



IOWA ADMINISTRATIVE BULLETIN

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- Filed, Traffic safety improvement program—application deadline, 164.9(1)"b" **ARC 7618B**. 2083

PREFACE

The Iowa Administrative Bulletin is published biweekly pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)"a"]; and agricultural credit corporation maximum loan rates [535.12].

PLEASE NOTE: Underscore indicates new material added to existing rules; ~~strike through~~ indicates deleted material.

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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	(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).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

NOTE: In accordance with Iowa Code section 7.17, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

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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. 24 '08	Jan. 14 '09	Feb. 3 '09	Feb. 18 '09	Feb. 20 '09	Mar. 11 '09	Apr. 15 '09	July 13 '09
Jan. 9	Jan. 28	Feb. 17	Mar. 4	Mar. 6	Mar. 25	Apr. 29	July 27
Jan. 23	Feb. 11	Mar. 3	Mar. 18	Mar. 20	Apr. 8	May 13	Aug. 10
Feb. 6	Feb. 25	Mar. 17	Apr. 1	Apr. 3	Apr. 22	May 27	Aug. 24
Feb. 20	Mar. 11	Mar. 31	Apr. 15	Apr. 17	May 6	June 10	Sep. 7
Mar. 6	Mar. 25	Apr. 14	Apr. 29	May 1	May 20	June 24	Sep. 21
Mar. 20	Apr. 8	Apr. 28	May 13	***May 13***	June 3	July 8	Oct. 5
Apr. 3	Apr. 22	May 12	May 27	May 29	June 17	July 22	Oct. 19
Apr. 17	May 6	May 26	June 10	June 12	July 1	Aug. 5	Nov. 2
May 1	May 20	June 9	June 24	***June 24***	July 15	Aug. 19	Nov. 16
May 13	June 3	June 23	July 8	July 10	July 29	Sep. 2	Nov. 30
May 29	June 17	July 7	July 22	July 24	Aug. 12	Sep. 16	Dec. 14
June 12	July 1	July 21	Aug. 5	Aug. 7	Aug. 26	Sep. 30	Dec. 28
June 24	July 15	Aug. 4	Aug. 19	***Aug. 19***	Sep. 9	Oct. 14	Jan. 11 '10
July 10	July 29	Aug. 18	Sep. 2	Sep. 4	Sep. 23	Oct. 28	Jan. 25 '10
July 24	Aug. 12	Sep. 1	Sep. 16	Sep. 18	Oct. 7	Nov. 11	Feb. 8 '10
Aug. 7	Aug. 26	Sep. 15	Sep. 30	Oct. 2	Oct. 21	Nov. 25	Feb. 22 '10
Aug. 19	Sep. 9	Sep. 29	Oct. 14	Oct. 16	Nov. 4	Dec. 9	Mar. 8 '10
Sep. 4	Sep. 23	Oct. 13	Oct. 28	***Oct. 28***	Nov. 18	Dec. 23	Mar. 22 '10
Sep. 18	Oct. 7	Oct. 27	Nov. 11	***Nov. 12***	Dec. 2	Jan. 6 '10	Apr. 5 '10
Oct. 2	Oct. 21	Nov. 10	Nov. 25	***Nov. 25***	Dec. 16	Jan. 20 '10	Apr. 19 '10
Oct. 16	Nov. 4	Nov. 24	Dec. 9	***Dec. 9***	Dec. 30	Feb. 3 '10	May 3 '10
Oct. 28	Nov. 18	Dec. 8	Dec. 23	***Dec. 23***	Jan. 13 '10	Feb. 17 '10	May 17 '10
Nov. 12	Dec. 2	Dec. 22	Jan. 6 '10	Jan. 8 '10	Jan. 27 '10	Mar. 3 '10	May 31 '10
Nov. 25	Dec. 16	Jan. 5 '10	Jan. 20 '10	Jan. 22 '10	Feb. 10 '10	Mar. 17 '10	June 14 '10
Dec. 9	Dec. 30	Jan. 19 '10	Feb. 3 '10	Feb. 5 '10	Feb. 24 '10	Mar. 31 '10	June 28 '10
Dec. 23	Jan. 13 '10	Feb. 2 '10	Feb. 17 '10	Feb. 19 '10	Mar. 10 '10	Apr. 14 '10	July 12 '10

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
21	Friday, March 20, 2009	April 8, 2009
22	Friday, April 3, 2009	April 22, 2009
23	Friday, April 17, 2009	May 6, 2009

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.

*****Note change of filing deadline*****

AGENCY	HEARING LOCATION	DATE AND TIME
CULTURAL AFFAIRS DEPARTMENT[221]		
Iowa community cultural grants program—applicant eligibility, 6.3 IAB 2/25/09 ARC 7589B	Tone Room, Third Floor West Historical Building 600 E. Locust St. Des Moines, Iowa	March 17, 2009 10 a.m.
COMMUNITY ACTION AGENCIES DIVISION[427]		
Individual development accounts (IDAs), ch 14 IAB 3/11/09 ARC 7614B	Room 208 Lucas State Office Bldg. Des Moines, Iowa	March 31, 2009 11 a.m.
EDUCATIONAL EXAMINERS BOARD[282]		
NCATE-accredited programs, 13.19 IAB 2/25/09 ARC 7600B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	March 18, 2009 1 p.m.
EDUCATION DEPARTMENT[281]		
Senior year plus program, ch 22 IAB 3/11/09 ARC 7612B (ICN Network)	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	March 31, 2009 9 a.m. to 12 noon
	Louisa Rm., Mississippi Bend AEA 9 729 21st Street Bettendorf, Iowa	March 31, 2009 9 a.m. to 12 noon
	Rm. 115, Industrial Technologies Bldg. Northeast Iowa Community College 1625 Hwy. 150 S. Calmar, Iowa	March 31, 2009 9 a.m. to 12 noon
	Room A169, Carroll High School 2809 N. Grant Road Carroll, Iowa	March 31, 2009 9 a.m. to 12 noon
	Hawkeye Community College 5330 Nordic Drive Cedar Falls, Iowa	March 31, 2009 9 a.m. to 12 noon
	State Room, AEA 267 Clear Lake Regional Office 9184B 265th Street Clear Lake, Iowa	March 31, 2009 9 a.m. to 12 noon
	Room 024, Looft Hall Iowa Western Community College 1 2700 College Road Council Bluffs, Iowa	March 31, 2009 9 a.m. to 12 noon
	Turner Rm., Green Valley AEA 14 1405 N. Lincoln Creston, Iowa	March 31, 2009 9 a.m. to 12 noon

AGENCY	HEARING LOCATION	DATE AND TIME	
EDUCATION DEPARTMENT[281] (Cont'd) (ICN Network)	Eastern Iowa Comm. College Dist. 1 Rm. 300, Kahl Education Center 326 W. 3rd Street Davenport, Iowa	March 31, 2009 9 a.m. to 12 noon	
	Room 818, Smith Wellness Center Iowa Lakes Community College 3200 College Drive Emmetsburg, Iowa	March 31, 2009 9 a.m. to 12 noon	
	Linn-Mar High School 3111 N. 10th Street Marion, Iowa	March 31, 2009 9 a.m. to 12 noon	
	Regional Office, AEA 267 909 S. 12th Street Marshalltown, Iowa	March 31, 2009 9 a.m. to 12 noon	
	Videoconferencing and Training Center Indian Hills Community College 7 651 Indian Hills Drive Ottumwa, Iowa	March 31, 2009 9 a.m. to 12 noon	
	Room 139 Northeast Iowa Community College 1 10250 Sundown Road Peosta, Iowa	March 31, 2009 9 a.m. to 12 noon	
	Prairie Lakes AEA 8 500 N.E. 6th Street Pocahontas, Iowa	March 31, 2009 9 a.m. to 12 noon	
	Room 103, AEA 4 1382 4th Avenue N.E. Sioux Center, Iowa	March 31, 2009 9 a.m. to 12 noon	
	Room 206, Northwest AEA 12 1520 Morningside Avenue Sioux City, Iowa	March 31, 2009 9 a.m. to 12 noon	
	Rm. 528, North Campus/Trustee Hall Southeastern Community College 1 1500 W. Agency Road West Burlington, Iowa	March 31, 2009 9 a.m. to 12 noon	
	Supplementary weighting plan for operational function sharing, 97.1, 97.2, 97.4, 97.5(6)“a,” 97.7 IAB 3/11/09 ARC 7611B (ICN Network)	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	March 31, 2009 9 a.m. to 12 noon
		Louisa Rm., Mississippi Bend AEA 9 729 21st Street Bettendorf, Iowa	March 31, 2009 9 a.m. to 12 noon
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	Room 024, Looft Hall Iowa Western Community College 1 2700 College Road Council Bluffs, Iowa	March 31, 2009 9 a.m. to 12 noon
	Turner Rm., Green Valley AEA 14 1405 N. Lincoln Creston, Iowa	March 31, 2009 9 a.m. to 12 noon
	Eastern Iowa Comm. College Dist. 1 Rm. 300, Kahl Education Center 326 W. 3rd Street Davenport, Iowa	March 31, 2009 9 a.m. to 12 noon
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	Room 103, AEA 4 1382 4th Avenue N.E. Sioux Center, Iowa	March 31, 2009 9 a.m. to 12 noon
	Room 206, Northwest AEA 12 1520 Morningside Avenue Sioux City, Iowa	March 31, 2009 9 a.m. to 12 noon
	Rm. 528, North Campus/Trustee Hall Southeastern Community College 1 1500 W. Agency Road West Burlington, Iowa	March 31, 2009 9 a.m. to 12 noon

AGENCY	HEARING LOCATION	DATE AND TIME
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Removal of EPA clean air mercury rule (CAMR) provisions, 23.1, 25.3, 34.300 to 34.308 IAB 3/11/09 ARC 7622B	Conference Rooms, Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	April 13, 2009 1 p.m.
Surface water classification, 61.3(5) IAB 3/11/09 ARC 7624B	Fourth Floor Conference Rooms Wallace State Office Bldg. Des Moines, Iowa	April 7, 2009 1 p.m.
	Cherokee Community Center 530 W. Bluff St. Cherokee, Iowa	April 9, 2009 10 a.m.
	Municipal Utilities Conference Room 15 West 3rd St. Atlantic, Iowa	April 9, 2009 6 p.m.
	Falcon Civic Center 1305 5th Avenue NE Independence, Iowa	April 14, 2009 10 a.m.
	Public Library 123 Linn St. Iowa City, Iowa	April 14, 2009 6 p.m.
	Community Meeting Room 15 North 6th St. Clear Lake, Iowa	April 16, 2009 1 p.m.
Animal feeding operations—surface application of manure on frozen or snow-covered ground, 65.1, 65.3, 65.17(3) ^e , 65.100, 65.101, 65.112(8) IAB 2/11/09 ARC 7570B	Auditorium Wallace State Office Bldg. 502 E. 9th St. Des Moines, Iowa	March 16, 2009 9 a.m.
	Washington County Conservation Board Education Center, Marr Park 2943 Highway 92 Ainsworth, Iowa	March 16, 2009 6 p.m.
	American Legion Hall 302 Main St. Dedham, Iowa	March 18, 2009 6 p.m.
	Northeast Iowa Community College Room 115, Dairy Center 1527 Highway 150 South Calmar, Iowa	March 20, 2009 1 p.m.
	City Hall 125 Central Ave. SE Orange City, Iowa	March 23, 2009 6 p.m.
Licensing of UST professionals, 134.17 to 134.29 IAB 3/11/09 ARC 7620B	Lime Creek Nature Center 3501 Lime Creek Rd. Mason City, Iowa	March 24, 2009 6 p.m.
	Fifth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	April 2, 2009 1 p.m.

