and in which a primary portion of the phases of the production cycle ~~are~~ 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.*

"Thoroughfare" means a road, street, bridge or highway open to the public and constructed or maintained by the state or a political subdivision.

"Unformed manure storage structure" means a covered or uncovered animal feeding operation structure in which manure is stored, other than a formed manure storage structure or egg washwater storage structure, which is an anaerobic lagoon, earthen aerobic structure or earthen manure storage basin.

"Watercourse" means any lake, river, creek, ditch, or other body of water or channel having definite banks and bed with water flow or the occurrence of water, except lakes or ponds without outlet to which only one landowner is riparian. Watercourse does not include water flow or the occurrence of water in a terrace, grassed waterway, solids settling basin, road ditch, areas subject to rill erosion, or other similar areas.

"Wetted perimeter" means the outside edge of land where the direct discharge of manure occurs from spray irrigation equipment.

**567—65.2(455B) Minimum manure control requirements and guidelines reporting of releases.** Water pollution control facilities shall be constructed and maintained to meet the minimum manure control requirements stated in subrules 65.2(1) to 65.2(10)(8) of this rule. ~~Subrule 65.2(11) of this rule provides guidelines in addition to these requirements. A release shall be reported to the department as provided in subrule 65.2(9) of this rule.~~

65.2(1) The minimum level of manure control for any animal feeding operation open feedlot shall be the removal of settleable solids from the manure prior to discharge into a water of the state.

a. Settleable solids may be removed by use of solids-settling basins, terraces, diversions, or other solid-removal methods. Construction of solids-settling facilities shall not be required where existing site conditions provide adequate settleable solids removal.

b. Removal of settleable manure solids shall be considered adequate when the velocity of manure flows has been reduced to less than 0.5 foot per second for a minimum of five minutes. Sufficient capacity shall be provided in the solids-settling facilities to store settled solids between periods of manure application and to provide required flow-

velocity reduction for manure flow volumes resulting from precipitation events of less intensity than the ten-year, one-hour frequency event. Solids-settling facilities receiving open feedlot runoff shall provide a minimum of 1 square foot of surface area for each 8 cubic feet of runoff per hour resulting from the ten-year, one-hour frequency-precipitation event.

65.2(2) The minimum level of manure control for an open feedlot covered by the operation-permit application requirements of 65.2(4)(1) or 65.2(4)(2) shall be retention of all manure flows from the feedlot areas and all other manure-contributing areas resulting from the 25-year, 24-hour precipitation event. Open feedlots which design, construct, and operate waste manure control facilities in accordance with the requirements of any of the manure control alternatives listed in Appendix A of these rules shall be considered to be in compliance with this rule, unless discharges from the manure control facility cause a violation of state water quality standards. If water quality standards violations occur, the department may impose additional manure control requirements upon the feedlot, as specified in subrule 65.2(4).

Control of manure from open feedlots may be accomplished through use of manure-retention basins, terraces, or other runoff control methods. Diversion of uncontaminated surface drainage prior to contact with feedlot or manure-storage areas may be required. Manure-solids-settling facilities shall precede the manure-retention basins or terraces.

65.2(3) 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. 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 confinement feeding operation that is required to submit a manure management plan to the department under rule 65.16(455B) or 65.18(455B) shall not apply manure in excess of the nitrogen use levels necessary to obtain optimum crop yields.~~

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. 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 earthen manure storage structures (anaerobic lagoons, earthen manure storage basins, or earthen waste slurry storage basins) 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 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.

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65.2(4) If site topography, operation procedures, experience, or other factors indicate that a greater or lesser level of manure control than that specified in subrule 65.2(1), 65.2(2), or 65.2(3) is required to provide an adequate level of water pollution control for a specific animal feeding operation, the department may establish different minimum manure control requirements for that operation.

65.2(5) In lieu of using the manure control methods specified in subrule 65.2(1), 65.2(2), or 65.2(3), 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.

65.2(6) No direct discharge shall be allowed from an animal feeding operation into a publicly owned lake, a sinkhole, or an agricultural drainage well.

65.2(7) All manure removed from an animal feeding operation or its manure control facilities shall be land-applied in a manner which will not cause surface or groundwater pollution. Application in accordance with the provisions of state law, and the rules and guidelines in this chapter, shall be deemed as compliance with this requirement.

65.2(8) As soon as practical but not later than six months after the use of an animal feeding operation is discontinued, all manure shall be removed from the discontinued animal feeding operation and its manure control facilities and be land-applied.

65.2(9) ~~A person shall not apply manure on cropland within 200 feet from a designated area, unless one of the following applies:~~

~~a. The manure is applied by injection or incorporation within 24 hours following application.~~

~~b. An area of permanent vegetation cover exists for 50 feet surrounding the designated area and that area is not subject to manure application.~~

65.2(9) A release, as defined in rule 65.1(455B), shall be reported to the department as provided in this subrule. This subrule does not apply to land application of manure in compliance with these rules, or to precipitation or snowmelt-induced runoff from open feedlots which complies with the minimum control requirements of these rules.

a. Notification. A person storing, handling, transporting, or land-applying manure from an animal feeding operation 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, as follows:

(1) During normal working hours, 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. It is preferable that the appropriate environmental protection division field office of the department be contacted by telephone.

(2) During other times, or if the field office cannot be reached, the department may be contacted at (515) 281-8694, and the local police department or the office of the sheriff of the affected county shall be contacted. A sheriff or police chief who has been notified of a release shall immediately notify the department. Reports made pursuant to this rule shall be confirmed in writing as provided in 65.2(9) "c."

b. Verbal report. The verbal report of such a release should provide information on as many items listed in 65.2(9) "c" as available information will allow.

c. 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:

(1) The approximate location of alleged release (including at a minimum the quarter-quarter section, township and county in which the release occurred or is discovered).

(2) The time and date of onset of the alleged release, if known, and the time and date of the discovery of the alleged release.

(3) The time and date of the verbal report to the department of the release.

(4) The name, mailing address and telephone number of the person reporting the release.

(5) The name, mailing address and telephone number of any other person with knowledge of the event who can be contacted for further information.

(6) The source of the manure allegedly released (e.g., formed storage, earthen storage, open feedlot retention basin).

(7) The estimated or known volume of manure allegedly released.

(8) The weather conditions at the time of the onset or discovery of the release.

(9) If known, the circumstances under which the alleged release occurred or exists (e.g., overflow, storage structure breach, equipment malfunction or breakdown, land runoff).

(10) The approximate location of the nearest stream or other water body which 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 which could be a direct conveyance to a surface water or groundwater.

(11) A description of any containment or remedial measures taken to minimize the impact of the release.

(12) Any information that may assist the department in evaluating the release.

d. 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.

e. A waiver from the notification requirement of paragraph "a" of this subrule may be granted by the department for a release to a specific drainage tile line or intake if sufficient information is provided to demonstrate that the drainage tile line or intake will not result in a discharge to a water of the state.

567—65.3(455B) Requirements and recommended practices for land application of manure.

65.3(1) Application rate based on crop nitrogen use. A confinement feeding operation that is required to submit a manure management plan to the department under rule 65.16(455B) shall not apply manure in excess of the nitrogen use levels necessary to obtain optimum crop yields. Calculations to determine the maximum manure application rate allowed under this subrule shall be performed pursuant to rule 65.17(455B).

65.3(2) General requirements for application rates and practices.

a. For confinement feeding operations required to submit a manure management plan to the department under rule 65.16(455B), application rates and practices shall be determined pursuant to rule 65.17(455B).

65.2(10) ~~A person shall not apply manure by spray irrigation equipment, except as provided in the following paragraphs:~~

~~a. Minimum manure control. Manure shall be applied by spray irrigation equipment from an animal feeding operation in a manner which will not cause surface water or groundwater pollution. Application in accordance with the provisions of state law, and the rules and guidelines in this~~

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~~chapter, shall be deemed as compliance with this requirement.~~

b. ~~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 c. ~~Application rate.~~ The spray 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.

d. ~~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.~~

65.3(3) ~~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 455B.162. 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 65.3(3) "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 benefiting 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 small animal feeding operation.~~

(4) ~~The liquid manure is applied by low-pressure spray irrigation equipment pursuant to paragraph 65.3(3) "d."~~

c. ~~Separation distance for spray irrigation from property lines 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 which 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. Separation distance from structures.~~

(1) ~~A separation distance shall apply for application of manure by spray irrigation equipment between the manufacturer's specification for the wetted perimeter and the closest point of a residence, commercial enterprise, bona fide religious institution, educational institution or public use area, as follows:~~

1. ~~For manure from an earthen waste slurry storage basin, earthen manure storage basin, or formed manure storage structure, the minimum separation distance shall be 1,000 feet.~~

2. ~~For manure from the first or second cells of an anaerobic lagoon, the minimum separation distance shall be 750 feet.~~

3. ~~For manure from the third cell of an anaerobic lagoon or a runoff control basin, the minimum separation distance shall be 500 feet.~~

4. ~~For manure from an aerobic structure, the separation distance shall be 100 feet.~~

(2) ~~If the manure in 65.2(10) "d" (1) "1" and "2" is incorporated into the soil within 24 hours following completion of application, the minimum separation distance shall be 500 feet between the manufacturer's specification for the wetted perimeter and the closest point of a residence, a commercial enterprise, bona fide religious institution, educational institution or public use area.~~

(3) ~~If the manure in 65.2(10) "d" (1) "1" and "2" is applied near the residence, commercial enterprise, bona fide religious institution, educational institution or public use area from which separation is required, once per calendar year for a period of less than four days during a consecutive seven-day period, the minimum separation distance shall be 500 feet between the manufacturer's specification for the wetted perimeter and the closest point of a residence, a commercial enterprise, bona fide religious institution, educational institution or public use area.~~

(4) ~~A separation distance requirement in this subrule for the spray irrigation of manure does not apply if the residence, educational institution, commercial enterprise, or bona fide religious institution was constructed, or if the public use area was established or the public use area boundaries were expanded, after the date that the animal feeding operation began using spray irrigation equipment as a method for manure application on the cropland subject to a separation distance in 65.2(10) "d" (1).~~

(5) ~~Spray irrigation equipment with a center pivot system using hoses which discharge the manure at a maximum height of 9 feet and in a downward direction, and spray nozzles with a pressure of 25 pounds per square inch or less shall~~

d. ~~Distance from structures for low-pressure irrigation systems. Low-pressure irrigation systems shall have a minimum separation distance of 250 feet between the manufacturer's specification for the actual wetted perimeter and the closest point of a residence, a commercial enterprise, bona fide religious institution, educational institution business, church, school or public use area.~~

e. ~~Written waiver from minimum separation distances. A separation distance requirement in this subrule for spray irrigation of manure does not apply if a written waiver is executed by the property owner benefiting from the separation distance. 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.~~

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~~The filed waiver shall preclude enforcement of the separation distance requirement for spray irrigation of manure that is waived.~~

f. *e.* Variances. Variances to *paragraph "c"* of this subrule may be granted by the department if sufficient and proposed alternative information is provided to substantiate the need and propriety for such action. Variances may be granted on a temporary or permanent basis. The request for a variance 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.

g. *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 cropland within 200 feet from a designated area, unless one of the following applies:

(1) The manure is applied by injection or by surface application with incorporation occurring within 24 hours after application.

(2) An area of permanent vegetation cover exists for 50 feet surrounding the designated area and that area is not subject to manure application.

~~65.2(11)~~ 65.3(4) *Recommended practices.* Except as required by rule in this chapter, the following practices are recommended:

a. Nitrogen application rates. To minimize the potential for leaching to groundwater or runoff to surface waters, nitrogen application from all sources, including manure, legumes, and commercial fertilizers, should not be in excess of the nitrogen use levels necessary to obtain optimum crop yields for the crop being grown.

b. Phosphorous application rates. To minimize phosphorous movement to surface waters, manure should be applied at rates equivalent to crop uptake when soil tests indicate adequate phosphorous levels. Phosphorous application more than crop removal can be used to obtain maximum crop production when soil tests indicate very low or low phosphorous levels.

c. Manure application on frozen or snow-covered cropland. Manure application on frozen or snow-covered cropland should be avoided where possible. If manure is spread on frozen or snow-covered cropland, application should be limited to areas on which:

(1) Land slopes are 4 percent or less, or

(2) Adequate erosion control practices exist. Adequate erosion control practices may include such practices as terraces, conservation tillage, cover crops, contour farming or similar practices.

d. Manure application on cropland subject to flooding. Manure application on cropland subject to flooding more than once every ten years should be *injected during application* or incorporated into the soil after application. Manure should not be spread on such areas during frozen or snow-covered conditions.

e. Manure application on land adjacent to water bodies. Unless adequate erosion controls exist on the land and manure is injected or incorporated into the soil, manure application should not be done on land areas located within 200 feet of and draining into a stream or surface intake for a tile line or other buried conduit. No manure should be spread on waterways except for the purpose of establishing seedings.

f. Manure application on steeply sloping cropland. Manure application on tilled cropland with greater than 10 percent slopes should be limited to areas where adequate soil erosion control practices exist. Injection or soil incorporation of manure is recommended where consistent with the established soil erosion control practices.

**567—65.34(455B) Operation permit required.** An animal feeding operation shall apply for and obtain an operation permit if any of the following conditions exist:

65.34(1) The capacity of an open feedlot exceeds any of the following:

a. 1,000 beef cattle

b. 700 dairy cattle

c. 2,500 butcher and breeding swine (over 55 lbs.)

d. 10,000 sheep or lambs

e. 55,000 turkeys

f. 500 horses

g. 1,000 animal units

65.34(2) Manure from the operation is discharged into a water of the state through a man-made manure drainage system or is discharged directly into a water of the state which originates outside of and traverses the operation, and the capacity of the operation exceeds:

a. 300 beef cattle

b. 200 dairy cattle

c. 750 butcher and breeding swine (over 55 lbs.)

d. 3,000 sheep or lambs

e. 16,500 turkeys

f. 30,000 broiler or layer chickens

g. 150 horses

h. 300 animal units

65.34(3) The department notifies the operation in writing that, in accordance with the departmental evaluation provisions of 65.4-5(2)"a," application for an operation permit is required.

**567—65.4-5(455B) Departmental evaluation.**

65.4-5(1) The department may evaluate any animal feeding operation 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 65.2(1), 65.2(2), or 65.2(3);

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.

65.4-5(2) If departmental evaluation determines that any of the conditions listed in subrule 65.4-5(1) exist, the operation shall:

a. Apply for an operation permit if the operation receives a written notification from the department that it is required to apply for an operation permit. However, no operation with an animal capacity less than that specified in subrule 65.34(2) shall be required to apply for a permit unless manure from the operation is discharged into a water of the state through a man-made manure drainage system or is discharged into a water of the state which traverses the operation.

b. 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 paragraph shall apply to all permitted and unpermitted animal feeding operations, regardless of animal capacity.

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**567—65.56(455B) Operation permits.**

**65.56(1)** Existing animal feeding operations holding an operation permit. Animal feeding operations which hold a valid operation permit issued prior to July 22, 1987, are not required to reapply for an operation permit. However, the operations are required to apply for permit renewal in accordance with subrule 65.56(10).

**65.56(2)** Existing animal feeding operations not holding an operation permit. Animal feeding operations in existence on July 22, 1987, which are covered by the operation-permit provisions of subrule 65.34(1) or 65.34(2) but have not obtained a permit, shall apply for an operation permit prior to January 22, 1988. Once application has been made, the animal feeding operation is authorized to continue to operate without an operation permit until the application has either been approved or disapproved by the department.

**65.56(3)** Expansion of existing animal feeding operations. A person intending to expand an existing animal feeding operation which, upon completion of the expansion, will be covered by the operation-permit provisions of subrule 65.34(1) or 65.34(2) shall apply for an operation permit at least 180 days prior to the date operation of the expanded facility is scheduled. Operation of the expanded portion of the facility shall not begin until an operation permit has been obtained.

**65.56(4)** New animal feeding operations. A person intending to begin a new animal feeding operation which, upon completion, will be covered by the operation-permit provisions of subrule 65.34(1) or 65.34(2) shall apply for an operation permit at least 180 days prior to the date operation of the new animal feeding facility is scheduled. Operation of the new facility shall not begin until an operation permit has been obtained.

**65.56(5)** Permits required as a result of departmental evaluation. An animal feeding operation which is required to apply for an operation permit as a result of departmental evaluation (in accordance with the provisions of subrule 65.4-5(2)"a") shall apply for an operation permit within 90 days of receiving written notification of the need to obtain a permit. Once application has been made, the animal feeding operation is authorized to continue to operate without a permit until the application has either been approved or disapproved by the department.

**65.56(6)** Voluntary operation permit applications. Applications for operation permits received from animal feeding operations not meeting the operation-permit requirements of subrules 65.34(1) to 65.34(3) will be acknowledged by the department and returned to the applicant. Operation permits will not be issued for facilities not meeting the permit requirements of subrules 65.34(1) to 65.34(3).

**65.56(7)** Application forms. An application for an operation permit shall be made on a form provided by the department. The application shall be complete and shall contain detailed information as deemed necessary by the department. The application shall be signed by the person who is legally responsible for the animal feeding operation and its associated manure control system.

**65.56(8)** Compliance schedule. When necessary to comply with a present standard or a standard which must be met at a future date, an operation 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 subrule 65.67(1).

**65.56(9)** Permit conditions. Operation permits shall contain conditions considered necessary by the department to ensure compliance with all applicable rules of the depart-

ment, to ensure that the manure-control system is properly operated and maintained, to protect the public health and beneficial uses of state waters, and to prevent water pollution from manure storage or application operations. Self-monitoring and reporting requirements which may be imposed on animal feeding operations are specified in 567—subrule 63.5(1).

**65.56(10)** Permit renewal. An operation permit may be issued for any period of time not to exceed five years. An application for renewal of an operation 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 provisions of those rules of the department which apply to the facility at the time of renewal.

A permitted animal feeding operation which does not meet the operation-permit requirements of subrules 65.34(1) to 65.34(3) will be exempted from the need to retain that permit at the time of permit renewal, and the existing operation permit will not be renewed.

**65.56(11)** Permit modification, suspension or revocation. The department may modify, suspend, *refuse to renew* or revoke in whole or part any operation permit for cause. Cause for modification, suspension or revocation of a permit may include 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 submit the records and information that the department requires in order to ensure compliance with the operation and discharge conditions of the permit.
- e. *A determination by the department that the continued operation of a confinement feeding operation constitutes a clear, present and impending danger to public health or the environment.*

**567—65.67(455B) Construction permits.**

**65.67(1)** Animal feeding operations required to obtain a construction permit.

a. An animal feeding operation covered by the operation permit provisions of subrules 65.34(1) to 65.34(3) shall obtain a construction permit prior to constructing, installing, or modifying a manure control system for that operation *or reopening the operation if it was discontinued for 24 months or more.*

b. Except as provided in subrule 65.67(2), a confinement feeding operation beginning construction, installation or modifications after March 20, 1996, shall obtain a construction permit prior to beginning construction, installation of an animal feeding operation structure used in that operation or prior to beginning significant modifications in the volume or manner in which the manure is stored or *reopening the operation if it was discontinued for 24 months or more* if any of the following conditions exist:

- (1) The confinement feeding operation uses an aerobic structure, anaerobic lagoon or earthen manure storage basin.
- (2) The confinement feeding operation uses a formed manure storage structure and has an animal weight capacity of 625,000 pounds or more for animals other than bovine or 1,600,000 pounds or more for bovine.
- (3) The confinement feeding operation structure *which* provides for the storage of manure exclusively in a dry form and has an animal weight capacity of 1,250,000 pounds or more for animals other than bovine or 4,000,000 pounds or more for bovine.



## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

(4) The confinement feeding operation uses an egg wash-storage structure.

~~(5) The confinement feeding operation has less than the animal weight capacity required by subparagraphs (2) or (3) of this paragraph to obtain a construction permit, but a person with an interest in the confinement feeding operation is subject to a pending enforcement action, or is classified as a habitual violator under Iowa Code section 455B.191. This requirement shall apply while the enforcement action is pending or for five years after the date of the last violation committed by the 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.~~

(5) *The confinement feeding operation contains more than one species and the sum of the total animal weight capacity for each species divided by the permit threshold for that species is greater than 1.0 (100%).*

(6) *The confinement feeding operation is proposed for an increase in animal weight capacity which would otherwise require a construction permit, even though no physical changes or construction is necessary.*

65.67(2) Animal feeding operations not required to obtain a construction permit.

a. A construction permit shall not be required for an animal feeding operation structure used in conjunction with a small animal feeding operation.

b. *A construction permit shall not be required for an animal feeding operation structure related to research activities and experiments performed under the authority and regulations of a research college.*

65.67(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 section 455B.191.

c. *The department shall not issue a construction permit to expand or modify a confinement feeding operation for one year after completion of the last construction or modification at the operation, if a permit was not required for the last construction or modification. The department, upon good cause demonstrated by the applicant, shall grant a waiver to this rule.*

65.67(4) Plan review criteria. Review of plans and specifications shall be conducted to determine the potential of the proposed manure control system to achieve the level of manure control being required of the animal feeding operation. In conducting this review, applicable criteria contained in federal law, state law, these rules, natural resource conservation service design standards and specifications unless inconsistent with federal or state law or these rules, and 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.

65.67(5) Expiration of construction permits. The construction permit shall expire if construction, as defined in rule 65.78(455B), is not begun within one year of the date of issuance. The director may grant an extension of time to be-

gin 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.

65.7(6) *Revocation of construction permits. The department may revoke a construction permit or refuse to renew a permit expiring according to subrule 65.7(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.*

65.7(7) *Permit prior to construction. An applicant for a construction permit shall not begin construction at the location of a site planned for the construction of an animal feeding operation structure, including an aerobic structure, until the person has been granted a permit for the construction of the structure by the department.*

~~567—65.78(455B) Construction. An applicant for a construction permit shall not begin construction at the location of a site planned for the construction of an animal feeding operation structure, including an aerobic structure, until the person has been granted a permit for the construction of the structure by the department. For purposes of these rules:~~

65.78(1) *Construction of an animal feeding operation structure begins or an animal feeding operation structure is constructed when any of the following occur:*

a. Excavation for a proposed animal feeding operation structure, or excavation for footings for a proposed animal feeding operation structure.

b. Installation of forms for concrete for an animal feeding operation structure.

c. Installation of piping for movement of manure within or between animal feeding operation structures.

65.78(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 or compacting at the site.

d. Installation of temporary utility services.

65.8(3) *Prohibition on construction.*

a. *A person shall not construct or expand an animal feeding operation structure which 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 an animal feeding operation structure which is part of a confinement feeding operation 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 section 455B.191.*

c. *This rule shall not prohibit a person from completing the construction or expansion of an animal feeding operation structure, if either of the following applies:*

(1) *The person has an unexpired permit for the construction or expansion of the animal feeding operation structure.*

(2) *The person is not required to obtain a permit for the construction or expansion of the animal feeding operation structure.*

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

**567—65.89(455B) Construction permit application.**

**65.89(1) Confinement feeding operations.** 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. At the time the department receives a complete application, the department shall make a determination regarding the approval or denial of the permit within 60 days. However, the 60-day requirement shall not apply to an application if the applicant is not required to obtain a permit. A construction permit application for a confinement feeding operation shall include at least the following information:

a. The owner and the name of the confinement feeding operation, including mailing address and telephone number.

b. The contact person for the confinement feeding operation, including mailing address and telephone number.

c. The location of the confinement feeding operation.

d. Whether the application is for the expansion of an existing or the construction of a proposed confinement feeding operation.

e. 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.

f. For a manure storage structure in which manure is stored in a liquid or semiliquid form or for an egg washwater storage structure, an engineering report, construction plans and specifications, prepared by a licensed professional engineer or by Natural Resources Conservation Service personnel, that detail the proposed structures.

g. A report on soil borings ~~corings~~ in the area of the aerobic structure, anaerobic lagoon, egg washwater storage structure, or manure storage basin, as described in subrule ~~65.15(6)~~ 65.17(6), if an earthen lagoon, structure or basin is being constructed. ~~A minimum of three borings is required for structures of 1/2 acre or less and four borings or more for structures larger than 1/2 acre. For structures larger than four acres water surface area, one additional boring per acre is required for each acre above four acres. All borings shall be taken to a minimum of 10 feet below the bottom elevation of the proposed structure and one boring must be taken to 25 feet below the bottom.~~

h. Payment to the department of the indemnity fund fee as required in Iowa Code section 455J.3.

i. If the confinement feeding operation contains three or more animal feeding operation structures, a licensed professional engineer 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.

j. Information (e.g., maps, drawings, aerial photos) that clearly shows the proposed location of the animal feeding operation structures, any locations or objects from which a separation distance is required by Iowa Code sections 455B.162 and 455B.204 and that the structures will meet all applicable separation distances.

k. 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.

l. Documentation that a copy of the permit application and manure management plan has 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.

**65.89(2) Open feedlots.** An open feedlot required to obtain a construction permit in accordance with the provisions of 65.67(1)"a" shall apply for a construction permit at least 90 days before the date that construction, installation, or modification of the manure control system is scheduled to start.

a. Application forms. Application for a construction permit for an open feedlot shall be made on a form provided by the department. The application shall be complete and shall include detailed engineering plans as determined necessary by the department.

b. Plan requirements. Manure control system plans for an open feedlot shall be designed and submitted in conformance with Iowa Code chapter 542B.

**567—65.910(455B) County comment on participation in site inspections and the construction permit application review process.**

**65.910(1) Delivery of application to county.** The applicant for a construction permit for a confinement feeding operation or related animal feeding operation structure shall deliver in person or by certified mail a copy of the permit application and manure management plan to the county board of supervisors of the county where the confinement feeding operation is located or related animal feeding operation structure is proposed to be constructed. Receipt of the application and manure management plan by the county auditor is deemed receipt of the application and manure management plan by the county board of supervisors. Documentation of the delivery or mailing of the permit application and manure management plan shall be forwarded to the department. ~~A permit shall not be issued until 30 days after the application and manure management plan have been received by the county board of supervisors.~~

**65.910(2) County comment.** The county board of supervisors may ~~comment submit comments by the board and the public on the regarding~~ compliance of the construction permit application and manure management plan with the requirements in this chapter and Iowa Code chapter 455B for obtaining a construction permit. ~~Any comment received by the department within 14 calendar days after receipt of the application by the board of supervisors shall be considered in the issuance of the permit.~~

a. *The department shall consider and respond to comments submitted by the county board of supervisors regarding compliance by the applicant with the legal requirements for approving a construction permit as provided in this chapter, including rules adopted by the department pursuant to Iowa Code section 455B.200. The comments shall be delivered to the department within 30 days after receipt of the application by the county board of supervisors in order to be considered in the permit review process.*

b. 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 which benefits from a separation distance requirement as provided in Iowa Code section 455B.162 or 455B.204.*

(2) *The suitability of soils and the hydrology of the site where construction or expansion of a confinement feeding operation or related animal feeding operation structure is proposed.*

(3) *The availability of land for the application of manure originating from the confinement feeding operation.*

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(4) Whether the construction or expansion of a proposed animal feeding operation 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.

a. ~~The existence of a surface tile intake of an agricultural drainage well or known sinkhole that was not included in the permit application;~~

b. ~~The impact of the confinement feeding operation on the drainage in the area; and~~

c. ~~The existence of structures or areas from which a separation distance is required under Iowa Code sections 455B.162 and 455B.204.~~

65.10(3) *Inspection of proposed construction site.* The department shall notify the county board of supervisors at least three days prior to conducting an inspection of the site where construction is proposed in the permit application. The county board of supervisors may designate a county employee to accompany a departmental official during the site inspection. The county designee shall have the same right to access to the site's real estate as the departmental official conducting the inspection during the period that the county designee accompanies the departmental official.

65.10(4) *Waiting period.* The department shall not approve or disapprove the application until 30 days following delivery of the application to the county board of supervisors.

65.10(5) *Departmental notification of permit application decision.* Within three days following the department's decision to approve or disapprove the application, the department shall deliver a notice of the decision to the county board of supervisors. For an approved application, the notice shall consist of a copy of the construction permit as issued. For a disapproved application, the notice shall consist of a copy of the department's letter of denial.

65.10(6) *County demand for hearing.* The county board of supervisors may contest the department's decision to approve or disapprove an application by filing a written demand for a hearing before the commission. Due to the need for expedited scheduling, the county board of supervisors shall, as soon as possible but not later than 14 days following receipt of the department's notice of decision, notify the chief of the department's water quality bureau by facsimile transmission to (515)281-8895 that it intends to file a demand for hearing. The demand for hearing shall be mailed to the Director, Department, Henry A. Wallace Building, 502 East Ninth Street, Des Moines, Iowa 50319, and must be postmarked within 14 days following receipt of the department's notice of decision. The demand shall include a statement providing all reasons the application should be approved or disapproved according to legal requirements in this chapter and Iowa Code chapter 455B; legal briefs and any other documents to be considered by the commission or a statement indicating that no other documents will be submitted for consideration by the commission; and a statement indicating whether oral argument before the commission is desired.

65.10(7) *Decision by the commission.* The director shall schedule the matter for consideration at the next regular meeting of the commission and notify the county board of supervisors and the applicant of the time and place. 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 an electronic meeting of the commission pursuant to Iowa Code section 21.8. The director

shall provide the applicant with copies of all documents submitted by the county board of supervisors and a copy of the department's file on the permit application within three days after receipt of the county board of supervisors' comments. The applicant may submit responses or other documents for consideration by the commission postmarked or hand-delivered at least 14 days prior to the date of consideration by the commission. Consideration by the commission is not a contested case and, unless otherwise determined by the commission, oral participation before the commission will be limited to argument by one representative each from the county board of supervisors, the applicant and the department. 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 superseding permit or letter of denial to the applicant. The letter of decision shall contain the reasons for the action regarding the permit.

65.10(8) *Complaint investigations.* Complaints of violations of Iowa Code chapter 455B and this rule, which are received by the department or are forwarded to the department by a county, following a county board of supervisor's 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.

a. If after evaluating a complaint to determine whether the allegation may constitute a violation, without investigating whether the facts supporting the allegation are true or untrue, the county board of supervisors shall forward its finding to the department director.

b. 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 chapter 455B or environmental standards in regulations subject to federal law and enforced by the department.

c. 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.

d. The department shall notify the complainant and the alleged violator if an investigation is not conducted specifying the reason for the decision not to conduct an investigation.

e. 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.

f. 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.

g. 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 65.17(12) or the current manure management plan maintained at the facility.

h. Upon completion of an investigation, the department shall notify the complainant of the results of the investigation, including any anticipated, pending or complete en-

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forcement action arising from the investigation. The department shall deliver a copy of the notice to the animal feeding operation that is the subject of the complaint, any alleged violators if different from the animal feeding operation and the county board of supervisors of the county where the violation is alleged to have occurred.

i. When entering the premises of an animal feeding operation, both of the following shall apply to a person who is a departmental official, an agent of the department, or a person accompanying the departmental official or agent:

(1) 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:

- Within ten days after its date.
- In a reasonable manner, and any property seized shall be treated in accordance with the provisions of Iowa Code chapters 808, 809, and 809A.
- Subject to any restrictions imposed by the statute, ordinance or regulation pursuant to which inspection is made.

(2) The person shall comply with standard biosecurity requirements customarily required by the animal feeding operation which are necessary in order to control the spread of disease among an animal population.

**567—65.1011(455B) Separation Confinement feeding operation separation distance measurements requirements.** All animal feeding operation structures shall be separated from locations and objects as specified in this rule regardless of whether a construction permit is required. Exceptions are allowed to the extent provided in 567—65.12(455B).

**65.11(1) Separation from residences, businesses, churches, schools, public use areas, and thoroughfares shall be as specified in Iowa Code section 455B.162 and summarized in Table 6 and Table 7 at the end of this chapter. The**

residence, business, church, school, public use area or thoroughfare must exist at the time an applicant submits an application for a construction permit to the department or at the time construction of the animal feeding operation structure begins if a construction permit is not required.

**65.11(2) Separation from surface intakes, wellheads or cisterns of agricultural drainage wells, known sinkholes, major water sources and watercourses shall be as specified in Iowa Code section 455B.204 and summarized in Table 6 and Table 7 at the end of this chapter.**

**65.11(3) For structures constructed after March 20, 1996, the separation to wells shall be as specified in Table 6 and Table 7 at the end of this chapter.**

**65.11(4) Unformed manure storage structures shall not be constructed or expanded in an agricultural drainage well area as specified in Iowa Code section 455I.5.**

**65.11(5) All distances** The distance between animal feeding operation structures and locations or objects provided in Iowa Code sections 455B.161 to 455B.165 and 455B.171 to 455B.192 and in this chapter from which separation is required shall be measured horizontally by standard survey methods from between the closest points point of the locations location or objects object (not a property line) and the closest point of the animal feeding operation structures structure. The distances shall be measured by standard survey methods. A property boundary line of a location, object or structure between which separation is required shall not be used as a point of measurement for the closest point unless the property boundary line coincides with the closest point of the location, object or structure.

**65.10(1) The closest point of a. Measurement to an anaerobic lagoon or earthen manure storage basin shall be measured from to the point of maximum allowable level of manure as permitted pursuant to paragraph 65.2(3)“b.”**

**65.10(2) The closest point of b. Measurement to a public use area shall be measured from the closest point of to the facilities which attract the public to congregate and remain in the area for significant periods of time, not to the A property boundary line of the land owned by the United States, the state, or a political subdivision which contains a public use area shall not be used as a point of measurement for the closest point unless the property boundary line coincides with the closest point of the facilities.**

**65.10(3) The closest point of a lake, river or stream from which separation is required by this chapter c. Measurement to a major water source or watercourse shall be measured from to the top of the bank of the stream channel of a river or stream or the ordinary high water mark of a lake or reservoir.**

**65.10(4) The separation distance for an animal feeding operation constructed after May 31, 1995, or an animal feeding operation constructed and expanded after May 31, 1995, shall be measured from the closest point of the closest animal feeding operation structure.**

**d. Measurement to a thoroughfare shall be to the closest point of the right-of-way.**

**65.10(5) e. The separation distance for an animal feeding operation structure qualifying for the exemption to separation distances under 65.11(7)“a” 65.12(3)“b”(1) shall be measured from the closest point of the animal feeding operation structure which is constructed or expanded after May 31, 1995 December 31, 1998.**

**567—65.112(455B) Exemptions to confinement feeding operation separation distance requirements.**

**65.12(1) As specified in Iowa Code section 455B.165, the separation distance requirement required from residences, businesses, churches, schools, public use areas and**

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thoroughfares specified in Iowa Code section 455B.162 and summarized in Table 6 and Table 7 at the end of this chapter shall not apply to the following:

~~65.11(1) a.~~ A confinement feeding operation structure which provides for the storage of stores manure exclusively in a dry form.

~~65.11(2) b.~~ A confinement feeding operation structure, other than an earthen unformed manure storage basin structure, if the structure is part of a confinement feeding operation which qualifies as a small animal feeding operation.

~~65.11(3) c.~~ An animal feeding operation structure which 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 is located, under such terms and conditions that the parties negotiate. 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, commercial enterprise, bona fide religious institution, educational institution, 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 455B.162.

~~65.11(4)~~ An animal feeding operation constructed or expanded closer than the required separation distance within the corporate limits of a city or the area within a separation distance required pursuant to Iowa Code sections 455B.161 to 455B.165 if the city approves a waiver which shall be memorialized in writing. The written waiver becomes effective only upon recording the waiver in the office of the recorder of deeds of the county in which the benefited land is located. The filed waiver shall preclude enforcement by the state of Iowa Code sections 455B.161 to 455B.165 as they relate to the animal feeding operation structure. However, this subrule shall not affect a separation distance required between residences, educational institutions, commercial enterprises, bona fide religious institutions, or public use areas, as provided in this rule.

~~65.11(5) d.~~ An animal feeding operation structure which is located within any distance closer than the distances in Table 6 and Table 7 at the end of this chapter from a residence, educational institution, commercial enterprise, bona fide religious institution, city, business, church, school or public use area, if the residence, educational institution, commercial enterprise or bona fide religious institution business, church, school or public use area was constructed or expanded, or the boundaries of the city or public use area were expanded after the date that the animal feeding operation was established. The date that the animal feeding operation was established is the date on which the animal feeding operation commenced operating. An animal feeding operation commences operating when it is first occupied by animals. A change in ownership or expansion of the animal feeding operation shall does not change the established date of the operation commenced operating.

65.12(2) As specified in Iowa Code section 455B.165(4), the separation required from thoroughfares specified in Iowa Code section 455B.162(5) and summarized in Table 6 and Table 7 at the end of this chapter shall not apply if permanent vegetation stands between the animal feeding operation structure and that part of the right-of-way from which separation is required. The permanent vegetation must be at least seedlings of plants with mature height of at least 20 feet and stand along the full length of the structure. The minimum

vegetation requirement shall be a single row of conifers or columnar deciduous trees on 12- to 16-foot spacing. It is recommended that the advice of a professional forester or nursery stock expert, a department district forester or the Natural Resource Conservation Service be sought to identify tree species for a specific site.

65.12(3) As specified in Iowa Code section 455B.163, the separation required from residences, businesses, churches, schools, public use areas and thoroughfares specified in Iowa Code section 455B.162 and summarized in Table 6 and Table 7 at the end of this chapter shall not apply to confinement feeding operations constructed before the effective date of the separation distance in the following cases:

~~65.11(6) a.~~ An animal The confinement feeding operation constructed before May 31, 1995, which does not comply with the distance requirements of Iowa Code section 455B.162 on May 31, 1995, which continues to operate, but is does not expanded expand.

b. The animal feeding operation structure as constructed or expanded prior to January 1, 1999, complies with the distance requirements applying to that structure at the time of construction or expansion.