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	Meeting Room B, Public Library 1401 5th St. Coralville, Iowa	April 6, 2009 1 p.m.
	Public Meeting Room 111 N. Main St. Denison, Iowa	April 7, 2009 1 p.m.
HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]		
Community disaster grants, ch 13 IAB 2/25/09 ARC 7581B	Conference Room, Bldg. W-4 Camp Dodge Johnston, Iowa	March 20, 2009 10 a.m.
HUMAN SERVICES DEPARTMENT[441]		
Disability services management— county of residence, 25.11, 25.13 to 25.17 IAB 3/11/09 ARC 7626B	NE Conference Room 2, Fifth Floor Hoover State Office Bldg. Des Moines, Iowa	April 2, 2009 10 to 11 a.m.
Case management services, amendments to chs 78, 79, 83, 90 IAB 3/11/09 ARC 7631B	Room 128, Iowa Medicaid Enterprise 100 Army Post Rd. Des Moines, Iowa	April 2, 2009 1:30 to 3 p.m.
MEDICINE BOARD[653]		
Preliminary notice of denial— public record, 9.15(1) IAB 3/11/09 ARC 7607B	Board Office, Suite C 400 S.W. 8th St. Des Moines, Iowa	March 31, 2009 1:30 p.m.
TRANSPORTATION DEPARTMENT[761]		
Motor carrier safety and hazardous materials regulations, 520.1(1) IAB 3/11/09 ARC 7601B	DOT Motor Vehicle Division 6310 SE Convenience Blvd. Ankeny, Iowa	April 2, 2009 10 a.m. (If requested)
UTILITIES DIVISION[199]		
Notification rules for natural gas and electric utilities and electric transmission companies, 19.17, 20.19 IAB 2/25/09 ARC 7585B	350 Maple St. Des Moines, Iowa	March 26, 2009 10 a.m.

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].

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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 Iowa Code section 541A.5, the Commission on Community Action Agencies hereby proposes to adopt new Chapter 14, "Individual Development Accounts (IDAs)," Iowa Administrative Code.

Individual development accounts (IDAs) are established in Iowa Code chapter 541A. These rules establish the policies and procedures governing IDAs in replacement of 441—Chapter 10, Iowa Administrative Code.

The IDA is a tax-benefited means for an individual whose annual household income does not exceed 200 percent of the federal poverty level to accumulate assets and earnings on assets for long-term purposes that lead to family self-sufficiency. Withdrawal of funds from an individual's IDA is intended to be used for any or all of the following purposes: educational costs at an institution of higher learning; job training costs; purchase of a primary residence; capitalization of a small business start-up; an improvement to a primary residence which increases the tax basis of the property; emergency medical costs for the account holder or for a member of the account holder's family which is limited to a single withdrawal during the life of the account in an amount not to exceed 10 percent of the account balance at the time of the withdrawal; purchase of an automobile; or purchase of assistive technology, home or vehicle modification, or other device or physical improvement to assist an account holder or family member with a disability.

Contributions up to \$2,000 made to an account by the individual are eligible for state match payments at a 1:1 ratio. Income earned on assets in an account is not subject to state income taxes.

Adults may transfer account assets to another individual's account without tax or penalty. Transfer of funds from a child's account is prohibited, and withdrawals must be for purposes approved by the operating organization.

The Division of Community Action Agencies shall administer the IDA program in partnership with local community organizations. The Division will issue requests for proposals (RFPs) for organizations to design and operate local IDA projects. Within the constraints of these rules and the enabling legislation, the local organizations shall have maximum flexibility to design an IDA project that best suits the needs of their local communities. Review criteria used to select local IDA operating organizations will include: safety and security of the investment mechanism, ability to link individual deposits with other services, performance requirements, matching funding for accounts, innovation and creativity in planning and implementation, and reporting and evaluation plans. The Division shall approve the establishment of the local IDA programs through an agreement with the selected operating organizations.

A public hearing to receive comments on the proposed rules will be held on March 31, 2009, at 11 a.m. in Room 208 at the Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa.

The Division will accept public comments concerning the proposed rules until March 31, 2009. Comments should be addressed to William Brand, Administrator, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319; or faxed to (515)242-6119. E-mail may be sent to William Brand at bill.brand@iowa.gov.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 7613B**. The content of that submission is incorporated by reference.

COMMUNITY ACTION AGENCIES DIVISION[427](cont'd)

These rules are intended to implement Iowa Code chapter 541A and 2008 Iowa Acts, chapter 1178, divisions III and IV.

ARC 7608B**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 proposes to amend Chapter 16, "Statewide Voluntary Preschool Program," Iowa Administrative Code.

2008 Iowa Acts, chapter 1181, section 69, predicated a school district's continued participation in the statewide voluntary preschool program that was created in 2007 Iowa Acts, chapter 148, on the district's compliance with accountability provisions. These amendments implement the legislation by providing a process for the Department and districts to utilize and by clarifying that a district remains in the statewide voluntary preschool program while the district is working to become compliant.

An agencywide waiver provision is provided in 281—Chapter 4.

Any interested person may make written comments on the proposed amendments on or before March 31, 2009. Comments should be directed to Carol Greta, Office of the Director, Second Floor, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa 50319-0146. Comments may be sent by fax to (515)281-4122 or submitted by E-mail to carol.greta@iowa.gov.

These amendments are intended to implement Iowa Code section 256C.5(2)"b."

The following amendments are proposed.

ITEM 1. Strike "82GA, HF877" wherever it appears in rules **281—16.1(82GA, HF877)** to **281—16.15(82GA, HF877)** and insert "256C" in lieu thereof.

ITEM 2. Adopt the following **new** paragraph **16.11(1)"c"**:

c. Continuation of a school district's participation in the preschool program for a second or subsequent budget year is subject to the approval of the department based upon the school district's compliance with the accountability requirements in rule 16.3(256C) and the department's on-site review of the school district's implementation of the preschool program. The department shall follow the procedure set forth in subrule 16.13(3) if a district is found to be noncompliant with one or more of the accountability requirements.

ITEM 3. Adopt the following **new** subrule 16.13(3):

16.13(3) Noncompliance with program requirements. If the department determines that a participating district does not meet one or more of the accountability requirements provided in rule 16.3(256C), the department shall inform the school district of appropriate actions that shall be taken by the school district. The school district shall submit an action plan that is approved by the department and contains reasonable timelines for coming into compliance. The department shall facilitate technical assistance when requested. If the department determines that the school district is not taking the necessary actions in a timely manner, the director of the department may terminate the school district's contract as provided in subrule 16.8(2), second unnumbered paragraph. Until such time as the school district's contract is terminated, the school district may continue to participate in the statewide voluntary preschool program.

ARC 7612B**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 proposes to rescind Chapter 22, "Postsecondary Enrollment Options," and to adopt new Chapter 22, "Senior Year Plus Program," Iowa Administrative Code.

2008 Iowa Acts, chapter 1181, division II, created a new chapter in the Iowa Code, chapter 261E, "Senior Year Plus Program." The senior year plus program established in legislation provides Iowa high school students increased access to advanced placement coursework and postsecondary credit. The variety of means for the latter includes postsecondary enrollment options, concurrent enrollment in community college courses for both secondary and postsecondary credit, career academies, and courses delivered via the Iowa Communications Network (ICN) or Internet.

An agencywide waiver provision is provided in 281—Chapter 4.

Interested individuals may make written comments on the proposed amendment on or before March 31, 2009, at 4:30 p.m. Comments on the proposed amendment should be directed to Kevin Fangman, Division Administrator, Iowa Department of Education, Third Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-3333; E-mail kevin.fangman@iowa.gov; or fax (515)281-7700.

A public hearing will be held over the ICN on March 31, 2009, from 9 a.m. to 12 noon, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should advise the Department of Education of specific needs by calling (515)281-5295. The ICN sites are as follows:

Department of Education
2nd Floor
Grimes State Office Building
E. 14th Street and Grand Avenue
Des Moines
(origination site)

Mississippi Bend Area Education Agency 9
Louisa Room
729 21st Street
Bettendorf

Northeast Iowa Community College
Room Number: 115
Industrial Technologies Building
1625 Hwy. 150 South
Calmar

Carroll High School
Room Number: A169
2809 N. Grant Road
Carroll

Hawkeye Community College
5330 Nordic Drive
Cedar Falls

Iowa Lakes Community College
Room Number: 818
Arthur and Audrey Smith Wellness Center
3200 College Drive
Emmetsburg

Linn-Mar High School
3111 N. 10th Street
Marion

Area Education Agency 267
Regional Office – Marshalltown
909 S. 12th Street
Marshalltown

Indian Hills Community College – 7
Videoconferencing and Training Center
651 Indian Hills Drive
Ottumwa

Northeast Iowa Community College – 1
Room Number: 139
10250 Sundown Road
Peosta

EDUCATION DEPARTMENT[281](cont'd)

Area Education Agency 267
Regional Office – Clear Lake
State Room
9184B 265th Street
Clear Lake

Iowa Western Community College – 1
Room Number: 024
Looft Hall
2700 College Road
Council Bluffs

Green Valley Area Education Agency – 14
Turner Room
1405 N. Lincoln
Creston

Eastern Iowa Community College
District 1
Room Number: 300
Kahl Education Center
326 W. 3rd Street
Davenport

Prairie Lakes AEA 8
500 N.E. 6th Street
Pocahontas

Area Education Agency 4
Room Number: 103
1382 4th Avenue N.E.
Sioux Center

Northwest Area Education Agency 12
Room Number: 206
1520 Morningside Avenue
Sioux City

Southeastern Community College – 1
Room Number: 528
North Campus/Trustee Hall
1500 W. Agency Road
West Burlington

This amendment is intended to implement Iowa Code chapter 261E.
The following amendment is proposed.

Rescind 281—Chapter 22 and adopt the following **new** chapter in lieu thereof:

CHAPTER 22
SENIOR YEAR PLUS PROGRAM

DIVISION I
GENERAL PROVISIONS

281—22.1(261E) Scope. The senior year plus program provides Iowa high school students access to advanced placement courses and a variety of means by which to concurrently access secondary and postsecondary credit.

281—22.2(261E) Student eligibility. A student shall meet all of the following criteria as a condition of participation in the programs described in this chapter, except that a student desiring to participate in the postsecondary enrollment options program under Division V of these rules shall meet the eligibility requirements set forth in rule 281—22.16(261E) in lieu of the requirements of 22.2(2).

22.2(1) Requirements established by postsecondary institution.

a. The student shall meet the enrollment requirements established by the eligible postsecondary institution providing the course credit.

b. The student shall meet or exceed the minimum performance measures on any academic assessments that may be required by the eligible postsecondary institution.

c. The student shall have taken the appropriate course prerequisites, if any, prior to enrollment in the eligible postsecondary course, as determined by the eligible postsecondary institution delivering the course.

22.2(2) Requirements established by school district.

a. The student shall have attained the approval of the school board or its designee and the eligible postsecondary institution to register for the postsecondary course.

b. The student shall have demonstrated proficiency in all of the content areas of reading, mathematics, and science as evidenced by achievement scores on the most recent administration of the Iowa tests of basic skills (ITBS) or the Iowa tests of educational development (ITED) for which scores are available for the student. If the student was absent for the most recent administration of either the ITBS or ITED, and such absence was not excused by the student's school of enrollment, the student is

EDUCATION DEPARTMENT[281](cont'd)

deemed to not be proficient in any of the content areas. The school district may determine whether such student is eligible for qualification under an equivalent qualifying performance measure.

(1) If a student is not proficient in one or more of the content areas of reading, mathematics, and science, the school board may establish alternative but equivalent qualifying performance measures. The school board is not required to establish equivalent performance measures, but if it does so, such measures may include but are not limited to additional administrations of the state assessment, portfolios of student work, student performance rubric, or end-of-course assessments. A school board that establishes equivalent performance measures shall also establish criteria by which its district personnel shall determine comparable student proficiency.

(2) A student who attends an accredited nonpublic school and desires to access advanced placement coursework or postsecondary enrollment options shall meet the same eligibility criteria as students in the school district in which the accredited nonpublic school is located.

(3) A student under competent private instruction shall meet the same eligibility criteria as students in the school district in which the student is dually enrolled and shall have the approval of the school board in that school district to register for the postsecondary course.

281—22.3(261E) Teacher eligibility, responsibilities. A teacher employed to provide instruction under this chapter shall meet the following criteria:

22.3(1) Eligibility. The teacher shall meet the standards and requirements set forth which other full-time instructors teaching within the academic department are required to meet and which are approved by the appropriate postsecondary administration. An individual under suspension or revocation of an educational license or statement of professional recognition issued by the board of educational examiners shall not be allowed to provide instruction for any program authorized by this chapter. If the instruction for any program authorized by this chapter is provided at a school district facility or a neutral site, the teacher or instructor shall have successfully passed a background investigation conducted in accordance with Iowa Code section 272.2(17) prior to providing such instruction. The background investigation also applies to a teacher or instructor who is employed by an eligible postsecondary institution if the teacher or instructor provides instruction under this chapter at a school district facility or a neutral site. For purposes of this rule, “neutral site” means a facility that is not owned or operated by an institution.

22.3(2) Responsibilities. A teacher employed to provide instruction under this chapter shall do all of the following:

- a. Collaborate, as appropriate, with other secondary or postsecondary faculty of the institution that employs the teacher regarding the subject area;
- b. As assisted by the school district, provide ongoing communication about course expectations, teaching strategies, performance measures, resource materials used in the course, and academic progress to the student and, in the case of students of minor age, to the parent or guardian of the student;
- c. Provide curriculum and instruction that is accepted as college-level work as determined by the institution;
- d. Use valid and reliable student assessment measures, to the extent available.

281—22.4(261E) Institutional eligibility, responsibilities.

22.4(1) Requirements of both school district and eligible postsecondary institution.

a. The institutions shall ensure that students, or in the case of minor students, parents or guardians, receive appropriate course orientation and information, including but not limited to a summary of applicable policies and procedures, the establishment of a permanent transcript, policies on dropping courses, a student handbook, information describing student responsibilities, and institutional procedures for academic credit transfer.

b. The institutions shall ensure that students have access to student support services, including but not limited to tutoring, counseling, advising, library, writing and math labs, and computer labs, and student activities, excluding postsecondary intercollegiate athletics. If a fee is charged to other students

EDUCATION DEPARTMENT[281](cont'd)

of the eligible postsecondary institution for any of the above services, that fee may also be charged to participating secondary students on the same basis as it is charged to postsecondary students.

c. The institutions shall ensure that students are properly enrolled in courses that will carry college credit.

d. The institutions shall ensure that teachers and students receive appropriate orientation and information about the institution's expectations.

e. The institutions shall ensure that the courses provided achieve the same learning outcomes as similar courses offered in the subject area and are accepted as college-level work.

f. The institutions shall review the course on a regular basis for continuous improvement, shall follow up with students in order to use information gained from the students to improve course delivery and content, and shall share data on course progress and outcomes with the collaborative partners involved with the delivery of the programming and with the department, as needed.

g. The institutions shall not require a minimum or a maximum number of postsecondary credits to be earned by a high school student under this chapter. However, no student shall be enrolled as a full-time student in any one postsecondary institution.

h. The institutions shall not place restrictions on participation in senior year plus programming beyond that which is specified in statute or administrative rule.

i. The institutions shall provide the teacher or instructor appropriate orientation and training in secondary and postsecondary professional development related to curriculum, pedagogy, assessment, policy implementation, technology, and discipline issues.

j. The institutions shall provide the teacher or instructor adequate notification of an assignment to teach a course under this chapter, as well as adequate preparation time to ensure that the course is taught at the college level. The specifics of this paragraph shall be locally determined.

22.4(2) *Requirements of school district only.*

a. The school district shall certify annually to the department, as an assurance in the district's basic education data survey, that the course provided to a high school student for postsecondary credit in accordance with this chapter does not supplant a course provided by the school district in which the student is enrolled.

b. The school district shall ensure that the background investigation requirement of subrule 22.3(1) is satisfied. The school district shall pay for the background investigation but may charge the teacher or instructor a fee not to exceed the actual cost charged the school district for the background investigation conducted. If the teacher or instructor is employed by an eligible postsecondary institution, the school district shall pay for the background investigation but may request reimbursement of the actual cost to the eligible postsecondary institution.

22.4(3) *Requirements of eligible postsecondary institution only.*

a. All eligible postsecondary institutions providing programming under this chapter shall include the unique student identifier assigned to students while in the kindergarten through grade 12 system as a part of the institution's student data management system.

(1) Eligible postsecondary institutions providing programming under this chapter shall cooperate with the department on data requests related to the programming.

(2) All eligible postsecondary institutions providing programming under this chapter shall collect data and report to the department on the proportion of females and minorities enrolled in science-, technology-, engineering-, and mathematics-oriented educational opportunities provided in accordance with this chapter.

b. The eligible postsecondary institution shall provide the teacher or instructor with ongoing communication and access to instructional resources and support, and shall encourage the teacher or instructor to participate in the postsecondary institution's academic departmental activities.

281—22.5(261E) Reserved.

EDUCATION DEPARTMENT[281](cont'd)

DIVISION II
DEFINITIONS

281—22.6(261E) Definitions. For the purposes of this chapter, the indicated terms are defined as follows:

“Concurrent enrollment” means any course offered to students in grades 9 through 12 during the regular school year approved by the board of directors of a school district through a contractual agreement between a community college and the school district that meets the provisions of Iowa Code section 257.11(3).

“Department” means the department of education.

“Director” means the director of the department of education.

“Eligible postsecondary institution” means an institution of higher learning under the control of the state board of regents, a community college established under Iowa Code chapter 260C, or an accredited private institution as defined in Iowa Code section 261.9.

“Full time” means enrollment in 12 or more postsecondary credit hours in one semester or the equivalent of one semester or as otherwise determined by the eligible postsecondary institution.

“ICN” means Iowa communications network, the statewide system of educational telecommunications including narrowcast and broadcast systems under the public broadcasting division of the department of education and live interactive systems which allow, at a minimum, one-way video and two-way audio communication.

“Institution” means a school district or eligible postsecondary institution delivering the instruction in a given program as authorized by this chapter.

“School board” means the board of directors of a school district or a collaboration of boards of directors of school districts.

“State board” means the state board of education.

“Student” means any individual in grades 9 through 12 enrolled or dually enrolled in a school district who meets the criteria in rule 281—22.2(261E). For purposes of Division III (Advanced Placement Program) and Division V (Postsecondary Enrollment Options Program) only, “student” also includes a student enrolled in an accredited nonpublic school or the Iowa School for the Deaf or the Iowa Braille and Sight Saving School.

DIVISION III
ADVANCED PLACEMENT PROGRAM

281—22.7(261E) School district obligations. All school districts shall comply with the following obligations but may do so through direct instruction, collaboration with another school district, or use of the Iowa online advanced placement academy. An international baccalaureate program is not an advanced placement program.

22.7(1) A school district shall provide descriptions of the advanced placement courses available to students using a course registration handbook.

22.7(2) A school district shall ensure that advanced placement course teachers are appropriately licensed by the board of educational examiners in accordance with Iowa Code chapter 272 and meet the minimum certification requirements of the national organization that administers the advanced placement program.

22.7(3) A school district shall establish prerequisite coursework for each advanced placement course offered and shall describe the prerequisites in the course registration handbook, which shall be provided to every junior high school or middle school student prior to the development of a core curriculum plan pursuant to Iowa Code section 279.61.

22.7(4) A school district shall make advanced placement coursework available to a dually enrolled student under competent private instruction if the student meets the same criteria as a regularly enrolled student of the district.

EDUCATION DEPARTMENT[281](cont'd)

22.7(5) A school district shall make advanced placement coursework available to a student enrolled in an accredited nonpublic school located in the district if the student meets the same criteria as a regularly enrolled student of the district.

281—22.8(261E) Obligations regarding registration for advanced placement examinations. The board of directors of a school district and the authorities in charge of an accredited nonpublic school shall ensure that any student enrolled who is interested in taking an advanced placement examination is properly registered for the examination. An accredited nonpublic school shall provide a list of students registered for advanced placement examinations to the school district in which the accredited nonpublic school is located. The school district and the accredited nonpublic school shall ensure that any student enrolled in the school district or school, as applicable, who is interested in taking an advanced placement examination and qualifies for a reduced fee for the examination is properly registered for the fee reduction. The school district shall provide Educational Testing Services with a list of all students enrolled in the school district and the accredited nonpublic schools located in the school district who are properly registered for advanced placement examinations administered by the college board.

281—22.9(261E) Reserved.

281—22.10(261E) Reserved.

DIVISION IV
CONCURRENT ENROLLMENT PROGRAM

281—22.11(261E) Applicability. The concurrent enrollment program, also known as district-to-community college sharing, promotes rigorous academic or career and technical pursuits by providing opportunities to high school students to enroll part-time in eligible nonsectarian courses at or through community colleges established under Iowa Code chapter 260C.

22.11(1) The program shall be made available to all resident students in grades 9 through 12.

a. Notice of the availability of the program shall be included in a school district's student registration handbook, and the handbook shall identify which courses, if successfully completed, generate college credit under the program.

b. A student and the student's parent or guardian shall also be made aware of this program as a part of the development of the student's core curriculum plan in accordance with Iowa Code section 279.61.

22.11(2) A student enrolled in an accredited nonpublic school may access the program through the school district in which the accredited nonpublic school is located. A student receiving competent private instruction may access the program through the school district in which the student is dually enrolled and may enroll in the same number of concurrent enrollment courses as a regularly enrolled student of the district.

22.11(3) A student may make application to a community college and the school district to allow the student to enroll for college credit in a nonsectarian course offered by the community college. A comparable course, as defined in rules adopted by the board of directors of the school district, must not be offered by the school district or accredited nonpublic school which the student attends. The school board shall annually approve courses to be made available for high school credit using locally developed criteria that establish which courses will provide the student with academic rigor and will prepare the student adequately for transition to a postsecondary institution. A school district may not use concurrent enrollment courses to meet the accreditation requirements in Division V of 281—Chapter 12 other than for career-technical courses.

22.11(4) If an eligible postsecondary institution accepts a student for enrollment under this division, the school district, in collaboration with the community college, shall send written notice to the student, the student's parent or guardian in the case of a minor child, and the student's school district. The notice shall list the course, the clock hours the student will be attending the course, and the number of hours of college credit that the student will receive from the community college upon successful completion of the course.

EDUCATION DEPARTMENT[281](cont'd)

22.11(5) A school district shall grant high school credit to a student enrolled in a course under this division if the student successfully completes the course as determined by the community college and the course was previously approved by the school board pursuant to 22.11(3). The board of directors of the school district shall determine the number of high school credits that shall be granted to a student who successfully completes a course. Students shall not “audit” a concurrent enrollment course; the student must take the course for credit.

22.11(6) School districts that participate in district-to-community college sharing agreements or concurrent enrollment programs that meet the requirements of Iowa Code section 257.11(3) are eligible to receive supplementary weighted funding under that provision. Regardless of whether a district receives supplementary weighted funding, the district shall not charge tuition of any of its students who participate in a concurrent enrollment course.

22.11(7) Community colleges shall comply with the data collection requirements of Iowa Code section 260C.14(22). The data elements shall include but not be limited to the following:

- a. The course title and whether the course supplements, rather than supplants, a school district course.
- b. An unduplicated enrollment count of eligible students participating in the program.
- c. The actual costs and revenues generated for concurrent enrollment. An aligned unique student identifier system shall be established by the department for students in kindergarten through grade 12 and community college.
- d. Degree, certifications, and other qualifications to meet the minimum hiring standards.
- e. Salary information including regular contracted salary and total salary.
- f. Credit hours and laboratory contact hours and other data on instructional time.
- g. Other information comparable to the data regarding teachers collected in the basic education data survey.

281—22.12(261E) Transportation. Reserved.

281—22.13(261E) Reserved.

DIVISION V
POSTSECONDARY ENROLLMENT OPTIONS PROGRAM

281—22.14(261E) Availability. The senior year plus programming provided by a school district pursuant to this division may be but is not required to be available to students on a year-round basis.

281—22.15(261E) Notification. The availability and requirements of this program shall be included in each school district’s student registration handbook. Information about the program shall be provided to the student and the student’s parent or guardian prior to the development of the student’s core curriculum plan under Iowa Code section 279.61. The school district shall establish a process by which students may indicate interest in and apply for enrollment in the program.

281—22.16(261E) Student eligibility. Persons who have graduated from high school are not eligible for this program. Eligible students shall be residents of Iowa. “Eligible student” includes a student classified by the board of directors of a school district, by the state board of regents for students of the Iowa School for the Deaf and the Iowa Braille and Sight Saving School, or by the authorities in charge of an accredited nonpublic school as a ninth or tenth grade student who is identified according to the school district’s gifted and talented criteria and procedures, pursuant to Iowa Code section 257.43, as a gifted and talented child, or an eleventh or twelfth grade student, during the period the student is participating in the postsecondary enrollment options program.