~~65.11(7) c.~~ An animal feeding The confinement feeding operation constructed before May 31, 1995, but which does not comply with the distance requirements of Iowa Code section 455B.162 on May 31, 1995, which expands on or after May 31, 1995 January 1, 1999, if either and any of the following applies apply:

a. (1) The animal feeding operation structure as constructed or expanded complies with the distance separation requirements of Iowa Code section 455B.162. The separation distance required shall be determined by based on the animal weight capacity of the entire animal confinement feeding operation, including the existing operation and proposed structures.

b. (2) All of the following apply to the expansion of the animal feeding operation:

(1) 1. No portion of the animal feeding confinement feeding operation after expansion is closer than before expansion to a location or object for which separation is required under Iowa Code section 455B.162.

(2) 2. The animal weight capacity of the animal feeding the confinement feeding operation which did not comply with a separation requirement that went into effect on May 31, 1995, as expanded after expansion is not more than the lesser of the following:

1. Double double its capacity on May 31, 1995, or  
2. 625,000 pounds animal weight capacity for animals other than bovine, or 1,600,000 pounds animal weight capacity for bovine.

3. The animal weight capacity of a confinement feeding operation which complied with the separation requirements that went into effect on May 1, 1995, but did not comply with a separation requirement that went into effect on January 1, 1999, after expansion is not more than the lesser of double its capacity on January 1, 1999, or 625,000 pounds for animals other than bovine, or 1,600,000 pounds for bovine.

(3) The confinement feeding operation is expanded by replacing one or more unformed manure storage structures with one or more formed manure storage structures and all of the following apply:

1. The animal weight capacity of the portion of the operation that changes from unformed to formed manure storage does not increase.

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2. Use of the replaced unformed manure storage structures is discontinued within one year after construction of the replacement formed manure storage structures.

3. The replacement formed manure storage structures do not provide more than 14 months of manure storage.

4. No portion of the operation after expansion is closer than before expansion to a location or object for which separation is required.

(NOTE: A construction permit is not required to construct the replacement formed manure storage structures if a permit would not be required for the construction if the unformed manure storage structures did not exist.)

65.12(4) As specified in Iowa Code section 455B.165(7), the separation required from a cemetery shall not apply to animal feeding operations structures on which construction or expansion began before January 1, 1999.

65.12(5) As specified in Iowa Code section 455B.204(3), the separation required from surface intakes, wellheads or cisterns of agricultural drainage wells, known sinkholes, major water sources and watercourses specified in Iowa Code section 455B.204 and summarized in Table 6 and Table 7 at the end of this chapter shall not apply to a farm pond, privately owned lake or a manure storage structure constructed with a secondary containment barrier according to subrule 65.15(17).

65.12(6) Variances to the well separation requirements may be granted by the director if the applicant provides an alternative that is substantially equivalent to the required separation or provides improved or greater protection for the well. Requests for a variance shall be made in writing at the time an application is submitted. The denial of a variance request may be appealed to the environmental protection commission.

~~567—65.12(455B) Separation distances from agricultural drainage wells or sinkholes. Iowa Code section 455B.204 provides that an animal feeding operation structure shall be located at least 500 feet away from the surface intake of an agricultural drainage well or known sinkhole. The exemptions to the separation distance requirements specified in rule 65.11(455B) shall not apply to this rule.~~

~~567—65.13(455B) Separation distances from certain lakes, rivers and streams. Iowa Code section 455B.204 provides that an animal feeding operation structure shall be located at least 200 feet away from a lake, river, or stream located within the territorial limits of the state, any marginal river area adjacent to the state, which can support 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. The exemptions to the separation distance requirements specified in rule 65.11(455B) shall not apply to this rule. However, no distance separation is required between a location or object and a farm pond or privately owned lake, as defined in Iowa Code section 462A.2.~~

~~65.13(1) Table 1, "Navigable Rivers and Streams," at the end of this chapter implements Iowa Code section 455B.204 by identifying rivers and streams which meet the statutory requirement. For purposes of this rule, an animal feeding operation structure shall be located at least 200 feet away from the rivers and streams identified in Table 1.~~

~~65.13(2) Table 2, "Navigable Lakes," at the end of this chapter implements Iowa Code section 455B.204 by identifying lakes which meet the statutory requirement. For purposes of this rule, an animal feeding operation structure shall be located at least 200 feet away from the lakes identified in Table 2.~~

~~65.13(3) Other streams, lakes, or rivers may be considered during the construction permit application process, on a case-by-case basis. Any additions or other changes will be made to the lists through the rule-making process.~~

~~567—65.14(455B) Well separation distances for open feedlots. Open feedlots, open feedlot runoff control basins and open feedlot solids settling facilities shall be separated from wells as specified in Table 6 and Table 7 at the end of this chapter.~~

~~65.14(1) For the construction of the following structures after March 20, 1996, the minimum distances between public and nonpublic water supplies shall be as follows:~~

Structure	Nonpublic Water Supply		Public Water Supply	
	Shallow Well	Deep Well	Shallow Well	Deep Well
<del>Aerobic structure, anaerobic lagoon, earthen manure storage basin, egg wash water storage structure, and runoff control basin</del>	<del>400 feet</del>	<del>400 feet</del>	<del>1000 feet</del>	<del>400 feet</del>
<del>Formed manure storage structure, confinement building, feedlot solids settling facility, and open feedlot</del>	<del>200 feet</del>	<del>100 feet</del>	<del>200 feet</del>	<del>100 feet</del>

~~65.14(2) Variances to this rule may be granted by the director if the applicant provides an alternative that is substantially equivalent to the rule or provides improved effectiveness or protection as required by the rule. Variance shall be made in writing at the time the application is submitted. The denial of a variance may be appealed to the commission.~~

~~567—65.15(455B) Manure storage structure design requirements. The requirements in this rule apply to all animal feeding operation structures unless specifically stated otherwise.~~

~~65.15(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, for which a construction permit is obtained, the site of for the confinement animal feeding operation structure shall be investigated for drainage tile lines as provided in this subrule and all. All applicable records of known drainage tiles shall be examined for the existence of drainage tile lines.~~

~~a. Prior to excavation for the berm of an aerobic structure, anaerobic lagoon or earthen manure storage basin, an applicant for a construction permit for a confinement feeding operation unformed manure storage structure, the owner of the unformed manure storage structure shall follow any one of the following procedures:~~

~~(1) An inspection trench of at least ten inches wide shall be dug around the structure to a depth of at least 6 feet from the original grade and at least 50 feet from the projected outside edge of the berm.~~

~~(2) A core trench shall be dug to a depth of at least 6 feet from grade at the projected center of the berm. After investigation for tile lines and any discovered tile lines are removed, an additional containment barrier shall be~~

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constructed underneath the center of the berm. The secondary containment shall meet the same percolation standards as the lagoon or basin with the lateral flow potential restricted to one-sixteenth of an inch per day.

b. The drainage tile lines discovered near an ~~aerobic structure, anaerobic lagoon or earthen manure storage basin~~ *unformed manure storage structure* shall be removed within 50 feet of the projected outside edge of the berm and within the projected site of the structure including under the berm. Drainage tile lines discovered upgrade from the structure shall be rerouted outside of 50 feet from the berm to continue the flow of drainage. ~~Drain~~ Drainage tile lines installed at the time of construction to lower a groundwater table may remain where located. A device to allow monitoring of the water in the ~~drain~~ drainage tile lines installed to lower the groundwater table and a device to allow shutoff of the ~~drain~~ drainage tile lines shall be installed if the ~~drain~~ drainage tile lines do not have a surface outlet accessible on the property where the ~~aerobic structure, anaerobic lagoon or earthen manure storage basin~~ *unformed manure storage structure* is located. All other drainage tile lines discovered shall be rerouted, capped, plugged with concrete, Portland cement concrete grout or similar materials, or reconnected to upgrade tile lines.

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, plugged with concrete, Portland cement concrete grout or similar materials or reconnected to upgrade tile lines. ~~Drain~~ Drainage tile lines installed at the time of construction to lower a groundwater table may remain where located. A device to allow monitoring of the water in the ~~drain~~ drainage tile lines installed to lower the groundwater table and a device to allow shutoff of the ~~drain~~ drainage tile lines shall be installed if the ~~drain~~ drainage tile lines do not have a surface outlet accessible on the property where the formed manure storage structure is located.

d. An ~~applicant~~ *owner of a confinement feeding operation* may utilize other proven methods approved by the department to discover drainage tile lines.

e. Variances to this subrule may be granted by the director if the ~~applicant~~ *owner of the confinement feeding operation* provides an alternative that is substantially equivalent to the subrule or provides improved effectiveness or protection as required by the subrule. A request for a variance shall be made in writing at the time the application is submitted *or prior to investigating for drainage tile, whichever is earlier*. The denial of a variance may be appealed to the commission.

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.

65.15(2) Drainage tile removal around an existing manure storage structure.

a. 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 by March 20, 1997, 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 have an inspection conducted by July 1, 2000, for drainage tiles as provided in this subrule, and all applicable records of known drainage tiles shall be examined.*

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 at least 50 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 50 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 50 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 outside of 50 feet from the berm to continue the flow of drainage. All other drainage tile lines discovered shall be rerouted, capped, plugged with concrete, Portland cement concrete grout or similar materials, or reconnected to upgrade tile lines. ~~Drain~~ 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. ~~By March 20, 1997, the~~ *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, that is part of a confinement feeding operation with a construction permit granted before March 20, 1996, including those granted before December 31, 1992, shall install* have a device to allow monitoring of the water in the ~~drain~~ drainage tile lines ~~installed to~~ *that* lower the groundwater table and to allow shutoff of the ~~drain~~ drainage tile lines if the ~~drain~~ 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 ~~drain~~ drainage tile that projects underneath the berm, it 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. Variances to this subrule may be granted by the director if the applicant provides an alternative that is substantial-

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ly equivalent to the subrule or provides improved effectiveness or protection as required by the subrule. A request for a variance shall be made in writing at least by January 20, 1997. The denial of a variance may be appealed to the commission.

g. 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.

h. 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 manure management plan records.

65.15(3) Guidelines for drainage tile removal around an existing manure storage structure.

a. It is recommended that a manure storage structure, other than the storage of manure in an exclusively dry form, that is part of a confinement feeding operation with a construction permit granted before January 1, 1993 May 31, 1985, be inspected for drainage tile lines as provided in this subrule, and all applicable records of known drainage tiles may be examined. For an aerobic structure, anaerobic lagoon, earthen manure storage basin or earthen waste slurry storage basin, inspection may be by digging an inspection trench of at least ten inches wide around the structure at a depth of at least 6 feet from the original grade and at least 50 feet from the projected outside edge of the berm. The owner first should 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.

b. The drainage tile lines discovered may be removed within 50 feet of the outside edge of the berm. Drainage tile lines discovered upgrade from the structure may be rerouted outside of 50 feet from the berm to continue the flow of drainage. Drain 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. All other drainage tile lines discovered may be rerouted, capped, plugged with concrete, Portland cement concrete grout or similar materials or reconnected to upgrade tile lines. The owner of a confinement feeding operation should either obtain permission from an adjoining property owner or trench up to the boundary line of the property if the distance of 50 feet would require the inspection trench to go onto the adjoining property.

c. If the owner of a confinement feeding operation discovers drain drainage tile that projects underneath the berm, it may follow one of the following options:

(1) and (2) No change.

d. No change.

65.15(4) Earthen waste slurry storage basins. An earthen waste slurry storage basin shall have accumulated manure completely 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 65.2(3)"b."

65.15(5) Earthen manure storage basins. An earthen manure storage basin shall have accumulated manure completely removed at least once each year. The 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 65.2(3)"b."

65.15(6) 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 2487-92 or D 2488-90. Soil borings corings shall be taken to determine subsurface soil characteristics and groundwater elevation and direction of flow of the proposed site for the an anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin. Soil borings corings shall be conducted by a qualified person normally engaged in soil testing activities. Data from the soil borings corings shall be submitted with a construction permit application and shall include a description of the geologic units encountered, and 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. All soil borings 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 borings 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 ~~three borings~~ four soil corings reflecting the continuous soil profile is required for an each anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin  $\frac{1}{2}$  acre water surface area or less, and four or more for an anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin larger than  $\frac{1}{2}$  acre. 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 4 acres water surface area, one additional boring coring per acre is required for each acre above 4 acres surface area.

b. All borings 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 boring 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 bore core holes, all soil bore core holes including those developed as temporary water level monitoring wells shall be plugged with concrete, Portland cement concrete grout, bentonite, or similar materials.

#### 65.15(7) Hydrology.

a. Groundwater table. A minimum separation of four feet between the top of the liner on an any earthen aerobic structure, anaerobic lagoon, or earthen manure storage basin floor and the groundwater table is recommended; however, in no case shall the top of the liner on an earthen aerobic structure, anaerobic lagoon, or earthen manure storage basin floor be below the groundwater table. If the groundwater table is less than two feet below the top of the liner on an earthen aerobic structure, anaerobic lagoon, or earthen manure storage basin floor, the aerobic structure, anaerobic la-



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goon, or earthen manure storage basin shall be provided with a synthetic liner as described in 65.15(12)"f."

b. Permanent artificial lowering of groundwater table. The groundwater table around an anaerobic lagoon, aerobic structure, or earthen manure storage basin may be artificially lowered to levels required in paragraph "a" by using a gravity flow tile drainage system or other permanent nonmechanical system for artificial lowering of the groundwater table. ~~Detailed~~ For a permitted animal feeding operation, detailed engineering and soil drainage information shall be provided with a construction permit application for an earthen aerobic structure, anaerobic lagoon or earthen manure storage basin to confirm the adequacy of the proposed permanent system to provide the required drainage without materially increasing the seepage potential of the site. (See subrule 65.15(1)"b" for monitoring and shutoff requirements for drainage tile lines installed to lower the groundwater table.) For formed manure storage structures partially or completely constructed below the normal soil surface, a 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.

c. Determination of groundwater table. For purposes of this rule, groundwater table means the average annual high water table determined by the a licensed professional engineer, and where a construction permit is required, approved by the department as part of issuing a construction permit to the animal feeding operation, pursuant to this subrule. Current groundwater levels shall be measured using three temporary monitoring wells by measuring the water level seven days after installation. The borings corings required in subrule 65.15(6) may be completed as temporary monitoring wells for this purpose. The monitoring well measurements, along with evaluation of site soils for indicative features such as color and mottling, other existing water table data, and other pertinent information shall be used to determine the average annual high water table. If a drainage system for artificially lowering the groundwater table will be installed in accordance with the requirements of paragraph 65.15(7)"b," the level to which the groundwater table will be lowered will be considered to represent the average annual high water table.

65.15(8) Karst features. The anaerobic lagoon or earthen manure storage basin shall not be located on sites a site that exhibit exhibits Karst features such as sinkholes, or solution channeling generally occurring in areas underlain by limestone or dolomite.

65.15(9) Bedrock separation. ~~A separation of ten feet between the lagoon or basin bottom and any bedrock formations is recommended with a minimum separation of four feet required. A minimum of four feet of separation between an unformed manure storage structure bottom and any bedrock formation is required. A ten-foot separation is recommended. A synthetic liner shall be required if the unformed structure is to be located less than ten feet above a carbonate or limestone formation.~~

65.15(10) Flooding protection. The top of the lagoon or basin embankment a manure storage structure shall be constructed at least one foot above the elevation of the 100-year flood.

65.15(11) Lagoon and basin seals. Seals for anaerobic lagoons, aerobic structures, and earthen manure storage basins. A lagoon or basin shall be sealed such that seepage loss through the seal is as low as practically possible. The percolation rate shall not exceed 1/16 inch per day at a water the design depth of ~~six feet~~ the lagoon or basin. Following

construction of the lagoon or basin, the results of a testing program which indicates the adequacy of the seal shall be provided to this department in writing prior to start-up of a permitted operation. The owner of a confinement feeding operation not required to obtain a construction permit shall keep a record of the construction methods and materials used to provide the seal and any test results available on the adequacy of the seal.

65.15(12) Aerobic structure, anaerobic lagoon, or earthen manure storage basin liner design and construction standards. An aerobic structure, anaerobic lagoon or earthen manure storage basin which receives a construction permit after January 21, 1998, shall comply with the following minimum standards in addition to subrule 65.15(11).

a. If the location of the proposed aerobic structure, anaerobic lagoon or earthen manure storage basin contains suitable materials as determined by the soil borings corings taken pursuant to subrule 65.15(6), those materials shall be compacted to establish a minimum of a 12-inch liner. A minimum initial overexcavation of 6 inches of material shall be required. The underlying material shall be scarified, reworked and compacted to a depth of 6 inches. The overexcavated materials shall be replaced and compacted.

b. If the location of the proposed aerobic structure, anaerobic lagoon or earthen manure storage basin does not contain suitable materials as determined by the soil borings corings taken in subrule 65.15(6), suitable materials shall be compacted to establish a minimum of a 24-inch liner.

c. to f. No change.

65.15(13) Anaerobic lagoon design standards. ~~For manure control systems that include the use of an anaerobic lagoon, the design criteria contained in 567— Chapters 22 and 23 for animal feeding operations shall be used. 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 8 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 at the end of this chapter.

b. Minimum stabilization volume and loading rate.

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(1) For all animal species other than beef cattle, there shall be 1000 cubic feet minimum design volume for each 5 pounds of volatile solids produced per day if the volatile solids produced per day are 6000 pounds or fewer and for each 4 pounds if the volatile solids produced per day are more than 6000 pounds. For beef cattle, there shall be 1000 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 1000 cubic feet minimum design volume for each 4.5 pounds of volatile solids per day if the volatile solids produced per day are 6000 pounds or fewer. However, if a water analysis as required in 65.15(3) "c"(2) below indicates that the sulfate level is below 500 milligrams per liter, then the rate is 1000 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 0.50 pound for each pound of volatile solids removed. For example, if a swine facility produces 7000 pounds of volatile solids per day, and if 2000 pounds of volatile solids per day are removed, the volatile solids produced per day would be reduced by 1000 pounds, leaving an adjusted pounds of volatile solids produced per day of 6000 pounds (for which the loading rate would be 5 pounds according to subparagraph (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.

(5) If a credit for solids removal is given in accordance with subparagraph (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 0.50 pound for each pound of solids removed.

(6) American Society of Agricultural Engineers (ASAE) standards, "Manure Production and Characteristics," D384.1, or Midwest Plan Service-18 (MWPS-18), Table 2-1, 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 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 design 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 design 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 (EC) and either chemical oxygen demand (COD) or ammonia (NH<sub>4</sub>-N) 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.

65.15(14) Concrete standards. A concrete formed manure storage structure, other than for the storage of manure in an exclusively dry form in a roofed structure, that is part of a confinement feeding operation which receives a construction permit after January 21, 1998, shall meet the minimum design and construction standards as described in this rule.

a. No change.

b. The floor of a concrete formed manure storage structure shall be a minimum of 5 inches thick. The floor of any concrete formed manure storage structure with a designed manure storage depth of 48 inches or more shall be reinforced with a minimum of either 6 × 6 × 10 × 10 steel 6 × 6-W 1.4 × W1.4 welded wire mesh fabric (formed by 0.014 square inch cross-sectional area steel wires at right angles spaced 6 inches apart in each direction) or #4 rebar placed a maximum of 18 inches on center in each direction, or the steel equivalent.

c. to e. No change.

65.15(15) Berm erosion control.

a. The following requirements shall apply to any anaerobic lagoons, earthen aerobic structures, or earthen manure storage basins which receive a construction permit constructed after January 21, 1998 May 12, 1999.

(1) to (3) No change.

b. No change.

65.15(16) Agricultural drainage wells. After May 29, 1997, a person shall not construct a new or expand an existing earthen aerobic structure, earthen anaerobic lagoon, earthen manure storage basin, earthen waste slurry storage basin, or earthen egg washwater storage structure within an agricultural drainage well area.

65.15(17) Secondary containment barriers for manure storage structures. Secondary containment barriers used to

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qualify any operation for the exemption provision in subrule 65.12(5) shall meet the following:

a. A secondary containment barrier shall consist of a structure surrounding or downslope of a manure storage structure that is designed to contain 120 percent of the volume of manure stored above the manure storage structure's final grade. If the containment barrier does not surround the manure storage structure, upland drainage must be diverted.

b. The barrier may be constructed of earth, concrete, or a combination of both and shall not have a relief outlet or valve.

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 65.3(455B).

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  $1 \times 10^{-6}$  cm/sec and shall be maintained to prevent downward water movement at rates greater than  $1 \times 10^{-5}$  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 3 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.

65.15(18) Human sanitary waste shall not be directed to a manure storage structure or egg washwater storage structure.

65.15(19) 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 a confinement feeding operation that only handles manure in a dry form or to an egg washwater storage structure or to a confinement feeding operation which was constructed before May 31, 1995, and does not expand.

567—65.16(455B) Manure management plan for construction permit applicants requirements.

65.16(1) In accordance with Iowa Code section 455B.202, the following persons are required to submit manure management plans to the department:

a. An applicant for a construction permit for a confinement feeding operation shall submit a manure management plan, in addition to the construction permit application, that meets the requirements of Iowa Code section 455B.203, and this rule in order to receive a construction permit. However, a manure management plan shall not be required of an applicant for an egg washwater storage structure. A construction permit for a confinement feeding operation shall not be granted unless the applicant has shown that sufficient cropland is available for manure application according to the manure management plan.

b. The owners of confinement feeding operations, other than a small animal feeding operation, if the operation was constructed or expanded after May 31, 1985, and regardless of whether the operation was required to have a construction

permit. Owners of confinement feeding operations which submitted a manure management plan are not required to submit a new plan if the plan meets the requirements of Iowa Code section 455B.200 which are summarized in 65.17(455B). Persons who have previously submitted manure management plans which do not meet the current plan requirements, and persons who have not previously submitted a manure management plan but are now required to do so, have until July 1, 1999, to submit a manure management plan which meets the requirements.

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 research college is exempt from this subrule and the manure management plan requirements of rule 65.17(455B) for research activities and experiments performed under the authority of the research college and related to animal feeding operations.

65.16(2) The department shall review and approve or disapprove all complete manure management plans within 60 days of the date they are received.

65.16(3) Manure shall not be removed from a manure storage structure, which is part of a confinement feeding operation required to submit a manure management plan, until the department has approved the plan. As an exception to this requirement, during calendar year 1999, the owner of a confinement feeding operation may remove and apply manure from a storage structure in accordance with a manure management plan which has been submitted to the department, but which has not been approved within the required 60-day period. Manure shall be applied in compliance with rule 65.2(455B).

65.16(4) All persons required to submit a manure management plan to the department shall also pay to the department an indemnity fee as required in Iowa Code section 455J.3 except those operations constructed prior to May 31, 1995, which were not required to obtain a construction permit.

567—65.17(455B) Manure management plan content requirements. All manure management plans submitted after January 1, 1999, or when forms are available, whichever is later, are to be submitted on forms prescribed by the department. The plans shall include all of the information specified in Iowa Code section 455B.203 and described below.

65.1617(1) Manure application rate general rules General.

a. A confinement feeding operation that is required to submit a manure management plan to the department under this rule shall not apply manure in excess of the nitrogen use levels necessary to obtain optimum crop yields. Nitrogen application rates shall be based on total nitrogen content of the manure unless the applicant submits calculations are submitted to show that crop usage rates based on plant available nitrogen have not been exceeded for the crop schedule submitted. Information to complete the required calculations may be obtained from the tables in this chapter, actual testing samples or from other credible sources including, but not limited to, Iowa State University, the United States Department of Agriculture, a licensed professional engineer, or an individual certified as a crop consultant under the American Registry of Certified Professionals in Agronomy, Crops, and Soils (ARCPACS) program, the Certified Crop Advisors (CCA) program, or the Registry of Environmental and Agricultural Professionals (REAP) program.

b. Manure management plans shall comply with the minimum manure control requirements of 65.2(455B) and

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the requirements for land application of manure in 65.3(455B).

c. All manure management plans shall include:

(1) The owner and the name of the confinement feeding operation, including mailing address and telephone number.

(2) The contact person for the confinement feeding operation, including mailing address and telephone number.

(3) The location of the confinement feeding operation and the animal weight capacity of the operation.

~~65.1617(2)~~ Manure management plan plans for sales of manure. An applicant for a construction permit for a confinement feeding operation that sells all or a portion of its manure shall be required to submit, in addition to the construction permit application, the following: 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. The confinement Confinement feeding operation operations that will sell dry manure as a commercial fertilizer or soil conditioner regulated by the Iowa department of agriculture and land stewardship under Iowa Code chapter 200 or 200A shall submit, as its manure management plan for that portion of manure which it intends to sell, documentation that manure will be sold pursuant to Iowa Code chapter 200 or 200A.

b. The applicant that is A confinement feeding operation not fully covered by paragraph "a" above and has an established practice of selling manure, or the confinement feeding operation that contains an animal species for which selling manure is a common practice shall submit a manure management plan providing the information specified in subparagraphs (1) through (3) of this paragraph, that includes the following: 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, license or other agreement granting the right to use the land for manure application is executed. The confinement feeding operation shall sell the manure to buyers with the sufficient number of acres according to the manure management plan and the manure sales forms for the application of the manure sold to the buyer from the confinement feeding operation.

(1) The manure management plan shall include:

1. (1) An estimate of the number of acres required for manure application calculated by dividing the total nitrogen available to be applied from the confinement feeding operation by the crop usage rate. Crop usage rate may be estimated by using a corn crop usage rate factor and an estimate of the optimum crop yield for the property in the vicinity of the confinement feeding operation.

2. (2) The total nitrogen available to be applied from the confinement feeding operation.

3. (3) An estimate of the annual animal production and manure volume or weight produced.

4. (4) A manure sales form, if manure will be sold, 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 optimum crop yield usage rate for the crops indicated in the crop schedule.

4. A place for manure application methods and the timing of manure application.

5. A place for the location of field where the manure will be applied including the number of acres where the manure will be applied.

6. A place for the manure application rate.

5. (5) 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 manure management plan 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:

(2) 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 optimum crop yield and crop usage rate for the crops indicated in the crop schedule.

4. A place for manure application methods and the timing of manure application.

5. A place for the location of field where the manure will be applied including the number of acres where the manure will be applied.

6. A place for the manure application rate.

(3) 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.

(4)(6) The construction permit holder owner shall maintain in its the owner's records a current manure management plan and copies of all of the manure sales forms completed and signed by each buyer of the manure and the applicant for three years. A construction permit holder An owner of a confinement feeding operation shall not be required to maintain current statements of intent as part of the manure management plan.

~~65.1617(3)~~ Manure management plan for nonsales of manure. An applicant for a construction permit for a confinement Confinement feeding operation operations that will not sell all of its their manure shall be required to submit the following as its manure management plan for that portion of the manure which will not be sold, in addition to the construction permit application:

a. Calculations to determine the land area required for manure application.

b. The total nitrogen available to be applied from the confinement feeding operation.

c. The optimum crop yield and crop usage rate for the crops indicated in the crop schedule.

d. Manure application methods and timing of the application.

e. The location of manure application.

f. An estimate of the annual animal production and manure volume or weight produced.

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g. Methods, structures or practices that will be used to reduce soil loss and *potential prevent* surface water pollution.

h. Methods or practices that will be utilized to reduce odor if spray irrigation equipment is used to apply manure.

~~65.1617(4)~~ Manure management plan calculations to determine land area required for manure application. ~~The number of acres required for manure application shall be determined by the following calculations:~~

~~a. The manure management plan shall include a calculation of the total nitrogen available to be applied from the confinement feeding operation. Pounds of nitrogen per year shall be determined by using the table values referenced in Table 3, "Annual Pounds of Nitrogen Per Space of Capacity," at the end of this chapter, actual nitrogen test values, or by using other credible sources. Deductions are to be taken for nitrogen credits from legume production and planned commercial nitrogen fertilizer applications. The resulting value shall then be multiplied by the correction factor for nitrogen loss in subrule 65.16(5), paragraph "c," based on the application method.~~

~~b. The manure management plan shall include a calculation of the crop usage rate by multiplying the optimum crop yield by the crop nitrogen usage rate factors for the crops named in the crop schedule for the cropland that will receive manure application.~~

~~e a.~~ The number of acres of cropland needed for manure application shall be calculated by dividing the total nitrogen available to be applied from the confinement feeding operation by the crop usage rate.

~~d b.~~ Manure from a confinement feeding operation may be applied in excess of the annual crop usage rate if soil testing determines that phosphorus or potassium levels are below recommended levels. However, maximum manure application rates shall not exceed 1.5 times the annual crop nitrogen usage rate; or, that rate which provides the recommended amount of phosphorus or potassium, whichever is more limiting, to obtain the optimum crop yield.

~~e c.~~ Nitrogen in addition to that allowed in the manure management plan may be applied up to the amounts, indicated by soil or crop nitrogen test results, necessary to obtain the optimum crop yield.

~~65.1617(5)~~ Total nitrogen available from the confinement feeding operation.

~~a.~~ To determine the nitrogen content of the confinement feeding operation's manure per year, the applicant may use the factors in Table 3, "Annual Pounds of Nitrogen Per Space of Capacity," at the end of this chapter multiplied by the number of spaces. ~~If the applicant does not use the table is not used to determine the nitrogen content of the confinement feeding operation's manure per year, the applicant shall use other credible sources for standard table values or the actual nitrogen content of the confinement feeding operation's manure may be used.~~ The actual nitrogen content shall be determined by a laboratory analysis of the manure from the confinement feeding operation's manure storage structure or from a manure storage structure with similar design and management as the confinement feeding operation's manure storage structure.

b. and c. No change.

~~65.1617(6)~~ Calculating the crop usage rate.

~~a.~~ The optimum crop yield shall be determined for the cropland where the manure from the confinement feeding operation is to be applied. ~~The applicant may use any of~~ the following methods for calculating the optimum crop yield *may be used*. 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.

(1) Soil survey interpretation record. The applicant plan shall submit include a soil type map showing soil types 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 the Natural Resources Conservation Service shall be used to determine yields based on soil type.

(2) Consolidated farm service agency yields. The applicant plan shall submit include a copy of the consolidated farm service agency's determined crop yield or verified yield data for the cropland where the confinement feeding operation's manure is to be applied.

(3) Countywide crop insurance yields. The applicant plan shall submit include a copy of the county average yields established for crops covered by the catastrophic crop insurance program administered by the consolidated farm service agency.

(4) No change.

(5) Proven yields. The applicant plan shall submit include the proven yield for the cropland that will be used for manure application and indicate the method used in determining the proven yield. Proven yields can only be used if a minimum of the most recent three years of yield data is submitted. The proven yields may exclude years in which a crop disaster occurred on the field or farm. These yields can be proven on a field-by-field or farm-by-farm basis.

(6) USDA county crop yields. The plan shall include the county yield data from the USDA Iowa Agricultural Statistics Service.

b. Crop schedule. Crop schedules submitted 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 can be used to indicate crop plans by field or farm. These plans shall name the crop that is planned to be grown in each successive growing season beginning with the crop planned or actually grown during the year this plan is submitted. ~~The construction permit holder for a confinement feeding operation shall be maintained~~ maintain records of a multiyear planned crop schedule, including the crop grown, or planned to be grown for the current year and the planned crops for successive years. ~~The construction permit holder for a~~ The confinement feeding operation owner shall not be penalized for exceeding the nitrogen application rate for an unplanned crop, if crop schedules are altered because of weather, farm program changes, market factor changes, or other unforeseeable circumstances.

c. Crop usage rates. Crop nitrogen requirements may be based on the values in Table 4 at the end of this chapter or other credible sources. ~~The applicant may use the~~ The corn crop usage rate and the optimum corn crop yield instead of the table value for a legume crop for those years in the crop schedule that are part of a corn/legume rotation *may be used*.

~~65.1617(7)~~ Manure application methods and timing.

a. The applicant manure management plan shall identify the methods that will be used to land-apply the confinement feeding operation's manure. Methods to land-apply the manure may include, but are not limited to, surface-

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apply dry with no incorporation, surface-apply liquids with no incorporation, surface-apply liquid or dry with incorporation within 24 hours, surface-apply liquid or dry with incorporation after 24 hours, knifed in or soil injection of liquids, or irrigated liquids with no incorporation.

b. The ~~applicant~~ *manure management plan* shall identify the approximate time of year that land application of manure is planned. The time of year may be identified by season or month.

~~65.1617(8)~~ Location of manure application.

a. No change.

b. The manure management plan shall include a copy of each written agreement executed with the owner of the land where manure will be applied. The written agreement shall indicate the 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 applicant or is owned by owner of the applicant confinement feeding operation.*

c. The current manure management plan must also include a copy of each written agreement executed with the landowner when the location where the manure will be applied to land not owned or rented for crop production by the ~~permit holder~~ *owner of the confinement feeding operation* is changed. If a present location becomes unavailable for manure application, additional land for manure application shall be identified in the current manure management plan prior to the next manure application period.

~~65.1617(9)~~ Estimate of annual animal production and manure volume or weight produced. Volumes or weights of manure produced shall be estimated based on the numbers of animals, species, and type of manure storage used. The ~~applicant plan~~ shall *submit list* the annually expected number of production animals by species. The volume of manure may be estimated based on the values in Table 5 at the end of this chapter and submitted as a part of the ~~producer's manure management plan.~~ *If the applicant plan does not use the table to determine the manure volume, from the confinement feeding operation, the applicant shall use other credible sources for standard table values or the actual manure volume from the confinement feeding operation may be used.*

~~65.1617(10)~~ Methods to reduce soil loss and potential surface water pollution. The manure management plan shall include an identification of the methods, structures or practices that will be used to prevent or diminish soil loss and potential surface water pollution during the application of manure. The ~~manure management~~ plan shall include a summary or copy of the conservation plan for the cropland where manure from the animal feeding operation will be applied if the manure will be applied on highly erodible cropland. The conservation plan shall be the conservation plan approved by the local soil and water conservation district or its equivalent. The summary of the conservation plan shall identify the methods, structures or practices that are contained in the conservation plan. The manure management plan may include additional information such as whether the manure will be injected or incorporated or the type of manure storage structure.

~~65.1617(11)~~ Spray irrigation. ~~Subrule 65.2(1) for Requirements contained in subrules 65.3(2) and 65.3(3) regarding~~ the use of spray irrigation equipment to apply manure shall be followed. ~~An applicant who~~ *A plan which* has identified spray irrigation equipment as the method of manure application shall identify any additional methods or

practices to reduce potential odor, if any other methods or practices will be utilized.

~~65.17(12)~~ *Current manure management plan. The owner of a confinement feeding operation which is required to submit a manure management plan shall maintain a current manure management plan at the site of the confinement feeding operation unless other arrangements acceptable to the department are made so that a copy of the current plan can be made available to the department within two working days after being requested. The plan shall include completed manure sales forms for a confinement feeding operation from which manure is sold. If manure management practices change, a person required to submit a manure management plan shall make appropriate changes consistent with this rule. If values other than the standard table values are used for manure management plan calculations, the source of the values used shall be identified.*

~~65.16(12)~~ ~~65.17(13)~~ Record keeping. The following ~~records~~ *Records* shall be maintained by the ~~construction permit holder for owner of a confinement feeding operation which is required to submit a manure management plan.~~ This recorded information shall be maintained by the ~~construction permit holder for a confinement feeding operation~~ for three years following the year of application or for the length of the crop rotation, whichever is greater. ~~Records and shall be maintained at the site of the confinement feeding operation unless other arrangements acceptable to the department are made so that a copy can be made available to the department within two working days after being requested by the department for upon inspection pursuant to Iowa Code section 455B.203. Records to demonstrate compliance with the manure management plan shall include:~~

~~a. A copy of the confinement feeding operation's current manure management plan, including completed manure sales forms for a confinement feeding operation from which manure is sold. If manure management practices change, a person required to submit a manure management plan shall make appropriate changes consistent with this rule. If values other than the standard table values are used for manure management plan calculations, the source of the values used.~~

~~b. Methods of application when manure from the confinement feeding operation was applied.~~

~~c. Date(s) when the manure from the confinement feeding operation was applied or sold.~~

~~d. Location of the field where the manure from the confinement feeding operation was applied, including the number of acres.~~

~~e. The manure application rate.~~

~~f. The record of inspection required by subrule 65.15(2), paragraph "g," if applicable.~~

~~65.16(13)~~ Existing construction permit holders. A construction permit holder for a confinement feeding operation with a construction permit granted after May 31, 1985, and before May 31, 1995, shall submit a manure management plan to the department by January 16, 1997. However, if a person required to submit a plan under this subrule violates a rule applicable to confinement feeding operations, the person shall submit the plan not later than 120 days following notice by the department. An existing confinement feeding operation with a construction permit for an egg washwater storage structure shall not be required to comply with this subrule. The manure management plan shall meet the requirements in this rule. The construction permit holder for a confinement feeding operation shall have sufficient acres of cropland available to apply the manure produced by the con-

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finement feeding operation as indicated in the manure management plan.

**65.17(14) Record inspection.** The department may inspect a confinement feeding operation at any time during normal working hours and may inspect the manure management plan and any records required to be maintained. As required in Iowa Code section 455B.203(5), 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.

**65.17(15) Enforcement action.** An owner required to provide the department a manure management plan pursuant to this rule who fails to provide the department a plan or who is found in violation of the terms and conditions of the plan shall not be subject to an enforcement action other than assessment of a civil penalty pursuant to Iowa Code section 455B.191.

**567—65.1718(455B) Construction certification.** A confinement feeding operation which obtains a construction permit after March 20, 1996, shall submit to the department a certification from a licensed professional engineer that the manure storage structure in which manure is stored in a liquid or semiliquid form or the egg washwater storage structure was:

1. No change.

2. Supervised by the licensed professional engineer or a designee of the engineer during critical points of the construction. A designee shall not be the permittee, owner of the confinement feeding operation, a direct employee of the permittee or owner, or the contractor or an employee of the contractor;

3. and 4. No change.

~~**567—65.18(455B) Manure management plans for confinement feeding operations utilizing formed manure storage structures for which a construction permit is not required.**~~

~~**65.18(1) Applicability.** The owner of a confinement feeding operation which:~~

~~a. Stores manure in a formed manure storage structure, other than exclusively in a dry form;~~

~~b. Is first occupied by animals, other than bovine, after September 22, 1995; and~~

~~c. Has an animal weight capacity of more than 200,000 pounds but less than the construction permit requirement in this chapter and former Chapter 65 for formed manure storage structures in effect at the time construction was begun, as defined in rule 65.7(455B); shall provide the department with a manure management plan meeting the requirements of this rule no later than 60 days prior to the first land application of the manure from the formed manure storage structure. To determine the animal weight capacity of a confinement feeding operation confining more than one species of animals or storing manure in more than one form, the animal capacity of bovine animals or animals confined in structures with manure stored exclusively in a dry form shall be excluded.~~

~~**65.18(2) Contents.** The manure management plan shall include:~~

~~a. The owner and the name of the confinement feeding operation, including mailing address and telephone number.~~

~~b. The contact person for the confinement feeding operation, including mailing address and telephone number.~~

~~c. The location of the confinement feeding operation and the animal weight capacity of the operation.~~

~~d. The calculations to determine the land area required for manure application, pursuant to 65.16(4).~~

~~e. The total nitrogen available to be applied from the confinement feeding operation, pursuant to 65.16(5).~~

~~f. The optimum crop yield and crop usage rate for the crops indicated in the crop schedule, pursuant to 65.16(6).~~

~~g. The manure application methods and timing of the application, pursuant to 65.16(7).~~

~~h. The location of manure application, pursuant to 65.16(8) "a," and the manure application rate.~~

~~**65.18(3) General.** The general rules for manure application rate in 65.16(1) shall apply.~~

~~**65.18(4) Current manure management plan.** The owner of a confinement feeding operation shall maintain a current manure management plan and maintain records sufficient to demonstrate compliance with the manure management plan. As required in Iowa Code Supplement section 455B.203(4), 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.~~

~~**65.18(5) Records.** Records to demonstrate compliance with the manure management plan shall include:~~

~~a. A copy of the current manure management plan.~~

~~b. The date, location, rate and method of each application of manure from the confinement feeding operation.~~

~~**65.18(6) Record inspection.** The department may inspect the confinement feeding operation at any time during normal working hours. The department shall assess and the confinement feeding operation shall pay the actual costs of the inspection. However, in order to access the operation, the departmental inspector must comply with standard disease control restrictions customarily required by the operation. The department shall comply with Iowa Code section 455B.103 in conducting an investigation of the premises where the animals are kept.~~

~~**65.18(7) Enforcement action.** An owner required to provide the department a manure management plan pursuant to this rule who fails to provide the department a plan or who is found in violation of the terms and conditions of the plan shall not be subject to an enforcement action other than assessment of a civil penalty pursuant to Iowa Code section 455B.191.~~

~~**567—65.19(455B) Manure applicators certification.**~~

~~**65.19(1)** After March 2, 1999, a commercial manure applicator and a confinement site manure applicator shall not apply dry or liquid manure to land, unless the person is certified. Certification of a commercial manure applicator 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 appli-~~

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cating vehicle or equipment must be certified individually except as allowed in subrule 65.19(6).

**65.19(2) Certification requirements.** To be certified as a commercial or a confinement site manure applicator by the department, a person must do all of the following:

a. Apply for certification on a form provided by the department.

b. Pay the required certification fee of \$50.

c. Pass the examination given by the department or in lieu of the examination attend continuing instruction courses as described in subrule 65.19(5).

**65.19(3) Certification term.**

a. Certification for a confinement site applicator shall be for a period of three years.

b. Certification for a commercial manure applicator shall be for a period of one year.

**65.19(4) Examinations.**

a. Persons wishing to take the examination required to become certified commercial manure applicators or certified confinement site manure applicators may request a listing of dates and locations of examinations. 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 reapply.

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.

**65.19(5) Continuing instruction courses in lieu of examination.**

a. To establish or maintain certification and license, a commercial manure applicator 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.

c. Application for renewal of a certification must be received by the department or postmarked by the expiration date of the certification. Application shall be on forms provided by the department and shall include:

(1) Certification renewal fee.

(2) A passing grade on the certification examination or proof of attending the required hours of continuing instructional courses.

d. A commercial manure applicator or a confinement site manure applicator may not continue to apply manure after expiration of a certificate.

**65.19(6) Exemption from certification.**

a. Certification as a commercial manure applicator is not required of a person who is any of the following:

(1) Actively engaged in farming who trades work with another such person.

(2) Employed by a person actively engaged in farming not solely as a manure applicator 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 a person's duties.

(5) Applying manure within a period of 30 days from the date of initial employment as a commercial manure applica-

tor if the person applying the manure is acting under direct instructions and control of a certified commercial 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 commercial applicator can physically observe and communicate with the supervised person at all times.

(6) Employed by a research college to apply manure from animal feeding operations 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 of a confinement site manure applicator and is acting under direct instruction and control of a certified commercial 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 commercial 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 animal feeding operation that is part of the research activities or experiments of the research college.

**65.19(7) Certified commercial manure applicators 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 animal feeding operation.

(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 manure management plan (MMP) prepared for the animal feeding operation and the requirements of 65.2(455B). If a manure management plan does not exist, the requirements of 65.2(455B) 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 applicator to transport manure on a public road shall display the certification/license number(s) of the certified applicator 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 applicator 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.

**65.19(8) Discipline of certified applicators.**

a. Disciplinary action may be taken against a certified commercial manure applicator or confinement site manure applicator on any of the following grounds:

(1) Violation of state law or rules applicable to certified manure applicators 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



## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

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.

**65.19(9) Revocation of certificates.** Upon revocation of a certificate, application for 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.

**65.19(10) Record inspection.** The department may inspect, with reasonable notice, the records maintained by a commercial applicator. If the records are for an operation required to maintain records to demonstrate compliance with a manure management plan, the confidentiality provisions of subrule 65.17(14) and Iowa Code section 455B.203 shall extend to the records maintained by the applicator.

**567—65.20(455B) Manure storage indemnity fund.** The manure storage indemnity fund created in Iowa Code chapter 455J 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.

**65.20(1) Eligible facility site.** The site of a confinement feeding operation which contains one or more animal feeding operation 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 which 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.

**65.20(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 which originates from the confinement feeding operation. Cleanup may also include demolishing and disposing of animal feeding operation 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 which apply to the disposal of farm buildings or equipment by an individual or business organization.

**65.20(3) Claims against the fund.** Claims for cleanup costs may be made by a county which 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.

**65.20(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 65.20(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 65.20(3) "a" that the department will

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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 65.20(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 65.20(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.

65.20(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 65.20(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.

65.20(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.

65.20(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.

65.20(8) Subrogation. The fund is subrogated to all county rights regarding any claim submitted or paid as provided in Iowa Code section 455J.5(5).

567—65.1921(455B) Transfer of legal responsibilities or title. If title or legal responsibility for a permitted animal feeding operation and its animal feeding operation storage structure is transferred, the person to whom title or legal responsibility is transferred shall be subject to all terms and conditions of the permit and these rules. The person to whom the permit was issued and the person to whom title or legal responsibility is transferred shall notify the department 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 permit to reflect the transfer of legal responsibility. A person who has been classified as a habitual violator under Iowa Code section 455B.191 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. A person who has an interest in a confinement feeding operation that is the subject of a pending enforcement action shall not acquire legal responsibility or an interest to any additional permitted confinement feeding operations for the period that the enforcement action is pending.

567—65.2022(455B) 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.

These rules are intended to implement Iowa Code sections chapter 455J; Iowa Code sections 455B.104, 455B.110, 455B.134(3)"e," 455B.161 to 455B.165, 455B.171 to 455B.188, 455B.191, and 455B.201 455B.200 to 455B.206; and 1998 Iowa Acts, chapter 1209, sections 41 and 44 to 47.

ITEM 6. Amend the title of Appendix B of 567—Chapter 65 as follows:

APPENDIX B  
GUIDELINES ON LAND DISPOSAL  
OF ANIMAL WASTES MANURE

ITEM 7. Amend the title of Table 1 in Appendix B of 567—Chapter 65 as follows:

Table 1  
Navigable Major Water Sources—Rivers and Streams

ITEM 8. Amend the title of Table 2 in Appendix B of 567—Chapter 65 as follows:

Table 2  
Navigable Major Water Sources—Lakes

ITEM 9. Amend Table 3 in Appendix B of 567—Chapter 65 as follows:

Table 3  
Annual Pounds of Nitrogen Per Space of Capacity

Swine	Space	Liquid, Pit* or Basin**	Liquid, Lagoon***	Solid Manure
Nursery, 25 lb.	1 head	2	1	5
Grow-finish, 150 lb.	1 head	21	6	29
Formed storage*				

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<u>Swine</u>	<u>Space</u>	<u>Liquid, Pit* or Basin**</u>	<u>Liquid, Lagoon***</u>	<u>Solid Manure</u>
Dry feed	1 head	21		29
Wet/dry feed	1 head	23		29
Earthen storage**	1 head	14		29
Lagoon***	1 head		6	29
Gestation, 400 lb.	1 head	14	5	39
Sow & Litter, 450 lb.	1 crate	32	11	86
Farrow-nursery	Per sow in breeding herd	22	8	85
Farrow-finish	Per sow in breeding herd	150	44	172
<u>Dairy, Confined</u>	<u>Space</u>	<u>Liquid, Pit* or Basin**</u>	<u>Liquid, Lagoon***</u>	<u>Solid Manure</u>
Cows, 1200 & up lb.	1 head	129	59	239
Heifers, 900 lb.	1 head	97	44	179
Calves, 500 lb.	1 head	54	24	100
Veal calves, 250 lb.	1 head	27	12	50
Dairy herd	Per productive cow in herd	203	87	393
<u>Beef, Confined</u>	<u>Space</u>	<u>Liquid, Pit* or Basin**</u>	<u>Liquid, Lagoon***</u>	<u>Solid Manure</u>
Mature cows, 1000 lb.	1 head	105	23	147
Finishing, 900 lb.	1 head	95	19	132
Feeder calves, 500 lb.	1 head	53	11	73
<u>Poultry</u>	<u>Space</u>			<u>Dry Manure</u>
Layer, cages	1000 head			816 367
Broiler, litter	1000 head			585
Turkeys, litter	1000 head			1400

\* Formed manure storage structure  
 \*\* Earthen manure storage basin  
 \*\*\* Anaerobic lagoon

ITEM 10. Amend Table 5 in Appendix B of 567—Chapter 65 as follows:

Table 5  
~~Volume of Manure Produced~~ Production Per Space of Capacity

<u>Swine</u>	<u>Space</u>	<u>Daily</u>		<u>Yearly</u>
		<u>Liquid, Pit* or Basin**</u>	<u>Liquid, Lagoon***</u>	<u>Solid Manure</u>
Nursery, 25 lb.	1 head	0.2 gal	0.7 gal	0.34 tons
Grow-finish, 150 lb.	1 head	1.2 gal	4.1 gal	2.05 tons
<i>Formed storage*</i>				
Dry feed	1 head	1.2 gal		2.05 tons
Wet/dry feed	1 head	0.84 gal		2.05 tons
Earthen storage**	1 head	1.2 gal		2.05 tons
Lagoon***	1 head		4.1 gal	2.05 tons
Gestation, 400 lb.	1 head	1.6 gal	3.7 gal	2.77 tons
Sow & Litter, 450 lb.	1 crate	3.5 gal	7.5 gal	6.16 tons
Farrow-nursery	Per sow in breeding herd	2.2 gal	5.4 gal	6.09 tons
Farrow-finish	Per sow in breeding herd	9.4 gal	30 gal	12.25 tons
<u>Dairy, Confined</u>	<u>Space</u>	<u>Liquid, Pit* or Basin**</u>	<u>Liquid, Lagoon***</u>	<u>Solid Manure</u>
Cows, 1200 & up lb.	1 head	11.8 gal	40.1 gal	19.93 tons
Heifers, 900 lb.	1 head	8.8 gal	29.9 gal	14.95 tons
Calves, 500 lb.	1 head	4.9 gal	16.5 gal	8.30 tons
Veal calves, 250 lb.	1 head	2.5 gal	8.2 gal	4.15 tons
Dairy herd	Per productive cow in herd	18.5 gal	59.8 gal	32.77 tons

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<u>Beef, Confined</u>	<u>Space</u>	<u>Liquid, Pit* or Basin**</u>	<u>Liquid, Lagoon***</u>	<u>Solid Manure</u>
Mature cows, 1000 lb.	1 head	7.2 gal	15.7 gal	12.23 tons
Finishing, 900 lb.	1 head	6.5 gal	13.1 gal	11.00 tons
Feeder calves, 500 lb.	1 head	3.6 gal	7.3 gal	6.11 tons
<u>Poultry</u>	<u>Space</u>			<u>Dry Manure</u>
Layer, cages	1000 head			<del>9.60</del> 10.5 tons
Broiler, litter	1000 head			9.00 tons
Turkeys, litter	1000 head			35.00 tons

\* *Formed manure storage structure*  
\*\* *Earthen manure storage basin*  
\*\*\* *Anaerobic lagoon*

ITEM 11. Amend 567—Chapter 65, Appendix B, by adopting new Tables 6, 7 and 8 as follows:

Table 6  
Required Separation Distances—Swine, Sheep, Horses and Poultry

DISTANCES TO BUILDINGS AND PUBLIC USE AREAS				
Type of Structure	Animal Weight Capacity (lbs.)	Residences, Businesses, Churches, Schools		Public Use Areas
		Unincorporated Areas	Incorporated Areas	
Anaerobic lagoons and uncovered earthen manure storage basins	<200,000	1,250 feet	1,250 feet	1,250 feet
	200,000 to <625,000	1,250 feet	1,250 feet	1,250 feet
	625,000 to <1,250,000	1,875 feet	1,875 feet	1,875 feet
	1,250,000 or more	2,500 feet	2,500 feet	2,500 feet
Covered earthen manure storage basins	<200,000	1,000 feet	1,250 feet	1,250 feet
	200,000 to <625,000	1,000 feet	1,250 feet	1,250 feet
	625,000 to <1,250,000	1,250 feet	1,875 feet	1,875 feet
	1,250,000 or more	1,875 feet	2,500 feet	2,500 feet
Uncovered formed manure storage structures	<200,000	None	None	None
	200,000 to <625,000	1,250 feet	1,250 feet	1,250 feet
	625,000 to <1,250,000	1,500 feet	1,875 feet	1,875 feet
	1,250,000 or more	2,000 feet	2,500 feet	2,500 feet
Confinement buildings and covered formed manure storage structures	<200,000	None	None	None
	200,000 to <625,000	1,000 feet	1,250 feet	1,250 feet
	625,000 to <1,250,000	1,250 feet	1,875 feet	1,875 feet
	1,250,000 or more	1,875 feet	2,500 feet	2,500 feet
Egg washwater storage structures	<200,000	None	None	None
	200,000 to <625,000	750 feet	1,250 feet	1,250 feet
	625,000 to <1,250,000	1,000 feet	1,875 feet	1,875 feet
	1,250,000 or more	1,500 feet	2,500 feet	2,500 feet

DISTANCES TO WELLS				
Type of Structure	Public Well		Private Well	
	Shallow	Deep	Shallow	Deep
Aerobic structure, anaerobic lagoon, earthen manure storage basin, egg washwater storage structure and open feedlot runoff control basin	1,000 feet	400 feet	400 feet	400 feet
Formed manure storage structure, confinement building, open feedlot solids settling facility and open feedlot	200 feet	100 feet	200 feet	100 feet

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OTHER DISTANCES FOR ANIMAL FEEDING OPERATION STRUCTURES regardless of animal weight capacity	
Surface intake, wellhead or cistern of agricultural drainage wells, known sinkholes or major water sources (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	500 feet
Watercourses other than major water sources (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	200 feet
Right-of-way of a thoroughfare maintained by a political subdivision (Excluding small feeding operations, dry manure storage or when permanent vegetation is provided)	100 feet

See rule 567 IAC 65.12(455B) for exemptions available from the above distances

Table 7  
Required Separation Distances—Beef and Dairy Cattle

DISTANCES TO BUILDINGS AND PUBLIC USE AREAS				
Type of Structure	Animal Weight Capacity (lbs.)	Residences, Businesses, Churches, Schools		Public Use Areas
		Unincorporated Areas	Incorporated Areas	
Anerobic lagoons and uncovered earthen manure storage basins	<400,000	1,250 feet	1,250 feet	1,250 feet
	400,000 to <1,600,000	1,250 feet	1,250 feet	1,250 feet
	1,600,000 to <4,000,000	1,875 feet	1,875 feet	1,875 feet
	4,000,000 or more	2,500 feet	2,500 feet	2,500 feet
Covered earthen manure storage basins	<400,000	1,000 feet	1,250 feet	1,250 feet
	400,000 to <1,600,000	1,000 feet	1,250 feet	1,250 feet
	1,600,000 to <4,000,000	1,250 feet	1,875 feet	1,875 feet
	4,000,000 or more	1,875 feet	2,500 feet	2,500 feet
Uncovered formed manure storage structures	<400,000	None	None	None
	400,000 to <1,600,000	1,250 feet	1,250 feet	1,250 feet
	1,600,000 to <4,000,000	1,500 feet	1,875 feet	1,875 feet
	4,000,000 or more	2,000 feet	2,500 feet	2,500 feet
Confinement buildings and covered formed manure storage structures	<400,000	None	None	None
	400,000 to <1,600,000	1,000 feet	1,250 feet	1,250 feet
	1,600,000 to <4,000,000	1,250 feet	1,875 feet	1,875 feet
	4,000,000 or more	1,875 feet	2,500 feet	2,500 feet

DISTANCES TO WELLS				
Type of Structure	Public Well		Private Well	
	Shallow	Deep	Shallow	Deep
Aerobic structure, anaerobic lagoon, earthen manure storage basin, and open feedlot runoff control basin	1,000 feet	400 feet	400 feet	400 feet
Formed manure storage structure, confinement building, open feedlot solids settling facility and open feedlot	200 feet	100 feet	200 feet	100 feet

OTHER DISTANCES FOR ANIMAL FEEDING OPERATION STRUCTURES regardless of animal weight capacity	
Surface intake, wellhead or cistern of agricultural drainage wells, known sinkholes or major water sources (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	500 feet
Watercourses other than major water sources (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	200 feet
Right-of-way of a thoroughfare maintained by a political subdivision (Excluding small feeding operations, dry manure storage or when permanent vegetation is provided)	100 feet

See rule 567 IAC 65.12(455B) for exemptions available from the above distances

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Table 8  
Summary of Credit for Mechanical Aeration

% of Oxygen Supplied	Pounds Volatile Solids per 1000 cubic feet			
	Beef	Other than Beef		
	Daily max in all counties	Less than or equal to 6000 lb vs. daily max	Less than or equal to 6000 lb vs. daily max in counties listed in 65.15(13)"b"(2) above	Greater than 6000 lb vs. daily max in all counties
0-50	10.0	5.0	4.5	4.0
50	12.5	6.3	5.6	5.0
60	13.3	6.6	6.1	5.5
70	14.0	7.0	6.5	6.0
80	14.8	7.4	6.9	6.5
90	15.5	7.8	7.4	7.0
100	16.3	8.1	7.8	7.5
110	17.0	8.5	8.3	8.0
120	17.8	8.9	8.7	8.5
130	18.5	9.3	9.1	9.0
140	19.3	9.6	9.6	9.5
150	20.0	10.0	10.0	10.0

ITEM 12. Amend rule 567—68.1(455B) as follows:

**567—68.1(455B) Purpose and applicability.** The purpose of this chapter is to implement Iowa Code subsection 455B.172(5) by providing standards for the commercial cleaning of and the disposal of waste from private waste facilities, and licensing requirements and procedures. These rules govern the commercial cleaning of and the disposal of wastes from private waste facilities. *Certification of commercial manure applicators under 567—Chapter 65 will be deemed to satisfy the license requirements of Iowa Code section 455B.172 and this rule as it applies to commercial manure applicators only.*

ITEM 13. Amend rule 567—68.2(455B), definitions of "Private waste facilities" and "Waste," as follows:

"Private waste facilities" includes, but is not limited to, septic tanks as defined in ~~subrule 567—subrule 69.3(1)~~; holding tanks for wastes; impervious vault toilets, portable toilets, and chemical toilets as described in 567—Chapter 69; and all ~~waste manure~~ control systems identified in 567—Chapter 65 for animal confinement feeding operations.

"Waste" means human or animal excreta, water, scum, sludge, septage, and grease solids from private sewage disposal systems; impervious vault, portable, or chemical toilets; and ~~waste manure~~ control systems for animal confinement feeding operations.

ITEM 14. Amend subrule 68.9(2) as follows:

**68.9(2)** Disposal of ~~water manure~~ from animal confinement feeding operations shall be consistent with the provisions of 567—Chapter 65 for land disposal of animal wastes. *Commercial manure applicators must be individuals certified in accordance with provisions of that chapter and compliance with those provisions will be deemed to satisfy the requirements of Iowa Code subsection 455B.172(5).* ~~Animal wastes from an animal confinement feeding operation shall be applied in accordance with the provisions applicable for that facility.~~

ITEM 15. Amend rule 567—70.2(455B,481A) by adopting the following new definition in alphabetical order:

"Animal feeding operation structure" means an anaerobic lagoon, formed manure storage structure, egg washwater storage structure, earthen manure storage basin, or confinement building.

ITEM 16. Amend rule 567—72.2(455B) by adopting the following new subrule:

**72.2(9)** Encroachment on an animal feeding operation structure. A major water source, as identified in Appendix B, Tables 1 and 2 of 567—Chapter 65, or a watercourse shall not be constructed, expanded or diverted if the watercourse or major water source as constructed, expanded or diverted is closer than the following distances from an animal feeding operation structure unless a secondary containment barrier according to 567—subrule 65.15(17) is in place. Measurement shall be from the closest point of the animal feeding operation structure to the top of the bank of a stream channel or the ordinary high water mark of a lake, pond or reservoir.

a. Minimum distance from a watercourse to an animal feeding operation structure is 200 feet.

b. Minimum distance from a major water source to an animal feeding operation structure is 500 feet.

ITEM 17. Amend rule 567—72.3(455B) by adopting the following new subrule:

**72.3(5)** Encroachment on an animal feeding operation structure. The provisions of subrule 72.2(9) apply to any reservoir or impoundment resulting from the construction or modification of any dam.

[Filed 3/19/99, effective 5/12/99]

[Published 4/7/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/99.

## ARC 8908A

ENVIRONMENTAL PROTECTION  
COMMISSION[567]

## Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.103, 455B.304 and 455E.9, the Environmental Protection Commission hereby amends Chapter 209, "Landfill Alternatives Financial Assistance Program," Iowa Administrative Code.

These amendments are intended to update the existing financial assistance program to better meet today's solid waste management needs while developing an integrated financial assistance program with established investment objectives to provide the best possible service. An advisory committee was established to be a part of revising the current program by providing feedback and recommendations. The advisory committee consisted of numerous clients and stakeholders that utilize the program and would be impacted by any changes to the current program.

Notice of Intended Action was published in Iowa Administrative Bulletin on January 13, 1999, as **ARC 8622A**. A public hearing was held February 17, 1999. One person attended. The following changes were made to the Notice of Intended Action:

- The name of the program has been changed to "Solid Waste Alternatives Program." The new name was discussed and recommended by the Department and the advisory committee.
- The words "dependent on the type of project and application proposal submitted" have been deleted from 209.7(455B,455E). This change was recommended by the advisory committee. Funding will now be awarded based on a three-tier system.
- The first sentence in the second paragraph of 209.14(455B,455E) is being deleted because one set of selection criteria will now be used for all proposals. The deletion reflects changes the advisory committee recommended.
- The words "mutual written consent with the department and the selected applicant" were added to the last sentence in 209.15(455B,455E). The addition is for clarity and made in response to a comment raised at the public hearing.
- The sentence "Proposals will be evaluated in accordance with the timeline established in the application and guideline manual," has been added to 209.16(455B,455E) for clarity as recommended by the advisory committee.
- A new rule, 209.18(455B,455E), has been added. The addition is in response to a discussion at the advisory committee meeting. The addition will ensure outside input to future program changes.

These amendments are intended to implement Iowa Code chapters 455B and 455E.

These amendments will become effective May 12, 1999. The following amendments are adopted.

ITEM 1. Amend 567—Chapter 209, title, as follows:

~~LANDFILL ALTERNATIVES FINANCIAL  
ASSISTANCE PROGRAM~~  
**SOLID WASTE ALTERNATIVES PROGRAM**

ITEM 2. Amend rule 567—209.1(455B,455E) as follows:

**567—209.1(455B,455E) Goal.** The goal of this program is to reduce the amount of solid waste being generated and the amount of solid waste being landfilled through implementation of solid waste management projects. ~~This goal will be achieved utilizing the following hierarchy of waste management priorities in descending order of preference:~~

- ~~1. Waste reduction;~~
- ~~2. Recycling and reuse;~~
- ~~3. Combustion with energy recovery; and~~
- ~~4. Combustion for volume reduction.~~

ITEM 3. Amend rule 567—209.2(455B,455E) as follows:

**567—209.2(455B,455E) Purpose.** The purpose of this program is to provide financial assistance to eligible applicants for the purpose of implementing ~~education programs and solid waste management best practices, education and market development~~ projects, to achieve a reduction in solid waste generation and a reduction in solid waste landfilling. ~~Projects receiving financial assistance must address the program's goal as described in 209.1(455B,455E). Emphasis for selected projects will be placed on tonnage avoided, sustainability, and replicability.~~

ITEM 4. Amend rule 567—209.3(455B,455E) as follows:

Amend the following definitions:

"Eligible projects" means any project which, when implemented, will ~~address a reduction in~~ reduce the amount of solid waste being generated or the amount of solid waste being landfilled.

~~"Energy recovery" means the direct conversion of solid wastes into useful process heat or electricity.~~

~~"Grants" means financial assistance in the form of cash payments to recipients.~~

~~"Loans" means an award of financial assistance with the requirement that the award be repaid including interest as identified in the written agreement between the department and the recipient.~~

Adopt the following new definition in alphabetical order:

"Forgivable loan" means financial assistance in the form of cash payments to recipients for reimbursement of eligible project expenses. Repayment of loan moneys awarded will be forgiven if the recipient has met all identified project goals, milestones and conditions identified in the written agreement between the department and the recipient or as amended by written agreement.

ITEM 5. Amend rule 567—209.6(455B,455E) as follows:

**567—209.6(455B,455E) Eligible projects.** The department may provide financial assistance to applicants for the following types of projects that are consistent with the goal and purpose of this program:

- ~~1. Public education;~~
- ~~2. Waste reduction;~~
- ~~3. Recycling and reuse;~~
- ~~4. Research and development;~~
- ~~5. Demonstration;~~
- ~~6. Market development for recyclable materials;~~
- ~~7. Projects that manufacture products with recycled content;~~
- ~~8. Environmental testing related to various landfill alternatives for solid waste. Such projects shall include, but are not limited to, testing air emissions generated by the combustion of municipal solid waste, analysis of the ash generated as a result of the combustion of municipal solid waste,~~

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

~~analysis of alternative materials to be used in leachate control;~~

~~9. Production of energy through combustion, including production of tire-derived fuels and refuse-derived fuels; and~~

~~10. Combustion for volume reduction.~~

~~1. Best practices—practices and programs that will move Iowa toward long-term pollution prevention, waste reduction and recycling sustainability;~~

~~2. Education—practices and programs that are consistent with a coordinated statewide message on pollution prevention, waste reduction, and recycling to ensure ongoing support of these integrated solid waste management activities; and~~

~~3. Market development—practices and programs that develop a demand for value-added recyclables sufficient to provide increased and stable commodity markets.~~

ITEM 6. Amend rule 567—209.7(455B,455E) as follows:

**567—209.7(455B,455E) Type of financial assistance.** The type of financial assistance offered to an applicant (*forgivable loan, zero interest loan, low interest loan*) is dependent on the type of project and application submitted upon the amount of program funds awarded to each selected project. The department reserves the right to offer any combination of financial assistance types to any selected project.

~~209.7(1) Grants will be offered to applicants for waste reduction projects; public education projects; research and development projects; and demonstration projects that are innovative or new to the state of Iowa.~~

~~209.7(2) Loans will be offered to applicants for all other eligible projects and may be offered to applicants requesting grant assistance.~~

ITEM 7. Amend rule 567—209.8(455B,455E) as follows:

**567—209.8(455B,455E) Loans.** The term of all loans, executed under these rules, shall *vary be determined* on a case-by-case basis and shall be based on the specific capital costs financed, as well as the terms of other financing provided for the project. The written agreement *between the department and the recipient* will establish other conditions or terms needed to manage or implement the project.

ITEM 8. Amend subrule 209.9(2) as follows:

**209.9(2)** The applicant could implement the project at a reduced level of financial assistance and achieve project objectives and ~~this program's goals of this program.~~

ITEM 9. Amend rule 567—209.10(455B,455E) as follows:

**567—209.10(455B,455E) Fund disbursement limitations.** No funds shall be disbursed until the department has:

1. Determined the total estimated cost of the project;
2. Determined that financing for the cost share amount is ensured by the recipient;
3. Received final design plans from the recipient, if applicable;
4. *Received confirmation that all permits or permit amendments have been obtained by the recipient;*
4. 5. Received commitments from the recipient to implement the project;
- 5-6. Executed a written agreement with the recipient; and

6-7. Determined that the recipient is currently in compliance with all applicable federal, state, and local statutes and regulations.

ITEM 10. Amend rule 567—209.11(455B,455E) as follows:

**567—209.11(455B,455E) Minimum applicant cost share.** An applicant for financial assistance shall agree to provide a minimum cost share of funds committed to the project. Financial assistance moneys received by the applicant under these rules or through the landfill alternatives grant program *or the landfill alternatives financial assistance program* are ineligible to be utilized for any portion of the required applicant cost share. Minimum *applicant* cost share of funds shall be in accordance with the following schedule: *the schedule outlined in the application guideline manual.*

~~209.11(1) Grants.~~

- ~~a. Waste reduction—35 percent.~~
- ~~b. Public education—35 percent.~~
- ~~c. Research and development—35 percent.~~
- ~~d. Demonstration—35 percent.~~

~~209.11(2) Loans.~~

- ~~a. Recycling and reuse—35 percent.~~
- ~~b. Combustion with energy recovery—50 percent.~~
- ~~c. Combustion for volume reduction—60 percent.~~

ITEM 11. Amend rule 567—209.12(455B,455E) as follows:

**567—209.12(455B,455E) Eligible costs.** Applicants may request financial assistance in the implementation and operation of a project which includes, but is not limited to, funds for the purpose of:

1. Waste reduction equipment purchase and installation;
2. Collection, processing, or hauling equipment including labor for installation;
3. Development, *printing* and distribution of educational materials;
4. Planning and implementation of educational forums including, but not limited to, workshops;
5. Materials and labor for construction or renovation of buildings;
6. Salaries directly related to implementation and operation of the project;
7. Laboratory analysis costs; and
8. Engineering or consulting fees.

ITEM 12. Amend rule 567—209.13(455B,455E) as follows:

**567—209.13(455B,455E) Ineligible costs.** Financial assistance shall not be provided or used for costs including, but not limited to, the following:

1. Taxes;
2. Vehicle registration;
3. Overhead expenses;
4. Indirect costs;
5. Legal costs;
6. Contingency funds;
7. ~~Application Proposal~~ preparation;
8. Contractual project administration;
9. Land acquisition;
10. *Office furniture, office computers, fax machines and other office furnishings and equipment;*
- 10-11. Costs for which payment has or will be received under another federal, state or private financial assistance program; and



## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

~~11.~~ 12. Costs incurred before a written agreement has been executed between the applicant and the department.

ITEM 13. Amend rule 567—209.14(455B,455E), introductory paragraphs, as follows:

~~567—209.14(455B,455E)~~ Selection criteria. To receive consideration under these rules, ~~applications proposals~~ submitted to the department for financial assistance must be provided to the agency responsible for submitting an approved solid waste comprehensive plan or subsequent plan for agency review and comment. Responsible agency review and comments are required from the area in which the proposed project is located or the area or areas in which the proposed project will be implemented.

~~Separate selection criteria and separate application forms will be used to evaluate projects. The separate selection criteria are identified below for the four applications: education projects; waste volume reduction projects; research and development and demonstration projects; and projects eligible for loans as identified in 209.7(2). For each application project type, points assigned to the selection criteria total 100 points. The department shall evaluate coordinate evaluation of applications proposals and applicants will be awarded financial assistance based on the following selection criteria: contained in the application guideline manual.~~

~~Applicants submitting preproposals deemed viable after review will be required to submit additional information as requested by the department. Additional information submitted will be reviewed for project viability prior to receiving a financial assistance commitment from the department.~~

ITEM 14. Rescind subrules 209.14(1) through 209.14(4).

ITEM 15. Amend rule 567—209.15(455B,455E) as follows:

~~567—209.15(455B,455E)~~ Written agreement. Recipients shall enter into a contract with the department for the purposes of implementing the project for which financial assistance has been awarded. The contract shall be signed by the department director, the administrator of the waste management assistance division, and the authorized officer of the recipient. In cases where the department has awarded a *other than a forgivable* loan, the recipient will be required to make regularly scheduled installment payments to retire the loan *and any interest assigned to the loan* as identified in the executed contract. The recipient will be required to submit periodic progress reports as identified in the executed contract. Progress reports are considered part of the public record. The department may terminate any contract and seek the return of any funds released under the contract for failure by the recipient to perform under the terms and conditions of the contract. Amendments to contracts may be adopted by *mutual* written consent *by the department and the selected applicant of the department director, the administrator of the waste management assistance division, and the authorized officer of the recipient.*

ITEM 16. Amend rule 567—209.16(455B,455E) as follows:

~~567—209.16(455B,455E)~~ Applications *Proposals*. Applicants shall submit ~~applications proposals~~ on forms provided by the department. *The proposals are considered part of the public record. Applications will be due the first Monday in June and the first Monday in December each year at 4:30 p.m., Proposals will be accepted during normal business hours throughout the year by the department unless otherwise designated by the waste management assistance divi-*

*sion. Proposals will be evaluated in accordance with the timeline established in the applications and guidelines manual. Applications received by the waste management assistance division after the stated deadline will not be considered for funding during the current funding period, will not be retained for future consideration, and will not be returned to the applicant. It is the applicant's responsibility to resubmit a completed application for funding consideration during a subsequent funding period. Applications must be submitted on forms supplied by the department and applications submitted are considered part of the public record.*

ITEM 17. Amend subrule 209.17(5) as follows:

~~209.17(5)~~ An applicant does not provide sufficient information requested in the application ~~forms on forms provided by the department~~ pursuant to rules 209.8(455B,455E) to 209.1416(455B,455E);

ITEM 18. Amend subrule 209.17(7) as follows:

~~209.17(7)~~ The project goals or scope is not consistent with ~~rule rules~~ 209.1(455B,455E), 209.2(455B,455E), 209.6(455B,455E), and 209.14(455B,455E) ~~209.8(455B,455E), 209.9(455B,455E), 209.13(455B,455E).~~

ITEM 19. Amend 567—Chapter 209 by adding the following new rule:

~~567—209.18(455B,455E)~~ Amendments. The department will solicit recommendations from impacted agencies, associations, and other interested entities for significant alterations to the program.

[Filed 3/19/99, effective 5/12/99]

[Published 4/7/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/99.

ARC 8865A

HUMAN SERVICES  
DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code paragraph 17A.3(1)“b,” the Department of Human Services hereby rescinds Chapter 3, “Agency Procedure for Rule Making,” Chapter 4, “Petition for Rule Making,” and Chapter 5, “Declaratory Rulings,” appearing in the Iowa Administrative Code, and adopts Chapter 3, “Department Procedure for Rule Making,” Chapter 4, “Petitions for Rule Making,” and Chapter 5, “Declaratory Orders,” Iowa Administrative Code.

The Council on Human Services adopted these amendments March 10, 1999. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on January 13, 1999, as ARC 8614A.

These amendments revise the Department's rules governing procedures for rule making, petitions for rule making, and declaratory orders.

The Seventy-seventh General Assembly passed amendments to the Iowa Administrative Procedure Act in 1998 Iowa Acts, chapter 1202. A task force from the Attorney General's Office has drafted amendments to the Uniform Rules on Agency Procedure to implement the amendments to the Administrative Procedure Act. The Department's

## HUMAN SERVICES DEPARTMENT[441](cont'd)

amendments to its rules are based on the amendments of the Attorney General's task force, with some omissions and modifications to fit the Department. The task force's amendments are available at the State Law Library, Capitol Building, Des Moines, Iowa, or on the Attorney General's Web site at <http://www.state.ia.us/government/ag/deptdir.htm>.

With these revisions, the Department's rules will be in compliance with 1998 Iowa Acts, chapter 1202. The major changes governing the rule-making process in chapter 1202 which are to be effective July 1, 1999, are as follows:

- The requirement for an economic impact statement if requested by members of the Administrative Rules Review Committee (ARRC) is deleted and replaced with a requirement for a regulatory analysis if requested by the ARRC or the Administrative Rules Coordinator. In addition, if the rule would have a substantial impact on small business, a request for a fiscal impact statement may also be made by at least 25 persons provided that each represents a small business, or an organization representing at least 25 small businesses.

- Any interested person, association, agency, or a political subdivision may submit a written request to the Administrative Rules Coordinator for the Department to conduct a formal review of a specified rule to determine whether the rule should be repealed or amended or a new rule adopted instead. The Administrative Rules Coordinator shall determine whether the request is reasonable and does not place an unreasonable burden upon the Department.

If the Department has not conducted such a review of the specified rule within a period of five years prior to the filing of that written request, and upon a determination by the Administrative Rules Coordinator, the Department shall prepare within a reasonable time a written report with respect to the rule summarizing the Department's findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the rule's effectiveness, including a summary of data supporting the conclusions reached; written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule (i.e., requests for exceptions to policy) tendered to the Department or granted by the Department; and alternative solutions regarding the subject matter of the criticisms and the reasons they were rejected or the changes made in the rule in response to those criticisms and the reasons for the changes. A copy of the report is sent to the ARRC and the Administrative Rules Coordinator.