22.16(1) A student enrolled in an accredited nonpublic school who meets all eligibility requirements may apply to take courses under this division in the school district where the accredited nonpublic school is located, provided that neither the accredited nonpublic school nor the school district offers a comparable course.

EDUCATION DEPARTMENT[281](cont'd)

22.16(2) A student under competent private instruction who meets all eligibility requirements may apply to take courses under this division through the public school district in which the student is dually enrolled, provided that the resident school district does not offer a comparable course, and shall be allowed to take such courses under the same terms and conditions as a regularly enrolled student of the district.

22.16(3) Postsecondary institutions may require students to meet appropriate standards or requirements for entrance into a course. Such requirements may include prerequisite courses, scores on national academic aptitude and achievement tests, or other evaluation procedures to determine competency. Acceptance of a student into a course by a postsecondary institution is not a guarantee that a student will be enrolled in all requested courses. Priority may be given to postsecondary students before eligible secondary students are enrolled in courses. However, once an eligible secondary student has enrolled in a postsecondary course, the student cannot be displaced by another student for the duration of the course. Students shall not “audit” postsecondary courses. The student must take the course for credit and must meet all of the requirements of the course which are required of postsecondary students.

281—22.17(261E) Eligible postsecondary courses. These rules are intended to implement the policy of the state to promote rigorous academic pursuits. Therefore, postsecondary courses eligible for students to enroll in under this division shall be limited to: nonsectarian courses; courses that are not comparable to courses offered by the school district where the student attends which are defined in rules adopted by the board of directors of the public school district; credit-bearing courses that lead to an educational degree; courses in the discipline areas of mathematics, science, social sciences, humanities, and vocational-technical education; and also the courses in career option programs offered by area schools established under the authorization provided in Iowa Code chapter 260C. A school district or accredited nonpublic school district shall grant academic or vocational-technical credit to an eligible student enrolled in an eligible postsecondary course.

281—22.18(261E) Application process. To participate in this program, an eligible student shall make application to an eligible postsecondary institution to allow the eligible student to enroll for college credit in a nonsectarian course offered at the institution. A comparable course, as defined in rules adopted by the board of directors of the school district consistent with department administrative rule, must not be offered by the school district or accredited nonpublic school the student attends. If the postsecondary institution accepts an eligible student for enrollment under this division, the institution shall send written notice to the student, the student’s parent or guardian in the case of a minor child, and the student’s school district or accredited nonpublic school and the school district in the case of a nonpublic school student or student under competent private instruction, or the Iowa School for the Deaf or the Iowa Braille and Sight Saving School. The notice shall list the course, the clock hours the student will be attending the course, and the number of hours of college credit that the eligible student will receive from the eligible postsecondary institution upon successful completion of the course.

281—22.19(261E) Credits. A school district, the Iowa School for the Deaf, the Iowa Braille and Sight Saving School, or accredited nonpublic school shall grant high school credit to an eligible student enrolled in a course under this division if the eligible student successfully completes the course as determined by the eligible postsecondary institution.

22.19(1) The board of directors of the school district, the board of regents for the Iowa School for the Deaf and the Iowa Braille and Sight Saving School, or authorities in charge of an accredited nonpublic school shall determine the number of high school credits that shall be granted to an eligible student who successfully completes a course.

22.19(2) Eligible students may take up to seven semester hours of credit during the summer months when school is not in session and receive credit for that attendance, if the student pays the cost of attendance for those summer credit hours.

EDUCATION DEPARTMENT[281](cont'd)

22.19(3) The high school credits granted to an eligible student under this division shall count toward the graduation requirements and subject area requirements of the school district of residence, the Iowa school for the deaf, the Iowa braille and sight saving school, or accredited nonpublic school of the eligible student. Evidence of successful completion of each course and high school credits and college credits received shall be included in the student's high school transcript.

281—22.20(261E) Transportation. The parent or guardian of an eligible student who has enrolled in and is attending an eligible postsecondary institution under this division shall furnish transportation to and from the postsecondary institution for the student.

281—22.21(261E) Tuition payments.

22.21(1) Not later than June 30 of each year, a school district shall pay a tuition reimbursement amount to a postsecondary institution that has enrolled its resident eligible students under this division, unless the eligible student is participating in open enrollment under Iowa Code section 282.18, in which case, the tuition reimbursement amount shall be paid by the receiving district. However, if a child's residency changes during a school year, the tuition shall be paid by the district in which the child was enrolled as of the date specified in Iowa Code section 257.6(1) or the district in which the child was counted under Iowa Code section 257.6(1) "a" (6). For students enrolled at the Iowa School for the Deaf and the Iowa Braille and Sight Saving School, the state board of regents shall pay a tuition reimbursement amount by June 30 of each year. The amount of tuition reimbursement for each separate course shall equal the lesser of:

a. The actual and customary costs of tuition, textbooks, materials, and fees directly related to the course taken by the eligible student.

b. Two hundred fifty dollars.

22.21(2) A student participating in the program is not eligible to enroll on a full-time basis in an eligible postsecondary institution. A student enrolled on a full-time basis shall not receive any payments under this rule.

22.21(3) An eligible postsecondary institution that enrolls an eligible student under this division shall not charge the student for tuition, textbooks, materials, or fees directly related to the course in which the student is enrolled except that the student may be required to purchase equipment that becomes the property of the student. For the purposes of this subrule, equipment shall not include textbooks.

281—22.22(261E) Tuition reimbursements and adjustments. The failure of a student to complete or otherwise to receive credit for an enrolled course requires the student, if 18 years of age or older, to reimburse the school district for the cost of the enrolled course. If the student is under 18 years of age, the student's parent or guardian shall sign the student registration form indicating that the parent or guardian assumes all responsibility for the costs directly related to the incomplete or failed coursework. If documentation is submitted to the school district that verifies the student was unable to complete the course for reasons including but not limited to the student's physical incapacity, a death in the student's immediate family, or the student's move to another school district, that verification shall constitute a waiver to the requirement that the student or parent or guardian pay the costs of the course to the school district. An eligible postsecondary institution shall make pro rata adjustments to tuition reimbursement amounts based upon federal guidelines established pursuant to 20 U.S.C. §1091b.

281—22.23(261E) Reserved.

DIVISION VI
CAREER ACADEMIES

281—22.24(261E) Career academies. A career academy is a program of study as defined in 281—Chapter 47. A course offered by a career academy shall not qualify as a regional academy course.

22.24(1) A career academy course may qualify as a concurrent enrollment course if it meets the requirements of Iowa Code section 261E.8.

EDUCATION DEPARTMENT[281](cont'd)

22.24(2) The school district providing secondary education under this division shall be eligible for supplementary weighting under Iowa Code section 257.11(2), and the community college shall be eligible for funds allocated pursuant to Iowa Code section 260C.18A.

22.24(3) Information regarding career academies shall be provided by the school district to a student and the student's parent or guardian prior to the development of the student's core curriculum plan under Iowa Code section 279.61.

281—22.25(261E) Reserved.

DIVISION VII
REGIONAL ACADEMIES

281—22.26(261E) Regional academies. A regional academy is a program established by a school district to which multiple school districts send students in grades 9 through 12, and which may include Internet-based coursework and courses delivered via the ICN. A regional academy shall include in its curriculum advanced level courses and may include in its curriculum career and technical courses.

22.26(1) A regional academy course shall not qualify as a concurrent enrollment course and does not generate any postsecondary credit.

22.26(2) School districts participating in regional academies are eligible for supplementary weighting as provided in Iowa Code section 257.11(2).

22.26(3) Information regarding regional academies shall be provided to a student and the student's parent or guardian prior to the development of the student's core curriculum plan under Iowa Code section 279.61.

281—22.27(261E) Reserved.

DIVISION VIII
INTERNET-BASED AND ICN COURSEWORK

281—22.28(261E) Internet-based coursework. The programming in this chapter may be delivered via Internet-based technologies including but not limited to the Iowa learning online program. An Internet-based course may qualify for additional supplemental weighting if it meets the requirements of Division IV or Division VI of this chapter. To qualify as a senior year plus course, an Internet-based course must comply with the appropriate provisions of this chapter.

281—22.29(261E) ICN-based coursework. The ICN may be used to deliver coursework for the programming provided under this chapter subject to an appropriation by the general assembly for that purpose. A school district that provides courses delivered via the ICN shall receive supplemental funding as provided in Iowa Code section 257.11(7). To qualify as a senior year plus course, a course offered through the ICN must comply with the appropriate provisions of this chapter.

These rules are intended to implement Iowa Code chapter 261E.

ARC 7609B**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 proposes to rescind Chapter 48, "Certified School to Career Program," Iowa Administrative Code.

Chapter 48 was adopted in 1998 to implement Iowa Code sections 15.361 to 15.367. Those sections were repealed by 1998 Iowa Acts, chapter 1225, sections 21 and 40, effective July 1, 2004. The proposed amendment rescinds Chapter 48 because the rules in the chapter are obsolete.

Interested individuals may make written comments on the proposed amendment on or before March 31, 2009, at 4:30 p.m. Comments on the proposed amendment should be directed to Carol Greta, Office of the Director, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-8661; E-mail carol.greta@iowa.gov; or fax (515)281-4122.

This amendment is intended to implement Iowa Code section 256.7(5).

The following amendment is proposed.

Rescind and reserve **281—Chapter 48**.

ARC 7610B**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 proposes to rescind Chapter 91, "Phase III, Educational Excellence Program," Iowa Administrative Code.

Chapter 91 was adopted in 1987 to implement Iowa Code sections 294A.12 to 294A.20. Those sections were repealed by 2003 Iowa Acts, chapter 180, section 70. The proposed amendment rescinds Chapter 91 because the rules in the chapter are obsolete.

Interested individuals may make written comments on the proposed amendment on or before March 31, 2009, at 4:30 p.m. Comments on the proposed amendment should be directed to Carol Greta, Office of the Director, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-8661; E-mail carol.greta@iowa.gov; or fax (515)281-4122.

This amendment is intended to implement Iowa Code section 256.7(5).

The following amendment is proposed.

Rescind and reserve **281—Chapter 91**.

ARC 7611B**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 proposes to amend Chapter 97, "Supplementary Weighting," Iowa Administrative Code.

2008 Iowa Acts, chapter 1181, division II, created a new chapter in the Iowa Code, chapter 261E, "Senior Year Plus Program." The Senior Year Plus Program established in legislation provides Iowa high school students increased access to advanced placement coursework and postsecondary credit. The first seven items address funding for and various elements of the program.

Items 8 through 10 amend provisions regarding the supplementary weighting plan for operational function sharing. In Item 8, the reference to Iowa Code chapter 28E is stricken because that is not the correct authority for such agreements. In Item 9, the percentages are reworded because the present wording only works when the district does not add more sharing arrangements. Taking 20 percent of each year is the equivalent of the present wording. Additionally, new paragraph 97.7(9)"b" clarifies the order of the adjustments and phaseouts. Item 10 is amended to give more flexibility to districts that cannot show savings because they are cutting costs across all functions, including cutting instructional staff.

An agencywide waiver provision is provided in 281—Chapter 4.

Interested individuals may make written comments on the proposed amendments on or before March 31, 2009, at 4:30 p.m. Comments on the proposed amendments should be directed to Kevin Fangman, Division Administrator, Iowa Department of Education, Third Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-3333; E-mail kevin.fangman@iowa.gov; or fax (515)281-7700.

A public hearing will be held over the Iowa Communications Network (ICN) on March 31, 2009, from 9 a.m. to 12 noon, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should advise the Department of Education of specific needs by calling (515)281-5295. The ICN sites are as follows:

Department of Education
2nd Floor
Grimes State Office Building
E. 14th Street and Grand Avenue
Des Moines
(origination site)

Mississippi Bend Area Education Agency 9
Louisa Room
729 21st Street
Bettendorf

Northeast Iowa Community College
Room Number: 115
Industrial Technologies Building
1625 Hwy. 150 South
Calmar

Iowa Lakes Community College
Room Number: 818
Arthur and Audrey Smith Wellness Center
3200 College Drive
Emmetsburg

Linn-Mar High School
3111 N. 10th Street
Marion

Area Education Agency 267
Regional Office – Marshalltown
909 S. 12th Street
Marshalltown

EDUCATION DEPARTMENT[281](cont'd)

Carroll High School
Room Number: A169
2809 N. Grant Road
Carroll

Hawkeye Community College
5330 Nordic Drive
Cedar Falls

Area Education Agency 267
Regional Office – Clear Lake
State Room
9184B 265th Street
Clear Lake

Iowa Western Community College – 1
Room Number: 024
Looft Hall
2700 College Road
Council Bluffs

Green Valley Area Education Agency – 14
Turner Room
1405 N. Lincoln
Creston

Eastern Iowa Community College
District 1
Room Number: 300
Kahl Education Center
326 W. 3rd Street
Davenport

Indian Hills Community College – 7
Videoconferencing and Training Center
651 Indian Hills Drive
Ottumwa

Northeast Iowa Community College – 1
Room Number: 139
10250 Sundown Road
Peosta

Prairie Lakes AEA 8
500 N.E. 6th Street
Pocahontas

Area Education Agency 4
Room Number: 103
1382 4th Avenue N.E.
Sioux Center

Northwest Area Education Agency 12
Room Number: 206
1520 Morningside Avenue
Sioux City

Southeastern Community College – 1
Room Number: 528
North Campus/Trustee Hall
1500 W. Agency Road
West Burlington

These amendments are intended to implement Iowa Code section 257.11(9) and Iowa Code chapter 261E.

The following amendments are proposed.

ITEM 1. Amend rule **281—97.1(257)**, definitions of “Political subdivision,” “Regional academy” and “Supplementary weighting plan,” as follows:

“*Political subdivision*” shall mean a political subdivision in the state of Iowa and shall include a city, a township, a county, a public school district, a community college, an area education agency, or an institution governed by the state board of regents (~~Malcom~~ Malcolm Price Laboratory School, Iowa Braille and Sight Saving School, Iowa School for the Deaf, Iowa State University, University of Iowa, and University of Northern Iowa).

“*Regional academy*” shall mean an educational program established by a school district to which multiple school districts send students in grades ~~nine 9~~ nine 9 through twelve 12. The curriculum shall include advanced-level courses and, in addition, may include ~~vocational-technical~~ career-technical courses, Internet-based courses, and a virtual academy coursework delivered via the ICN. Regional academy courses shall not qualify as concurrent enrollment courses and do not generate any postsecondary credit. School districts participating in regional academies are eligible for supplementary weighting as provided in Iowa Code section 257.11, subsection 2.

“*Supplementary weighting plan*” shall mean a plan as defined in this chapter to add a weighting for each resident student eligible who is enrolled in an eligible class taught by a teacher employed by another school district or taught by a teacher employed jointly with another school district or sent to and enrolled in an eligible class in another school district or sent to and enrolled in an eligible community college class. The supplementary weighting for each eligible class shall be calculated by multiplying the fraction of a school year that class represents ~~times~~ by the number of eligible resident students enrolled in that class ~~times~~ and then multiplying that figure by the weighting factor established in Iowa Code chapter 257.

EDUCATION DEPARTMENT[281](cont'd)

ITEM 2. Adopt the following **new** definitions in rule **281—97.1(257)**:

“*Career academy*” shall mean a program of study as defined in 281—Chapter 47. A course offered by a career academy shall not qualify as a regional academy course. A career academy course may qualify as a concurrent enrollment course if it meets the requirements of Iowa Code section 261E.8.

“*ICN*” shall mean the Iowa Communications Network.

ITEM 3. Amend subrule 97.2(5) as follows:

97.2(5) Attend class in a community college. All of the following conditions must be met for any student attending a community college-offered class to be eligible for supplementary weighting under paragraph 97.2(1)“d.”

a. to d. No change.

e. The course must be taught by ~~a teacher for whose services the community college has contracted to specifically teach the class~~ an instructor employed by or under contract with the community college who meets the requirements of Iowa Code section 261E.3.

f. No change.

g. The course must ~~be of the same quality as a course offered on a community college campus result in student work and assessment that meets college-level expectations.~~

h. The course must not have been determined as failing to meet the standards established by the postsecondary course audit committee.

ITEM 4. Amend subrule 97.2(6) as follows:

97.2(6) Ineligibility. The following students are ineligible for supplementary weighting:

a. Nonresident students attending the school district under any arrangement except open enrolled in students, nonpublic shared-time students, or dual enrolled competent private instruction students in grades 9 through 12.

~~b. Students taking courses taught via any television or electronic medium except the Iowa Communications Network (ICN) video services.~~

~~e. b.~~ Students eligible for the special education weighting plan provided in Iowa Code section 256B.9.

~~d. c.~~ Students in whole-grade sharing arrangements except under sharing pursuant to subrule 97.2(5) or subrule 97.2(7).

~~e. d.~~ Students open enrolled out except under sharing pursuant to subrule 97.2(5) or subrule 97.6(1), paragraph “c.”

~~f. e.~~ Students open enrolled in except under sharing pursuant to subrule 97.2(5) or subrule 97.6(1), paragraph “c,” when the students are under competent private instruction and are dual enrolled in grades 9 through 12.

~~g. f.~~ Students participating in shared services rather than shared classes except under sharing pursuant to rule 97.7(257).

~~h. g.~~ Students taking postsecondary enrollment options (PSEO) courses ~~authorized under Iowa Code chapter 261C are ineligible for supplementary weighting for the PSEO courses.~~

~~i. h.~~ Students enrolled in courses or programs offered by their resident school districts unless those courses meet the conditions for attending classes in a community college under subrule 97.2(5) or if the teacher is employed by another school district pursuant to subrule 97.2(3) or if a teacher is jointly employed with another school district pursuant to subrule 97.2(4) or if the courses are included in the curriculum of an in-district regional academy pursuant to subrule 97.4(1) or if the courses are in-district virtual classes provided via ~~Iowa Communications Network (ICN)~~ ICN video services to other districts pursuant to subrule 97.6(1).

~~j. i.~~ Students enrolled in courses or programs taught by teachers employed by their resident school districts unless the employment meets the criteria of joint employment with another school district under subrule 97.2(4) or if the criteria in subrule 97.2(5) are met for students attending class in a community college or if the courses are included in the curriculum of an in-district regional academy pursuant to subrule 97.4(1) or if the courses are in-district virtual classes provided via ~~Iowa Communications Network (ICN)~~ ICN video services to other districts pursuant to subrule 97.6(1).

EDUCATION DEPARTMENT[281](cont'd)

~~h. j.~~ Students enrolled in an at-risk program or alternative school program.

~~h. k.~~ Students enrolled in summer school courses.

ITEM 5. Amend subrule 97.2(7), introductory paragraph, as follows:

97.2(7) Whole-grade sharing. If all or a substantial portion of the students in any grade are shared with another one or more school districts for all or a substantial portion of a school day, then no students in that grade level are eligible for supplementary weighting except as authorized by rule 281—97.5(257). No students in the grade levels who meet the criterion in this subrule are eligible for supplementary weighting even in the absence of an agreement executed pursuant to Iowa Code sections 282.10 through 282.12. A district that discontinues grades pursuant to Iowa Code section 282.7 is deemed to be whole-grade sharing the resident students in those discontinued grades for purposes of these rules.

ITEM 6. Amend rule 281—97.4(257) as follows:

281—97.4(257) Supplementary weighting plan for a regional academy.

97.4(1) Eligibility. Except if listed under subrule 97.2(6), a resident student is eligible for supplementary weighting if the student is eligible to be counted as a resident student for certified enrollment and if all of the following criteria are met:

a. Two or more Iowa school districts, other than a whole-grade sharing partner district, send students to advanced-level courses that are included in the curriculum of the regional academy, and these students are eligible for supplementary weighting under subrule 97.2(1), paragraph “a” or “c.” In addition, for the host district to qualify for the minimum weighting pursuant to subrule 97.4(4), one or more Iowa school districts, other than a whole-grade sharing partner district, must send students to career-technical classes that are included in the curriculum of the regional academy.

b. and c. No change.

d. The curriculum is an organized course of study, adopted by the board, that includes a minimum of two advanced-level courses that are not part of a ~~vocational-technical~~ career-technical program. An advanced-level course is a course that is above the level of the course units required as minimum curriculum in 281—Chapter 12 in the host district.

e. and f. No change.

g. Two or more sending districts that are whole-grade sharing partner districts shall be treated as one sending district for purposes of subrule 97.4(1), paragraph “a.”

97.4(2) No change.

97.4(3) Maximum weighting. The maximum amount of additional weighting for which a school district establishing a regional academy shall be eligible is an amount corresponding to ~~15~~ 30 full-time-equivalent pupils.

97.4(4) Minimum weighting. The minimum amount of additional weighting for which a school district establishing a regional academy shall be eligible is an amount corresponding to ~~ten additional~~ 15 full-time-equivalent pupils if the academy provides both advanced-level courses and ~~vocational-technical~~ career-technical courses.

97.4(5) Additional programs. If all of the criteria in subrule 97.4(1) are met, the regional academy may also include in its curriculum ~~vocational-technical~~ career-technical courses ~~or a virtual academy,~~ Internet-based courses and ICN courses. ~~If the Internet connection for a qualified virtual academy is provided through the ICN, that Internet connection shall be deemed a regional academy class and not an ICN video class pursuant to Iowa Code section 257.11, subsection 6, for purposes of this subrule.~~

97.4(6) Maximum funding. ~~If the sum of the funding amount calculated for all districts operating regional academies under this rule exceeds \$1 million for the school year beginning July 1, 2004, and each succeeding fiscal year, the director of the department of management shall prorate the amount calculated for each district. The proration shall be based upon the amount calculated for each district when compared to the sum of the amount for all districts.~~

~~**97.4(7)** October 1, 2007, is the final date that any students may be included for supplementary weighting for an in-district regional academy.~~

EDUCATION DEPARTMENT[281](cont'd)

97.4(6) Career academy. A career academy is not a regional academy for purposes of these rules.

ITEM 7. Amend paragraph **97.5(6)“a”** as follows:

a. The progress report shall include, but not be limited to, the following information:

- (1) and (2) No change.
- (3) If the district is studying ~~reorganization~~ dissolution, information on whether public hearings have been held, a proposal has been adopted, and an election date has been set.
- (4) If the district is studying ~~dissolution~~ reorganization, information on whether public hearings have been held, a plan has been approved by the AEA, and an election date has been set.
- (5) and (6) No change.

ITEM 8. Amend paragraph **97.7(1)“a”** as follows:

a. The district shares a discrete operational function with one or more other political subdivisions pursuant to ~~an Iowa Code chapter 28E agreement~~ a written contract.

ITEM 9. Amend subrule 97.7(9) as follows:

97.7(9) Weighting. Resident students eligible for supplementary weighting pursuant to rule 97.7(257) shall be eligible for a weighting of two-hundredths per pupil included in the actual enrollment in the district. The supplementary weighting shall be assigned to each discrete operational function shared. The maximum number of years for which a supplementary weighting shall be assigned for all operational functions shared is five years.

a. The supplementary weighting for operational functions shared is decreased each year based on the following schedule:

(1) The total supplementary weighting calculated for all operational function sharing in the second year of any operational function sharing, after application of minimum and maximum supplementary weighting, shall be reduced by 20 percent of the total supplementary weighting for all operational function sharing in ~~the first year~~ each of the previous years of any operational function sharing, but not reduced to less than zero.

(2) The total supplementary weighting calculated for all operational function sharing in the third year of any operational function sharing, after application of minimum and maximum supplementary weighting, shall be reduced by ~~40~~ 20 percent of the total supplementary weighting for all operational function sharing in ~~the first year~~ each of the previous years of any operational function sharing, but not reduced to less than zero.

(3) The total supplementary weighting calculated for all operational function sharing in the fourth year of any operational function sharing, after application of minimum and maximum supplementary weighting, shall be reduced by ~~60~~ 20 percent of the total supplementary weighting for all operational function sharing in ~~the first year~~ each of the previous years of any operational function sharing, but not reduced to less than zero.

(4) The total supplementary weighting calculated for all operational function sharing in the fifth year of any operational function sharing, after application of minimum and maximum supplementary weighting, shall be reduced by ~~80~~ 20 percent of the total supplementary weighting for all operational function sharing in ~~the first year~~ each of the previous years of any operational function sharing, but not reduced to less than zero.

b. The decrease in the total supplementary weighting as described in paragraph “a” of this subrule shall be applied after any adjustment for minimum or maximum weighting has been applied.