- The current law regarding declaratory rulings is deleted and replaced with declaratory orders. The purpose is the same, but requirements are more specific than in current law. Rules are added to provide for petitions for intervention.

The following revision was made to the Notice of Intended Action:

Subrule 3.5(3), paragraph "a," was revised by adding a cross reference to subrule 3.5(2) for clarity.

These amendments are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 25B.6.

These amendments shall become effective July 1, 1999.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [Chs 3 to 5] is being omitted. With the

exception of the change noted above, these amendments are identical to those published under Notice as **ARC 8614A**, IAB 1/13/99.

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[Published 4/7/99]

[For replacement pages for IAC, see IAC Supplement 4/7/99.]

**ARC 8867A****HUMAN SERVICES  
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 239B.4, the Department of Human Services hereby amends Chapter 7, "Appeals and Hearings," Chapter 40, "Application for Aid," Chapter 41, "Granting Assistance," and Chapter 93, "PROMISE JOBS Program," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments March 10, 1999. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on November 18, 1998, as **ARC 8464A**.

Family Investment Program (FIP) participants who are not exempt from PROMISE JOBS participation must sign a family investment agreement (FIA) to continue to receive FIP assistance. The family investment agreement outlines the steps the family will take to become self-sufficient and the services that PROMISE JOBS will provide. Participants who do not sign a family investment agreement or who do not carry out the responsibilities of the agreement choose a limited benefit plan (LBP).

These amendments implement the following changes to the limited benefit plan:

1. Currently, a first limited benefit plan is a nine-month period that reduces FIP benefits to the family for the first three months and cancels FIP for the entire family for the remaining six months.

Persons who choose a first limited benefit plan by not signing a family investment agreement may reconsider during the first three months of the plan. The limited benefit plan ends when the family investment agreement is signed and FIP benefits are issued retroactively as early as the date the person indicated willingness to reconsider.

Persons who choose a first limited benefit plan by not carrying out the responsibilities of the family investment agreement cannot reconsider their choice. Before such a limited benefit plan is initiated, PROMISE JOBS makes every effort to resolve the participation issue, to clear any misunderstanding of expectations, and to identify any barriers to participation that the participant might be experiencing. When these efforts do not bring the person back into the family investment agreement process, the Division of Economic Assistance reviews the case and either concurs that the person chose a limited benefit plan or gives PROMISE JOBS guidance for further resolution of the issue.

For participants who choose a limited benefit plan before signing a family investment agreement, a qualified social services professional visits the family in the second and fourth months of the limited benefit plan. A qualified social services professional visits the family in the fourth month of

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a limited benefit plan which the family chose by abandoning the family investment agreement responsibilities.

Under these revisions, a first limited benefit plan results in immediate ineligibility for the entire family. Ineligibility continues until the person who chose the limited benefit plan reconsiders by completing significant contact or action with PROMISE JOBS. Persons who choose a first limited benefit plan may reconsider at any time from the date the notice of decision is issued establishing the limited benefit plan.

To reconsider, the participant must communicate to the Department or to PROMISE JOBS the desire to engage in PROMISE JOBS activities and sign a family investment agreement.

A first limited benefit plan ends when the person completes significant contact or action as previously described. FIP benefits are issued retroactively to the date that the family investment agreement is signed, or to the date the family is otherwise eligible, whichever date is later.

For participants who do not carry out the responsibilities of the family investment agreement, PROMISE JOBS continues to make every effort to resolve the participation issue, to clear any misunderstanding of expectations, and to identify any barriers to participation that the participant might be experiencing. These efforts occur before the case is referred for review as described below.

When a participant chooses a first limited benefit plan, the case must be reviewed in a procedure approved by the Division of Workforce Development Administration in the Workforce Development Department. The limited benefit plan is not initiated until a review of the case results in concurrence that the participant has chosen a limited benefit plan.

Since all participants choosing a first limited benefit plan may reconsider, the Department will no longer ask a qualified social services professional to visit the family.

2. Currently, a subsequent limited benefit plan is an immediate six-month period of ineligibility for the entire family. Participants who choose a subsequent limited benefit plan cannot reconsider the choice. When the family re-applies for assistance after the six-month ineligibility period, eligibility is established in the same manner as for any other new applicant.

For persons who choose a subsequent limited benefit plan by not carrying out the responsibilities of the family investment agreement, PROMISE JOBS makes every effort to resolve the participation issue, to clear any misunderstanding of expectations, and to identify any barriers to participation that the participant might be experiencing before the limited benefit plan is initiated. When these efforts do not bring the person back into the family investment agreement process, the Division of Economic Assistance reviews the case and either concurs that the person chose a limited benefit plan or gives PROMISE JOBS guidance for further resolution of the

issue. Current rules do not require any review of cases facing a subsequent limited benefit plan for failure to sign a family investment agreement.

A qualified social services professional visits the family in the second month of the limited benefit plan.

Under these revisions, a subsequent limited benefit plan is an immediate six-month period of ineligibility for the entire family and ineligibility continues after the six-month period is over until the person who chose the limited benefit plan completes significant contact or action with PROMISE JOBS.

There is no option to reconsider a subsequent limited benefit plan during the six-month period of ineligibility. Once the six-month ineligibility period ends, the person who chose the limited benefit plan may reconsider by communicating the desire to engage in PROMISE JOBS activities, signing a family investment agreement, and satisfactorily completing 20 hours of employment or other activity. PROMISE JOBS expense allowances, such as child care and transportation, will be available for the 20 hours of activity. The 20 hours of employment or other activity must be completed within 30 days of the date that the family investment agreement is signed.

The limited benefit plan ends when the family investment agreement is signed and the previously mentioned significant action is complete. Retroactive FIP benefits shall be issued to the date that the family investment agreement is signed, or the date that the family is otherwise eligible, whichever date is later, but in no case will the FIP effective date be within the six-month period of ineligibility.

For persons who choose a subsequent limited benefit plan by abandoning the family investment agreement, PROMISE JOBS will continue to make every effort to resolve the participation issue, to clear any misunderstanding of expectations, and to identify any barriers to participation that the participant might be experiencing. These efforts occur before the case is referred for review as described below.

State-level Workforce Development Department staff will review the case circumstances of each participant who chooses a second limited benefit plan. The limited benefit plan will not be initiated until a review of the case results in concurrence that the participant has chosen a subsequent limited benefit plan. No review will be required for a third or subsequent limited benefit plan.

A qualified professional visits the family during or within four weeks of the second month of the start of the subsequent limited benefit plan.

The changes just described relate to limited benefit plans for families. However, these amendments also make similar revisions in limited benefit plans for individuals.

The table below summarizes the changes by comparing current limited benefit plan provisions with these amendments.

Comparison of Current and Revised Limited Benefit Plan (LBP) Provisions		
	LBP Before 6/1/99	LBP As of 6/1/99
Length of LBP:		
First LBP	9-month period: 3 mos. reduced benefits 6 mos. ineligibility	Indefinite period of ineligibility until Family Investment Agreement (FIA) signed

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Comparison of Current and Revised Limited Benefit Plan (LBP) Provisions		
	LBP Before 6/1/99	LBP As of 6/1/99
Second and Subsequent LBP	6-month period of ineligibility	A minimum 6-month period of ineligibility. Ineligibility continues thereafter until Family Investment Agreement signed. Additionally, to show intent to comply, applicant must complete 20 hours of activity prior to reauthorization of FIP back to date FIA signed.
Reconsideration: First LBP		
<ul style="list-style-type: none"> <li>If no Family Investment Agreement</li> </ul>	Entire 3-month reduced benefit period. Not allowed in 6-month ineligibility period	At any time following issuance of Notice of Decision
<ul style="list-style-type: none"> <li>If fail to meet Family Investment Agreement terms</li> </ul>	Not allowed	At any time following issuance of Notice of Decision
Second and Subsequent LBP	Not allowed	At any time following 6-month ineligibility period
Well-Being Visits: First LBP		
<ul style="list-style-type: none"> <li>If can reconsider</li> </ul>	Months 2 and 4	None
<ul style="list-style-type: none"> <li>If cannot reconsider</li> </ul>	Month 4 only	Not applicable
Second and Subsequent LBP	Month 2 only	Month 2 or within 4 weeks of month 2
LBP Review Process: First LBP		
<ul style="list-style-type: none"> <li>If no FIA</li> <li>If fail to meet FIA terms</li> </ul>	No review DHS - Division of Economic Assistance staff review	In both instances, 100% review at state or local level with procedure approved by Workforce Development Department
Second LBP		
<ul style="list-style-type: none"> <li>If no FIA</li> <li>If fail to meet FIA terms</li> </ul>	No review DHS - Division of Economic Assistance staff review	In both instances, 100% review by state-level staff at Workforce Development Department
Third or Subsequent LBP	Same as Second LBP	No review

The effective date of these amendments will be May 31, 1999. The rule changes apply to limited benefit plans imposed effective on or after June 1, 1999. Limited benefit plans imposed in May 1999 or earlier are subject to the previous rules.

For a person who is in a limited benefit plan in May 1999, the terms of the person's existing limited benefit plan shall continue until that limited benefit plan either ends or is lifted in accordance with the previous rules. A participant who chose a limited benefit plan under the previous policy and who then chooses a limited benefit plan that becomes effective on or after June 1, 1999, shall be subject to a subsequent limited benefit plan under the provisions of the revised rules.

These amendments to change the limited benefit plan incorporate 1998 Iowa Acts, chapter 1218, sections 55 through 61, as passed by the Seventy-seventh General Assembly.

The limited benefit plan continues not to impact eligibility for the Medicaid or Food Stamp programs.

A study of participants in a first limited benefit plan revealed that most participants state that they do not understand the program rules of the limited benefit plan. The expansion of reconsideration options for first limited benefit plans protects those participants who do not understand and who do not want a limited benefit plan as they can regain FIP eligibility when they demonstrate significant contact with or action with PROMISE JOBS.

The elimination of the reduced benefit period for a first limited benefit plan simplifies the limited benefit plan for

## HUMAN SERVICES DEPARTMENT[441](cont'd)

participants, as well as PROMISE JOBS and Department staff. To encourage participation, the consequences of a first limited benefit plan are more immediate to the participant's behavior resulting in the need to impose a limited benefit plan. The increase of reconsideration opportunities and the elimination of the set six-month period of ineligibility offset the effect of the more immediate consequences.

Currently, the Department's Division of Economic Assistance staff review each case facing a limited benefit plan for abandonment of the family investment agreement. The process was put in place to protect participants facing a limited benefit plan without reconsideration options. No Department review currently occurs for cases facing a first limited benefit plan for not signing a family investment agreement since these clients have reconsideration options. Under the revised rules, the Department believes expansion of reconsideration options eliminates the need for a Department review before implementation of any limited benefit plan.

Instead, with these changes, a review of all first limited benefit plans will be done according to procedure approved by the Division of Workforce Development Administration in the Workforce Development Department. With the revised rules, state-level Workforce Development Department staff will review the case circumstances of each participant who chooses a second limited benefit plan. A review of all these cases ensures that PROMISE JOBS has made every effort to provide support and to encourage participation in the family investment agreement process before imposing a second limited benefit plan. No review will be required for a third or subsequent limited benefit plan. The Department retains control and oversees review procedures through its contract with the Workforce Development Department.

The limited benefit plan rule changes are required by state legislation and also result from consideration of recommendations from income maintenance and PROMISE JOBS field staff, a limited benefit plan work group, and the Welfare Reform Advisory Group.

In Iowa Code section 239B.9(1)"b," "significant contact with or action in regard to the JOBS program" means the individual participant communicates to the JOBS program worker the desire to engage in JOBS program activities, signs a new or updated family investment agreement, and takes any other action required by the Department in accordance with rules adopted for this purpose. The Department opts to not require additional action from persons in a first limited benefit plan.

For persons in a subsequent limited benefit plan, the Department has defined "other action" as 20 hours of participation in certain activities. The Department chose the definition of "other action" with the belief that a participant in a subsequent limited benefit plan must demonstrate a willingness to participate through action rather than a mere statement. The option to define "other action" as resolution of the original issue that caused the imposition of the limited benefit plan was rejected due to the variance of specific participation issues. Such a definition would require a specific definition for each participation issue, which would be too complicated for participants and staff. The Department is precluding activity in unpaid work experience or volunteer work to ensure there is no conflict with provisions of the Fair Labor Standards Act.

The Department considered alternatives to the type and level of review that should occur before a limited benefit plan is initiated. The Department believes there is no longer a need for a state-level review by the Department of any limited benefit plan because all participants in first limited bene-

fit plans will have the right to reconsider their limited benefit plan at any time, and participants going into a second or subsequent limited benefit plan should be aware of the consequences of their actions. The Department is requiring some level of review of first and second limited benefit plans by the Workforce Development Department at the state or local level to provide some measure of protection. There are no changes in appeal rights. Clients still have the right to a hearing before an administrative law judge in the Department of Inspections and Appeals. The Department believes the revised review procedures best serve the interest of FIP participants, PROMISE JOBS, and the Department.

Public hearings were held on these amendments in eight locations around the state. Four persons attended the hearings and three persons submitted comments. The following revisions were made to the Notice of Intended Action:

Subrule 41.24(1), paragraph "d," subrule 41.24(4), paragraph "a," and subrule 41.24(11) were revised to change the date references to coincide with the new effective date of the rules.

Subrule 41.24(8), paragraph "a," was revised to add a cross reference.

In subrule 41.24(8), paragraph "d," subparagraphs (1), (3), and (4) were revised and subparagraph (2) was rescinded to remove references that required persons who chose a first limited benefit plan by abandonment of the family investment agreement to complete 20 hours of employment or other activity in order to reconsider the limited benefit plan. As a result, all persons in a first limited benefit plan, regardless of the reason, may reconsider by contacting the Department of Human Services or PROMISE JOBS and signing a family investment agreement.

In subrule 41.24(8), paragraph "d," subparagraph (5) was deleted out of concern that this subparagraph could be interpreted as a means to delay PROMISE JOBS services to FIP applicants in a limited benefit plan. Subrule 93.105(2) addresses priority services given by PROMISE JOBS. PROMISE JOBS needs to schedule applicants and participants at the earliest available time.

Subrule 41.24(8), paragraph "f," was added to clarify situations when a limited benefit plan is considered in error.

Subrule 93.105(2) was revised to provide that applicants in a limited benefit plan need to be scheduled at the earliest available time and to clarify that the authority of PROMISE JOBS to prioritize services extends to applicants as well as participants.

Subrule 93.138(2) and paragraph 93.138(3)"c" were revised to state that while the rules shift the approval of the discussed review procedures to the Division of Workforce Development in the Workforce Development Department, the Department of Human Services retains control and oversees review procedures through the contract between the two agencies.

Subrule 93.138(2), paragraph "a," and paragraph "b," subparagraphs (3), (4), and (5), were revised to remove references that required persons who chose a first limited benefit plan by abandonment of the family investment agreement to complete 20 hours of employment or other activity in order to reconsider the limited benefit plan. As a result, all persons in a first limited benefit plan, regardless of the reason, may reconsider by contacting the Department of Human Services or PROMISE JOBS and signing a family investment agreement.

Subrule 93.138(3), introductory paragraph, was revised to clarify that the notice of decision to establish a subsequent

## HUMAN SERVICES DEPARTMENT[441](cont'd)

limited benefit plan will inform the participant of the six-month period of ineligibility.

These amendments are intended to implement Iowa Code section 239B.9.

These amendments shall become effective May 31, 1999. The following amendments are adopted.

ITEM 1. Amend subrule 7.5(8) as follows:

~~7.5(8) Appeal rights under the family investment program limited benefit plan. A participant only has the right to appeal the establishment of the limited benefit plan once, but, for a first limited benefit plan there shall be two opportunities to do so. A participant in a first limited benefit plan has the right to appeal the limited benefit plan at the time the department issues timely and adequate notice establishing the limited benefit plan or at the time the department issues the subsequent notice that establishes the six-month period of ineligibility. A participant who has chosen a second or subsequent limited benefit plan has the right to appeal only at the time the department issues the timely and adequate notice that establishes the six-month period of ineligibility limited benefit plan. However, when the reason for the appeal is based on an incorrect grant computation, an error in determining the eligible group, or another worker error, a hearing shall be granted when the appeal otherwise meets the criteria for hearing.~~

ITEM 2. Amend 441—Chapter 40 by changing the parenthetical implementation statutes “239” and “77GA, SF516” to “239B” wherever they appear.

ITEM 3. Amend rule 441—40.23(239B) as follows:

~~441—40.23(239B) Date of application. The date of application is the date an identifiable Public Assistance Application, Form PA-2207-0 470-0462 or Form PA-2230-0 470-0466 (Spanish), Form 470-3112, Application for Assistance, Part 1, or Form 470-3122 (Spanish), is received in any local or area office or by an income maintenance worker in any satellite office or by a designated worker who is in any disproportionate share hospital, federally qualified health center or other facility in which outstationing activities are provided. The disproportionate share hospital, federally qualified health center or other facility will forward the application to the department office which is responsible for the completion of the eligibility determination. An identifiable application is an application containing a legible name and address that has been signed.~~

A new application is not required when adding a person to an existing eligible group. This person is considered to be included in the application that established the existing eligible group. However, in these instances, the date of application to add a person is the date the change is reported. When it is reported that a person is anticipated to enter the home, the date of application to add the person shall be the date of the report.

In those instances where a person previously excluded from the eligible group as described at 441—subrule 41.27(11) is to be added to the eligible group, the date of application to add the person is the date the person indicated willingness to cooperate.

EXCEPTIONS: When adding a person who was previously excluded from the eligible group for failing to comply with 441—subrule 41.22(13), the date of application to add the person is the date the social security number or proof of application for a social security number is provided.

When adding a person who was previously excluded from the eligible group as described at 441—subrules 41.24(8),

41.25(5), and 46.28(2), and rule 441—46.29(77GA, SF516 239B), the date of application to add the person is the day after the period of ineligibility has end-ed.

*When adding a person who was previously excluded from the eligible group as described at 441—subrule 41.24(8), the date of application to add the person is the date the person signs a family investment agreement.*

This rule is intended to implement 1997 Iowa Acts, Senate File 516, section 3 Iowa Code section 239B.2.

ITEM 4. Amend rule 441—40.26(239B) as follows:

~~441—40.26(239B) Effective date of grant. New approvals shall be effective as of the date the applicant becomes eligible for assistance, but in no case shall the effective date be earlier than seven days following the date of application. When an individual is added to an existing eligible group, the individual shall be added effective as of the date the individual becomes eligible for assistance, but in no case shall the effective date be earlier than seven days following the date the change is reported. When it is reported that a person is anticipated to enter the home, the effective date of assistance shall be no earlier than the date of entry or seven days following the date of report, whichever is later.~~

When the change is timely reported as described at subrule 40.27(4), a payment adjustment shall be made when indicated. When the individual's presence is not timely reported as described at subrule 40.27(4), excess assistance issued is subject to recovery.

In those instances where a person previously excluded from the eligible group as described at 441—subrule 41.27(11) is to be added to the eligible group, the effective date of eligibility shall be seven days following the date the person indicated willingness to cooperate. However, in no instance shall the person be added until cooperation has actually occurred.

EXCEPTIONS: When adding a person who was previously excluded from the eligible group for failing to comply with 441—subrule 41.22(13), the effective date of eligibility shall be seven days following the date that the social security number or proof of application for a social security number is provided.

When adding a person who was previously excluded from the eligible group as described at 441—subrules 41.24(8), 41.25(5), and 46.28(2), and rule 441—46.29(77GA, SF516 239B), the effective date of eligibility shall be seven days following the date that the period of ineligibility ended.

*When adding a person who was previously excluded from the eligible group as described at 441—subrule 41.24(8), the effective date of eligibility shall be seven days following the date the person signs a family investment agreement. In no case shall the effective date be within the six-month ineligibility period of a subsequent limited benefit plan as described at 441—paragraph 41.24(8) “a.”*

This rule is intended to implement 1997 Iowa Acts, Senate File 516, section 4 Iowa Code section 239B.3.

ITEM 5. Amend 441—Chapter 41 by changing the parenthetical implementation statutes “239” and “77GA, SF516” to “239B” wherever they appear.

ITEM 6. Amend rule 441—41.24(239B) as follows:

Rescind subrule 41.24(1), paragraph “d,” and adopt the following new paragraph “d” in lieu thereof:

d. Applicants who have chosen and are in a limited benefit plan that began on or after June 1, 1999, shall complete significant contact with or action in regard to PROMISE JOBS as described at paragraphs 41.24(8) “a” and “d”

## HUMAN SERVICES DEPARTMENT[441](cont'd)

for FIP eligibility to be considered. For two-parent households, both parents must participate as previously stated except when one parent meets the exemption criteria described at subrule 41.24(2).

Amend subrule 41.24(4) as follows:

41.24(4) Method of referral.

a. *While the eligibility decision is pending, applicants in a limited benefit plan that began on or after June 1, 1999, shall receive a letter which contains information about the need to complete significant contact with or action in regard to the PROMISE JOBS program to be eligible for FIP assistance and the procedure for being referred to the PROMISE JOBS program.*

b. When the FIP application is approved or when exempt status is lost, volunteers and persons who are not exempt from referral to PROMISE JOBS shall receive a letter which contains information about participant responsibility under PROMISE JOBS and the FIA and reminds instructs the FIP participant to contact PROMISE JOBS within ten calendar days to schedule the PROMISE JOBS orientation. ~~A referral file of volunteers and persons who are not exempt from referral shall be provided to the appropriate PROMISE JOBS provider agencies.~~

Amend subrule 41.24(8) as follows:

41.24(8) The limited benefit plan (LBP). When a participant responsible for signing and meeting the terms of a family investment agreement as described at rule 441—93.109(249C 239B) chooses not to sign or fulfill the terms of the agreement, the FIP eligible group or the individual participant shall enter into a limited benefit plan. The first month of the limited benefit plan is the first month after the month in which timely and adequate notice is given to the participant as defined at 441—subrule 7.7(1). A participant who is exempt from PROMISE JOBS is not subject to the limited benefit plan.

a. *A limited benefit plan shall either be a first limited benefit plan or a subsequent limited benefit plan. From the effective date of the limited benefit plan, for a first limited benefit plan, the FIP household shall not be eligible for up to three months of benefits based on the needs of the children only, until the participant who chose the limited benefit plan completes significant contact with or action in regard to the PROMISE JOBS program as defined in paragraph "d."* ~~At the end of the three-month period of reduced benefits, the FIP eligible group becomes ineligible for FIP benefits for a six-month period. If a second or subsequent limited benefit plan is chosen by the same participant, a subsequent six-month period of ineligibility applies, and ineligibility continues after the six-month period is over until the participant who chose the LBP completes significant contact with or action in regard to the PROMISE JOBS program as defined in paragraph "d."~~ A limited benefit plan imposed in error as described in paragraph "f" shall not be considered a first limited benefit plan. A limited benefit plan is considered imposed when timely and adequate notice is issued establishing the limited benefit plan.

b. The limited benefit plan shall be applied to participants responsible for the family investment agreement and other members of the participant's family as follows:

(1) When the participant responsible for the family investment agreement is a parent or needy caretaker relative, ~~for a first limited benefit plan, the FIP eligible group is eligible for up to three months of benefits based on the needs of the children only the limited benefit plan shall apply to the entire FIP eligible group as defined at subrule 41.28(1). At the end of the three-month period of reduced benefits, the~~

~~FIP eligible group becomes ineligible for FIP benefits for a six-month period. For a second or subsequent limited benefit plan chosen by the same participant, a subsequent six-month period of ineligibility applies. If the eligible group re-applies for assistance after the six-month period of ineligibility, eligibility shall be established in the same manner as for any other new applicant.~~

(2) When the participant choosing a limited benefit plan is a needy relative who acts as payee when the parent is in the home but is unable to act as payee, or is a dependent child's stepparent who is in the FIP eligible group because of incapacity or caregiving, the limited benefit plan shall apply only to the individual participant choosing the plan. ~~For a first limited benefit plan, the individual participant choosing the limited benefit plan is ineligible for nine months from the effective date of the limited benefit plan. For a second or subsequent limited benefit plan chosen by the same individual participant, a subsequent six-month period of ineligibility applies.~~

(3) No change.

(4) When the FIP eligible group includes children who are mandatory PROMISE JOBS participants, the children shall not have a separate family investment agreement but shall be asked to sign the eligible group's family investment agreement and to carry out the responsibilities of that family investment agreement. A limited benefit plan shall be applied as follows:

1. When the parent or needy caretaker relative responsible for a family investment agreement meets those responsibilities but a child who is a mandatory PROMISE JOBS participant chooses an individual limited benefit plan, ~~the FIP eligible group is eligible for reduced benefits during the child's limited benefit plan shall apply only to the individual child choosing the plan. However, the child is ineligible for nine months for a first limited benefit plan, and for six months for a second or subsequent limited benefit plan.~~

2. No change.

(5) No change.

(6) ~~When the FIP eligible group includes two parents both parents of a FIP child are in the home, a limited benefit plan shall be applied as follows:~~

1. When only one parent of a child in the eligible group is responsible for a family investment agreement and that parent chooses the limited benefit plan, the limited benefit plan *applies to the entire family and* cannot be ended by the voluntary participation in a family investment agreement by the exempt parent. ~~However, for a first limited benefit plan, the exempt parent may continue to be included in the eligible group FIP grant during the three-month reduced benefit period by volunteering to participate in the PROMISE JOBS FIP-unemployed parent work program. If a second or subsequent limited benefit plan is chosen by either parent, the FIP eligible group becomes ineligible for a six-month period beginning with the effective date of the limited benefit plan.~~

2. When both parents of a child in the eligible group are responsible for a family investment agreement, both are expected to sign the agreement. If either parent chooses the limited benefit plan, the limited benefit plan cannot be ended by the participation of the other parent in a family investment agreement. ~~However, for a first limited benefit plan, the other parent may continue to be included in the eligible group's FIP grant during the three-month reduced benefit period by participating in the PROMISE JOBS FIP-unemployed parent work program. If a second or subsequent limited benefit plan is chosen by either parent, the FIP eligible group be-~~

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~~comes ineligible for a six-month period beginning with the effective date of the limited benefit plan.~~

3. When the parents from a two-parent eligible group family in a limited benefit plan separate, the limited benefit plan shall follow only the parent who chose the limited benefit plan and any children in the home of that parent.

4. A subsequent limited benefit plan applies when either parent in a two-parent family previously chose a limited benefit plan.

c. A participant shall be considered to have chosen a limited benefit plan under any of the following circumstances:

(1) A participant who does not establish an orientation appointment with the PROMISE JOBS program as described at 441—subrule 93.105(2) or who fails to keep or reschedule an orientation appointment shall receive a one reminder letter which informs the participant that those who do not attend orientation have elected to choose the limited benefit plan. A participant who chooses not to respond to the reminder letter does not establish an orientation appointment within ten calendar days from the mailing date of the reminder letter or who fails to keep or reschedule an orientation appointment shall receive notice establishing the limited benefit plan, the beginning date of the period of reduced benefits, for a first limited benefit plan, and the beginning and ending dates of the six-month period of ineligibility. Timely and adequate notice provisions as in 441—subrule 7.7(1) apply.

(2) No change.

(3) A participant who signs a family investment agreement but does not carry out the family investment agreement responsibilities shall be deemed to have chosen a limited benefit plan as described in subparagraph (1). This includes a participant who fails to respond to the PROMISE JOBS worker's request to renegotiate the family investment agreement when the participant has not attained self-sufficiency by the date established in the family investment agreement. A limited benefit plan shall be imposed regardless of whether the request to renegotiate is made before or after expiration of the family investment agreement.

d. A participant who chooses a limited benefit plan may reconsider that choice as follows:

(1) A participant who chooses a first limited benefit plan rather than sign a family investment agreement shall have through the entire three-month period of reduced benefits following the effective date of the limited benefit plan to reconsider and begin development of may reconsider at any time from the date timely and adequate notice is issued establishing the limited benefit plan. To reconsider, the participant must communicate the desire to engage in PROMISE JOBS activities to the department or appropriate PROMISE JOBS office and develop and sign the family investment agreement. The participant may contact the department or the appropriate PROMISE JOBS program office anytime from the date timely and adequate notice is issued establishing the limited benefit plan through the first three months of the limited benefit plan to begin the reconsideration process. Although FIP benefits shall not begin until the participant signs a family investment agreement during the PROMISE JOBS program orientation and assessment process, retroactive benefits shall be issued as described in rule 441—40.26(239). A limited benefit plan imposed in error shall not be considered a first limited benefit plan. A limited benefit plan is considered imposed when timely and adequate notice is issued establishing the limited benefit plan. FIP benefits shall be effective the date the family investment

agreement is signed or the effective date of the grant as described in rule 441—40.26(239B), whichever date is later. FIP benefits may be reinstated in accordance with 441—subrule 40.22(5) when the family investment agreement is signed before the limited benefit plan goes into effect.

(2) A participant who signs a family investment agreement but does not carry out the family investment agreement responsibilities shall be deemed to have chosen a limited benefit plan and shall not be allowed to reconsider that choice. This includes a participant who fails to respond to the PROMISE JOBS worker's request to renegotiate the family investment agreement when the participant has not attained self-sufficiency by the date established in the family investment agreement. A limited benefit plan shall be imposed regardless of whether the request to renegotiate is made prior to or after expiration of the family investment agreement.

(3) A participant who chooses a second or subsequent limited benefit plan shall not be allowed to may reconsider that choice at any time following the required six-month period of ineligibility. To reconsider, the participant must contact the department or the appropriate PROMISE JOBS office to communicate the desire to engage in PROMISE JOBS activities, sign a new or updated family investment agreement, and satisfactorily complete 20 hours of employment or the equivalent in an activity other than work experience or unpaid community service, unless problems or barriers as described at rules 441—93.133(239B) and 93.134(239B) apply. The 20 hours of employment or other activity must be completed within 30 days of the date that the family investment agreement is signed, unless problems or barriers as described at rules 441—93.133(239B) and 93.134(239B) apply. FIP benefits shall not begin until the person who chose the limited benefit plan completes the previously defined significant actions. FIP benefits shall be effective the date the family investment agreement is signed or the effective date of the grant as described in rule 441—40.26(239B), whichever date is later, but in no case shall the effective date be within the six-month period of ineligibility.

(4) For a two-parent family when both parents are responsible for a family investment agreement as described at subrule 41.24(1), a first or subsequent limited benefit plan continues until both parents have completed significant contact or action with the PROMISE JOBS program as described in subparagraphs (1) and (3) above.

e. When a participant has chosen a subsequent limited benefit plan, a qualified social services professional shall attempt to visit with the participant to inquire into the family's family with a focus upon the children's well-being. The visit shall be performed during or within four weeks of the second month of the start of the subsequent limited benefit plan. The visit shall serve as an extension of the family investment program and the family investment agreement philosophy of supporting families as they move toward self-sufficiency. The department may contract for those services the visit. The visit shall be made in accordance with the following:

(1) For a participant in a first limited benefit plan who has the reconsideration option, a qualified social services professional, as defined at 441—subrule 185.10(1), shall inquire into the well-being of the family during month two of the reduced benefit period. If the participant who is responsible for a family investment agreement indicates a desire to develop a family investment agreement, the qualified social services professional shall assist the participant in establishing an appointment with the appropriate PROMISE JOBS program office.



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~~(2) For a participant in a first limited benefit plan who does not enter into the family investment agreement process during the three month reconsideration period, a qualified social services professional shall make another inquiry as to the well-being of the family during month four of the limited benefit plan.~~

~~(3) A participant who signs the family investment agreement but does not carry out family investment agreement responsibilities and, consequently, has chosen a first limited benefit shall not be allowed to reconsider that choice. However, a social services professional shall inquire as to the well being of the family during month four of the limited benefit plan.~~

~~(4) A participant who has chosen a second or subsequent limited benefit plan shall not be allowed to reconsider that choice. However, a qualified social services professional shall inquire into the well-being of the family during month two of the limited benefit plan.~~

*f. A limited benefit plan imposed in error shall not be considered a limited benefit plan. This includes any instance when participation in PROMISE JOBS should not have been required as defined in the administrative rules. Examples of instances when an error has occurred are:*

*(1) The person considered to have chosen the limited benefit plan was disabled and unable to participate as described at paragraph 41.24(2) "d" on the date the notice of decision was issued to impose the limited benefit plan.*

*(2) It is verified that the person considered to have chosen the limited benefit plan moved out of state prior to the date that PROMISE JOBS determined the limited benefit plan was chosen.*

*(3) The final appeal decision under 441—Chapter 7 reverses the decision to impose a limited benefit plan.*

Amend subrule 41.24(9), catchwords, as follows:

41.24(9) Nonparticipation by ~~volunteers~~ *volunteer participants*.

Adopt the following new subrule 41.24(11):

41.24(11) Implementation. A limited benefit plan imposed effective on or after June 1, 1999, shall be imposed according to the revised rules becoming effective on that date. A limited benefit plan imposed effective on or before May 1, 1999, shall be imposed subject to the previous rules for the limited benefit plan. For a person who is in a limited benefit plan on May 1, 1999, the terms of the person's existing limited benefit plan shall continue until that limited benefit plan either ends or is lifted in accordance with previous limited benefit plan rules. A participant who chose a limited benefit plan under the previous policy and who then chooses a limited benefit plan that becomes effective on or after June 1, 1999, shall be subject to a subsequent limited benefit plan under the provisions of the revised rules.

ITEM 7. Amend rule 441—93.104(239B) as follows:

Rescind subrule 93.104(3) and adopt the following new subrule in lieu thereof:

93.104(3) Applicants in a limited benefit plan who must complete significant contact with or action in regard to PROMISE JOBS for FIP eligibility to be considered, as described at 441—paragraphs 41.24(8)"a" and "d," are eligible for expense allowances for the 20 hours of activity. However, PROMISE JOBS services and allowances are only available when it appears the applicant will otherwise be eligible for FIP.

Amend subrule 93.104(4) as follows:

93.104(4) Volunteers and ~~persons~~ *FIP participants* who are responsible for the FIA shall contact the appropriate PROMISE JOBS office to schedule an appointment for

PROMISE JOBS orientation within ten calendar days of notice that the FIP application is approved or that exempt status is lost and FIA responsibility has begun.

ITEM 8. Amend subrule 93.105(2) as follows:

93.105(2) ~~Call-up Service upon referral.~~ *FIP applicants and participants who are referred to PROMISE JOBS after January 1, 1994, shall initiate call-up service for PROMISE JOBS orientation by contacting the appropriate PROMISE JOBS office within ten calendar days of the mailing date of the notice of FIP approval or within ten calendar days of notice that exempt status has been lost and FIA responsibility has begun, as required under 441—subrule 41.24(5).*

PROMISE JOBS provider agencies shall schedule FIA orientation appointments at the earliest available times for FIP participants who contact the appropriate PROMISE JOBS office within the ten days except when the department exercises administrative authority to require prioritization of orientation services to ensure that specific groups receive services in order to achieve self-sufficiency in the shortest possible time, to meet federal minimum participation rate requirements and other TANF requirements.

*Applicants who have chosen and are in a limited benefit plan are referred to PROMISE JOBS and must initiate service by contacting the department or the appropriate PROMISE JOBS office as described at 441—subrule 41.24(1). The applicants who communicate the desire to engage in PROMISE JOBS activities shall be scheduled at the earliest available time to begin or resume the family investment agreement process.*

a. to f. Rescinded IAB 12/3/97, effective 2/1/98.

The department reserves the authority to prioritize orientation and other services to FIP *applicants and* participants in whatever order best fits the needs of *applicants and* participants and the PROMISE JOBS program.

~~Participants~~ *Applicants and participants* who are participating in the food stamp employment and training (FSET) program at the time of ~~call-up referral~~ shall be allowed to use the FSET component in which they are currently enrolled as the first step in the FIA. This does not apply to persons who drop out of the FSET component.

ITEM 9. Amend rule 441—93.138(239B) as follows:

Rescind subrules 93.138(2) and 93.138(3) and adopt the following new subrules in lieu thereof:

93.138(2) Resolution process for FIP participants who choose a first limited benefit plan. Before a notice of decision establishing a first limited benefit plan is issued, the case shall be reviewed in a procedure approved by the division of workforce development administration in the workforce development department. The procedure may include review by state-level division of workforce development administration staff or by a regional PROMISE JOBS manager, a PROMISE JOBS supervisor, an income maintenance supervisor, a person designated to coordinate services for FIP participants in the area, or a combination of any of the above. Approval of any review procedure at less than the state level for participants choosing a limited benefit plan by not carrying out the FIA responsibilities shall occur only after the service delivery region demonstrates satisfactory performance of the resolution process. The department of human services retains control and oversees review procedures through its contract with the workforce development department.

The notice of decision establishing a first limited benefit plan shall inform the FIP participant that the participant may reconsider at any time from the date timely and adequate notice is issued establishing the limited benefit plan. The no-

## HUMAN SERVICES DEPARTMENT[441](cont'd)

tice of decision shall inform the participant that the participant shall contact the department or appropriate PROMISE JOBS office to reconsider the limited benefit plan.

a. For participants who choose a first limited benefit plan, the notice of decision shall inform the participant of the action needed to reconsider the limited benefit plan as described at 441—subparagraph 41.24(8)“d”(1).

(1) When the participant contacts either the income maintenance worker or the PROMISE JOBS office, the participant shall be scheduled to begin or resume development of the FIA as described elsewhere in these rules.

(2) When the FIA is signed, the PROMISE JOBS worker shall notify the department and the limited benefit plan shall be terminated. FIP benefits shall be effective as described at 441—subparagraph 41.24(8)“d”(1).

b. For participants who choose a first limited benefit plan by not carrying out the FIA responsibilities, the PROMISE JOBS worker shall make every effort to negotiate for a solution, clearing misunderstanding of expectations or identifying barriers to participation which should be addressed in the FIA. The PROMISE JOBS supervisor shall be involved to provide further advocacy, counseling, or negotiation support, such as when a participant fails to respond to the PROMISE JOBS worker's request to renegotiate the FIA when the participant has not attained self-sufficiency by the date established in the FIA. An LBP shall be imposed regardless of whether the request to renegotiate is made prior to or after expiration of the FIA.