~~b.c.~~ The department shall reserve the authority to determine if an operational sharing arrangement constitutes a discrete arrangement, new arrangement, or continuing arrangement if the circumstances have not been clearly described in the Iowa Code or the Iowa Administrative Code.

ITEM 10. Amend paragraphs **97.7(13)“c”** and **“d”** as follows:

c. The department of education will adjust the total expenditures to exclude distorting financial transactions ~~such as energy costs, large equipment purchases,~~ or interagency financial transactions. Distorting financial transactions shall be determined by the department of education.

EDUCATION DEPARTMENT[281](cont'd)

d. If the district cannot demonstrate cost savings directly attributable to the shared operational function ~~and~~ or increased student opportunities, the district will not be eligible for supplementary weighting for operational function sharing for that fiscal year.

ITEM 11. Amend **281—Chapter 97**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~section~~ sections 257.6, ~~section~~ 257.11 ~~as amended by 2007 Iowa Acts, Senate File 447 and Senate File 588, section 20, and section 257.12, Iowa Code chapter 261E, and 2007 Iowa Acts, Senate File 588, section 20.~~

ARC 7622B

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 section 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 23, "Emission Standards for Contaminants," Chapter 25, "Measurement of Emissions," and Chapter 34, "Provisions for Air Quality Emissions Trading Programs," Iowa Administrative Code.

The purpose of the proposed amendments is to remove from the state air quality rules EPA's Clean Air Mercury Rule (CAMR) provisions that were vacated by the United States Court of Appeals for the District of Columbia Circuit (the D.C. Court). The D.C. Court found the regulations to be unauthorized under the federal Clean Air Act (CAA) or otherwise deficient. The Department is also proposing to amend the CAMR monitoring and reporting provisions that were adopted by reference in order to remove the vacated federal regulations and to add new mercury monitoring provisions.

The vacatur of this federal program has elicited uncertainty and confusion for regulated industries and for state and local air quality agencies. Although the D.C. Court vacated the federal regulations, the regulations were adopted by reference and therefore are still in effect and enforceable by the Department. The CAMR program was intended to reduce mercury emissions from coal-fired electrical steam generating units (EGUs) at the national level and was based upon the state's participation in an EPA-managed emissions trading program. Since the federal regulations are vacated, EPA will not be running the trading program, negating the need for Iowa to retain the associated federal regulations.

The Department is amending the CAMR monitoring provisions to require that affected EGUs conduct quarterly coal sampling analysis and stack testing for mercury using approved methods and submit the results of the sampling and testing to the Department.

Item 1 amends paragraph 23.1(2)"z," standards for electric utility steam generating units (EGUs), to remove the provisions associated with CAMR for mercury emissions from coal-fired units constructed or reconstructed after January 30, 2004. The Department is removing these provisions because the D.C. Court vacated the federal CAMR program.

Item 2 amends subrule 23.1(4) to strike the text that provides cross references to the standards for mercury emissions from electric utility steam generating units (EGUs). Because this rule making removes the federal CAMR provisions from the administrative rules, this cross reference is no longer valid.

Item 3 rescinds paragraph 23.1(5)"d" which contains a cross reference to the emission guidelines for mercury for coal-fired EGUs. The emission guidelines are a component of the federal CAMR program, which was vacated by the D.C. Court. Because this rule making rescinds the provisions in Chapter 34 that are referenced in this paragraph, this cross reference is no longer valid.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Item 4 rescinds rule 567—25.3(455B). This rule adopted by reference the provisions for continuous emissions monitoring for CAMR. This rule is being rescinded because the D.C. Court vacated the federal CAMR program.

Item 5 rescinds rules 567—34.300(455B) through 567—34.306(455B), including Tables 3A and 3B. The rules include the provisions of CAMR adopted to implement the federal requirements for the program, including allocation of emissions allowances. As noted above, the D.C. Court vacated the federal CAMR program in its entirety. When these proposed amendments are adopted, a note will be added that explains the vacatur and indicates that adoption of the federal provisions for CAMR is rescinded. The rules are reserved as placeholders for future air emissions trading programs. The note reads as follows:

“As of [insert effective date of these amendments], the requirements for the Clean Air Mercury Rule (CAMR) are rescinded and the adoption by reference of federal regulations associated with CAMR is also rescinded. On March 14, 2008, the United States Court of Appeals for the District of Columbia Circuit issued its mandate to vacate the federal CAMR regulations in their entirety.”

Item 6 amends rule 567—34.307(455B) to rescind the adoption by reference of the CAMR monitoring and reporting requirements for the same reasons as stated for Item 5. The amendment also includes new mercury testing provisions. The amendment requires owners and operators of CAMR-affected EGUs to conduct quarterly coal sampling analyses or stack testing for mercury using approved methods and to submit the results of the sampling and testing to the Department.

Item 7 rescinds and reserves rule 567—34.308(455B) for the reasons given in the summary of Item 5.

Any person may make written suggestions or comments on the proposed amendments on or before April 14, 2009. Written comments should be directed to Christine Paulson, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa, 50322; fax (515)242-5094; or by electronic mail to christine.paulson@dnr.iowa.gov.

A public hearing will be held on Monday, April 13, 2009, at 1 p.m. in the conference rooms at the Department's Air Quality Bureau office located at 7900 Hickman Road, Urbandale, Iowa. At the public hearing, comments on the proposed amendments may be submitted orally or in writing. All comments must be received no later than Tuesday, April 14, 2009.

Any person who intends to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, should contact Christine Paulson at (515)242-5154 to advise of any specific needs.

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

The following amendments are proposed.

ITEM 1. Amend paragraph **23.1(2)“z”** as follows:

z. Electric utility steam generating units. An electric utility steam generating unit that is capable of combusting more than 250 million Btus per hour (73 megawatts) heat input of fossil fuel for which construction or modification or reconstruction is commenced after September 18, 1978, or an electric utility combined cycle gas turbine that is capable of combusting more than 250 million Btus per hour (73 megawatts) heat input. An electric utility steam generating unit is any fossil fuel-fired combustion unit of more than 25 megawatts electric (MW) that serves a generator that produces electricity for sale. A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 MW output to any utility power distribution system for sale is also an electric utility steam generating unit. ~~This standard also includes a provision for mercury emissions for any coal-fired electric utility steam generating unit other than an integrated gasification combined cycle electric steam generating unit, for which construction or reconstruction commenced after January 30, 2004.~~ (Subpart Da)

ITEM 2. Amend subrule 23.1(4), introductory paragraph, as follows:

23.1(4) Emission standards for hazardous air pollutants for source categories. The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended or corrected through July 22, 2008, are adopted by reference, except those provisions which cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

designation is in parentheses. An earlier date for adoption by reference may be included with the subpart designation in parentheses. 40 CFR Part 63, Subpart B, incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded (F_{bio}) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purposes of this subrule, “hazardous air pollutant” has the same meaning found in 567—22.100(455B). For the purposes of this subrule, a “major source” means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an “area source” means any stationary source of hazardous air pollutants that is not a “major source” as defined in this subrule. Paragraph 23.1(4) “a,” general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below. ~~The provisions of 40 CFR Part 60, Subparts A, B, Da, and HHHH for the Clean Air Mercury Rule (CAMR), are found at subrules 23.1(2) and 23.1(5) and in 567—Chapter 34.~~

ITEM 3. Rescind paragraph **23.1(5)“d.”**

ITEM 4. Rescind rule **567—25.3(455B)**.

ITEM 5. Rescind and reserve rules **567—34.300(455B)** to **567—34.306(455B)**.

ITEM 6. Amend rule 567—34.307(455B) as follows:

567—34.307(455B) Monitoring and reporting. ~~The provisions in 40 CFR 60.4170 through 60.4176 as amended through May 18, 2005, are adopted by reference. As of [insert effective date of these amendments], the monitoring and reporting requirements for the Clean Air Mercury Rule (CAMR) are rescinded and the adoption by reference of federal regulations associated with CAMR is rescinded. On March 14, 2008, the United States Court of Appeals for the District of Columbia Circuit issued its mandate to vacate the federal CAMR regulations in their entirety. In lieu of complying with CAMR, affected sources shall comply with the following provisions:~~

34.307(1) Affected sources subject to the vacated CAMR provisions with no mercury-specific controls shall complete either: (1) quarterly, representative composite coal sampling for mercury that meets the sampling requirements for special purpose sampling of ASTM D2234-76, any subsequent amendment to the ASTM procedure, or any future ASTM amendment approved by the department; or (2) quarterly stack testing for mercury using one of the following federal reference methods: 40 CFR 60 Appendix A, Method 29, Method 30A, or Method 30B or 40 CFR 61 Appendix B, Method 101. The use of ASTM Method D6784-02 (Ontario Hydro Method) as incorporated by reference in 40 CFR 60.17 is also acceptable. Affected sources subject to the vacated CAMR provisions with mercury-specific controls shall complete at least one coal sample analysis using the methods described above concurrently with at least one quarterly stack test using acceptable federal reference methods.

34.307(2) Stack test notifications, protocols, and test results shall be submitted to the department in accordance with 567—paragraph 25.1(7)“a.” The test results of the coal sampling shall be submitted to the department within 60 days of completion of the testing.

34.307(3) If the affected source had previously submitted a request to EPA to be designated as a low mass emitter (LME) under CAMR, the owner or operator of such unit shall, by [insert date 30 days after effective date of these amendments], submit to the department a request to be classified as an LME and to be exempt from the sampling and testing requirements of this rule.

34.307(4) Sources subject to the requirements of Clean Air Act Section 112(g) shall comply with the requirements contained in permits issued by the department under 567—Chapters 22 and 33.

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34.307(5) The requirements of this rule shall apply until such time as EPA rules pertaining to the operation, certification, and reporting of mercury emissions data with continuous emissions monitoring systems (CEMS) become final and effective.

ITEM 7. Rescind and reserve rule **567—34.308(455B)**.

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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 61, "Water Quality Standards," Iowa Administrative Code.

The amendment being proposed will:

1. Revise and list approximately 33 river and stream segments as Class A2 Secondary Contact Recreational Use designated waters in the rule-referenced document "Surface Water Classification."
2. Revise and list approximately 83 river and stream segments as Class A2 Secondary Contact Recreational Use and Class B(WW-2) Warm Water-Type 2 designated waters in the rule-referenced document "Surface Water Classification."
3. Revise and list four stream segments as Class A2 Secondary Contact Recreational Use and Class B(WW-3) Warm Water-Type 3 designated waters in the rule-referenced document "Surface Water Classification."
4. Revise and list six river and stream segments as Class A3 Children's Recreational Use and Class B(WW-2) Warm Water-Type 2 designated waters in the rule-referenced document "Surface Water Classification."
5. Revise and list 11 river and stream segments as Class A3 Children's Recreational Use designated waters in the rule-referenced document "Surface Water Classification."
6. Revise and list one stream segment as Class HH Human Health designated water in the rule-referenced document "Surface Water Classification."

Recent rule making and 2006 legislative action have brought the Department's water quality rules closer to compliance with federal Clean Water Act requirements and U.S. Environmental Protection Agency (EPA) regulations, establishing new levels of protection for water quality. As an outcome of these efforts, all 26,000 miles of Iowa's perennial (flowing year-round) streams are initially protected at the highest levels for recreation and warm water aquatic life uses. These actions provide initial protection for many miles of perennial streams that were previously not designated for aquatic life or recreational uses.

Under the rules adopted in 2006, it is presumed that all perennial streams and rivers are attaining the highest level of recreation and aquatic life uses and should be protected for activities such as fishing and swimming. This concept of assigning all perennial streams the highest use designation, unless assessments show that the stream does not deserve that level of protection, is referred to as the "rebuttable presumption." Included in the federal regulations are the provisions that allow for scientific analysis of these "presumed" recreational and aquatic life uses. An integral part of implementing the rules adopted in 2006 is verifying that a stream is capable of supporting the presumed uses.

The concept of Use Assessment and Use Attainability Analysis (UA/UAA) is being applied by the Department as a step-by-step process to gather site-specific field data on stream features and uses. The

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Department then assesses available information to determine if the “presumed” recreational and aquatic life uses are appropriate.