(1) Local PROMISE JOBS management shall have the option to involve an impartial third party to assist in a resolution process. Arrangements shall be indicated in the local services plan of the local service delivery region.

(2) If the above resolution actions do not lead to fulfillment of the FIA, the case shall be referred for review as previously stated in this rule.

(3) If the above steps do not lead to fulfillment of the FIA, the FIP participant is considered to have chosen the limited benefit plan and the notice of decision shall be initiated. The notice of decision shall inform the participant of the action needed to reconsider the limited benefit plan as described at 441—subparagraph 41.24(8)“d”(1).

(4) When the participant contacts either the income maintenance worker or the PROMISE JOBS office, the participant shall be scheduled to sign a new or updated FIA as described elsewhere in these rules.

(5) When the FIA is signed and the participant has satisfactorily completed significant action, the PROMISE JOBS worker shall notify the department and the limited benefit plan shall be terminated. FIP benefits shall be effective as described at 441—subparagraph 41.24(8)“d”(1).

c. Appeal rights under the limited benefit plan are described at rule 441—93.140(239B), and judicial review upon petition of the participant is always available.

**93.138(3)** Resolution process for FIP participants who choose a subsequent limited benefit plan. The notice of decision establishing a subsequent limited benefit plan shall inform the FIP participant of the six-month ineligibility period and that the participant may reconsider at any time following the six-month ineligibility period. To reconsider, the participant must complete significant contact with or action in regard to the PROMISE JOBS program as described at 441—subparagraph 41.24(8)“d”(3). When the six-month ineligibility period ends, and the participant contacts either the income maintenance worker or the PROMISE JOBS office, the participant shall be scheduled to sign a new or updated FIA and to begin significant action as described at

441—subparagraph 41.24(8)“d”(3). When the FIA is signed and the participant has satisfactorily completed the significant action, the PROMISE JOBS worker shall notify the department and the limited benefit plan shall be terminated. FIP benefits shall be effective as described at 441—subparagraph 41.24(8)“d”(3).

a. For participants who choose a subsequent limited benefit plan as described at 441—subparagraph 41.24(8)“c”(1), the PROMISE JOBS supervisor shall send the participant one letter to explain the consequences of a subsequent limited benefit plan and to offer the participant an additional ten calendar days to schedule an orientation appointment before a notice of decision establishing the subsequent limited benefit plan is issued.

b. For participants who choose a subsequent limited benefit plan by not carrying out the FIA responsibilities, the PROMISE JOBS worker shall make every effort to negotiate for a solution, clearing misunderstanding of expectations or identifying barriers to participation which should be addressed in the FIA, such as when a participant fails to respond to the PROMISE JOBS worker's request to renegotiate the FIA when the participant has not attained self-sufficiency by the date established in the FIA. An LBP shall be imposed regardless of whether the request to renegotiate is made prior to or after expiration of the FIA.

(1) The PROMISE JOBS supervisor shall be involved to provide further advocacy, counseling, or negotiation support. The resolution actions of the supervisor shall be documented in the participant case file.

(2) Local PROMISE JOBS management shall have the option to involve an impartial third party to assist in a resolution process. Arrangements shall be indicated in the local services plan of the local service delivery region.

c. Before a notice of decision to establish a second limited benefit plan is issued, the case shall be referred to the division of workforce development administration for a review by state-level workforce development department staff. The department of human services retains control and oversees review procedures through its contract with the workforce development department.

d. If the above steps do not lead to fulfillment of the FIA, the FIP participant is considered to have chosen a subsequent limited benefit plan and the notice of decision establishing the limited benefit plan shall be initiated. The notice of decision shall inform the participant of the action needed to reconsider the limited benefit plan as described at 441—subparagraph 41.24(8)“d”(3).

e. Appeal rights under the limited benefit plan are described at rule 441—93.140(239B), and judicial review upon petition of the participant is always available.

f. A qualified professional shall attempt to visit with the participant family with a focus upon the children's well-being as described at subrule 93.138(4).

Amend subrule 93.138(4), introductory paragraphs and paragraph “a,” as follows:

**93.138(4)** Check on the well-being of the family children in subsequent LBP households. For FIP households who have chosen the a subsequent LBP, the department shall provide for a qualified social services professionals to provide home visits to make inquiry into the professional shall attempt to visit with the participant family with a focus upon the children's well-being of the family in circumstances as described at 441—subrule 41.24(8)“e”(1) to (4). A qualified social services professional is a person meeting the qualifications for education and experience set forth at 441—subrule 185.10(1) for the type of service provided. The visit shall be

## HUMAN SERVICES DEPARTMENT[441](cont'd)

performed during or within four weeks of the second month of the start of the subsequent benefit plan. The department may contract out for these services.

All visits to the FIP household shall be made in the spirit of supporting families who have chosen the LBP. The instructions for the visits shall be written to make it clear that these visits are an extension of the FIP and FIA philosophy of supporting families as they move toward self-sufficiency. If at any of the visits, initial or follow-up, the family denies entry to the qualified social services professional, this fact shall be reported to the department and no further action shall be taken.

a. ~~For participants who choose a first limited benefit plan before signing the FIA, the qualified social services professional shall visit the family during month two of the limited benefit plan. The qualified social services professional shall visit the family in a spirit of supporting the family to move toward self-sufficiency, which could mean engagement into the FIA process, or exploring with the family their alternative plan, identifying areas where the qualified social services professional can help.~~

The qualified social services professional's home visit shall include, but is not limited to, discussing reasons for not participating in the FIA; offering to problem solve with perceived problems of the FIA participation; being a liaison with PROMISE JOBS and IM; recommending to IM when conditions seem to warrant exemption; assessing family ability to assess their situation and plan for the well-being of the family; discussing specific future plans, for example, child care, to ensure that the family has realistic plans; using the minimum sufficient level of care concept as the standard for evaluating the family plan for the future; planning appropriate follow-up visits or referrals for services if the minimum sufficient level of care standard is not met.

~~When the participant who is responsible for a family investment agreement indicates a desire to develop a family investment agreement, the qualified social services professional shall assist the participant in establishing an appointment with the appropriate PROMISE JOBS office.~~

Further amend subrule 93.138(4) by rescinding and reserving paragraph "b."

ITEM 10. Amend subrule 93.140(2) as follows:

93.140(2) Appeal rights under the limited benefit plan. A participant only has the right to appeal the establishment of the limited benefit plan once ~~but for a first limited benefit plan there shall be two opportunities to do so. A participant in a first limited benefit plan has the right to appeal the limited benefit plan at the time the department issues timely and adequate notice establishing the limited benefit plan, or at the time the department issues the subsequent notice that establishes the six-month period of ineligibility. A participant who has chosen a second or subsequent limited benefit plan has the right to appeal only at the time the department issues the timely and adequate notice that establishes the six-month period of ineligibility the limited benefit plan.~~

However, when the reason for the appeal is based on incorrect grant computation, an error in determining the eligible group, or another worker error, a hearing shall be granted when the appeal otherwise meets the criteria for hearing.

[Filed 3/10/99, effective 5/31/99]

[Published 4/7/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/99.

ARC 8866A

HUMAN SERVICES  
DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 239B.4 and 249A.4, the Department of Human Services hereby amends Chapter 41, "Granting Assistance," Chapter 46, "Overpayment Recovery," Chapter 75, "Conditions of Eligibility," and Chapter 93, "PROMISE JOBS Program," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments March 10, 1999. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on November 18, 1998, as ARC 8465A.

These amendments implement the following changes to the Family Investment Program (FIP) and to the Family Medical Assistance Program (FMAP) and FMAP-related Medicaid programs:

1. Changes are made in the application of the earned income sanction for terminating, reducing, or refusing employment and the exemption of terminated income beginning with the benefit month of June 1999. Under the new rules, persons who terminate, reduce, or refuse employment without good cause will be allowed the 20 percent earned income deduction, and a deduction for child or adult care expenses, despite the person's employment issue. Also, the terminated income of these persons who are under retrospective budgeting is exempt for FIP, FMAP, and FMAP-related Medicaid programs beginning with the calendar month that the income is absent, providing the person is otherwise eligible for the exemption.

Currently, the terminated income of persons who terminate, reduce, or refuse employment without good cause is used retrospectively for FIP, FMAP, and FMAP-related Medicaid programs. These persons also receive an "earned income sanction," i.e., they are not allowed the 20 percent earned income deduction, or any child or adult care expense deductions, from countable earned income. In addition, FIP participants who are required to participate with the PROMISE JOBS program and who sign a Family Investment Agreement are considered to have chosen a limited benefit plan when the participant terminates, reduces, or refuses employment without good cause.

The Department believes the limited benefit plan is sufficient consequence for the action and there is no need to impose additional consequences.

Except for persons who are exempt from participating with PROMISE JOBS and persons who have not yet signed a Family Investment Agreement, PROMISE JOBS determines whether a person has good cause for terminating, reducing, or refusing employment. PROMISE JOBS also attempts to resolve the employment issue prior to imposing a limited benefit plan. Under the existing policy, the Department finds that the good cause determination cannot be completed in sufficient time to impose the sanction to earned income deductions or to disallow the terminated income exemption. Thus, the participant is allowed the usual earnings deductions and exemptions in the calculation of the FIP grant. When PROMISE JOBS later determines that the participant did not have good cause for terminating, reducing, or refusing employment, the Department is required to recover the excess FIP assistance the participant received by allow-

## HUMAN SERVICES DEPARTMENT[441](cont'd)

ing the earnings deductions and exemptions. This is not administratively effective.

2. Changes are made in policy for persons who are discharged from employment due to misconduct. Beginning June 1, 1999, a FIP participant who is required to participate in the PROMISE JOBS program who has signed a Family Investment Agreement and who is discharged from employment due to misconduct chooses the limited benefit plan, unless the person identifies problems or barriers to participation in employment or otherwise resolves the employment issue. Currently, only employment terminations that the employer considers to be a voluntary termination without good cause by the employee result in the choice of a limited benefit plan.

PROMISE JOBS and income maintenance staff find that many FIP participants are discharged from employment due to misconduct. Current FIP rules do not provide for any consequence for persons who are discharged by the employer due to the employee's own inappropriate action or inaction. The Department believes there need to be consequences for employment discharge when it is due to misconduct of the employee, such as failure to call or appear at the work site without valid cause.

3. Other changes are made to correct or eliminate obsolete references.

The amendments result from consideration and recommendation from income maintenance and PROMISE JOBS field staff, a limited benefit plan work group, and the Welfare Reform Advisory Group.

The following acronyms are used in these amendments:

FMAP - family medical assistance program

PAER - public assistance eligibility report

RRED - review/recertification eligibility document

Public hearings were held on these rules in eight locations around the state. Four persons attended the hearings and three persons submitted comments. The following revisions were made to the Notice of Intended Action:

Subrule 41.27(8), paragraphs "a," "b," and "c," and subrule 75.57(8), paragraphs "a," "b," and "c," were revised to change "sanctions" to "sanction" and to change the verb to singular.

Rule 441—93.132(239B), numbered paragraph "11," was revised to define "misconduct."

Rule 441—93.133(239B) was revised to cross-reference rule 441—93.132(239B).

These amendments are intended to implement Iowa Code sections 239B.7, 239B.9 and 249A.4.

These amendments shall become effective June 1, 1999.

The following amendments are adopted.

ITEM 1. Amend rule 441—41.27(239B) as follows:

Rescind subrule 41.27(2), paragraph "d," and adopt the following new paragraph "d" in lieu thereof:

d. Ineligibility for expenses and disregards. Except for persons in 41.27(8)"b" and "c," a person whose earned income must be considered is not eligible for the 20 percent earned income deduction or the care expense described in 41.27(2)"a" and "b" for any month in which the individual failed, without good cause, to timely report a change in earned income or to timely report earned income on Form 470-0455, Public Assistance Eligibility Report, or Form 470-2881, Review/Recertification Eligibility Document. However, the individual is eligible for the 50 percent work incentive deduction described in 41.27(2)"c." Good cause for not timely returning a Public Assistance Eligibility Report or a Review/Recertification Eligibility Document or for not timely reporting a change in earned income shall be lim-

ited to circumstances beyond the control of the individual, such as, but not limited to, a failure by the department to provide needed assistance when requested, to give needed information, to follow procedure resulting in a delay in the return of the Public Assistance Eligibility Report, or the Review/Recertification Eligibility Document, or when conditions require the forms to be mailed other than with the regular end-of-the-month mailing. Good cause shall also include, but not be limited to, circumstances when the individual was prevented from reporting by a physical or mental disability, death or serious illness of an immediate family member; or other unanticipated emergencies; or mail was not delivered due to a disruption of regular mail delivery. The applicant or recipient who returns the Public Assistance Eligibility Report, or the Review/Recertification Eligibility Document, listing earned income, by the sixteenth day of the report month shall be considered to have good cause for not timely returning the Public Assistance Eligibility Report or the Review/Recertification Eligibility Document.

Amend subrule 41.27(7), paragraph "ag," as follows:

ag. Terminated income of recipient households who are subject to retrospective budgeting beginning with the calendar month the source of the income is absent, provided the absence of the income is timely reported as described at 441—subrule 40.24(1) and 441—subparagraph 40.27(4)"f"(1).

EXCEPTION: Income that terminated in one of the two initial months occurring at time of an initial application that was not used prospectively shall be considered retrospectively as required by 41.27(9)"b"(1). ~~In the case of earned income, the exemption does not apply to any person who quit employment unless the person has identified problems with participation of a temporary or incidental nature as described at rule 441—93.133(249C) or barriers to participation as described at rule 441—93.134(249C).~~ If income terminated and is timely reported but a grant adjustment cannot be made effective the first of the next month, a payment adjustment shall be made. This subrule shall not apply to nonrecurring lump sum income defined at 41.27(9)"c"(2).

Amend subrule 41.27(8), paragraph "a," subparagraphs (1) and (2), as follows:

(1) Treatment of income when parent is a citizen or an alien other than those described in 41.23(4)"a"(3). A parent who is living in the home with the eligible child(ren) but whose needs are excluded from the eligible group is eligible for the 20 percent earned income deduction, child care expenses for children in the eligible group, the 50 percent work incentive deduction described at 41.27(2)"a," "b," and "c," and diversions described at 41.27(4), and shall be permitted to retain that part of the parent's income to meet the parent's needs as determined by the difference between the needs of the eligible group with the parent included and the needs of the eligible group with the parent excluded except as described at 41.27(11). All remaining nonexempt income of the parent shall be applied against the needs of the eligible group. Excluded parents are subject to the earned income ~~sanctions~~ *sanction* at 41.27(2)"d." ~~(1) and (2).~~ The 20 percent earned income deduction and child care expenses described at 41.27(2)"a" and "b" shall not be allowed for sanctioned earnings. However, the 50 percent work incentive deduction as in 41.27(2)"c" and diversions in 41.27(4) shall be allowed.

(2) Treatment of income of a parent who is ineligible because of lawful temporary or permanent resident status. The income of a parent who is ineligible as described in 41.23(4)"a"(3) shall be attributable to the eligible group in

## HUMAN SERVICES DEPARTMENT[441](cont'd)

the same manner as the income of a stepparent is determined pursuant to 41.27(8)"b"(1) to (7), (9) and (10), except for child care expenses which are only allowed for the children in the eligible group. Nonrecurring lump sum income received by the parent shall be treated in accordance with 41.27(9)"c"(2). The alien parent is subject to the earned income ~~sanctions sanction~~ in 41.27(2)"d."(1) and (2). The 20 percent earned income deduction and child care expenses in 41.27(2)"a" and "b" shall not be allowed for sanctioned earnings. However, the 50 percent work incentive deduction in 41.27(2)"c" shall be allowed.

Further amend subrule 41.27(8), paragraph "b," subparagraph (11), as follows:

(11) The earned income ~~sanctions sanction~~ described in 41.27(2)"d"(1) and (2) ~~do~~ does not apply to earnings of the stepparent.

Further amend subrule 41.27(8), paragraph "c," last paragraph, as follows:

The earned income ~~sanctions sanction~~ described in 41.27(2)"d"(1) and (2) ~~do~~ does not apply to earnings of self-supporting parent(s) and their spouses.

Amend subrule 41.27(9), paragraph "d," as follows:

d. The third digit to the right of the decimal point in any computation of income, hours of employment and work expenses for care, as defined in 41.27(2)"b," shall be dropped. This includes the calculation of the amount of a truancy sanction as defined in ~~subrule paragraph~~ 41.25(8)"g" or a child support sanction as defined in paragraph 41.22(6)"f."

ITEM 2. Amend subrule 41.28(1), paragraph "b," subparagraph (4), as follows:

(4) The stepparent who is not incapacitated when the stepparent is the legal spouse of the natural or adoptive parent by ceremonial or common-law marriage and the stepparent is required in the home to care for the dependent children. These services must be required to the extent that if the stepparent were not available, it would be necessary to allow for care as a deduction from earned income of the parent ~~or educational income of the parent~~.

ITEM 3. Amend rule 441—46.21(239), definition of "Procedural error," as follows:

"Procedural error" means a technical error which does not in and of itself result in an overpayment. Procedural errors include:

Failure to secure a properly signed application at the time of initial application or reapplication.

~~Failure to require an application when a new person is added to the eligible group or when a parent or a stepparent becomes a member of the household.~~

Failure of the local county office to conduct the face-to-face interviews described in 441—subrules 40.24(2) and 40.27(1).

Failure to request a Public Assistance Eligibility Report or a Review/Recertification Eligibility Document at the time of a monthly, ~~or six-month~~ semiannual, or annual review.

Failure of local county office staff to cancel the family investment program when the client submits a Public Assistance Eligibility Report or a Review/Recertification Eligibility Document which is not complete as defined in 441—paragraph 40.27(4)"b." However, overpayments of grants as defined above based on incomplete reports are subject to recoupment.

ITEM 4. Amend subrule 46.24(3), paragraph "a," as follows:

a. An overpayment due to client error shall be computed as if the information had been reported and acted upon timely.

EXCEPTION: When the client, without good cause, as defined in 441—~~subparagraph paragraph~~ 41.27(2)"d,"(2), fails to report income earned as specified in 41.27(2)"d,"(2), the deductions in 441—paragraphs 41.27(2)"a" and "b" shall not be allowed. However, the work incentive deduction in 441—paragraph 41.27(2)"c" shall be allowed except as described in 441—paragraph 41.27(9)"a."

ITEM 5. Amend rule 441—75.57(249A) as follows:

Rescind subrule 75.57(2), paragraph "d," and insert the following new paragraph "d" in lieu thereof:

d. Ineligibility for expenses and disregards. Except for persons described at paragraphs 75.57(8)"b" and "c," a person whose earned income must be considered is not eligible for the 20 percent earned income deduction or the care expense described at paragraphs 75.57(2)"a" and "b" for any month in which the individual failed, without good cause, to timely report a change in earned income or to timely report earned income on Form 470-0455, Public Assistance Eligibility Report (PAER), or Form 470-2881, Review/Recertification Eligibility Document (RRED). However, the individual is eligible for the 50 percent work incentive deduction described at paragraph 75.57(2)"c." Good cause for not timely returning a PAER or a RRED or for not timely reporting a change in earned income shall be limited to circumstances beyond the control of the individual, such as, but not limited to, a failure by the department to provide needed assistance when requested, to give needed information, to follow procedure resulting in a delay in the return of the PAER or the RRED, or when conditions require the forms to be mailed other than with the regular end-of-the-month mailing. Good cause shall also include, but not be limited to, circumstances when the individual was prevented from reporting by a physical or mental disability, death or serious illness of an immediate family member, or other unanticipated emergencies, or mail was not delivered due to a disruption of regular mail delivery. The applicant or recipient who returns the PAER or the RRED listing earned income by the sixteenth day of the report month shall be considered to have good cause for not timely returning the PAER or the RRED.

Amend subrule 75.57(8), paragraph "a," as follows:

a. Treatment of income in excluded parent cases. A parent who is living in the home with the eligible children but whose needs are excluded from the eligible group is eligible for the 20 percent earned income deduction, child care expenses for children in the eligible group, the 50 percent work incentive deduction described at paragraphs 75.57(2)"a," "b," and "c," and diversions described at subrule 75.57(4), and shall be permitted to retain that part of the parent's income to meet the parent's needs as determined by the difference between the needs of the eligible group with the parent included and the needs of the eligible group with the parent excluded except as described at subrule 75.57(10). All remaining nonexempt income of the parent shall be applied against the needs of the eligible group. Excluded parents are subject to the earned income ~~sanctions sanction~~ at ~~subparagraphs paragraph~~ 75.57(2)"d."(1) and (2). The 20 percent earned income deduction and child care expenses described at paragraphs 75.57(2)"a" and "b" shall not be allowed for sanctioned earnings. However, the 50 percent work incentive deduction as at paragraph 75.57(2)"c" and diversions at subrule 75.57(4) shall be allowed.

Amend subrule 75.57(8), paragraph "b," subparagraph (11), as follows:

## HUMAN SERVICES DEPARTMENT[441](cont'd)

(11) The earned income ~~sanctions~~ *sanction* described at ~~subparagraphs paragraph 75.57(2)"d"(1) and (2) do~~ does not apply to earnings of the stepparent.

Amend subrule 75.57(8), paragraph "c," second unnumbered paragraph, as follows:

The earned income ~~sanctions~~ *sanction* described at ~~subparagraphs paragraph 75.57(2)"d"(1) and (2) do~~ does not apply to earnings of self-supporting parents and their spouses.

ITEM 6. Amend subrule 75.58(1), paragraph "b," subparagraph (4), as follows:

(4) The stepparent who is not incapacitated when the stepparent is the legal spouse of the natural or adoptive parent by ceremonial or common-law marriage and the stepparent is required in the home to care for the dependent children. These services must be required to the extent that if the stepparent were not available, it would be necessary to allow for care as a deduction from earned income of the parent ~~or educational income of the parent~~.

ITEM 7. Amend rule 441—93.132(239B), numbered paragraph "11," as follows:

11. Participants who do not follow up on job referrals, or refuse offers of employment or terminate employment, or *who are discharged from employment due to misconduct. For the purposes of these rules, "misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of the worker's contract of employment. To be considered "misconduct," the employee's conduct must demonstrate deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees. Mere inefficiency, unsatisfactory conduct, failure to perform well due to inability or incapacity, ordinary negligence in isolated instances, or good-faith errors in judgment or discretion are not to be deemed misconduct for the purpose of these rules.*

ITEM 8. Amend rule 441—93.133(239B) as follows:

Amend the introductory paragraph as follows:

441—93.133(239B) Problems with participation of a temporary or incidental nature. Problems with participation as described below shall be considered to be of a temporary or incidental nature when participation can be easily resumed. These problems are acceptable instances when a participant is excused from participation or for refusing or quitting a job or limiting or reducing hours *or for discharge from employment due to misconduct as described at rule 441—93.132(239B).*

Amend subrule 93.133(2), catchwords, as follows:

93.133(2) Acceptable instances when a person is excused from participation or for refusing or quitting a job or limiting or reducing hours *or for discharge from employment due to misconduct as described at rule 441—93.132(239B).*

Amend subrule 93.133(3), catchwords, as follows:

93.133(3) Jobs that participants have the choice of refusing or quitting or limiting or reducing, *or instances when participants are excused for discharge from the job due to misconduct as described at rule 441—93.132(239B).*

Further amend subrule 93.133(3) by adding the following new paragraph "e":

e. The employment changes substantially from the terms of hire, such as a change in work hours, work shift, or decrease in pay rate.

Amend subrule 93.133(4) as follows:

93.133(4) Instances when problems of participation could negatively impact the client's achievement of self-sufficiency. There may be instances where staff determine that a participant's problems of participation are not described in 93.133(1) to 93.133(3), but may be circumstances which could negatively impact the participant's achievement of self-sufficiency. When this occurs, the case shall be referred to the administrator of the division of economic assistance for a determination as to whether the problems are acceptable instances for not participating or for refusing or quitting a job *or for discharge from employment due to misconduct as described at rule 441—93.132(239B).*

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/99.

ARC 8868A

HUMAN SERVICES  
DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 75, "Conditions of Eligibility," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments March 10, 1999. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on January 27, 1999, as ARC 8627A.

These amendments revise the statewide average cost to a private pay person for nursing care in Iowa and the average charges for nursing facility care, hospital-based skilled nursing care, non-hospital-based skilled nursing care, intermediate care facility for the mentally retarded (ICF/MR) care, mental health institute (MHI) care, and psychiatric medical institution for children (PMIC) care. The statewide average cost is used to determine the period of ineligibility when an applicant or recipient has transferred assets for less than fair market value. The statewide average charge is used to determine whether a person who has established a medical assistance income trust qualifies for Medicaid.

A person in a nursing facility who transfers assets for less than fair market value to become eligible for Medicaid becomes ineligible for Medicaid for a period of time determined by dividing the uncompensated value of the transferred assets by the statewide average cost to a private pay person in order to arrive at the number of months of ineligibility for nursing facility services or home- and community-based waiver services.

Any person is allowed to establish a medical assistance income trust under Iowa Code section 633.709. For persons whose income exceeds 300 percent of the Supplemental Security Income (SSI) benefit for one person (currently \$1,500) but whose income is below the statewide average charge or the average Medicaid reimbursement rate for the type of medical facility care the person needs, a medical assistance income trust may be used to establish Medicaid eligibility.

The Department is required to update these average statewide costs and charges annually. The statewide average cost

HUMAN SERVICES DEPARTMENT[441](cont'd)

used to determine the period of ineligibility for a person who transfers assets for less than fair market value is a cost determined using all types of nursing facilities, including hospital-based and non-hospital-based skilled care.

The average private pay cost increased from \$2,567.77 to \$2,673. The average charge to a private pay resident of nursing facility care increased from \$2,397 to \$2,536. The average charge for hospital-based skilled care increased from \$7,471 per month to \$8,013. The average charge for non-hospital-based skilled care increased from \$3,671 to \$4,097. The average charge for ICF/MR care increased from \$8,319 to \$8,510. The average statewide charge to a resident of a mental health institute increased from \$9,975 to \$11,924. The average charge of a psychiatric medical institution for children increased from \$4,135 to \$4,218.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments shall become effective July 1, 1999. The following amendments are adopted.

ITEM 1. Amend subrule 75.23(3) as follows:

**75.23(3)** Period of ineligibility. The number of months of ineligibility shall be equal to the total cumulative uncompensated value of all assets transferred by the individual (or the individual's spouse) on or after the look-back date specified in 75.23(2), divided by the statewide average private pay rate for nursing facility services at the time of application. The average statewide cost to a private pay resident shall be determined by the department and updated annually for nursing facilities. For the period from July 1, ~~1998~~ 1999, through June 30, ~~1999~~ 2000, this average statewide cost shall be ~~\$2,567.77~~ \$2,673 per month or ~~\$84.42~~ \$87.87 per day.

ITEM 2. Amend subrule **75.24(3)**, paragraph "b," introductory paragraphs and subparagraphs (1) to (6), as follows:

b. A trust established for the benefit of an individual if the trust is composed only of pension, social security, and other income to the individual (and accumulated income of the trust), and the state will receive all amounts remaining in the trust upon the death of the individual up to the amount equal to the total medical assistance paid on behalf of the individual.

For disposition of trust amounts pursuant to Iowa Code sections 633.707 to 633.711, the average statewide charges and Medicaid rates for the period from July 1, ~~1998~~ 1999, to June 30, ~~1999~~ 2000, shall be as follows:

(1) The average statewide charge to a private pay resident of a nursing facility is ~~\$2,397~~ \$2,536 per month.

(2) The average statewide charge to a private pay resident of a hospital-based skilled nursing facility is ~~\$7,471~~ \$8,013 per month.

(3) The average statewide charge to a private pay resident of a non-hospital-based skilled nursing facility is ~~\$3,671~~ \$4,097 per month.

(4) The average statewide Medicaid rate for a resident of an intermediate care facility for the mentally retarded is ~~\$8,319~~ \$8,510 per month.

(5) The average statewide charge to a resident of a mental health institute is ~~\$9,975~~ \$11,924 per month.

(6) The average statewide charge to a private pay resident of a psychiatric medical institution for children is ~~\$4,135~~ \$4,218 per month.

[Filed 3/10/99, effective 7/1/99]

[Published 4/7/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/99.

**ARC 8869A**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments March 10, 1999. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on January 27, 1999, as **ARC 8626A**.

These amendments update terminology for payment of diabetic supplies, clarify that blood glucose test strips are covered by Medicaid for recipients receiving care in a nursing facility or an intermediate care facility for the mentally retarded, and remove the prior authorization requirement for binaural hearing aids.

There has been confusion regarding coverage of blood glucose test strips for recipients in nursing care facilities. The Iowa Hearing Aid Society requested removal of the prior authorization requirement for binaural hearing aids. The prior authorization requests for binaural hearing aids are routinely approved. The prior authorization procedure is no longer cost-effective and creates unnecessary delays.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments shall become effective June 1, 1999.

The following amendments are adopted.

ITEM 1. Amend subrule **78.1(2)**, paragraph "b," subparagraph (7), as follows:

(7) Diabetic supplies including ~~disposable or reusable~~ needles and syringes, ~~testape, clinitest tablets, and clinistix~~ blood glucose test strips, and diabetic urine test supplies.

ITEM 2. Amend subrule **78.10(4)**, paragraphs "a" and "b," as follows:

a. Only the following types of sickroom supplies, and supplies necessary for the effective use of a payable item, can be purchased through the medical assistance program:

Bed pan.

Cane.

Catheter (indwelling Foley).

Colostomy and ileostomy appliances.

Colostomy and ileostomy care dressings, liquid adhesive, and adhesive tape.

Commode pail.

Crutches.

~~Decubitis~~ Decubitus equipment.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

Diabetic supplies (needles and syringes, ~~disposable or reusable test tape, blood and urine glucose test strips and tablets diabetic urine test supplies~~).

Dialysis supplies.

Diapers (for recipients aged four and above).

Diaphragm (contraceptive device).

Disposable catheterization trays or sets (sterile).

Disposable irrigation trays or sets (sterile).

Disposable saline enemas (e.g., sodium phosphate type).

Disposable underpads.

Dressings.

Elastic antiembolism support stocking.

Enema.

Hearing aid batteries.

Hospital bed accessories.

Respirator supplies.

Surgical supplies.

Urinal (portable).

Urinary collection supplies.

Vaporizer.

b. No payment will be made for sickroom supplies for a recipient receiving care in a skilled nursing facility. Only the following types of sickroom supplies will be approved for payment for recipients receiving care in an intermediate care facility or an intermediate care facility for the mentally retarded when prescribed by the physician, physician assistant, or advanced registered nurse practitioner:

Catheter (indwelling Foley).

Colostomy and ileostomy appliances.

Colostomy and ileostomy care dressings, liquid adhesive and adhesive tape.

Diabetic supplies (needles and syringes, ~~disposable or reusable test tape, clintest tablets and clintestix blood glucose test strips and diabetic urine test supplies~~).

Disposable catheterization trays or sets (sterile).

Disposable irrigation trays or sets (sterile).

Disposable saline enemas (e.g., sodium phosphate type, ~~for example~~).

ITEM 3. Amend subrule 78.14(6) as follows:

**78.14(6)** Purchase of hearing aid. Payment shall be made for the type of hearing aid recommended when purchased from an eligible licensed hearing aid dealer pursuant to rule 441—77.13(249A). ~~When binaural amplification is recommended, prior approval shall be obtained from the fiscal agent before payment is made except when the binaural aid is for a child under the age of 21.~~ Payment for binaural amplification shall be made when:

a. A child needs the aid for speech development, or

b. The aid is needed for educational or vocational purposes, or

c. The aid is for a blind individual.

Payment for binaural amplification shall also be ~~considered~~ *approved* where the recipient's hearing loss has caused marked restriction of daily activities and constriction of interests resulting in seriously impaired ability to relate to other people, or where lack of binaural amplification poses a hazard to a recipient's safety. (~~Cross-reference 78.28(4) "b"~~)

ITEM 4. Amend subrule **78.28(4)** by rescinding and reserving paragraph "b."

[Filed 3/10/99, effective 6/1/99]

[Published 4/7/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/99.

## ARC 8892A

INSPECTIONS AND APPEALS  
DEPARTMENT[481]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 135B.7, the Department of Inspections and Appeals hereby amends Chapter 51, "Hospitals," Iowa Administrative Code.

This amendment deletes obsolete language and updates rules to reflect current standards of practice relating to medical and hospital records and radiological and laboratory services in hospitals. The amendment also brings rules into conformity with Department of Public Health rules.

The adopted amendment is identical to the one published under Notice of Intended Action in the Iowa Administrative Bulletin on February 10, 1999, as **ARC 8664A**. No public comments were received during the public comment period.

The Hospital Licensing Board approved the adoption of this amendment on February 25, 1999. The Board of Health approved the adoption of the amendment on March 10, 1999.

This amendment will become effective May 12, 1999.

This amendment is intended to implement Iowa Code chapter 135B.

The following amendment is adopted.

Rescind rules 481—51.12(135B), 481—51.16(135B), and 481—51.18(135B), and insert in lieu thereof the following **new** rules:

**481—51.12(135B) Records and reports.**

**51.12(1)** Medical records. Accurate and complete medical records shall be written for all patients and signed by the attending physician. These records shall be filed and stored in an accessible manner in the hospital and in accordance with the statute of limitations as specified in Iowa Code chapter 614.

**51.12(2) Hospital records.**

a. Admission records. A register of all admissions to the hospital shall be maintained.

b. Death records. A record of all deaths in the hospital shall be kept, including all information required on a standard death certificate as specified in Iowa Code chapter 144.

c. Birth records. A record of all births in the hospital shall be kept, including all information required on a standard birth certificate as specified in Iowa Code chapter 144.

d. Controlled substance records. Controlled substance records shall be maintained in accordance with state and federal laws, rules and regulations.

**51.12(3)** Annual reports. Annual reports shall be filed with the Iowa department of public health within three months after termination of each fiscal year in accordance with Iowa Code section 135.75.

**481—51.16(135B) Radiological services.**

**51.16(1)** The hospital must maintain, or have available, radiological services to meet the needs of the patients.

**51.16(2)** All radiological services including diagnostic, fluoroscopy, mammography, therapeutic, and nuclear medicine furnished by the hospital or its agent shall be furnished in compliance with 641 IAC Chapters 38 to 42.

**481—51.18(135B) Laboratory service.**

**51.18(1)** The hospital must maintain, or have available, adequate laboratory and pathology services and facilities to meet the needs of its patients. The medical staff shall deter-



## INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

mine which laboratory tests are necessary to be performed on site to meet the needs of the patients.

**51.18(2)** Emergency laboratory services must be available 24 hours a day.

**51.18(3)** The hospital must ensure that all laboratory services provided to its patients are performed in a laboratory certified in accordance with the Code of Federal Regulations in 42 CFR, Part 493, October 1, 1997.

**51.18(4)** All laboratory services shall be under the supervision of a physician, preferably a clinical pathologist.

[Filed 3/18/99, effective 5/12/99]

[Published 4/7/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/99.

**ARC 8875A****LAW ENFORCEMENT  
ACADEMY[501]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 80B.11(7), the Iowa Law Enforcement Academy hereby amends Chapter 3, "Certification of Law Enforcement Officers," Iowa Administrative Code.

This amendment clarifies and defines the term "enrolled," as used in Iowa Code section 80B.17, which automatically extends the time period in which an officer who is enrolled in training within 12 months of initial appointment must achieve certification. Confusion arises over what the word "enrolled" means and its application without this clarification. It is most practical and in harmony with Iowa Code chapter 80B and 501—Chapter 3 to define "enrolled" in this context to mean that the person must be physically present in and currently attending a basic certification class to receive the benefit of the extension.

Notice of Intended Action was published in the February 10, 1999, Iowa Administrative Bulletin as **ARC 8639A**. The adopted amendment is identical to that published under Notice.

This amendment was approved by the Iowa Law Enforcement Academy Council on August 6, 1998.

This amendment is intended to implement Iowa Code section 80B.17.

This amendment will become effective on May 12, 1999.

The following amendment is adopted.

Amend rule 501—3.1(80B) by adopting a **new** subrule as follows:

**3.1(4)** In accordance with Iowa Code section 80B.17, the one-year time period in which an officer must become certified is automatically extended for up to 180 days for an officer who is enrolled in training within 12 months of initial appointment. For purposes of this subrule, "enrolled" means physically present in and currently attending a basic certification training class.

[Filed 3/17/99, effective 5/12/99]

[Published 4/7/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/99.

**ARC 8876A****LAW ENFORCEMENT  
ACADEMY[501]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 80B.11(9) and 80B.11C, the Iowa Law Enforcement Academy amends Chapter 13, "Telecommunicator Training Standards," Iowa Administrative Code.

These amendments establish the periods of validity of approval of telecommunicator training courses and instructors as specified in Chapter 13 and also require the reporting of essential information to the Academy so that the purposes of Iowa Code sections 80B.11(9) and 80B.11C can be carried out.

Notice of Intended Action was published in the February 10, 1999, Iowa Administrative Bulletin as **ARC 8638A**.

These amendments were approved by the Iowa Law Enforcement Academy Council on November 4, 1997.

These amendments are identical to the Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 80B.11(9) and 80B.11C.

These amendments will become effective on May 12, 1999.

The following amendments are adopted.

ITEM 1. Amend rule 501—13.3(80B) by adopting a **new** subrule as follows:

**13.3(4)** Period of validity. The approval of courses under this rule shall be valid for a period of 36 months.

ITEM 2. Amend rule 501—13.5(80B) by adopting a **new** subrule as follows:

**13.5(4)** Period of validity. Instructor approval shall be valid for a period of 36 months.

ITEM 3. Amend 501—Chapter 13 by adopting a **new** rule as follows:

**501—13.6(80B) Telecommunicator status forms furnished to academy.** Within ten days of any of the following occurrences, the academy will be notified by the use of prescribed forms:

1. Any hiring, termination or retirement of personnel.
2. Change of status of existing personnel (e.g., promotions, name changes).
3. Training received by telecommunicators not provided at or by personnel of the Iowa law enforcement academy.

[Filed 3/17/99, effective 5/12/99]

[Published 4/7/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/99.

**ARC 8904A****NATURAL RESOURCE  
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby

## NATURAL RESOURCE COMMISSION[571](cont'd)

amends Chapter 40, "Boating Speed and Distance Zoning," Iowa Administrative Code.

This amendment creates two five-mile-per-hour speed zones on West Lake Okoboji, one zone at Little Millers Bay and one zone at Little Emmerson Bay. These speed restriction zones will help to decrease the motor/propeller damage on underwater fish habitat caused by boats operating at higher rates of speed in these shallow bay areas and increase boating safety for the public.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 30, 1998, as ARC 8598A. No comments were received during the comment period or at the public hearing. There are no changes from the Notice of Intended Action.

This amendment is intended to implement Iowa Code section 462A.26.

This amendment will become effective May 12, 1999.

The following amendment is adopted.

Amend subrule 40.31(5) by adding the following new paragraphs:

d. Zone 4. Zone 4 shall be the area commonly known as Little Millers Bay. The zone shall start at Pinkies Point and extend southeasterly (160 degrees) approximately 370 yards until bisecting the southern shoreline of Little Millers Bay.

e. Zone 5. Zone 5 shall be the area commonly known as Little Emmerson Bay. The zone shall start at Breezy Point and extend southwesterly (235 degrees) approximately 330 yards until bisecting the west shoreline of Little Emmerson Bay.

[Filed 3/19/99, effective 5/12/99]

[Published 4/7/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/99.

## ARC 8874A

PUBLIC EMPLOYMENT  
RELATIONS BOARD[621]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 68B.4, the Public Employment Relations Board hereby adopts Chapter 13, "Consent for the Sale of Goods and Services," Iowa Administrative Code.

The adopted rules specify the method by which officials of the agency may obtain the agency's consent for their sale of goods or services to individuals or entities subject to the agency's regulatory authority. The adoption of such rules is required by Iowa Code section 68B.4.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 10, 1999, as ARC 8649A. A public hearing was held on March 2, 1999, at 11 a.m. in the Board's hearing room at 514 East Locust Street, Des Moines, Iowa. No written or verbal comments were received.

These rules are identical to those published under Notice of Intended Action.

These rules are intended to implement Iowa Code section 68B.4.

These rules will become effective May 12, 1999.

The following new chapter is adopted.

CHAPTER 13  
CONSENT FOR THE SALE OF  
GOODS AND SERVICES

**621—13.1(68B) General prohibition.** An official shall not sell, either directly or indirectly, any goods or services to individuals or entities subject to the regulatory authority of the agency without obtaining written consent as provided in this chapter.

**621—13.2(68B) Definitions.**

"Agency" means the public employment relations board.

"Compensation" means any money, thing of value, or financial benefit conferred in return for goods or services rendered or to be rendered.

"Official" means the chairperson and members of the public employment relations board. Where the term "official" is used in this chapter, it includes a firm in which any of those persons is a partner and a corporation of which any of those persons hold 10 percent or more of the stock, either directly or indirectly, and the spouse and minor children of any of those persons.

"Sale of goods or services" means the receipt of compensation by an official for providing goods or services. For purposes of this chapter, the term does not include outside employment activities which constitute an employer-employee relationship.

**621—13.3(68B) Conditions for consent.** Consent to a sale of goods or services shall not be given unless all of the following conditions are met:

1. The official's job duties or functions are not related to the agency's regulatory authority over the individual or entity, or the selling of the good or service does not affect the official's job duties or functions.

2. The selling of the good or service does not include acting as an advocate on behalf of the individual or entity to the agency.

3. The selling of the good or service does not result in the official selling a good or service to the agency on behalf of the individual or entity.

4. The selling of the good or service does not reasonably appear to create a conflict of interest, a situation where the official's neutrality in the performance of the official's employment duties might thereafter be reasonably questioned, or the appearance of any other impropriety.

**621—13.4(68B) Application for consent.** An application for consent must be in writing and signed by the official seeking consent. The application must be filed with the agency at least 20 calendar days in advance of the proposed sale of goods or services. An application shall not be deemed filed until all of the following information has been provided:

1. A description of the goods or services proposed to be sold.

2. The identity of the prospective recipient(s) of the goods or services and the recipient's relationship to the agency's regulatory authority.

3. The anticipated dates of delivery of the goods or services.

4. The approximate amount and form of the compensation to be received by the official.

5. A statement by the official explaining why the proposed sale of goods or services will not create a conflict of interest, a situation where the official's neutrality in the performance of the official's employment duties might thereafter be reasonably questioned, or the appearance of any other impropriety.

## PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

**621—13.5(68B) Consent or denial.**

**13.5(1) Who may consent or deny.** The agency's officials not joining in the application will consider the application and consent to or deny it by majority vote, a tie vote being deemed a denial of the application. The officials entitled to vote on the application may require the submission of additional information prior to taking action on the application.

**13.5(2) Timing and content of consent or denial.** Written consent to or denial of the application will be issued within 14 days following the date of its filing or the receipt of the additional information submitted pursuant to subrule 13.5(1). If the application is denied, the denial will state the reasons therefor.

**13.5(3) Effect of consent.** Any consent granted is valid only for the activity and time period described in it and only to the extent that all material facts have been disclosed and the actual facts are consistent with those set forth in the application. Consent may be revoked at any time upon written notice to the official.

**621—13.6(68B) Public information.** The application and the resulting consent or denial thereof are public records, open for public examination, except to the extent that disclosure of details would constitute a clearly unwarranted invasion of personal privacy or trade secrets and the record is exempt from disclosure under Iowa law.

**621—13.7(68B) Effect of other laws.** Neither these rules nor any consent provided under them constitutes consent for any activity which would constitute a conflict of interest at common law or which violates any applicable statute or rule. Despite agency consent, a sale of goods or services to an individual or entity subject to the jurisdiction of the agency may violate, for example, the gift law or bribery and corruption laws. It is the responsibility of the official to ensure compliance with all applicable laws and to avoid both impropriety and the appearance of impropriety.

[Filed 3/17/99, effective 5/12/99]

[Published 4/7/99]

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ARC 8894A

REVENUE AND FINANCE  
DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue and Finance hereby adopts amendments to Chapter 12, "Filing Returns, Payment of Tax, Penalty and Interest," Chapter 16, "Taxable Sales," Chapter 17, "Exempt Sales," Chapter 18, "Taxable and Exempt Sales Determined by Method of Transaction or Usage," and Chapter 26, "Sales and Use Tax on Services," Iowa Administrative Code.

Notice of Intended Action was published in IAB, volume XXI, number 17, page 1516, on February 10, 1999, as ARC 8662A.

These rules are amended for a variety of reasons. Rule 701—12.3(422) is amended by including within it the subjects of negotiated sales tax rate agreements and the provision which such rate agreements must contain. Rule 701—16.30(422) is amended to remove confusing language

about repealed tax on commercial amusement enterprises. An amendment to rule 701—17.23(422,423) updates to October 1, 1998, the list of states which provide reciprocal sales and use tax exemptions to Iowa. An amendment to rule 701—18.54(422,423) limits the definition of "advertising material" to comply with existing statutory language. The definition of "replacement parts" in the existing machinery and equipment exemption is amended in subrule 18.58(1). A final amendment corrects erroneous references to the Iowa Code found in the sales tax rule 701—26.62(422) regarding landscaping services.

There is one change from the Notice of Intended Action. In rule 701—18.54(422,423) the phrase "floppy discs, CD-ROMs, videotapes" has been added to the list of items called "advertising material."

These amendments will become effective May 12, 1999, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code sections 422.43, 422.45 and 422.53(8).

The following amendments are adopted.

ITEM 1. Amend rule 701—12.3(422), catchwords, as follows:

701—12.3(422) *Permits and negotiated rate agreements.*

ITEM 2. Amend rule 701—12.3(422) by adopting the following new subrule:

**12.3(3) Negotiated rate agreements.** Any person who has been issued or who has applied for a direct pay permit may request the department to enter into a negotiated rate agreement with the permit holder or applicant. These agreements are negotiated on a case-by-case basis and, if approved by the department, allow a direct pay permit holder to pay the state sales, local option sales, or use tax on a basis calculated by agreement between the direct pay permit holder and the department. Negotiated rate agreements are not applicable to sales and use taxes set out in subrule 12.3(2), paragraph "b," above, and no negotiated rate agreement is effective for any period during which a taxpayer who is a signatory to the agreement is not a direct pay permit holder.

All negotiated rate agreements shall contain the following information or an explanation for its omission:

1. The name of the taxpayer who has entered into the agreement with the department.

2. The name and title of each person signing the agreement and the name, telephone or fax number, and E-mail or physical address of at least one person to be contacted if questions regarding the agreement arise.

3. The period during which the agreement is in effect and the renewal or extension rights (if any) of each party, and the effective date of the agreement.

4. The negotiated rate or rates, the classes of sales or uses to which each separate rate is applicable, any items which will be excluded from the agreement, and any circumstances which will result in a changed rate or rates or changed composition of classes to which rates are applicable.

5. Actions or circumstances which render the agreement void, or voidable at the option of either party, and the time frame in which the agreement will be voided.

6. Rights, if any, of the parties to resort to mediation or arbitration.

7. An explanation of the department's right to audit aspects of the agreement, including any right to audit remaining after the agreement's termination.

## REVENUE AND FINANCE DEPARTMENT[701](cont'd)

8. The conditions by which the agreement may be terminated and the effective date of the termination.

9. The methodology used to determine the negotiated rate and any schedules needed to verify percentages.

10. Any other matter deemed necessary to the parties' mutual understanding of the agreement.

## ITEM 3. Amend rule 701—16.30(422) as follows:

~~701—16.30(422) Commercial amusement enterprises—companies or persons which contract to furnish show for fixed fee. Sales by commercial amusement enterprises occurring on or after May 31, 1984, shall not be subject to tax. For any sales occurring prior thereto, any circus, show, carnival company or person contracting with persons to put on a show for a fixed fee or on a percentage basis shall be liable for the current rate of tax on the amount received for such performances or operation of commercial amusement enterprises. Any sponsor of a commercial amusement enterprise may purchase the amusement for resale if the sponsor makes an additional charge to the general public for the commercial amusement and tax is collected on that charge. If no additional charge is made by the sponsor or if tax is not collected on the additional charge by the sponsor, the sponsor is the consumer of the commercial amusement enterprise and tax should be collected on the fixed fee or percentage amount paid to entertainer(s).~~

~~EXAMPLE: A tavern (sponsor) contracts with a rock band for a certain number of performances. The sponsor charges a cover charge for the amusement and tax is collected on this admission. The sponsor would be purchasing the commercial amusement enterprise for resale and tax is collected on the additional charge.~~

~~EXAMPLE: A group of store owners in a shopping mall (sponsor) contracts with a group of entertainers to put on a show in the mall for a fixed fee. The sponsor does not make an additional charge to the general public for the entertainment. Tax is due on the amount of the fixed fee and since the sponsor has not resold the entertainment, the group of entertainers are selling a taxable amusement to the shopping mall and as such, are responsible for remitting tax on their fee.~~

~~EXAMPLE: A lounge (sponsor) contracts with a band for a performance on a percentage basis. The sponsor does not charge a cover charge but raises the price of drinks and beer. The sponsor is purchasing the amusement for resale because the sponsor is making an additional charge to the general public. Tax is collected on the price of the drinks and beer, thus no tax is due on the percentage amount paid by the sponsor to the entertainer.~~

This rule is intended to implement Iowa Code section 422.43.

## ITEM 4. Amend rule 701—17.23(422,423) as follows:

~~701—17.23(422,423) Sales to other states and their political subdivisions. On and after July 1, 1990, gross receipts from the sale of tangible personal property or from the furnishing of electrical energy, natural or artificial gas, or communication service to another state or political subdivision of another state are exempt from tax if that other state provides a similar reciprocal exemption for Iowa and its political subdivisions. As of August 1, 1990, the only states bordering Iowa to which this exemption is applicable are Illinois and South Dakota. See Illinois Rev. Stat., Ch 120, Retailers' Occupation Tax, Sec. 2, and South Dakota Rev. Stat., Sec. 10-45-10. The states known to provide a similar reciprocal exemption to Iowa and its subdivisions (as of October 1, 1998) are Illinois,~~

*Kentucky, North Dakota, South Dakota, and the District of Columbia.*

This rule is intended to implement Iowa Code section 422.45.

## ITEM 5. Amend rule 701—18.54(422,423) as follows:

~~701—18.54(422,423) Sales of advertising material. On and after July 1, 1990, gross receipts from the sales of advertising material to any person in Iowa are exempt from tax if that person, or any agent of that person, will, after the sale, send that advertising material outside of Iowa and subsequent sole use of that material will be outside this state.~~

For the purposes of this subrule "advertising material" is tangible personal property only, including paper. Examples of "advertising material" include, but are not limited to, the following: brochures, catalogs, leaflets, fliers, order forms, return envelopes, floppy discs, CD-ROMs, videotapes, and any similar items of tangible personal property which will be used to promote sales of property or services.

This rule is intended to implement Iowa Code section 422.45.

## ITEM 6. Amend subrule 18.58(1), definition of "Replacement parts," as follows:

"Replacement parts." A "replacement part" is any machinery, equipment, or computer part which is substituted for another part that has broken, has become worn out or obsolete, or is otherwise unable to perform its intended function. "Replacement parts" are those parts which materially add to the value of industrial machinery, equipment, or computers or appreciably prolong their lives or keep them in their ordinarily efficient operating condition. Excluded from the meaning of the term "replacement parts" are supplies, the use of which is necessary if machinery is to accomplish its intended function. Drill bits, grinding wheels, punches, taps, reamers, saw blades, lubricants, coolants, sanding discs, sanding belts, and air filters are nonexclusive examples of supplies. Sales of supplies remain taxable.

*Tangible personal property with an expected useful life of 12 months or more which is used in the operation of machinery, equipment, or computers is rebuttably presumed to be a "replacement part." Tangible personal property used in the same manner with an expected useful life of less than 12 months is rebuttably presumed to be a "supply."*

## ITEM 7. Amend rule 701—26.62(422) as follows:

~~701—26.62(422) Landscaping. On or after July 1, 1985, the gross receipts from the service of "landscaping" are subject to tax. The services performed by one who arranges and modifies the natural condition of a given parcel or tract of land so as to render the land suitable for public or private use or enjoyment is engaged in the business of "landscaping." Any services for which registration is required as a "landscape architect" under Iowa Code section 118A.2 544B.2 are not subject to tax on the service of "landscaping" if performed by a registered landscape architect and separately stated and separately billed on a charge for landscape architecture. The gross receipts from landscaping performed on or in connection with new construction, reconstruction, alteration, expansion or remodeling of a building or structure shall not be subject to tax. See rule 701—19.13(422,423).~~

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

## REVENUE AND FINANCE DEPARTMENT[701](cont'd)

This rule is intended to implement Iowa Code subsection 422.43(11).

[Filed 3/19/99, effective 5/12/99]  
[Published 4/7/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/99.

**ARC 8872A****TRANSPORTATION  
DEPARTMENT[761]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on March 9, 1999, adopted amendments to Chapter 117, "Outdoor Advertising," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the January 27, 1999, Iowa Administrative Bulletin as **ARC 8624A**.

The definition of "modification" is being rescinded in 117.6(5)"d" (Item 13) and adopted in 761—117.1(306B, 306C) (Item 1). The revised definition provides that a change in the number or type of support posts is a modification. The addition of an extension or a cutout for a period of 90 days or less is not a modification.

The definition of "nonconforming sign" (Item 2) is being amended to provide that a nonconforming sign includes one that continues to be lawfully maintained.

For a multiple-face advertising device, these amendments provide that a permit is required for each face (a face is visible from a single direction of travel). (Exception: Only one permit is required for a back-to-back advertising device identifying the same business on each side if each face is no larger than 32 square feet.) Under the old rules, a permit was required for each advertising message, and a back-to-back structure allowable under a single permit was limited to 16 square feet. These amendments also provide for tri-face and tri-vision advertising devices. Items 1, 2, 9 and 10 reflect these changes.

1997 Iowa Acts, chapter 104, section 1, repealed Iowa Code subsection 306B.2(3). This subsection allowed advertising devices that were located within 660 feet of the edge of the right of way of the interstate system if they advertised activities being conducted within 12 air miles. Item 7 rescinds subrule 117.4(5), which implemented the 12-air-mile provision. Other amendments modify the rules accordingly.

1997 Iowa Acts, chapter 104, section 3, amended the fees for outdoor advertising devices. It set the fees for calendar years 1997 and 1998 and provided that beginning January 1, 1999, fees are to be determined by rule by the Department. Item 10 continues the same fees, with no increase.

New subrule 117.6(6) (Item 14) provides that a permit for an advertising device that has not been erected within one year after the date the permit was issued shall be revoked.

Amended subrule 117.6(9) (Item 15) provides that an advertising device that has been completely removed is a blank sign.

Subrules 117.7(5) and 117.7(6) (Item 16) are being rescinded and new subrules are being substituted to clarify that service club and religious notices and municipal, county and school district recognition signs may be placed within 660 feet of the right of way of an interstate highway only if they

comply with outdoor advertising permit provisions. Municipal, county and school district recognition signs in other locations may identify up to two sponsors under certain conditions.

Several amendments clarify minimum spacing requirements, measurements of distance, and other provisions.

Changes from the Notice of Intended Action are as follows:

1. In Item 2, an amendment amending the definition of "nonconforming sign" was added.

2. In Item 2, numbered paragraph "6" under the definition of "on-premise sign" was revised by adding the sentence: "Principally means 50 percent or more of the display area of the sign."

3. In Item 9, paragraph 117.5(5)"1" was revised by adding the sentence: "See the appendix for an illustration of this spacing requirement."

4. In Item 10, paragraph 117.6(1)"c" was revised by adding the word "intentional."

5. In Item 14, subrule 117.6(6) was revised by changing "six months" to "one year" in two places.

6. An appendix to this chapter was added. This appendix illustrates the spacing requirements when a segment of a noninterstate primary highway changes to a freeway-primary highway.

These changes are the result of a meeting between Department staff and members of the Outdoor Advertising Association of Iowa.

These amendments are intended to implement Iowa Code chapters 306B and 306C.

These amendments will become effective May 12, 1999.

Rule-making actions:

ITEM 1. Amend rule **761—117.1(306B,306C)** by adopting the following **new** definitions in alphabetical order:

"Daylight area" means a triangular area formed by a line connecting two points each back (50 feet in city, 100 feet in unincorporated area) from the point where the right of way lines of the main traveled way and an intersecting street meet or would meet if extended.

"Interchange" means the entire area constructed for a junction of two or more public streets or highways by a system of separate levels that permit traffic to pass from one level to another without the crossing of traffic streams. This includes all acceleration and deceleration lanes constructed to accommodate this movement of traffic.

"Lease" means an agreement, oral or written, by which possession or use of land or interests therein are given by the owner or other person to another person for a specified purpose.

"Modification" means any addition to or change in dimensions, lighting, structure or advertising face, except as incidental to the customary maintenance of an advertising device.

1. A change in the number or type of support posts is a modification. A change in dimensions, other than the addition of extensions or cutouts (including forward projecting) for a period of 90 days or less, is a modification.

2. A lawful change in advertising message is not a modification. The use of a vinyl overlay or wrap on either a poster panel or paint unit is a change in advertising message, not a modification.

"Tri-face device" means an advertising device with three singular faces attached to one common structure in a triangular configuration. The maximum area of any face is 750 square feet. The inside angle formed by any two faces may not exceed 60 degrees.

## TRANSPORTATION DEPARTMENT[761](cont'd)

"Tri-vision device" means an advertising device that has an advertising face with a mechanical device that allows three advertising messages to be alternately visible to traffic proceeding in any one direction. Each message is attached to individual vertical or horizontal louvers, which are mechanically rotated to change the message.

ITEM 2. Amend rule 761—117.1(306B,306C) by rescinding the definitions of "Entrance roadway," "Exit roadway," "Facing," and "Parkland," and by amending the following definitions:

"Face" means that part of the display area of an advertising device that is devoted to a single the display of advertising message and that is visible to traffic proceeding in any one direction. An overlay or message across the bottom of a multifaced advertising device is not an additional face if it relates to an element common to the advertising messages, such as "exit number 64 left two blocks" or "turn left at light." However, the overlay or message is part of the display area.

"Nonconforming sign" means an advertising device that was lawfully erected but fails to comply with the bonus Act, the billboard control Act or these rules and continues to be lawfully maintained.

"On-premise sign" means an advertising device advertising the sale or lease of, or activities being conducted upon, the property where the sign is located. The criteria to be used to determine if an advertising device qualifies as on-premise signing include but are not limited to the following:

1. A sign that consists solely of the name of the establishment or that identifies the establishment's principal or accessory products or services offered on the property is an on-premise sign.

2. An on-premise sign must be located on the same property as the advertised activity or the same property as that advertised for sale or lease. A subdivided property is considered to be one property if all lots remain under common ownership and all lots share a common, private access to public roads. However, if any lot in the subdivided property is sold or disposed of in any manner, that lot will be considered to be separate property.

3. Contiguous lots or parcels of land combined for development purposes are considered to be one property for outdoor advertising control purposes provided they are owned or leased by the same party or parties. However, land held by lease or temporary easement must be used for a purpose related to the advertised activity other than signing.

4. An on-premise sign shall not be located on a narrow strip of land that cannot reasonably be used for a purpose related to the advertised activity other than signing.

5. An on-premise sign is limited to advertising the property's sale or lease, or identifying the activities located on or products or services available on the property.

6. An advertising device is not an on-premise sign if it consists principally of brand- or trade-name advertising and either the product or service advertised is not a major product or service available on the property only incidental to the establishment's principal products or services or the advertising brings rental income to the property owner. "Principally" means 50 percent or more of the display area of the sign.

7. An on-premise sign concerning the sale or lease of property shall not display the legend "sold" or "leased" or a similar message.

ITEM 3. Amend rule 761—117.2(306B,306C) by rescinding subrule 117.2(1), by renumbering subrules 117.2(2) to 117.2(4) as subrules 117.2(3) to 117.2(5), re-

spectively, and by amending the introductory paragraph as follows:

**761—117.2(306B,306C) General provisions.**

**117.2(1) Scope.** ~~These~~ This chapter of rules pertains to all advertising devices which are visible from the main traveled way of any interstate, freeway-primary, or primary highway, except advertising devices located within incorporated areas beyond 660 feet from the right-of-way, with the following exceptions:

a. Within incorporated areas, this chapter does not apply to advertising devices which are beyond 660 feet from the nearest edge of the right of way.

b. Except where specified otherwise, this chapter does not apply to official traffic control devices, logo signing, tourist-oriented directional signing, or private directional signing.

**117.2(2) Address.** Inquiries, requests for forms, and applications regarding this chapter shall be directed to Advertising Control Section, Office of Right of Way, Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

ITEM 4. Amend subrule 117.3(1) as follows:

Amend the introductory paragraph as follows:

**117.3(1) Prohibition.** Advertising devices shall not be erected, maintained or illuminated which do not unless they comply with all applicable state or local laws, rules, regulations or ordinances, which may be more strict than the following:

Adopt the following new paragraph "k":

k. An advertising device shall comply with all applicable state and local laws, regulations and ordinances, including but not limited to zoning, building and sign codes as locally interpreted and applied and enforced, which may be stricter than this chapter.

ITEM 5. Amend subrules 117.3(2) and 117.3(3) as follows:

**117.3(2) Measurements of distance.** Distance from the edge of a right of way shall be measured horizontally along a line normal or perpendicular to the centerline of the highway. All other measurements of distance shall be measured horizontally between points on a line parallel to the highway centerline.

**117.3(3) Measurement of area.** The area of an advertising device shall be measured by the smallest square, rectangle, triangle, circle or combination thereof which will encompass the entire display area including cutouts, extensions, border and trim, but excluding temporary cutouts and extensions, base, apron, support, or and other structural members.

ITEM 6. Amend rule 761—117.4(306B,306C), introductory paragraph, as follows:

**761—117.4(306B,306C) Interstate special provisions.** In addition to the general provisions of rule 117.3(306B,306C), the following provisions apply. This rule applies to advertising devices located within the adjacent area of any interstate highway, except that subrules 117.4(1), 117.4(2), 117.4(3), and 117.4(4) and 117.4(5) shall do not apply to advertising devices located within areas exempt from control under the bonus Act section 306B.2(5) Iowa Code section 306B.2(4).

ITEM 7. Amend rule 761—117.4(306B,306C) by rescinding subrule 117.4(5) and by amending subrule 117.4(6) as follows:

**117.4(6) 117.4(5)** Interstate advertising devices not previously subject to control until July 1, 1972. The following advertising devices along interstate highways became sub-

## TRANSPORTATION DEPARTMENT[761](cont'd)

ject to control on July 1, 1972, and shall comply with rule 761—117.5(306C):

a. Advertising devices which are visible from any interstate highway, but which are located beyond the adjacent area of any interstate highway in unincorporated areas, and .

b. *Within adjacent areas*, advertising devices which are located in commercial or industrial zones traversed by segments of the interstate system within the boundaries of incorporated municipalities as these boundaries existed September 21, 1959, where the use of property adjacent to the interstate system is subject to municipal regulation and control, or other areas where the land on September 21, 1959, was clearly established by law for industrial or commercial purposes, shall be subject to the provisions of rule 117.5(306C).

ITEM 8. Amend rule 761—117.5(306C), introductory paragraph, as follows:

~~761—117.5(306C) Special provisions interstate highways not previously controlled subject to control until July 1, 1972, by Iowa Code chapter 306B, freeway-primary highways, and primary highways. Subject to the more strict provisions of rule 761—117.4(306B,306C), pertaining to advertising devices within the adjacent area of previously controlled segments of interstate highways, no advertising devices which are no advertising device which is visible from any interstate, freeway-primary, or primary highway shall be erected or maintained except on-premise advertising devices, and except official directional or other traffic control devices, which do not comply with the provisions of this rule in addition to the general provisions of rule 117.3(306B,306C) unless it complies with this rule. This rule does not apply to on-premise signs.~~

ITEM 9. Amend subrule 117.5(5) as follows:

117.5(5) Advertising devices erected after July 1, 1972. ~~After July 1, 1972, no~~ No advertising device which is visible from any interstate, freeway-primary, or primary highway shall be erected after July 1, 1972, or subsequently maintained within the adjacent area in incorporated areas or within or beyond the adjacent area in unincorporated areas, which does not comply unless it complies with the following:

a. ~~Permit required. No advertising device shall be erected or maintained without a~~ A current permit from the department is required for the erection or subsequent maintenance of the advertising device.

b. ~~Commercial or industrial area. No~~ The advertising device shall be erected or maintained outside of must be located within a zoned or unzoned commercial or industrial areas area.

c. *Spacing within city—interstate and freeway-primary highway.* Within the corporate limits of a municipality, ~~no~~ the following provisions apply to an advertising device which is visible from any a freeway-primary highway; ~~no~~ or an advertising device which is located in a commercial or industrial zones zone traversed by segments a segment of the interstate system within the boundaries of an incorporated municipalities municipality as these boundaries existed on September 21, 1959, where the use of the property adjacent to the interstate system is subject to municipal regulation or control, shall be erected or maintained:

(1) ~~Within~~ The advertising device shall not be located within 250 feet of another advertising device facing in the same direction when both are visible to traffic proceeding in the same direction.

(2) ~~Within~~ The advertising device shall not be located within the adjacent area on either side of the highway within

250 feet of an interchange or rest area. Measurements shall be taken The 250 feet shall be measured along a line parallel to the centerline from a point opposite the end or beginning of whichever acceleration or deceleration ramp extends the farthest from the interchange or rest area nearest pavement widening constructed for the purpose of acceleration or deceleration of traffic to or from the main traveled way, to a point opposite the advertising device.

(3) In an area where two interchanges are in such close proximity that the acceleration or deceleration lanes or ramps merge or overlap or where there are continuous acceleration or deceleration lanes between interchanges, the area will be treated as one continuous interchange.

d. *Spacing outside city—interstate and freeway-primary highway.* Outside the corporate limits of a municipality, ~~no~~ the following provisions apply to an advertising device which is visible from any a freeway-primary highway; ~~no~~ an advertising device which is visible from any an interstate highway and is located within the adjacent area in a commercial or industrial zones zone traversed by segments a segment of the interstate system where the land use as of September 21, 1959, was clearly established by Iowa law as industrial or commercial; ~~no~~ or an advertising device which is visible from any an interstate highway and is located beyond the adjacent area shall be erected or maintained:

(1) ~~Within~~ The advertising device shall not be located within 500 feet of another advertising device facing in the same direction when both are visible to traffic proceeding in the same direction.

(2) ~~Within the adjacent area,~~ The advertising device shall not be located within the adjacent area on either side of the highway within 250 feet of an interchange or rest area. Measurements shall be taken The 250 feet shall be measured along a line parallel to the centerline from a point opposite the end or beginning of whichever acceleration or deceleration ramp extends the farthest from the interchange or rest area nearest pavement widening constructed for the purpose of acceleration or deceleration of traffic to or from the main traveled way, to a point opposite the advertising device.

(3) In an area where two interchanges are in such close proximity that the acceleration or deceleration lanes or ramps merge or overlap or where there are continuous acceleration or deceleration lanes between interchanges, the area will be treated as one continuous interchange.

e. *Spacing within city—nonfreeway-primary highway.* Within the corporate limits of a municipality, ~~no~~ the following provisions apply to an advertising device which is visible from any a nonfreeway-primary highway shall be erected or maintained:

(1) ~~Within~~ The advertising device shall not be located within 100 feet of another advertising device facing the same direction when both are visible to traffic proceeding in the same direction.

(2) ~~Within~~ The advertising device shall not be located within the triangular daylight area. formed by a line connecting two points each 50 feet back from the point where the right-of-way lines of the main traveled way and an intersecting street meet or would meet if extended, except However, if a building is located within the triangular daylight area, a wall advertising device may be attached to the building provided it the device does not protrude more than 12 inches, exclusive of catwalk and lights. No part of a catwalk or lights may overhang the right of way. The permit for the advertising device shall be revoked if the building the device is attached to is removed.

## TRANSPORTATION DEPARTMENT[761](cont'd)

f. *Spacing outside city—nonfreeway-primary highway.* Outside the corporate limits of a municipality, ~~no the following provisions apply to an advertising device which is visible from any a nonfreeway-primary highway shall be erected or maintained:~~

(1) ~~Within~~ *The advertising device shall not be located within 300 feet of another advertising device facing in the same direction when both are visible to traffic proceeding in the same direction.*

(2) ~~Within~~ *The advertising device shall not be located within the triangular daylight area, formed by a line connecting two points each 100 feet back from the point where the right-of-way lines of the main traveled way and an intersecting roadway meet, or would meet if extended, except* *However, if a building is located within the triangular daylight area, a wall advertising device may be attached to the building provided it the device does not protrude more than 12 inches exclusive of catwalk and lights. No part of a catwalk or lights may overhang the right of way. The permit for the advertising device shall be revoked if the building the device is attached to is removed.*

g. *Spacing—signs separated by a building.* The distance and spacing requirements of subparagraphs “c”(1), “d”(1), “e”(1), and “f”(1), above, shall not apply to advertising devices which are separated by a building in such a manner that only one advertising device located with *within* the minimum spacing distance is visible from a highway at any one time.

h. *Spacing—measurement of distance.* The minimum distance between two advertising devices facing the same direction ~~visible to traffic proceeding in the same direction~~ shall apply without regard to the side of the highway on which the advertising devices may be located and shall be measured along a *line parallel to* the centerline of the highway between points directly opposite the advertising devices.

i. *Spacing—rural area next to incorporated area.*

(1) In a rural area adjacent next to an incorporated area, the first rural sign placement shall be no closer than the rural spacing requirement measured along the centerline of the highway between from the point where the corporation line intersects the centerline or from the point where a line normal or perpendicular to the centerline of the highway intersects the first unincorporated area within the adjacent area and to a point directly opposite the advertising device first potential sign location.

j. (2) In those areas where the adjacent area on one side of the highway is incorporated and on the opposite side of the highway it all or part of the adjacent area is not, the spacing on both sides of the highway shall be regulated by the rural or unincorporated area spacing requirements.

k. *Signs not considered when determining spacing.* Directional and other official signs and notices and on-premise advertising devices shall not be taken into consideration in determining compliance with spacing requirements.

l. ~~No single face advertising device shall be erected or maintained which exceeds 1200 square feet in area.~~

m. ~~Only the following types of multiple face advertising devices are permitted: back-to-back, v-type, side-by-side, and double-deck.~~

k. *Sizes and types.* Only the following types of advertising devices are permitted: single-face, side-by-side, double-deck, tri-vision, back-to-back, v-type, and tri-face.

(1) The multiple faces or panels of an advertising device must be contiguous or on a common structure. Side-by-side structures are contiguous if the faces are not more than two

feet apart and they are owned by the same permit holder. Side-by-side structures must be on the same vertical and horizontal plane planes.

(1) ~~A maximum of two faces not to exceed a combined display area of 750 square feet may be visible to traffic proceeding in any one direction.~~

(2) ~~An advertising device may have no more than two faces.~~

(2) *A maximum of one face of an advertising device may be visible to traffic proceeding in any one direction. An advertising device other than a tri-face device may have no more than two faces.*

(3) *For an advertising device with one face, the maximum display area of the face is 1200 square feet. This applies to single-face, side-by-side, double-deck and tri-vision devices.*

(4) *For an advertising device with two or more faces, the maximum display area of each face is 750 square feet. This applies to back-to-back and v-type devices (which have two faces) and tri-face devices (which have three faces).*

(5) *Each message on a tri-vision device must be displayed for a minimum of four seconds and the transition between messages must be completed in two seconds.*

l. *Spacing—transition to freeway-primary highway.* As a segment of a noninterstate primary highway changes to a freeway-primary highway, the first freeway-primary highway sign placement shall be no closer than the freeway-primary highway spacing requirements measured along a line parallel to the centerline from a point opposite the point where the centerline of the highway and centerline of the at-grade crossing intersect to a point opposite the first potential sign location. See the appendix for an illustration of this spacing requirement.

ITEM 10. Amend subrules 117.6(1) and 117.6(2) as follows:

117.6(1) Application. Application for a permit shall be made in accordance with Iowa Code section 306C.18.

a. A permit is required for each face of an advertising device; thus, a permit application must be filed submitted for each face. ~~Three permits are required for a tri-face device if all three faces are visible from the main traveled way of an interstate, freeway-primary, or primary highway.~~ However, only one application and permit are required for a single panel with identical messages appearing on the reverse sides of the panel back-to-back advertising device that identifies the same business or service on each face if the panel each face is no larger than 4 feet in length, 8 feet in width or height and 16 32 square feet in area.

b. ~~A copy of the current lease shall be submitted upon application for a permit.~~

c. ~~Any intentional falsification or misrepresentation of information in the application or renewal process shall result in immediate denial or revocation of the permit.~~

117.6(2) Fees.

a. The initial fee, payable at the time of application, is \$50 \$100 per permit. This fee is not refundable unless the application is withdrawn prior to the department's field review of the proposed location.

b. ~~The annual renewal fee for each permit, due on or before June 30 of each year, is \$10 per permit, as follows:~~

<u>Area of Sign</u>	<u>Annual Renewal Fee</u>
Up to 375 square feet	\$15
376 to 999 square feet	\$25
1000 square feet or more	\$50

~~For tri-vision signs, the area shall be calculated by multiplying the area of the face by three.~~

(1) ~~This~~ *The renewal fee is not refundable.*



## TRANSPORTATION DEPARTMENT[761](cont'd)

(2) Failure to timely pay the annual renewal fee when due ~~is grounds for~~ *shall result in* revocation of any permit that has been issued for the advertising device and removal of the advertising device as an abandoned sign.

c. Fees shall not be prorated.

d. If an outdoor advertising permit is revoked, any permit fee paid is forfeited.

ITEM 11. Amend subrule 117.6(3), introductory paragraph, as follows:

~~117.6(3) Permits to be issued. The department shall issue a permit in accordance with Iowa Code section 306C.18. Upon timely application for a permit containing all of the required information in due form and properly executed, together with the required fee being paid, the department shall issue a permit to be affixed to the advertising device, if it will not violate any provision of law or rule or regulation promulgated hereunder.~~

ITEM 12. Amend paragraphs 117.6(4)“c” and “d” as follows:

c. The owner of an advertising device is responsible for replacing a permit plate that is ~~lost, damaged or destroyed missing or illegible~~. To obtain a replacement, the owner shall apply to the department and pay a \$10 fee.

d. If the department notifies the owner of the advertising device that a permit plate is not properly displayed, the owner shall within 90 days of notification either correct the situation or secure and display a replacement permit plate. Failure to properly display a permit plate after the 90-day period has expired ~~is grounds for~~ *shall result in* revocation of any permit that has been issued for the advertising device and removal of the advertising device in the manner specified in subrule 117.8(2) or 117.8(3), as applicable.

ITEM 13. Amend subrule 117.6(5) by amending paragraph “c” as follows and by rescinding paragraph “d”:

c. Reconstruction or modification of an advertising device prior to the issuance of the required permit ~~is grounds for~~ *shall result in* revocation of any permit that has been issued for the advertising device and removal of the advertising device in the manner specified in subrule 117.8(2) or 117.8(3), as applicable.

ITEM 14. Amend rule 761—117.6(306C) by adopting new subrule 117.6(6) as follows:

117.6(6) One year to erect advertising device. The permit for an advertising device that has not been erected within one year after the date the permit was issued shall be revoked. After revocation, a new permit is required. To obtain a new permit, the owner of the advertising device shall submit a new application to the department, accompanied by the initial application fee and a copy of the current lease.