The Department elected to perform a UA/UAA on any newly designated stream that receives a continuous discharge from a facility with a National Pollutant Discharge Elimination System (NPDES) permit. Prior to issuing an NPDES permit for an affected facility, the Department will complete a UA/UAA for the receiving stream or stream network. Below is a list of the overall 138 proposed stream segments as a result of field assessments conducted from 2005 to 2008. (Duplicate listings represent separate segments along the overall reach of the stream.)

The proposed stream segment revisions are:

Class A2 Stream Segments

1. Ballard Creek (Story Co.)
2. Big Bear Creek (Poweshiek/Iowa Co.)
3. Black Hawk Creek (Black Hawk/Grundy Co.)
4. Deep Creek (Plymouth Co.)
5. Deep Creek (Plymouth Co.)
6. East Nodaway River
7. Elk Run (Black Hawk Co.)
8. Flint Creek (Des Moines Co.)
9. Granger Creek (Dubuque Co.)
10. Hartgrave Creek (Franklin/Butler Co.)
11. Indian Creek (Sac Co.)
12. Little Bear Creek (Poweshiek Co.)
13. Little Cedar River (Mitchell Co.)
14. Little Maquoketa River (Dubuque Co.)
15. Mosquito Creek (Pottawattamie/Harrison/Shelby Co.)
16. Mud Creek (Benton Co.)
17. Mud Creek (Polk Co.)
18. Otter Creek (Franklin Co.)
19. Otter Creek (Franklin Co.)
20. Plum Creek (Delaware Co.)
21. Shoal Creek (Appanoose Co.)
22. South Timber Creek (Marshall Co.)
23. Spring Creek (Franklin Co.)
24. Spring Creek (Franklin Co.)
25. Squaw Creek (Franklin Co.)
26. Squaw Creek (Linn Co.)
27. Stony Creek (Clay Co.)
28. Thompson River
29. Timber Creek (Marshall Co.)
30. Unnamed Creek (City of Carroll)
31. Waterman Creek (O'Brien Co.)
32. Willow Creek (Cerro Gordo Co.)
33. Willow Creek (Cerro Gordo Co.)

Class A2, B(WW-2) Stream Segments

1. Apple Creek (Linn Co.)
2. Bear Creek (Wapello Co.)
3. Blue Creek (Benton/Linn Co.)
4. Brewers Creek (Hamilton Co.)
5. Brush Creek (Marshall Co.)
6. Bulger Creek (Dallas Co.)

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7. Burr Oak Creek (Jefferson Co.)
8. Clear Creek (Cerro Gordo Co.)
9. Crooked Creek (Cedar Co.)
10. Drainage Ditch #13 (Hancock Co.)
11. Drainage Ditch #4 (Wright Co.)
12. Drainage Ditch #81 (Worth Co.)
13. Dry Creek (Benton/Linn Co.)
14. East Branch Blue Creek (Linn Co.)
15. Fourmile Creek (Kossuth Co.)
16. Fourmile Creek (Union Co.)
17. Fudge Creek (Wapello Co.)
18. Hawkeye Creek (Des Moines Co.)
19. Hawkeye-Dolbee Diversion Channel (Des Moines Co.)
20. Honey Creek (Delaware Co.)
21. Indian Creek (Audubon/Shelby/Cass Co.)
22. Indian Creek (Sioux Co.)
23. Indian Creek (Tama Co.)
24. Little Flint Creek (Des Moines Co.)
25. Lutes Creek (Marshall Co.)
26. Marvel Creek (Adair Co.)
27. Mitchell Creek (Jefferson Co.)
28. Mosquito Creek (Shelby Co.)
29. Murray Creek (O'Brien Co.)
30. Neola Creek (Pottawattamie Co.)
31. North Timber Creek (Marshall Co.)
32. Orange City Slough (Sioux Co.)
33. Platte River
34. Plum Creek (Delaware Co.)
35. Sewer Creek (Jasper Co.)
36. Sixmile Creek (Sioux Co.)
37. Snipe Creek (Marshall Co.)
38. Sugar Creek (Keokuk Co.)
39. Twelvemile Creek (Union Co.)
40. Unnamed Creek (#1) (City of Atkins)
41. Unnamed Creek (#1) (City of Brighton)
42. Unnamed Creek (#1) (City of Elkhart)
43. Unnamed Creek (#1) (HWH Company)
44. Unnamed Creek (#1) (Lakewood Estates MHP)
45. Unnamed Creek (#1) (Little Sioux Corn Processing)
46. Unnamed Creek (#1) (Missouri Valley Energy – Exira)
47. Unnamed Creek (#1) (Missouri Valley Energy – Exira)
48. Unnamed Creek (#1) (Siouxland Energy)
49. Unnamed Creek (#2) (City of Atkins)
50. Unnamed Creek (#2) (City of Brighton)
51. Unnamed Creek (#2) (City of Cincinnati)
52. Unnamed Creek (#2) (City of Elkhart)
53. Unnamed Creek (#2) (City of Hedrick)
54. Unnamed Creek (#2) (City of Middletown)
55. Unnamed Creek (#2) (City of Milo)
56. Unnamed Creek (#2) (Oak Hills Subdivision)
57. Unnamed Creek (aka Johnson's Creek)
58. Unnamed Creek (Bulk Petroleum)

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59. Unnamed Creek (Chantland-PVS Company)
60. Unnamed Creek (City of Creston WWTP)
61. Unnamed Creek (City of Earlville)
62. Unnamed Creek (City of Hedrick)
63. Unnamed Creek (City of Hills)
64. Unnamed Creek (City of Huxley)
65. Unnamed Creek (City of Malvern)
66. Unnamed Creek (City of Remsen)
67. Unnamed Creek (City of Sioux Center)
68. Unnamed Creek (City of Sully)
69. Unnamed Creek (Corn Belt Power) (aka Bull Ditch)
70. Unnamed Creek (DNR Viking Lake)
71. Unnamed Creek (Echo Valley MHP #2)
72. Unnamed Creek (Ecosystems Inc.)
73. Unnamed Creek (Heartland Lysine)
74. Unnamed Creek (IAMU)
75. Unnamed Creek (John Deere Engineering Center)
76. Unnamed Creek (McCreary Community Building)
77. Unnamed Creek (Siouxpreme Packing)
78. Unnamed Creek (Stacyville Co-op Creamery)
79. Unnamed Creek (Tri-Center Community School)
80. Unnamed Creek (Wells Dairy Mill Plant)
81. Waugh Branch (Keokuk Co.)
82. West Branch Blue Creek (Benton Co.)
83. West Branch Floyd River

Class A2, B(WW-3) Stream Segments

1. Barlene Creek (Des Moines Co.)
2. Little Walnut Creek (Appanoose Co.)
3. Unnamed Creek (#1) (City of Milo)
4. Unnamed Creek (Iowa Army Ammunition Plant)

Class A3, B(WW-2) Stream Segments

1. Brewers Creek (Hamilton Co.)
2. Crow Creek (Jefferson Co.)
3. Dry Creek (Linn Co.)
4. Unnamed Creek (John Deere Davenport Works)
5. Unnamed Creek (Magellan Pipeline – Johnson Co.)
6. Unnamed Creek (Wells Dairy – North Plant)

Class A3 Stream Segments

1. Big Bear Creek (Poweshiek/Iowa Co.)
2. Black Hawk Creek (Black Hawk/Grundy Co.)
3. Elk Run (Black Hawk Co.)
4. Indian Creek (Linn Co.)
5. Mosquito Creek (Pottawattamie Co.)
6. Otter Creek (Franklin Co.)
7. Plum Creek (Delaware Co.)
8. Spring Creek (Franklin Co.)
9. Squaw Creek (Franklin Co.)
10. Willow Creek (Cerro Gordo Co.)
11. Willow Creek (Cerro Gordo Co.)

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Class HH Stream Segments

1. Milford Creek (Dickinson Co.)

As required by recent legislation, a Fiscal Impact Statement (FIS) has been prepared for this Notice and is available upon request.

Additional information on Iowa's Water Quality Standards, including the FIS and detailed maps of the stream assessments, can be found on the Department's Web site at <http://www.iowadnr.com/water/standards/index.html>.

Any person may submit written suggestions or comments on the proposed amendment through April 30, 2009. Such written material should be submitted to Adam Schnieders, Iowa Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319; fax (515)281-8895; or E-mail adam.schnieders@dnr.iowa.gov. Persons who have questions may contact Adam Schnieders at (515)281-7409.

Persons are invited to present oral or written comments at a series of public hearings, which will be held throughout the state as follows:

April 7, 2009	1 p.m.	Wallace State Office Building 4th Floor Conference Rooms 502 E. 9th Street Des Moines
April 9, 2009	10 a.m.	Cherokee Community Center 530 W. Bluff Street Cherokee
April 9, 2009	6 p.m.	Atlantic Municipal Utilities Conference Room 15 W. 3rd Street Atlantic
April 14, 2009	10 a.m.	Falcon Civic Center 1305 5th Avenue N.E. Independence
April 14, 2009	6 p.m.	Iowa City Public Library 123 Linn Street Iowa City
April 16, 2009	1 p.m.	Clear Lake Community Meeting Room 15 N. 6th Street Clear Lake

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

This amendment may have an impact upon small businesses.

This amendment is intended to implement Iowa Code chapter 455B, division III, part 1.

The following amendment is proposed.

Amend subrule 61.3(5) as follows:

61.3(5) Surface water classification. The department hereby incorporates by reference "Surface Water Classification," effective ~~June 11, 2008~~ [effective date of amendment]. This document may be obtained on the department's Web site at <http://www.iowadnr.com/water/standards/index.html>.

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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 455B.474, the Environmental Protection Commission proposes to amend Chapter 134, "Underground Storage Tank Licensing and Certification Programs," Iowa Administrative Code.

The proposed amendments rescind rules 567—134.18(455B) to 567—134.28(455B) and adopt new rules 567—134.18(455B) to 567—134.29(455B) in Part C of 567—Chapter 134. In addition, the proposed amendments revise the title of Part C and amend definitions and add new definitions to rule 567—134.17(455B).

Pursuant to 2007 Iowa Acts, Senate File 499, section 10, the Environmental Protection Commission (Commission) adopted by emergency rule making in **ARC 6073B** [IAB 8/1/07] the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board (Board) rules in 591—Chapter 15. The rules in 591—Chapter 15 were rescinded by the Board in **ARC 6165B**, effective August 15, 2007. The rules pertain to the licensing of underground storage tank (UST) installers, installation inspectors, testers, and liners. Pursuant to 2007 Iowa Acts, Senate File 499, the Board's licensing authority was transferred to the Commission, and the emergency rule making effectuated that transition.

No substantive changes were made to the rules during the emergency rule making. However, 2007 Iowa Acts, Senate File 499, section 6, authorizes the Commission to expand the UST professional licensing scheme to include adding a licensing program for individuals providing services for permanent closure of UST systems (removers). Therefore, the Commission proposes to amend the rules accordingly. The amendments:

- Add a licensing scheme for UST removers and require that soil and groundwater sampling at the time of UST closure be performed by a certified groundwater professional.
- Raise the required insurance liability coverage for UST professionals from \$250,000 to \$1 million. This coverage amount was required by legislation in 2007 and reflects the industry standard.
- Clarify the type of work that must be performed by a licensed professional from that performed by service technicians and clarify when an installation inspection is required.
- Add a requirement for installation inspections using a Department-authorized checklist with submittal for review.
- Increase the license fee for companies and individuals to \$200 biennially. Currently the fee is \$50 per year.
- Expand the reciprocity criteria to recognize training and examinations from other states or equipment manufacturers on the basis of Department approval.
- Include a requirement for UST professionals to report suspected and confirmed releases. Currently only the UST owner/operator must report.
- Clarify conflict-of-interest activities.
- Provide that a cathodic protection tester must be trained and maintain certification with the National Association of Corrosion Engineers (NACE), the Steel Tank Institute (STI) or equivalent certification approved by the Department.

The Department held two stakeholder meetings in Des Moines before proposing to amend Chapter 134 under Notice of Intended Action. Written and oral comments were received. The stakeholders' main concern was the duty to report UST releases; a secondary concern focused on the respective responsibilities of licensed removers and certified groundwater professionals during the UST system closure process.