ITEM 15. Amend subrules 117.6(7) to 117.6(9) as follows:

117.6(7) Access. Access to the private property upon which an advertising device is located shall be gained from highway right of way only at access points designated or allowed by the department in accordance with 761—Chapter 112. An initial violation of this requirement by or on behalf of the permit holder shall result in the department sending a written warning by certified mail to the permit holder. A second violation of this requirement ~~is grounds for~~ *shall result in* revocation of any permit that has been issued for the advertising device and removal of the advertising device in the manner specified in subrule 117.8(2) or 117.8(3), as applicable. If a permit is revoked for an access violation, the permit holder is ineligible to apply for a permit for at least 12

months after revocation for any location within 500 feet of the revoked permit's sign location.

117.6(8) Destruction of vegetation. Without the written authorization of the department, vegetation growing on the highway right of way shall not be cut, trimmed, removed, or in any manner altered or damaged to improve the visibility of an advertising device. Violation of this prohibition by or on behalf of the permit holder ~~is grounds for~~ *shall result in* revocation of any permit that has been issued for the advertising device and removal of the advertising device in the manner specified in subrule 117.8(2) or 117.8(3), as applicable. If a permit is revoked for destruction of vegetation, the permit holder is ineligible to apply for a permit for 12 months after revocation for any location within 500 feet of the revoked permit's sign location.

117.6(9) Blank sign.

a. A blank sign is:

(1) An advertising device that has had a face physically removed.

(2) ~~An advertising device that has been completely removed.~~

(3) An advertising device that does not display copy. “This space for rent” or a similar message is not copy.

~~(3) (4) An advertising device that qualifies as an obsolete sign.~~

b. A sign that is a blank sign for at least six months ~~is grounds for~~ *shall result in* revocation of any permit that has been issued for the advertising device and removal of the advertising device in the manner specified in subrule 117.8(2) or 117.8(3), as applicable.

ITEM 16. Amend rule 761—117.7(306C) by rescinding subrules 117.7(5) and 117.7(6) and adopting in lieu thereof the following new subrules:

117.7(5) Service club and religious notices.

a. Service club and religious notices shall not be placed within the right of way.

b. Service club and religious notices may be placed within the adjacent area of an interstate highway only if they are eligible for issuance of an outdoor advertising permit. All permit provisions apply, including but not limited to size and spacing requirements of subrule 117.5(5) and permit fees.

c. Service club and religious notices may be placed outside the right of way of a freeway-primary or primary highway and outside the adjacent area of an interstate highway. Notices in these locations may be grouped upon a common panel or on a municipal, county or school district recognition sign and shall comply with the following:

(1) The message shall comply with the definition of “service club or religious notice” in rule 761—117.1(306B,306C).

(2) A notice shall not exceed eight square feet in area.

(3) A notice shall comply with rule 761—117.3(306B, 306C).

(4) The department's approval shall be obtained prior to erection. A special application form shall be filed with the department, but no fees are required.

117.7(6) Municipal, county and school district recognition signs.

a. Municipal, county and school district recognition signs shall not be placed within the right of way.

b. Municipal, county and school district recognition signs may be placed within the adjacent area of an interstate highway only if they are eligible for issuance of an outdoor advertising permit. All permit provisions apply, including

TRANSPORTATION DEPARTMENT[761](cont'd)

but not limited to the size and spacing requirements of sub-rule 117.5(5) and permit fees.

c. A municipal, county or school district recognition sign may be placed outside the right of way of a freeway-primary or primary highway and outside the adjacent area of an interstate highway if the following conditions are met:

(1) The recognition sign shall comply with the definition of "Municipal, county or school district recognition sign" in rule 761—117.1(306B,306C).

(2) The recognition sign shall comply with rule 761—117.3(306B,306C).

(3) The recognition sign shall not display advertising.

(4) The recognition sign may identify no more than two sponsors of the sign. Each sponsor's message is limited to eight square feet in area and is limited to identifying the sponsor. No advertising or product logos are allowed.

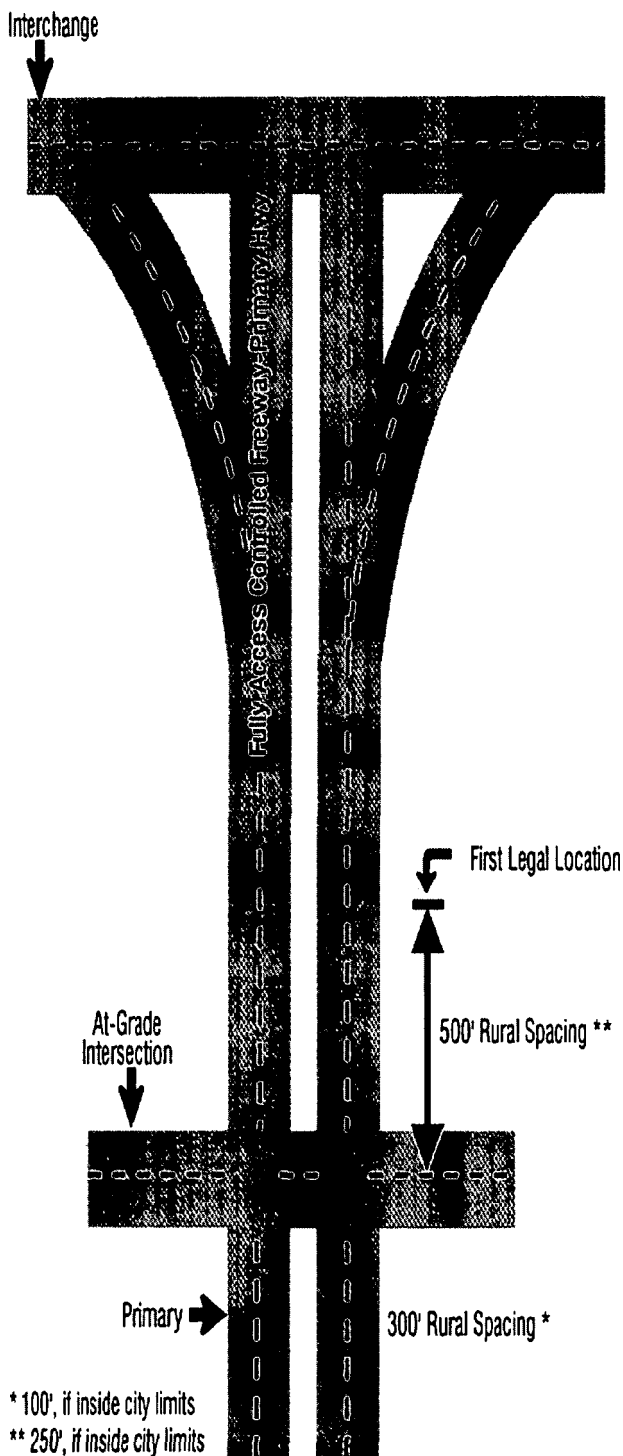
(5) The department's approval of the recognition sign and its proposed location shall be obtained prior to the sign's erection. A special application form shall be filed with the department, but no fees are required.

ITEM 17. Amend rule 761—117.8(306B,306C), introductory paragraph, as follows:

**761—117.8(306B,306C) Acquisition and removal procedures.** The department shall cause to be removed every advertising device illegally erected or maintained, and every abandoned advertising device which violates the provision of these rules. The department shall acquire by purchase, gift, or condemnation, and shall pay "just compensation" upon the removal of any advertising device for which a provisional permit has been issued, *provided the permit has not been revoked.*

ITEM 18. Amend **761—Chapter 117** by adopting the following appendix at the end of the chapter:

### Spacing--Transition To Freeway-Primary Highway



\* 100', if inside city limits

\*\* 250', if inside city limits

[Filed 3/10/99, effective 5/12/99]

[Published 4/7/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/99.

## ARC 8871A

TRANSPORTATION  
DEPARTMENT[761]

## Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on March 9, 1999, adopted amendments to Chapter 400, "Vehicle Registration and Certificate of Title," and Chapter 401, "Special Registration Plates," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the January 13, 1999, Iowa Administrative Bulletin as ARC 8607A.

1998 Iowa Acts, chapter 1073, section 5, amended Iowa Code section 321.23 to specify that the Department's physical inspection is not to determine whether the vehicle is in a safe condition to operate. Chapter 400 is being amended accordingly.

Iowa Code section 321.34(13)"d" [1997 Iowa Acts, chapter 104, section 10] provides for state agency-sponsored processed emblem plates and establishes the fees for these plates. Chapter 401 is being amended to establish requirements for the issuance of these plates.

These amendments are identical to the ones published under Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 321.1, 321.23, and 321.34.

These amendments will become effective May 12, 1999. Rule-making actions:

ITEM 1. Amend subrule 400.17(4), introductory paragraph, as follows:

400.17(4) Approval. If the department determines that the motor vehicle is a remanufactured vehicle as defined in Iowa Code section 321.1, ~~that the vehicle is in safe operating condition,~~ that the integral parts and components have been identified as to ownership, that the diesel engine and tires have not been previously put into service and carry manufacturer's warranties, and that the application forms have been properly completed:

ITEM 2. Amend subrule 400.17(5) as follows:

400.17(5) Disapproval. If the department determines that the vehicle does not meet the definition of a remanufactured vehicle under Iowa Code section 321.1, ~~that the vehicle is not in safe operating condition,~~ that the integral parts or components have not been properly identified as to ownership, that the diesel engine or any tire of the vehicle has been previously put into service or is not under a manufacturer's warranty, or that the application forms have not been properly completed, then the department shall not approve the vehicle for titling and registration.

ITEM 3. Amend rule 761—401.15(321), introductory paragraph, as follows:

761—401.15(321) Processed emblem application and approval process. Following is the application and approval process for special plate requests under Iowa Code subsection 321.34(13) ~~as amended by 1997 Iowa Acts, chapter 104, sections 9 and 10.~~

ITEM 4. Amend subrule 401.16(1) by adding the following new line at the end of the table:

State Agency-Sponsored	\$35	\$10	\$60	\$15
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ITEM 5. Adopt new rule 761—401.17(321) as follows:

761—401.17(321) State agency-sponsored processed emblem plates.

401.17(1) Application and approval process for a new plate. A state agency recommending a new special registration plate with a processed emblem shall submit its request to the department on a form prescribed by the department. The application and approval process is set out in rule 761—401.15(321). The application shall include clear and concise eligibility requirements for plate applicants.

401.17(2) Plate application. Once new state agency-sponsored processed emblem plates have been approved, manufactured and issued, the plates may be ordered as described below.

a. When the plates have no eligibility requirements:

(1) Application for letter-number designated plates shall be submitted to the county treasurer.

(2) Application for personalized plates shall be submitted to the department on a form prescribed by the department.

b. When the plates have eligibility requirements, application for either letter-number designated or personalized plates shall be submitted to the sponsoring state agency for approval on a form prescribed by the department. The sponsoring state agency shall forward approved applications to the department.

401.17(3) Characters. Personalized state agency-sponsored processed emblem plates shall consist of no less than two nor more than five characters and shall be issued in accordance with subrule 401.6(2), paragraphs "a" to "d."

401.17(4) Renewal. If renewal of either letter-number designated or personalized state agency-sponsored processed emblem plates is delinquent for more than one month:

a. A new application and issuance fee are required.

b. The department may issue the combination of characters on personalized plates to another applicant.

401.17(5) Reassignment. A vehicle owner may request reassignment of either letter-number designated or personalized state agency-sponsored processed emblem plates in accordance with subrule 401.6(4). However, plates that have eligibility requirements may not be reassigned.

401.17(6) Gift certificate.

a. When state agency-sponsored processed emblem plates have no eligibility requirements:

(1) A gift certificate for the issuance fee for letter-number designated plates may be purchased from the county treasurer.

(2) A gift certificate for the issuance fee for personalized plates may be purchased by completing a form prescribed by the department and submitting the form to the department.

b. When state agency-sponsored processed emblem plates have eligibility requirements, a request to purchase a gift certificate for either letter-number designated or personalized plates shall be submitted to the sponsoring state agency.

c. A gift certificate is void 90 days after issuance.

[Filed 3/10/99, effective 5/12/99]

[Published 4/7/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/99.

**ARC 8870A****TRANSPORTATION  
DEPARTMENT[761]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on March 9, 1999, adopted amendments to Chapter 750, "Aircraft Registration," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the January 13, 1999, Iowa Administrative Bulletin as **ARC 8608A**.

Iowa Code section 328.21 [1998 Iowa Acts, chapter 1182] amends the method for calculating aircraft registration fees. Iowa Code section 328.21(2) states that when an aircraft other than a new aircraft is registered in Iowa, the registration fee shall be based upon the number of years the aircraft was previously registered. Chapter 750 is being amended to specify that the model year of the aircraft shall be used to determine the number of times the aircraft was previously registered.

These amendments are identical to the ones published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 328.

These amendments will become effective May 12, 1999.  
Rule-making actions:

ITEM 1. Adopt new rule 761—750.9(328) as follows:

**761—750.9(328) Registration.** When a used aircraft is registered in Iowa, the model year of the aircraft shall be used to determine the number of times the aircraft was previously registered, and a reduction of the registration fee shall be computed accordingly. "Model year," except where otherwise specified, means the year of original manufacture or the year certified by the manufacturer. For the purpose of registration, the model year shall advance one year each January 1.

This rule is intended to implement Iowa Code section 328.21.

ITEM 2. Amend rule 761—750.10(328) by amending subrule 750.10(3) and the implementation clause as follows:

**750.10(3) Fee.** The *aircraft registration fee for a new aircraft* shall be computed according to Iowa Code section 328.21. ~~The fee for other aircraft shall be computed according to Iowa Code sections 328.21 and 328.22.~~

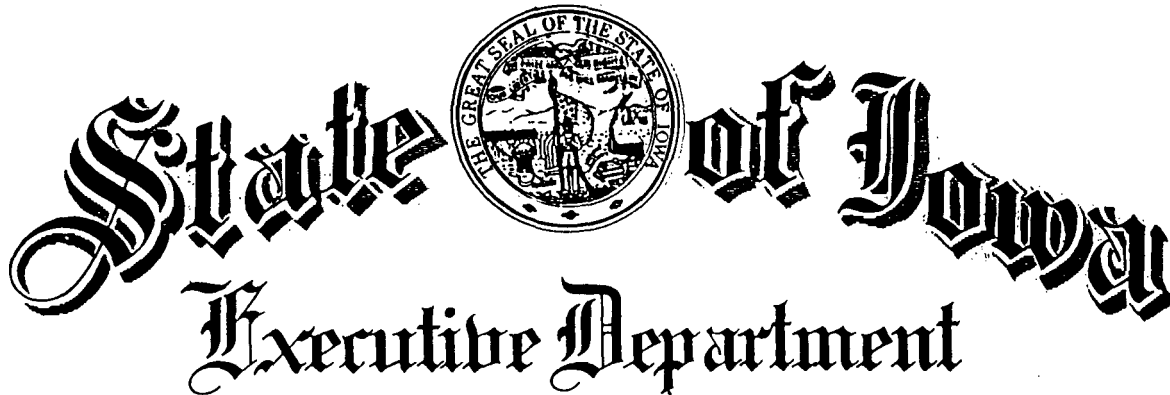
This rule is intended to implement Iowa Code sections 328.20, ~~to 328.22~~ 328.21, 328.25 to 328.27, 328.35, 328.37, 328.42, 328.44 to 328.46 and 328.56A.

[Filed 3/10/99, effective 5/12/99]

[Published 4/7/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/99.

AGENCY	RULE	DELAY
Economic Development, Iowa Department of[261]	Chapter 4 [IAB 2/10/99, ARC 8696A]	Effective date of March 17, 1999, delayed 70 days by the Administrative Rules Review Committee at its meeting held March 8, 1999. [Pursuant to §17A.4(5)]
Workforce Development Department[871]	24.26(14), 24.26(15) [IAB 2/10/99, ARC 8648A, Item 13]	Effective date of March 17, 1999, delayed 70 days by the Administrative Rules Review Committee at its meeting held March 8, 1999. [Pursuant to §17A.4(5)]



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER FOUR

WHEREAS, the state of Iowa has experienced an acute labor shortage of workers to fill job openings state-wide; and

WHEREAS, many communities throughout the state have shortages of trained and skilled workers; and

WHEREAS, the shortage of skilled and trained workers has reduced the growth of Iowa industries; and

WHEREAS, a vibrant Iowa economy in the 21<sup>st</sup> Century that is beneficial to both employees and their employers will depend upon this state's ability to nurture and develop a diversified and well-trained workforce; and

WHEREAS, economic prosperity for Iowa's citizens depends upon the availability and growth of high-skilled and high wage jobs; and

WHEREAS, a broad cross-section of Iowans throughout various sectors of the economy including: public education; state-wide community colleges, local and small businesses, publicly traded corporations; and government bodies have analyzed a number of factors that contribute to the state labor shortage; and

WHEREAS, a workforce development council should be created to coordinate existing studies and develop a comprehensive action plan to address this acute workforce crisis.

NOW, THEREFORE, I Thomas J. Vilsack, Governor of the State of Iowa, by the power vested in me by the Laws and the Constitution of the State of Iowa, do hereby order as follows:

- I. The 21<sup>st</sup> Century Workforce Council is established.
- II. Lieutenant Governor Pederson shall convene the 21<sup>st</sup> Century Workforce Council, which will be charged with the following tasks:
  - A. the council shall hold regularly-scheduled meetings in a centralized location;
  - B. the council shall hold regional meetings across the state to facilitate public input on state-wide workforce issues;
  - C. the council shall prepare a set of preliminary recommendations for review by this office within six (6) months after the council first convenes;

- D. the council shall hold a conference to report on council findings and issue a final set of recommendations to this office.
- III. The recommendations of the 21<sup>st</sup> Century Workforce Council shall be based upon information that is gathered in the fields of education, job-training, business, and economic development. The recommendations shall address specific vocations, professions, and fields of employment where there are currently shortages of skilled workers.
- IV. The 21<sup>st</sup> Century Workforce Council shall collaborate with the Department of Education, the Department of Workforce Development, and the Department of Economic Development in the collection of data needed to prepare council recommendations.
- V. The 21<sup>st</sup> Century Workforce Council shall be comprised of Iowa citizens representing local businesses, labor, public/private education; and state law makers concerned with the crisis in the Iowa workforce.



IN TESTIMONY WHEREOF, I have hereunto  
 Subscribed my name and caused the Great Seal of  
 Iowa to be affixed. Done at Des Moines this \_\_\_  
 day of \_\_\_\_\_ in the year our Lord  
 one thousand nine hundred and ninety-nine.

*[Handwritten Signature]*  
 \_\_\_\_\_  
 GOVERNOR

*[Handwritten Signature]*  
 \_\_\_\_\_  
 SECRETARY OF STATE

\*SUMMARY OF DECISIONS  
THE SUPREME COURT OF IOWA  
FILED MARCH 24, 1999

*Note:* Copies of these opinions may be obtained from the Supreme Court Clerk, State Capitol Building, Des Moines, IA, 50319, for a fee of 40 cents per page.

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**No. 98-1770. IOWA SUP. CT. BD. OF PROF'L ETHICS & CONDUCT  
v. BLAZEK.**

On review of the report of the Grievance Commission. **LICENSE SUSPENDED.** Considered by Larson, P.J., and Lavorato, Snell, Ternus, and Cady, JJ. Opinion by Larson, J. (7 pages \$2.80)

Attorney Michael Blazek pled guilty in federal court to a felony charge of knowingly engaging in sexual conduct with a child under twelve. We temporarily suspended Blazek's license to practice law on March 7, 1997. The board of professional ethics and conduct charged Blazek with violating disciplinary rules against engaging in illegal conduct involving moral turpitude and engaging in conduct adversely reflecting on his fitness to practice law. Our grievance commission concluded Blazek committed the violation and recommended a minimum three-year suspension. Blazek has appealed. **OPINION HOLDS:** We agree Blazek's conduct violated the disciplinary rules charged. The more difficult issue concerns the sanction to be imposed for his violations, which are unrelated to the practice of law. We believe Blazek has shown significant mitigating factors in that he has taken full responsibility for his actions and has sought counseling and developed a safety plan to insure he will not reoffend. We therefore suspend Blazek's license indefinitely with no possibility of reinstatement for two years from the date of the temporary suspension. In his application for reinstatement, Blazek shall (1) demonstrate he has continued counseling and treatment, (2) show he has complied with all conditions of his federal parole, and (3) include current reports of two treating professionals on Blazek's progress and his prognosis. Costs are assessed to Blazek.

**No. 98-2016. IOWA SUPREME CT. BD. OF PROF'L ETHICS & CONDUCT v. STAMP.**

On review of the report of the Grievance Commission. **LICENSE SUSPENDED.** Considered by Larson, P.J., and Lavorato, Snell, Ternus, and Cady, JJ. Opinion by Lavorato, J. (9 pages \$3.60)

The board of professional ethics and conduct filed a complaint against attorney Ervin E. Stamp of Bellevue, Iowa, alleging Stamp committed numerous statutory and ethical violations in purchasing bank stock from an estate. The board charged that Stamp, as attorney for the estate, purchased the stock at substantially below market value, without court approval or notice to distributees, and falsely listed the bank as the purchaser in the final report. Our grievance commission concluded Stamp committed the alleged violations and recommended a ninety-day suspension. We review the matter de novo under Iowa Supreme Court Rule 118.10. **OPINION HOLDS:** We conclude Stamp violated the statutory provisions and ethical rules. We think Stamp's unethical actions were serious enough to warrant suspending his license indefinitely, with no possibility of reinstatement for one year from the filing date of this opinion. Costs are assessed against Stamp.



**No. 97-771. COMMERCIAL SAVINGS BANK v. HAWKEYE FEDERAL SAVINGS BANK.**

Appeal from the Iowa District Court for Carroll County, Timothy J. Finn, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Carter, Neuman and Cady, JJ. Opinion by McGiverin, C.J. (21 pages \$8.40)

Commercial Savings Bank, whose main and branch offices are all located in Carroll County, sells banking products and services to its customers in Carroll and surrounding counties under the Commercial name. In August 1995 and October 1996 Commercial Federal Bank headquartered in Omaha merged with two local banks in Commercial Savings trading area and began competing under the Commercial Federal name with Commercial Savings. Commercial Savings filed a petition against Hawkeye Federal Savings/Commercial Federal Bank, one of merged banks, asserting claims for common-law trademark infringement, unfair competition, and injury to business reputation-dilution and seeking declaratory relief concerning those claims. Commercial Savings also sought temporary and permanent injunctions on those claims. The district court denied Commercial Savings' request for a temporary injunction determining it had failed to show the existence of a common law trademark and to show sufficient confusion over use of the Commercial name for the infringement claims. Following entry of this ruling, the parties agreed that the ruling should become the final judgment. Commercial Savings appealed. **OPINION HOLDS:** I. The evidence in the record is sufficient to establish a secondary meaning in the name Commercial, such that consumers in the Commercial Savings' trading area would associate that designation with banking products and services provided by that bank. We therefore conclude that Commercial Savings met its burden of proving it has a protectable common-law property right in the mark Commercial. II. Although the strength of Commercial Savings' trademark and the similarity of the names and goods and services favor a likelihood of confusion, the rest of the factors for the infringement claim do not: degree of care exercised by customers, minimal evidence of actual confusion by customers, and lack of intent to deceive. Given Commercial Savings' solid reputation in the eight-county area, it is not likely that any negative comments concerning Commercial Federal will affect Commercial Savings. Commercial Savings therefore failed to show its common-law trademark in the name Commercial was infringed and therefore is not entitled to injunctive relief. Accordingly, we affirm the district court's judgment.

**No. 97-1273. BRANSON v. MUNICIPAL FIRE & POLICE RETIREMENT SYSTEM OF IOWA.**

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Carter, Neuman and Cady, JJ. Opinion by McGiverin, C.J. (12 pages \$4.80)

Steven G. Branson worked as a firefighter for the city of Council Bluffs from 1980 until 1995, when he was forced to take an early retirement due to swelling and pain in his left knee. Branson filed an application with the Municipal Fire and Police Retirement System of Iowa (the System) for disability retirement benefits. A medical board certified that Branson was permanently physically incapacitated and unable to perform the demands of his position. The System then awarded Branson ordinary disability retirement benefits. Branson filed an appeal with the System, challenging the classification of his disability as

**No. 97-1273. BRANSON v. MUNICIPAL FIRE & POLICE RETIREMENT SYSTEM OF IOWA. (continued)**

“ordinary” rather than “accidental.” At a hearing, medical testimony from a treating physician indicated Branson’s job aggravated his knee condition and accelerated its wear and tear, but the doctor did not link the condition to a specific work injury event. The System ultimately denied Branson’s claim for accidental disability benefits because he failed to prove his disability was caused by the actual performance of duty at a definite time and place, as required by Iowa Code section 411.6(5)(a) (1995). Branson filed a petition for writ of certiorari in district court, the court denied the petition, and Branson now appeals. **OPINION HOLDS:** We find that section 411.6(5)(a) requires a member to prove that his or her incapacitating injury is the result of a specific, work-related accident or incident to qualify for accidental disability retirement benefits. The record shows Branson does not meet this requirement. We thus agree with the district court and conclude that the System’s decision is supported by substantial evidence and the statute was applied correctly.

**No. 97-2061. STINE SEED FARM, INC. v. FARM BUREAU MUT. INS. CO.**

Appeal from the Iowa District Court for Polk County, George W. Bergeson, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Carter, Neuman, and Cady, JJ. Opinion by Harris, J. (4 pages \$1.60)

The plaintiff, Stine Feed Farm, Inc., a commercial dealer in farm seeds, purchased two liability insurance policies from defendant Farm Bureau Mutual Insurance Company. Both policies provided coverage on an occurrence basis but did not extend coverage to damages caused by failure to perform contracts. The underlying suit against Stine was brought by Floyd Nielsen, Glenn Nielsen and Dennis Nielsen. An agent of Stine contracted with the Niensens for the production of soybeans, and for the delivery at a set price; however, the Niensens were not paid in accordance with the contract after delivering the soybeans. Because of the nonpayment, the Niensens brought the underlying suit, and Stine requested Farm Bureau to defend and indemnify the Niensens’ claims. Following Farm Bureau’s refusal to do so, Stine brought this action against Farm Bureau. The Niensens’ suit against Stine was in several counts, the first for breach of contract. The other counts each incorporated the allegations of the breach of contract count. The district court granted Farm Bureau summary judgment, finding no coverage under either policy. **OPINION HOLDS:** An occurrence is defined in both policies as an accident that was not expected or intended from the standpoint of the insured. The Niensens’ suit against Stine was in no way derived from an accident, but from a contract dispute. Contract liability was expressly excluded from coverage under either policy so dismissal of count I—coverage for contract liability—was obviously correct. Dismissal of the other counts was also correct because Stine’s coverage claim is not rescued by reasserting the identical facts as the basis for the other counts it labeled as alternative legal theories. Because there was no “occurrence,” there was no duty to defend or indemnify. We affirm.

**No. 97-1234. STATE v. SMOTHERS.**

Appeal from the Iowa District Court for Des Moines County, R. David Fahey, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Carter, Neuman, and Cady, JJ. Per curiam. (5 pages \$2.00)

The defendant, David Smothers, was charged with and later convicted of two counts of third-degree burglary. The charges were based on allegations he burglarized two businesses located within the same building. On appeal, the defendant argues the businesses are located in the same occupied structure; therefore, his conduct constituted only one burglary. He asserts his trial counsel was ineffective for failing to raise this issue. **OPINION HOLDS:** We have previously determined that the term "occupied structure" as defined in Iowa Code section 902.12 (1997) is broad. The two businesses are separate legal entities which occupy independent and distinct portions of the facility. Each has its own entrance from the street, is separately owned and operated, is secured for the most part from access by the other, and conducts its operations exclusive of the other. We conclude the businesses are located in separate structures used for the purpose of carrying on business. Therefore, Smothers entered two occupied structures. Smothers' trial counsel was not ineffective for failing to raise this issue. We therefore affirm the district court judgment.

**No. 96-1818. SCHLADER v. INTERSTATE POWER CO.**

Appeal from the Iowa District Court for Cerro Gordo County, John Mackey, Judge. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.** Considered by Harris, P.J., and Larson, Carter, Neuman, and Ternus, JJ. Opinion by Harris, J. (9 pages \$3.60)

Interstate Power Company (IPC) provides electricity to the dairy farm of Stephen and Carol Schlader. The Schladers filed a petition against IPC, claiming their dairy cow herd suffered decreased milk production and health problems as a result of stray voltage. The district court entered summary judgment against the Schladers. The Schladers appeal. **OPINION HOLDS:** I. We decline the Schladers' invitation to adopt a rule of strict liability against power companies regarding stray voltage. II. The Schladers vigorously challenge a trial court finding that their expert was not qualified to testify. We find, however, that the trial court properly rejected the expert's unsupported and seemingly bizarre theories. III. We conclude the case should not have been dismissed. Expert testimony, although clearly helpful to fact finders, is not required to prevail in a stray-voltage claim. The subject of stray voltage is certainly technical. But the nature of electricity and the results of contact with it by humans and animals is not beyond a common person's understanding. Accordingly, the case must be remanded for further proceedings in conformity with this opinion.

**No. 97-1320. SMITH-PORTER v. IOWA DEP'T OF HUMAN SERVS.**

Appeal from the Iowa District Court for Lee County, R. David Fahey, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Harris, Carter, Neuman, and Cady, JJ. Opinion by Neuman, J. (7 pages \$2.80)

Connie Smith-Porter is a disabled person who received family investment program (FIP) payments. In a separate proceeding, the Department of Human Services (DHS) determined it overpaid Smith-Porter by \$751 in FIP benefits.

**No. 97-1320. SMITH-PORTER v. IOWA DEP'T OF HUMAN SERVS.**  
(continued)

Based on her disability and meager income, Smith-Porter also qualified for an additional welfare benefit called a "rent tax credit," an annual sum payable to poor or disabled renters. Because of the overpayment in FIP benefits, Smith-Porter's rent tax credit of \$500 payable in 1996 was intercepted and applied toward the sum she owed DHS pursuant to the setoff provisions of Iowa Code sections 421.17(21) and (29) (1995). In a hearing before the agency, Smith-Porter contested the applicability of these statutory setoff provisions to her. An administrative law judge rejected Smith-Porter's contentions. Upon judicial review, the district court affirmed the agency. Smith-Porter appeals. **OPINION HOLDS:** I. Smith-Porter's rent tax credit is not a form of income tax refund subject to setoff under section 421.17(21). II. Section 421.17(29), which authorizes a setoff procedure against any claim, does not override the exemption available under section 627.6(8) when the funds sought to be intercepted are disability payments. We must, accordingly, reverse the contrary finding of the district court and remand for entry of judgment in Smith-Porter's favor.

**No. 97-660. CHIAFOS v. MUNICIPAL FIRE & POLICE RETIREMENT SYSTEM.**

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered by McGiverin, C.J., and Harris, Carter, Neuman, and Cady, JJ. Opinion by Harris, J. (6 pages \$2.40)

A former police officer, Robert Chiafos, argues he is entitled to accidental disability benefits rather than ordinary disability benefits. The municipal fire and police retirement system of Iowa (system) rejected his claim and the district court affirmed. The court of appeals reversed. **OPINION HOLDS:** I. The record clearly supports the finding that Chiafos failed to establish his disability resulted from an injury at a definite time and place. Chiafos cited seven significant physical traumas he experienced during his employment as a police officer. However, in order to qualify for accidental disability benefits the applicant must prove the injury is the result of a specific work-related accident or incident. This requirement is not satisfied by merely pointing to a series of injuries that heal before the next injury occurs. II. We reject the court of appeals' conclusion that causation could be established in this case by expert testimony that Chiafos' injury was "possibly" work related, coupled with other evidence that the condition did not previously exist. We note our rejection of that standard of causation is limited to claims brought for accidental disability benefits.

**No. 97-1190. HOLMSTROM v. SIR.**

Appeal from the Iowa District Court for Howard County, James L. Beeghly, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Harris, Carter, Neuman, and Cady, JJ. Opinion by Harris, J. (7 pages \$2.80)

The plaintiffs and defendants are members of the First Congregational Church. The plaintiffs allege the defendants have violated the by-laws of the

**No. 97-1190. HOLMSTROM v. SIR.** (continued)

church in numerous ways. The district court sustained the defendants' motion to dismiss and the plaintiffs appeal. **OPINION HOLDS:** I. Our court has traditionally refrained from interfering in purely ecclesiastical matters, and it is clear much of the controversy indicated by the pleadings would—if appropriately attacked—be deemed impervious to court intervention. However, this matter comes to us on an appeal from a trial court ruling dismissing the suit on the pleadings and we cannot reach the merits, or take advantage of facts gleaned in a hearing. II. The defendants never obtained a ruling on their motion for summary judgment and we do not review this appeal as we would in the case of an appeal from a summary judgment ruling. III. Because of the present posture of the case, it is inappropriate for us to point out which individual claims should—on their face—be dismissed. In military parlance, a motion to dismiss is akin to carpet bombing, and will not do in situations that call for a preemptive strike. A motion to dismiss can be sustained only if the petition shows on its face no right of recovery under any stated facts. We cannot say, looking only to the face of the petition, that no recovery is possible under any allegation. The case must be reversed and remanded for further proceedings in conformance with this opinion.

**No. 97-544. CITY OF HAWARDEN v. US WEST COMMUNICATIONS, INC.**

Appeal from the Iowa District Court for Sioux County, James D. Scott, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Carter, Lavorato, and Neuman, JJ. Opinion by Neuman, J. (11 pages \$4.40)

The City of Hawarden passed ordinance 549, requiring the payment of a “user fee” of three percent of the gross revenues of any nonmunicipal utility operating within the city. It is undisputed the franchise fee will generate revenue over and above any expense incident to Hawarden’s administrative or regulatory costs. US West contested Hawarden’s right to collect a franchise fee based on revenues generated by the company. It claimed the ordinance violates state and federal regulatory schemes governing telephone utilities and the fee amounts to an unauthorized tax. The city eventually sued US West to enforce the fee. The district court, however, agreed with the utility and dismissed the city’s suit. The city appeals. **OPINION HOLDS:** To the extent Hawarden’s ordinance 549 purports to require a revenue-based “user fee” as a prerequisite to providing telephone service in Hawarden, it conflicts with Iowa Code sections 476.29(6), 477.1 and .3 (1997), as well as the Telecommunications Act of 1996. The district court correctly recognized Hawarden’s “user fee” for what it is—a revenue-generating measure—and properly determined that, whether characterized as a “tax” or “rent,” the city is without authority to impose such a fee for use of public easements granted by the state. The district court also correctly recognized that the municipality may recover a fee for managing its public rights-of-way but, under the Telecommunications Act of 1996, such compensation must be “reasonable” and imposed on a “competitively neutral and nondiscriminatory basis.” The fee here is not reasonable or nondiscriminatory in its application. We therefore affirm the district court’s dismissal of the city’s action to enforce the ordinance.

**No. 97-1838. GINDER v. IOWA DEP'T OF HUMAN SERVS.**

Appeal from the Iowa District Court for Woodbury County, Robert C. Clem, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Carter, Neuman, and Cady, JJ. Per curiam. (2 pages \$80)

Cynthia Ginder is a disabled person eligible to receive a rent tax credit of \$289 in accordance with the disability provisions of Iowa Code section 425.16 (1995). She is also a recipient of family investment program (FIP) benefits and food stamps. When the Iowa Department of Human Services (DHS) determined Ginder had been overpaid in FIP benefits and food stamps, it sought to intercept her rent tax credit and apply it toward her outstanding debt pursuant to Iowa Code section 421.17(29). Ginder claimed her rent tax credit payment was exempt from seizure under the disability benefit provision of section 627.6(8)(c). Following a hearing, an administrative law judge found the exemption inapplicable. On judicial review the district court reversed, concluding the rent reimbursement is a disability benefit exempt from setoff. DHS appeals. **OPINION HOLDS:** In another decision filed today, *Smith-Porter v. Iowa Department of Human Services*, \_\_\_ N.W.2d \_\_\_, \_\_\_ (Iowa 1999), this court held that payment made under section 425.16 on account of a person's disability is a disability payment exempt from offset by DHS. The decision controls the present controversy. We therefore affirm the district court.

**No. 97-1930. STATE v. MILLER.**

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge. **DECISION OF THE COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT REVERSED AND REMANDED WITH INSTRUCTIONS.** Considered by McGiverin, C.J., and Harris, Carter, Neuman, and Cady, JJ. Per curiam. (5 pages \$2.00)

The defendant challenges her conviction for forgery by credit card. She claims the State improperly aggregated the amounts of the items obtained by the stolen credit cards to elevate the offense to a class "D" felony and her trial counsel was ineffective in allowing her to plead guilty to a forgery charge which lacked a factual basis. **OPINION HOLDS:** I. The defendant's failure to file a motion in arrest of judgment precludes her from attacking the guilty plea directly, and we decline to abrogate this long-standing error preservation rule. She may, however, challenge the guilty plea through an ineffective-assistance-of-counsel claim. II. We have previously held Iowa Code section 715A.6 (1997) does not provide for the aggregation of purchase amounts for the offense of forgery by credit card, and counsel was ineffective in failing to object to the aggregation. A factual basis did not exist for the felony guilty plea. To compound the matter, the improperly charged felony triggered the habitual offender provisions, thereby tripling the defendant's sentence and requiring a minimum term of incarceration. The defendant was clearly prejudiced by the State's improper charging and her counsel's failure to challenge the issue. III. Ordinarily, if a factual basis is merely lacking in the record, we will remand the case to the district court to allow the State to establish a factual basis or allow the defendant to plead anew. In this situation, however, no additional facts will save the plea. We therefore vacate the court of appeals judgment, and remand this case to the district court for dismissal of the charge without prejudice to the State's right to re-indict the defendant under the appropriate Code sections or reinstate the charges dismissed pursuant to the plea agreement.

**No. 97-1391. SCHULTZ v. SCHULTZ.**

Appeal from the Iowa District Court for Jasper County, Larry J. Eisenhauer, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Lavorato, Snell, Ternus, and Cady, JJ. Opinion by Ternus, J. (8 pages \$3.20)

The marriage of Daniel and Paula Schultz was dissolved in 1988. As part of the decree, Daniel was awarded his IRA account. Paula was listed as a beneficiary. Daniel subsequently remarried. He did not, however, change the beneficiary designation on his IRA. Upon Daniel's death in 1995, the IRA proceeds were paid to Paula. Beverly, individually and as executor of Daniel's estate, filed a declaratory judgment action seeking the court's ruling on the issue of whether Daniel and Paula's dissolution extinguished Paula's rights as a beneficiary. The court ruled the dissolution did not address Paula's status as a beneficiary and therefore did not terminate her expectancy interest in the account. Beverly and the estate have appealed. **OPINION HOLDS:** We conclude that the award of an IRA to one spouse pursuant to a dissolution decree does not terminate the expectancy interest of the other as the designated beneficiary absent some additional language addressing the expectancy interest. We hold the district court was correct in ruling that Paula was entitled to the benefits.

**No. 97-2019. STATE v. WESTEEN.**

Appeal from the Iowa District Court for Woodbury County, Michael S. Walsh, Judge. **REVERSED AND REMANDED.** Considered by Harris, P.J., and Larson, Carter, Neuman, and Ternus, JJ. Opinion by Ternus, J. (17 pages \$6.80)

The defendant, Douglas Westeen, was arrested at the Bennett Motel in Sioux City, Iowa and charged with possession of methamphetamine with intent to deliver and with keeping a dwelling for possessing controlled substances in violation of Iowa Code section 124.402(1)(e) (1997). The evidence presented at trial supports that the following events occurred. Westeen emerged from a motel room and began talking to an acquaintance, Mike Fritsen, about drugs. Westeen then invited Fritsen and two other individuals into the room. Westeen gave them some methamphetamine to use in the room. Westeen also told them that Fritsen knew where to find him. Thereafter, the police entered the room, arrested Westeen on an outstanding warrant and conducted a cursory search of the room. They recovered drug paraphernalia and methamphetamine. Officers found the motel room key in Westeen's pocket, but did not find any money on him or in the room. Westeen had not rented the room, but was given permission to use it by another person. The jury could not reach a verdict on the charge of possession of methamphetamine with the intent to deliver but did find Westeen guilty of keeping a dwelling for possessing controlled substances. Westeen appeals. **OPINION HOLDS:** I. Westeen argues the evidence was insufficient to prove the room was used for keeping, possessing, or selling controlled substances because only a 2.97-gram chunk of methamphetamine was found in the room and there was no evidence directly linking him with this particular quantity of drug. The jury could reasonably conclude that Westeen was using the room for possessing controlled substances because Westeen offered the drugs to the visitors, he had a key to the room, and he was the only one present in the room

**No. 97-2019. STATE v. WESTEEN.** (continued)

when the visitors arrived. II. Westeen complains that his trial attorney should have challenged the sufficiency of the evidence to prove that he “kept” a dwelling that is used for keeping, possessing or selling controlled substances, and should have objected to the marshaling instruction because it omitted any requirement that there be some degree of continuity before a defendant could be found guilty of “keeping.” He also asserts that his trial counsel should have objected to the court’s response to one of the jury’s questions in which the court gave a definition of “keep” that did not include the element of continuity. We agree with Westeen’s contention that an isolated instance of drug usage in a dwelling is not a violation of section 124.402(1)(e). Rather, proof that a substantial purpose of the dwelling was for the ongoing storing, possessing or selling of drugs is required. We also conclude Westeen’s trial counsel failed to perform an essential duty by not raising the continuity issue. An attorney exercising reasonable care would have concluded that this issue was certainly worth raising. Also, had this challenge been made, Westeen would have been entitled to a judgment of acquittal because, not only is there a lack of evidence of ongoing drug activity in the motel room, the evidence introduced at trial indicated the contrary. Clearly, Westeen was prejudiced by his counsel’s ineffective assistance. Therefore, we reverse his conviction and remand this case to the district court for dismissal of the charge.

**No. 97-850. STATE v. GREENE.**

Appeal from the Iowa District Court for Black Hawk County, George Stigler, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Carter, Snell, and Ternus, JJ. Opinion by Ternus, J. (18 pages \$7.20)

Greene appeals his convictions of multiple drug offenses, raising three issues: (1) the trial court erred in not allowing him to impeach one of the State’s witnesses; (2) the evidence was insufficient to support his conviction of distribution of a controlled substance to a minor; and (3) the trial court erred in refusing to grant a mistrial due to prosecutorial misconduct. **OPINION HOLDS:** I. At trial, Greene sought to impeach officer Richard Knief, a State’s witness, with a federal district court ruling in which the judge found Knief had made false or misleading statements in seeking a search warrant. Greene asserted this showed Knief’s dishonesty but the district court excluded the evidence. We find Greene did not preserve error on his claim under Iowa Rule of Evidence 608(b) that the court abused its discretion in refusing to allow him to impeach Knief. We note the narrow scope of rule 608(b) which permits cross-examination concerning a specific instance of conduct; it does *not* permit such conduct to be proved by extrinsic evidence. Here, Greene’s offer of proof sought to lay a foundation for admission of the federal court ruling. This evidence is extrinsic. Thus, the offer of proof did not include the cross-examination that may have been permissible under rule 608(b). Without knowing what Knief’s testimony would have been, we have no way of determining whether any prejudice befell Greene. II. The federal ruling was not admissible as opinion evidence under rule 608(a) because the ruling did not address Knief’s character; it merely described a specific incident of misconduct. Rule 608(a) only allows testimony directed to a witness’s character for truthfulness or untruthfulness. III. The State’s theory on the charge of distributing a controlled substance to a minor was that Greene gave LSD to



**No. 97-850. STATE v. GREENE. (continued)**

Kane, a minor. Green contends there was no evidence to support a finding of distribution because he and Kane were co-owners of the LSD and there can be no delivery between two individuals who simultaneously and jointly acquire a drug. Even if we assume Kane and Greene simultaneously and jointly acquired the drug, there was abundant evidence that the LSD was purchased for resale, not just for their personal use. Greene and Kane were shown to be links in the chain of distribution. The mere fact that they may have been co-owners does not insulate Greene from criminal liability for distribution to a minor. IV. Although we find the prosecutor did not violate the pretrial order excluding a co-defendant's inculpatory statements about Greene, we agree with Greene that the prosecutor misrepresented an accomplice's testimony in her closing arguments and is guilty of misconduct. The argument was inaccurate and we cannot attribute the prosecutor's statement to a "slip of the tongue." However, Greene was not deprived of a fair trial because the prosecutor's isolated misrepresentation of testimony is insignificant in the context of the overwhelming evidence of Greene's guilt. We affirm.

**No. 98-535. STATE v. GUZMAN-JUAREZ.**

Appeal from the Iowa District Court for Black Hawk County, James D. Coil, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Lavorato, Snell, Ternus, and Cady, JJ. Opinion by Ternus, J. (6 pages \$2.40)

The defendant, Jesus Guzman-Juarez, pleaded guilty to first-offense operating while intoxicated and requested a deferred judgment. However, the court concluded he was not eligible because his intoxilyzer test showed an alcohol concentration of .154, and Iowa Code section 321J.2(3)(a)(1) (Supp. 1997) prohibited the court from deferring judgment to a defendant testing above .15. On appeal defendant claims the trial court should have considered the intoxilyzer's margin of error in determining his alcohol concentration in which case his test would not have exceeded .15, thereby making him eligible for a deferred judgment. **OPINION HOLDS:** Clearly, section 321J.2(3)(a)(1) does not instruct the court to apply a margin of error in determining the alcohol concentration established by the test. Defendant argues, however, that he should be given the benefit of the doubt. We conclude that because the statute's terms are absolute, the test results may not be reduced by the margin of error. Defendant relies on an amendment to section 321J.2(3)(a)(1) enacted shortly after he filed his notice of appeal which expressly stated the margin of error was *not* to be subtracted from the test results. Defendant asserts this change is evidence that at the time of his sentencing, the applicable law allowed for the requested correction for the margin of error. We conclude the amendatory language does not evidence an intent to change the law, nor does it raise a presumption that the legislature intended to alter the law. We hold the amended statute merely clarifies the legislature's original intent defendant was not eligible for a deferred judgment.

No. 97-1072. SEAR v. CLAYTON COUNTY ZONING BD. OF ADJUSTMENT

Appeal from the Iowa District Court for Clayton County, Robert J. Curnan, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Lavorato, Snell, Ternus, and Cady, JJ. Opinion by Snell, J. (11 pages \$4.40)

The plaintiffs, Rodger and Carla Sear, obtained a variance from the Clayton County Zoning Board of Adjustment allowing them to place a mobile home upon their agricultural land. An adjoining landowner, Steven Metzger, filed a petition for writ of certiorari challenging the Board's actions in the district court. Metzger did not join the Searns as parties to the certiorari action. The district court found deficiencies in the Board's action and reversed its grant of a variance. Metzger also commenced a mandamus action to compel the Clayton County Board of Supervisors to remove the mobile home. Again, the Searns were not made parties to the action. The district court issued a writ of mandamus requiring the Board of Supervisors to remove the mobile home from the Searns' property. The Searns filed a petition for a temporary and permanent injunction seeking to prevent the removal of the mobile home. The district court granted the Searns' request for a temporary injunction. Metzger intervened, claiming he continued to suffer damages because of the temporary injunction. The district court denied his motions to dissolve the temporary injunction and for a default judgment. The court granted the Searns' petition for a permanent injunction, finding they had been denied due process when they were not joined as parties to the certiorari and mandamus actions, they had no adequate remedy at law, and they would be irreparably damaged if the mobile home was removed. Metzger appeals. **OPINION HOLDS:** I. We reject the Searns' contention that the issues on appeal are moot because the county has amended the ordinance in question. The district court injunction pertains to the enforcement of the former ordinance, and additional factual questions would have to be resolved to determine if the Searns could obtain a special use exception under the new ordinance. II. We conclude the denial of a motion for a default judgment is not a final order from which Metzger was required to seek an immediate appeal in order to preserve his right to appellate review. Therefore, Metzger's appeal on this issue is timely. III. Metzger cited no authority which holds the failure to file a response to a petition for intervention supports the entry of a default judgment. We affirm the trial court's denial of this motion. IV. We conclude a certiorari or mandamus proceeding which will directly affect another's use of, or interest in, property involves an interest for which some process is due. The record reveals that while the Searns may have had constructive notice of Metzger's certiorari and mandamus proceedings, they were not afforded the opportunity to appear and be heard in opposition and were denied due process. We disagree with Metzger's contention that the mandate of Iowa Rule of Civil Procedure 25 requiring the joinder of indispensable parties does not apply to petitions contesting the legality of board of adjustment decisions pursuant to Iowa Code section 335.18 (1995). We find the Searns qualify as indispensable parties under the second definition provided in Rule 25(b), and they established that the absence of notice in the underlying proceedings resulted in an invasion or threatened invasion of their rights, substantial injury or damages would result without an injunction, and they have no adequate remedy at law. The district court properly granted the Searns' request for a permanent injunction.

**No. 97-1443. SHELTER GEN. INS. CO. v. LINCOLN.**

Appeal from the Iowa District Court for Story County, Gary L. McMinimee, Judge. **AFFIRMED.** Considered by Larson, P.J., and Lavorato, Snell, Ternus, and Cady, JJ. Opinion by Snell, J. (8 pages \$3.20)

Morris Muehlenthaler was driving his truck when it collided with a train. Both Morris and his wife, Rona, a passenger in the vehicle, were killed. At the time of the accident Shelter General Insurance Company provided insurance to the Muehlenthalers under three motor vehicle liability insurance policies and a personal umbrella liability policy. Each of the policies contained language excluding liability coverage for "[b]odily injury to the insured or any member of the family of the insured residing in the same household as the insured." The administrators of the Muehlenthalers' estates objected to Shelter's decision to deny coverage under the family member exclusion beyond the \$100,000 in uninsured benefits. Shelter filed a petition for declaratory judgment. The administrators challenged the family member exclusion claiming it had no factual basis, was an unconstitutional restriction on the parties' freedom to contract, violated public policy regarding contractual freedom, and interfered with public policy supporting the family. Shelter filed a motion for summary judgment. The district court granted Shelter's motion and it upheld the family exclusion provision. The court declared there was no coverage beyond the conceded uninsured benefits. **OPINION HOLDS:** I. The claim that the insureds' reasonable expectations were frustrated by the family exclusion clause is without any support in the record. II. We refuse to invalidate the exclusions because of the insurers' unwillingness to provide coverage without them. Any policy decisions mandating the availability of such coverage should come from the legislature. III. The claim that family member exclusions constitutes an unconstitutional restriction on their right to contract is without merit. IV. The family member exclusion does not violate state public policy. We are not convinced the existence of a family member exclusion in automobile liability policies will result in the family discord and collusion. We affirm the district court's grant of summary judgment.

**No. 97-654. CITY OF DUBUQUE v. FANCHER.**

Appeal from the Iowa District Court for Dubuque County, John Bauercamper, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Carter, Neuman, and Cady, JJ. Opinion by Cady, J. (6 pages \$2.40)

Walt Fancher appeals from a district court order for the disposition of nearly three hundred neglected rabbits removed from his home. The district court ordered the rabbits destroyed by euthanasia because they were highly infected with bacteria and parasites, and required Fancher to pay the expenses of the removal, care, and destruction of the rabbits. **OPINION HOLDS:** I. We reject Fancher's claim that the district court erred in failing to address his statutory and constitutional challenges to the seizure of the rabbits prior to the dispositional hearing. We conclude a challenge to the propriety of the seizure of neglected animals does not impact the city's authority to file a petition for disposition or the jurisdiction of the district court to hear and decide the petition. This conclusion makes it unnecessary for us to decide the merits of Fancher's claim that the city failed to comply with Iowa Code section 717B.5 (1997) in

**No. 97-654. CITY OF DUBUQUE v. FANCHER. (continued)**

removing the rabbits. II. We find the evidence relating to sanitation and cleanliness was relevant to the appropriate disposition of the rabbits. The trial court did not abuse its discretion by admitting this evidence. III. Although a letter admitted by the district court did not meet the foundational requirements of Iowa Rule of Evidence 703, it was merely cumulative of evidence properly admitted at trial.

**No. 97-1181. IN RE ESTATE OF KIRK v. HEALTH MANAGEMENT SYS., INC.**

Appeal from the Iowa District Court for Madison County, David L. Christensen, Judge. **AFFIRMED IN PART, REVERSED IN PART.** Considered by McGiverin, C.J., and Harris, Carter, Neuman, and Cady, JJ. Opinion by Cady, J. (8 pages \$3.20)

Ruby Kirk died testate on February 23, 1996. Her husband, Gerdon, died three months earlier. Prior to her death, Ruby qualified for Title XIX Medicaid benefits to assist in the expenses of her nursing care. Gerdon's will devised to Ruby all real and personal property, including all jointly-held property. Jerry Decker, Ruby's grandson and executor of her estate, filed a disclaimer of all real and personal property passing from Gerdon's estate, including all jointly-held property. Health Management Services (HMS) filed a claim against Ruby's estate on behalf of the State to recover the Medicaid benefits paid to Ruby. Decker filed an application with the court to determine the validity of the waiver. The district court ruled the disclaimer was valid. HMS has appealed. **OPINION HOLDS:** I. We reject HMS's claim that the disclaimer is contrary to public policy because it thwarts its attempt to recover from Ruby's estate. We have acknowledged that beneficiaries may renounce property intended for their benefit even if renunciation defeats creditors' claims. Although Medicaid claims a priority status versus other creditors, our legislature has not indicated that such claims should not face the same consequences of a disclaimer. Because the disclaimer does not amount to an assignment or conveyance, the disclaimer cannot be viewed as a scheme to circumvent Medicaid eligibility. II. Regarding disclaimer of the jointly-held property, we conclude the only interest available for Ruby to disclaim was the accretive interest which passed to her upon Gerdon's death. We reverse that portion of the district court's ruling holding Ruby could disclaim her interest in joint property held prior to her death. We otherwise affirm.

**No. 98-279. IN RE MELODIE L.**

Appeal from the Iowa District Court for Polk County, Douglas R. Smalley, Judicial Referee, and D. J. Stovall, Judge. **AFFIRMED IN PART, REVERSED IN PART, AND DISMISSED.** Considered by Larson, P.J., and Lavorato, Neuman, Snell, and Cady, JJ. Opinion by Cady, J. (11 pages \$4.40)

Melodie L. has been hospitalized for treatment of mental illness numerous times. In November 1997, Melodie assaulted her case worker. The case worker filed an application for Melodie's involuntary hospitalization. A hospitalization referee found Melodie to be seriously mentally impaired and ordered her to be

**No. 98-279. IN RE MELODIE L. (continued)**

committed to a hospital. Melodie appealed the referee's decision to the district court, which affirmed. The case was returned to the referee for further proceedings. Eventually, the referee ordered Melodie to participate in inpatient treatment. In December 1997, Melodie filed an application requesting to be released from further inpatient treatment. A new medical report was not submitted. Following a hearing the referee discharged Melodie from treatment and dismissed the case. The county attorney, on behalf of the case worker, (the applicant) filed an appeal to a district judge. The district court dismissed the action for lack of subject matter jurisdiction, finding no authority to permit an applicant to file an appeal. On appeal, the applicant claims the referee had no statutory authority to release Melodie based upon her application, but is only permitted to take such action in response to a medical report. Melodie claims the applicant failed to challenge the referee's jurisdiction at the time of the hearing, and has no right to an appeal. **OPINION HOLDS:** I. There is no statutory right for an applicant to appeal a referee's order to the district court. Therefore, the district court properly dismissed the appeal for lack of subject matter jurisdiction. II. The notice of appeal, however, was filed within thirty days of the referee's order. A hospitalization proceeding is a civil proceeding and a final civil judgment of the district court may be appealed to the supreme court. Because orders issued by referees have the same force as if ordered by the district court, and due to the lack of review of referee orders by the district court, we conclude the referee's order for dismissal is a final judgment. III. We conclude the referee lacked authority to dismiss the action in response to Melodie's application for release. Other than the habeas corpus process, there is no specific procedure which enables a patient to initiate a review of the commitment or request to be released. Instead, the treating physician charged with the care and treatment of the patient triggers the review procedure by submitting the required periodic medical report. Thus, Melodie's application was actually a petition for habeas corpus. The legislature, however, has not authorized a referee to hear habeas corpus requests, or to release and discharge a patient without the submission of a medical report. IV. We recognize Melodie was released from hospitalization more than a year ago. We do not remand this case for further proceedings. Any further need for treatment would be available through a new action. Nevertheless, the issue presented is important but would evade review under the mootness doctrine if not resolved.

**No. 97-889. UNIVERSITY OF IOWA v. DUNBAR.**

Appeal from the Iowa District Court for Warren County, William H. Joy, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Carter, Neuman, and Cady, JJ. Opinion by Carter, J. (4 pages \$1.60)

Defendant, George Wesley Dunbar, appeals from a judgment entered against him in favor of the University of Iowa based on nonpayment of student loans he obtained in 1977 and 1978. The action to collect on the loans was commenced in 1996. Dunbar urged that the claims were time-barred pursuant to Iowa Code sections 614.1(5) and 614.5 (1995). The district court held that any statute of limitations otherwise applicable to the claims is abrogated by the provisions of Iowa Code section 262.19. **OPINION HOLDS:** Section 262.19 provides: "No lapse of time shall be a bar to any action to recover on any loan made on behalf of any institution." Because this statute is contained in the

**No. 97-889. UNIVERSITY OF IOWA v. DUNBAR.** (continued)

chapter of the Code dealing with the Iowa Board of Regents' institutions, it is implicit that the words "any institution" refer to the Board of Regents' institutions. We reject Dunbar's claim the history of statutes culminating in the enactment of section 262.19 reveals it does not apply to his student loans. Section 262.19's language is not ambiguous and is not limited as to either the types of loans to which it applies or the particular institution making the loan. We conclude that the district court correctly interpreted the statute as abrogating any statute-of-limitations defense otherwise available to Dunbar. We affirm.

**No. 98-164. STATE v. RETTINGHAUS/SWANSON.**

Appeal from the Iowa District Court for Polk County, Gregory D. Brandt, District Associate Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Carter, Neuman, and Cady, JJ. Opinion by Carter, J. (4 pages \$1.60)

Defendants, Candace Rettinghaus and Kirk Eric Swanson, appeal from the sentences imposed on their convictions of operating while intoxicated (OWI). At sentencing, each contended they should be eligible for a deferred judgment or a suspended sentence. The court found they were not eligible for either because Iowa Code section 321J.2(3)(a)(1) (Supp. 1997) prohibits granting a deferred judgment or a suspended sentence to an OWI violator whose blood alcohol concentration tested above .15. On appeal defendants contend the court was required to consider the margin of error in which case their concentrations would have been reduced to .144 and .148, respectively. **OPINION HOLDS:** I. We have already rejected the defendants' argument that section 321J.2(3)(a)(1) requires the application of the inherent margin of error in *State v. Guzman-Juarez*, \_\_\_ N.W.2d \_\_\_, \_\_\_ (Iowa 1999). II. Contrary to defendants' argument, we find no requirement that the sentencing element embraced in section 321J.2(3)(a)(1) must be stated in the indictment or trial information and that the trier of fact must make a specific finding with respect thereto. III. Defendants contend that due process requires a specific fact-finding of the alcohol concentration rather than a resort to results produced by a particular chemical testing process. We disagree with defendants' argument. Federal decisions examining the due process implications of fact-finding by a sentencing court merely require that the defendant not be sentenced on materially false information. There is no indication that these defendants were sentenced based on materially false information. Further, it is the test result that triggers the prohibition on sentencing options rather than some independent finding by the court concerning the defendant's blood alcohol content. Outcome determinative sentencing date need only exist by a preponderance of the evidence. We affirm.

**No. 97-608. FENSKE v. STATE.**

Appeal from the Iowa District Court for Poweshiek County, Dan F. Morrison, Judge. **AFFIRMED.** Considered en banc. Opinion by Larson, J. Dissent by Snell, J. (29 pages \$11.60)

The evidence at Stan Fenske's burglary trial showed he and William Weant went to Maurine Creamer's house. Creamer was out of town, and Danelle Besco was living there with Creamer's consent. The men entered the home. Besco told Fenske to leave, but before doing so, Fenske assaulted another occupant. A jury ultimately convicted Fenske of burglary and other charges. On appeal the court

**No. 97-608. FENSKE v. STATE. (continued)**

of appeals reversed the burglary conviction. We vacated the court of appeals decision on further review and affirmed the conviction. After an unsuccessful federal action, Fenske filed a postconviction relief application, arguing our court affirmed the conviction on a theory not presented to the jury. Although the postconviction court agreed with Fenske's contention, it denied his application. Fenske appeals. **OPINION HOLDS:** We reject Fenske's argument on the merits. The key issue throughout this case has been whether Fenske had a "right, license or privilege" to enter the house. He claims the State tried the case on the theory that Besco had standing to give or deny consent to Fenske's entry. In the prior appeal, we suggested that the evidence would also support a finding that Creamer had the right to consent, and Fenske's entry was beyond the scope of that consent. Contrary to Fenske's contentions, this did not constitute a fatal discrepancy because neither the trial information nor the jury instructions charged any theory as to who had the authority to give consent. Whether Fenske had consent to enter the house was a fact question, which the jury resolved against him. Substantial evidence supports that finding, and the district court properly denied the postconviction relief application. **DISSENT ASSERTS:** I believe Fenske's constitutional rights were violated. In affirming Fenske's conviction on direct appeal, we relied upon a theory not presented at trial. The State focused on the theory that it was Besco, not Creamer, who had the authority to grant permission. There is a discrepancy between the basis on which the jury rendered its verdict and the basis on which we sustained the conviction. I also disagree with the majority's position that this case presents an issue of variance and that the State is not required to plead a theory of guilt. I believe Fenske's appellate counsel rendered ineffective assistance by not presenting his challenges to our opinion in a petition for rehearing. I would reverse the district court's denial of postconviction relief and reverse Fenske's conviction.

**No. 97-2273. WHITE v. STATE.**

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge. **AFFIRMED.** Considered by Larson, P.J., and Lavorato, Snell, Ternus, and Cady, JJ. Per curiam. (5 pages \$2.00)

Charmayne White appeals from the district court order denying her application for postconviction relief, in which White argued that her trial counsel was ineffective in failing to file a motion asking for her early release from a residential correctional facility, which resulted in revocation of her probation when she left the facility without authority. **OPINION HOLDS:** We conclude White's counsel was not ineffective for failing to file a formal application or motion requesting that the court order White's release from the facility. Trial counsel communicated with both the judge and the residential facility. Although the judge indicated that he would have been willing to release White had a formal motion been filed, such ruling was dependent on the nature of any problems White had at the facility and the State's response. Counsel learned that due to various rule violations, the facility was opposed to White's early release. Based on this information, we find it was reasonable for counsel to conclude that filing a formal application or motion would prove fruitless. We affirm the district court's denial of the application.

**No. 97-2108. STATE v. DANN.**

Appeal from the Iowa District Court for Clinton County, David H. Sivright, Jr., Judge. **AFFIRMED IN PART; SENTENCE VACATED IN PART; AND REMANDED.** Considered by Larson, P.J., and Lavorato, Snell, Ternus, and Cady, JJ. Per curiam. (7 pages \$2.80)

Defendant, Samuel Dann, was charged by trial information with three counts of willful injury. The trial information, however, failed to allege Dann had used a dangerous weapon, or otherwise indicate how the willful injuries were inflicted. Following a jury trial, Dann was found guilty of one count of willful injury, and lesser included offenses on the remaining counts. The court sentenced Dann to an indeterminate ten-year term of incarceration on the willful injury conviction, and imposed the five-year mandatory minimum term pursuant to Iowa Code section 902.7 (1995). Dann appeals, arguing the district court could not impose the mandatory minimum because the State failed to comply with Iowa Rule of Criminal Procedure 6(6) by not alleging in the trial information he had used a dangerous weapon. **OPINION HOLDS:** In light of the recent amendment to section 902.7, we find an ambiguity now exists in rule 6(6). While the rule continues to use the term "firearm," it does so in the context of referring to section 902.7. Section 902.7, however, no longer applies only to firearms, but to all "dangerous weapons." The inconsistency in language between rule 6(6) and section 902.7 is due solely to the obvious omission of the appropriate change in rule 6(6) when section 902.7 was recently amended. We accordingly construe rule 6(6) as encompassing allegations of dangerous weapons usage. The State's failure to comply with the notice requirement of rule 6(6) and include the appropriate allegation in the trial information precludes imposition of the mandatory minimum of section 902.7. The judgment of Dann's guilt is affirmed, but the portion of the sentence which imposes the mandatory minimum is vacated and remanded.

**No. 97-1251. CITY OF WAUKEE v. CITY DEV. BD.**

Appeal from the Iowa District Court for Dallas County, Darrell J. Goodhue, Judge. **REVERSED AND REMANDED WITH DIRECTIONS.** Considered by Larson, P.J., and Lavorato, Snell, Ternus, and Cady, JJ. Opinion by Lavorato, J. (17 pages \$6.80)

This appeal arises out of a dispute between the cities of Clive and Waukee over the annexation of certain land in Dallas County, Iowa. On July 27, 1995, Clive filed an application for approval of voluntary annexation of land located in Dallas County. The owners of 89.8 percent of the property in this area requested annexation. The Knapp/Koethe property and the Croci/Van Dorn properties are the largest voluntary parcels. The Knapp/Koethe property is contiguous to the largest involuntary parcel—the Nizzi property. Without the Nizzi property, Clive could not annex the Knapp/Koethe property under its proposed annexation application because the Knapp/Koethe property would be an island. On August 1, 1995, Waukee filed a voluntary annexation application for a smaller area, including the Nizzi property. The City Development Board (Board) approved Clive's voluntary annexation application over Waukee's voluntary annexation application. Waukee and owners of property included in Waukee's application petitioned the district court for judicial review. Clive intervened in the proceeding. The district court reversed, concluding Clive's application did not comply with Iowa Code section 368.7(1) (1995) because voluntary property Clive sought to annex was not "adjoining" to Clive pursuant to the statute's



**No. 97-1251. CITY OF WAUKEE v. CITY DEV. BD. (continued)**

requirement. It also determined that the Board's decision to include property of nonconsenting landowners in Clive's application to make a more uniform boundary was not supported by substantial evidence. It remanded the case to the Board for reconsideration. Clive and the Board appealed. **OPINION HOLDS:** I. We agree with Clive that the plain language of the first sentence in section 368.7(1) requires only that the entire land area to be annexed share a common boundary with the city to which annexation is sought. Although not all of the parcels in the territory adjoin or share a common boundary with Clive, they are all contiguous to each other in the sense that there is no parcel that does not share a boundary with a parcel included in the territory to be annexed. In addition, one of the parcels is contiguous to Clive. We therefore conclude Clive's application meets the requirement of the first sentence of section 368.7(1). II. We conclude the district court's interpretation that section 368.7(1) does not permit the inclusion of property of nonconsenting owners in the annexation territory for the purpose of providing contiguity is unreasonable and not warranted by the statutory language. III. We conclude the Board's decision that the inclusion of property of nonconsenting owners was necessary to create a more uniform boundary is consistent with section 368.7(1). Such an interpretation does not unduly restrict the Board's choice of comparable boundaries and acknowledges the Board's expertise and its role in overseeing long-range planning and orderly development of cities. IV. We also find substantial evidence supports the Board's finding that the inclusion of the property of nonconsenting owners created more uniform municipal boundaries for Clive than the boundaries that would have been created by the alternative proposal. The Board's interpretation of section 368.7(1) and its approach to the boundary comparisons were consistent with the Board's role, the statutory language, and the public interest. Additionally, the Board did not ignore the wishes of the residents on the Nizzi property. The record is clear that their interests were simply outweighed by the need to create more uniform boundaries, as well as what was best for *all* of the residents in the proposed annexed territory. We therefore reverse the district court's ruling, affirm the Board's decision, and remand to the district court for an order dismissing the petition for judicial review.

**No. 97-950. LEAF v. GOODYEAR TIRE & RUBBER CO.**

Appeal from the Iowa District Court for Boone County, William J. Pattinson, Judge. **AFFIRMED.** Considered by Larson, P.J., and Lavorato, Snell, Ternus, and Cady, JJ. Opinion by Larson, J. Special concurrence by Lavorato, J. (22 pages \$8.80)

Christopher Leaf, an employee at a tire service center, sued the Goodyear Tire & Rubber Company for personal injuries he sustained when a retreaded Goodyear tire that he was working on ruptured. Under normal circumstances, Leaf would have inflated the tire in a safety cage as required by federal safety rules, but because the bead on the tire would not seal on the rim, Leaf had to initially use a sealing device with the tire placed outside the cage. While Leaf was inflating the tire and looking for a valve core, the tire ruptured. Following a trial, the jury awarded Leaf \$274,225.90 on his strict-liability claim. Goodyear appeals. **OPINION HOLDS:** I. We do not decide whether the district court erred by failing to instruct that Goodyear's warning about using a safety cage, which was stamped on the tire, was a defense in connection with Leaf's strict-liability claim, as opposed to only his negligence claim. While we have doubts

**No. 97-950. LEAF v. GOODYEAR TIRE & RUBBER CO. (continued)**

concerning Goodyear's argument, Goodyear did not raise it in its motion for directed verdict, and the issue was waived. II. We reject Goodyear's argument that it was relieved from liability as a matter of law because the tire was misused after it left Goodyear's control, both by having been run underinflated and by Leaf's extended inflation of the tire outside the cage. The record could support findings that it was foreseeable this type of tire would be used when underinflated and that the tire was not overpressurized at the time it ruptured. III. Under our liberal application of Iowa Rule of Evidence 702, we find the district court did not err in allowing testimony from Leaf's expert, who gave an opinion on the alleged design defect. In so finding, we determine the analysis used in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), is not controlling; we hold trial courts are not required to apply the *Daubert* analysis in considering the admission of expert testimony, but note the *Daubert* considerations are helpful guidelines for a court to assess the reliability of evidence especially in complex cases. A. While we believe the issue of the expert's qualifications should have been addressed prior to trial as contemplated by Iowa Rule of Evidence 104(a), we consider the merits of Goodyear's objection raised at trial. B. We find the district court was within its discretion in finding the expert qualified. The fact that the expert had not actually designed a radial tire, had not conducted testing to determine whether a feasible alternative design existed, and had only anecdotal information about Goodyear tires all goes to the weight of his testimony and not its admissibility. C. The expert's testimony was sufficient to establish Leaf's defective-design claim. IV. We reject Goodyear's claim that the court's instructions to the jury unfairly portrayed the fault issues as relating to Goodyear and not to Leaf. When all of the instructions are read together, they adequately and accurately explain fault as it related to both parties. V. We decline to accept Goodyear's invitation to alter the rule that violation of an OSHA standard is negligence per se only in an action by an employee against an employer. In actions by an employee against a third party, as in the present case, the violation of an OSHA standard is only evidence of negligence. **SPECIAL CONCURRENCE ASSERTS:** I think the result the majority reaches is correct, but I would reject the *Daubert* analysis.

**No. 97-998. VICORP v. BADER.**

Appeal from the Iowa District Court for Linn County, Thomas M. Horan, Judge. **REVERSED AND REMANDED WITH DIRECTIONS.** Considered by Larson, P.J., and Lavorato, Snell, Ternus, and Cady, JJ. Opinion by Lavorato, J. (14 pages \$5.60)

James J. Bader and Lee Schmidt formed a partnership to acquire and operate a Village Inn Restaurant and executed a Franchise Operating Agreement (FOA) with Vicorp for its purchase. Vicorp sent a notice of default and right to cure to Bader alleging Bader failed to pay monies due and gave him thirty days to bring the account current. At the time, Bader was involved in negotiating a transfer of the franchise to Vince DeLong. The FOA permitted a transfer of the franchise with Vicorp's "written approval." Vicorp caused DeLong to abandon his efforts to purchase the franchise and then sued Bader seeking alleged royalty delinquencies and foreclosure of a security interest in certain personal property. In his answer and counterclaim, Bader alleged Vicorp unreasonably withheld consent to the transfer of the franchise to DeLong, failed to provide a proper notice of default and right to cure, and improperly terminated the FOA.

**No. 97-998. VICORP v. BADER. (continued)**

Following a bench trial, the court found Vicorp breached the FOA and that it failed to meet a good-faith obligation to consider the transfer. The court denied Vicorp's claim and upheld Bader's counterclaim for damages. Bader filed a posttrial motion for attorney fees pursuant to a fee-shifting provision in the FOA that allowed fees to the "prevailing party." However, the court did not rule on it before the end of the thirty-day appeal period. Bader filed a notice of appeal and sought a limited remand to allow a ruling on his motion for attorney fees, which we granted. On remand, the court denied Bader's application, finding that both parties breached the FOA and, thus, neither party could be considered to have prevailed. Bader appeals. **OPINION HOLDS:** Bader contends he was the prevailing party because the district court's original ruling found Vicorp had breached the FOA and entered judgment in his favor on the liability issue. Bader insists the court's finding in the second ruling that he breached the FOA was inconsistent with the original ruling and an unauthorized expansion of it. We agree. Under Colorado law, which governs the issue, the verdict on liability alone determines the prevailing party. Because the court's finding on liability was favorable to Bader, he was the prevailing party. Thus, Bader could at least recover attorney fees on his counterclaim because the court had entered judgment in his favor on it. We also find Bader can recover fees in defending against Vicorp's claim for the delinquencies. The court originally found that Vicorp breached the FOA; it did not so find as to Bader. Obviously, the finding on remand that Bader breached the FOA is directly contrary to the court's original finding. The district court was without authority to make such a finding. We therefore conclude Bader was a prevailing party on both the counterclaim and on his defense against Vicorp's claim. Bader is also entitled to appellate attorney fees. We reverse and remand so the district court can hold an evidentiary hearing on trial and appellate attorney fees.

**No. 97-2144. STEWART v. DeMOSS.**

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Monroe County, Daniel P. Wilson, Judge. **COURT OF APPEALS DECISION AFFIRMED; DISTRICT COURT JUDGMENT REVERSED AND REMANDED.** Considered by Larson, P.J., and Lavorato, Snell, Ternus, and Cady, JJ. Opinion by Lavorato, J. (7 pages \$2.80)

Kent Stewart and Kendra Pearson purchased a 1995 van and financed it through GMAC. They took title as joint tenants with rights of survivorship. Pearson died prior to their wedding. Diane DeMoss was appointed executor. DeMoss published notice to creditors on March 30 and April 6, 1995. Seven weeks after the last publication of notice of probate, Stewart paid off the remaining balance due GMAC. Stewart subsequently filed a claim in Pearson's estate for one-half this amount plus interest. At no time before his payment had DeMoss mailed him notice of probate. DeMoss denied the claim on the basis it was untimely under Iowa Code section 633.410 (1995). Following a hearing, the district court ruled Stewart's claim was untimely and held he was not a reasonably ascertainable claimant and that the executor was not required to send him notice by ordinary mail. On appeal, the court of appeals reversed, concluding Stewart was a reasonably ascertainable claimant and was entitled to separate notice under section 633.410. The court of appeals ruled his appeal was timely. We granted DeMoss's application for further review. **OPINION HOLDS:** I. We conclude that until Stewart paid more than his share of the debt to GMAC, his claim for

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contribution against Pearson's estate was contingent. II. We find DeMoss was aware of Stewart's claim no later than April 1, 1995, five days before the publication of the second notice to creditors. We also conclude DeMoss was aware that, as Stewart made monthly payments, his contingent right to contribution would become enforceable. Under these facts, Stewart was a reasonably ascertainable claimant and was entitled to notice under section 633.410. Because he received no notice, his claim was timely filed. We affirm the court of appeals' decision, reverse the district court, and remand for further proceedings consistent with this opinion.







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