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Stakeholders expressed concern that requiring UST professionals to report suspected or confirmed releases to the Department would jeopardize the professional relationship, especially with regard to payment, between UST professionals and their client, the regulated public. Once a suspected release is reported, Department rules require an investigation to determine whether a release has in fact occurred and, specifically, the location and manner of release. Stakeholders preferred that owners and operators personally make all reports to the Department, which is how the rule currently reads, primarily because stakeholders are concerned that they may be viewed as responsible for costs associated with a release. However, the Department believes such reports should be made directly by the professionals trained in the field. Direct reporting by installers ensures that an accurate and timely report is made for the benefit of public health and the environment. Furthermore, a majority of states surveyed have a similar rule in place.

Discussions with stakeholders also focused on the role of removers at UST closures compared with the role of certified groundwater professionals (CGWPs). Removers will perform the technical aspects of closure, i.e., required digging, grading, demolition work and the physical removal of the tanks. CGWPs will oversee, for example, soil and groundwater sample collection and will submit samples to laboratories. Even though one individual can hold both licenses and perform all necessary work, the Department sees a benefit in having these duties divided between two occupations.

Other amendments to Chapter 134 were noncontroversial. Stakeholders recognized the legitimacy of raising the license fee to reflect inflation since the original \$50 per year fee was imposed in 1991. The proposed license fee is the same as the fee for becoming a certified groundwater professional. The same economic principle applies to the proposal to increase liability insurance coverage. Revisions to the continuing legal education and testing requirements have also been generally supported, especially in light of the Department's willingness to reciprocate with neighboring states as long as the programs are similar enough to justify an Iowa license.

Any interested person may make written suggestions or comments on the proposed amendments on or before April 9, 2009. Such written materials should be directed to Tom Collins, Underground Storage Tank Section, Department of Natural Resources, 502 East Ninth Street, Des Moines, Iowa 50319-0034; fax (515)281-8895; or E-mail tom.collins@dnr.iowa.gov.

Three public hearings will be held at the following times and locations, at which time persons may present their views either orally or in writing.

April 2, 2009	1 p.m.	Wallace State Office Building Fifth Floor West Conference Room 502 E. 9th Street Des Moines
April 6, 2009	1 p.m.	Coralville Public Library Meeting Room B 1401 5th Street Coralville
April 7, 2009	1 p.m.	Denison Public Meeting Room 111 N. Main Street Denison

Any persons who intend to attend a public hearing and have special requirements, such as those related to 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 455B.474.

The following amendments are proposed.

ITEM 1. Amend **567—Chapter 134**, title of Part C, as follows:

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

~~UNDERGROUND STORAGE TANK INSTALLER AND
INSPECTOR LICENSING LICENSING OF UST PROFESSIONALS~~

ITEM 2. Amend rule **567—134.17(455B)**, definitions of “Inspector,” “Installer,” “Liner,” “Maintenance,” “Repair” and “Tester,” as follows:

~~“Inspector *Installation inspector*” means a licensed individual who is engaged in the inspection and approval of the installation of new or upgraded underground storage tank systems.~~

~~“Installer” means a licensed individual or licensed company engaged in the installation of a new underground storage tank system or the upgrading ~~or lining of existing~~ of underground storage tank systems.~~

~~“Liner” means a licensed company or an individual who ~~lines a tank using an acceptable procedure under subrule 134.24(2)~~ provides services to install underground storage tank lining and to repair underground storage tanks.~~

~~“Maintenance” means minor service work to existing equipment, associated with underground storage tank systems, which is installed above grade level and can be observed from grade level. Maintenance does not require licensing the normal operational upkeep to prevent a UST system from releasing a regulated substance or to ensure that a release is detected.~~

~~“Repair” means modification or correction of any existing portion of an underground storage tank system through such means as replacement of valves, fill pipes, vents, liquid level monitoring systems, and installation of spill and overflow devices, provided the activity occurs above grade, and the maintenance and inspection of the efficacy of cathodic protection devices. Repair does not include activities which are maintenance as defined in this chapter. to restore any portion of a UST system that has failed. “Repair” does not include the activities defined in this rule by “modification” or “replacement.”~~

~~“Tester” means a licensed company or individual who tests tanks, lines, leak detection systems, or monitoring systems, using an acceptable procedure under subrule 134.23(2) as required by 567—Chapter 135 and this chapter. For the purposes of this definition, an owner, operator or ~~one of their employees~~ an employee of an owner or operator performing vapor monitoring, cathodic protection tests, statistical inventory reconciliation or using an automated in-tank gauging device installed at a site location they own or operate shall not be defined as a tester. An owner or operator or one of their employees may also perform volumetric, nonvolumetric or vacuum tests on their own tanks and hydrostatic pressure tests on their own lines, provided they have received certification from the manufacturer or supplier of the system for its usage and the system has been approved by the U.S. EPA leak detection or cathodic protection monitoring, as required by 567—Chapter 135, is not a tester.~~

ITEM 3. Adopt the following **new** definitions in rule **567—134.17(455B)**:

~~“Cathodic protection tester” means a licensed individual who provides installation, maintenance and testing services on underground storage tank corrosion protection systems.~~

~~“Install” or “installation” means the physical construction of a UST system including, but not limited to, activities such as excavating, backfilling, testing, placement of the tank, underground piping, release detection devices, corrosion protection systems, spill and overflow devices and any associated administrative activities such as notifications, record keeping and record submissions.~~

~~“Modification” means to change a UST system currently in use by the installation of new UST system components. “Modification” includes, but is not limited to, the addition of corrosion protection to a previously lined tank, installation of new underground piping or replacement of existing underground piping, changing the primary release detection method to one of the methods listed in OAR 340-150-0450 through 340-150-0470, or adding secondary containment. “Modification” does not include those activities defined in this rule as “repair” or “replacement.”~~

~~“Remover” means a licensed individual who is engaged in permanent closure activities by removal or filling in place of underground storage tank systems in accordance with 567—135.15(455B).~~

~~“Replacement” means to effect a change in any part of a UST system above grade by exchanging one unit for a like or similar unit. “Replacement” does not include activities defined in this rule as “repair” or “modification.”~~

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“*Service technician*” means a nonlicensed individual who works for a licensed individual or a licensed company or who is certified by a manufacturer to conduct modification or replacement activities at UST facilities.

“*Underground storage tank professional*” means an individual licensed under Part C of this chapter.

ITEM 4. Rescind rules 567—134.18(455B) to 567—134.28(455B) and adopt the following **new** rules:

567—134.18(455B) Applicability of Part C. All persons and companies that are currently licensed under the former board rules in rescinded 591—Chapter 15 shall be subject to Part C of this chapter. All persons conducting underground storage tank installations and installation inspections as provided in 567—subparagraph 135.3(1) “e”(2) and installers, installation inspectors, liners, testers, and removers shall be licensed by the department in accordance with Part C of this chapter. Service technicians as defined in rule 134.17(455B) are exempt from licensure under Part C of this chapter.

567—134.19(455B) General licensing requirements. Applications for licenses shall be submitted on a form provided by the department along with all required supporting documentation. Existing licenses as of [insert the effective date of these amendments] and new licenses shall expire December 31, 2010. Subsequently, licenses shall be issued and renewed on a two-year calendar basis, beginning January 1, 2011. All applicants must be at least 18 years of age. The applicant shall not have been issued a certificate of noncompliance from the child support recovery unit.

134.19(1) Licensing classifications. A separate license will be issued for:

- a. UST installers and installation inspectors;
- b. UST removers;
- c. UST testers;
- d. Cathodic protection testers; and
- e. UST liners.

134.19(2) Individual and company licenses. A company employing licensed individuals for installation, upgrading, removal, lining or testing of underground storage tank systems shall be registered as a licensed company. A company shall have its license revoked if it fails to employ at least one licensed individual or if it employs unlicensed individuals to do work requiring a license. Individuals who are not companies as defined in rule 134.17(455B) are required to have an individual license only.

134.19(3) License fees. A \$200 fee shall be submitted with a company license application and with an individual license application. Companies and individuals are licensed separately as set forth in subrule 134.19(2). Individuals may apply for multiple individual licenses at once, paying only one \$200 processing fee. All fees are nonrefundable.

134.19(4) License issuance. Upon receipt, review, and acceptance of the application and application fee, the department shall furnish the applicant with a license showing the name of the individual/company and the expiration date. In order to remain valid, the license shall be renewed prior to the expiration date specified on the license.

134.19(5) Environmental liability insurance. All license holders, including licensed companies, are required to have environmental liability insurance with minimum liability of \$1 million per occurrence, as well as in the aggregate. Current license holders shall have 45 days from [insert the effective date of these amendments] to upgrade their environmental liability insurance.

a. *Licensed company.* A licensed company is required to provide environmental liability insurance for all licensed activities of the company and its licensed UST professionals.

b. *Licensed individuals.* Each licensed installer, installation inspector, remover, liner, cathodic protection tester, and tester is required to provide proof of environmental liability insurance covering licensed activities. The insurance may be provided by the licensed company employing the licensed individual or by the individual licensee.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

c. Insurance exception. UST professionals employed by owners or operators of underground storage tank systems to work only on the owner's or operator's private system(s) are exempt from insurance requirements.

d. Forms of acceptable insurance. All parties covered by the licensing provisions of Part C of this chapter shall provide evidence of environmental liability insurance to the department upon request.

(1) Environmental liability insurance may be provided by a private insurer authorized to do business in Iowa.

(2) Evidence of environmental liability insurance may be provided using methods of self-insurance as outlined in 567—Chapter 136.

134.19(6) Examinations and course of instruction. Prior to the issuance of a license as an installer, installation inspector, remover, liner, tester, or cathodic protection tester, the applicant shall successfully complete a department or department-approved course of instruction and pass a qualification examination approved by the department.

a. Examination requirements for all license holders.

(1) A passing grade of not less than 85 percent is required on the Iowa examination.

(2) Candidates who have failed the examination may not perform work unless supervised by an appropriately licensed individual.

(3) A fee reflecting the actual costs of developing and administering each course of instruction and examination shall be charged.

(4) Nothing in Part C of this chapter shall limit the right of the department to require additional educational requirements of license holders.

b. Exceptions to completion of the course of instruction or examination. All license holders, except cathodic protection testers, are required to complete the course of instruction. Cathodic protection testers are only required to maintain NACE certification, STI cathodic protection certification or equivalent certification approved by the department. Testers may qualify for reciprocity under paragraph 134.19(6)“c” if the department approves the public or private certification or training program completed. For testers, the department will approve or deny the certification based upon a review of the course of instruction, applicable manuals and handouts, and the examination.

c. Reciprocity. Persons who are certified under another state or federal regulatory program which has been approved by the department may be eligible for licensure in Iowa without having to take a course of instruction or pass the examination. However, these individuals shall still pay the \$200 application fee and qualify for license renewal by fulfilling continuing education requirements.

d. Repeat examination attempts. An applicant who fails an initial examination may take a second examination within one calendar year without having to retake the course of instruction. Failure of the second examination will result in termination of the application. A person may reapply for licensure. The applicant shall complete a course of instruction before retaking the examination.

134.19(7) Continuing education. Each person licensed under Part C of this chapter shall complete a department-approved refresher course every two years, except for licensed cathodic protection testers. Cathodic protection testers shall maintain NACE or STI certification or another certification approved by the department. Beginning with the first application for license renewal, each UST professional shall provide evidence to the department, prior to submission of the application for renewal, that at least 12 credit hours of department-approved continuing education have been satisfactorily completed since the last license was issued or renewed. The department may limit the number of credits granted for similar courses during a renewal period. The requirement for continuing education may be met only by those continuing education offerings which have been approved by the department.

a. Form of approval. Approval may take the form of:

(1) Program approval granted by the department to the sponsor or instructor of a continuing education offering;

(2) Individual requests for credit granted by the department to an installer or inspector for a continuing education offering whose sponsor or instructor did not seek program approval; or

(3) Blanket approval granted by the department to continuing education offerings sponsored by the department or other professional organizations whose standards have been approved by the department.

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b. Procedures for department approval of continuing education offerings.

- (1) Application for program approval shall be made by the sponsor or instructor to the department and include an agenda or an outline of the content of the proposed continuing education offering.
- (2) Application shall be made at least 45 days prior to the desired effective date of approval.
- (3) The application shall be reviewed by the department, and notice of approval or denial of program approval shall be sent to the sponsor or instructor. Credit hours may be limited by the department based on program content.

c. Proof of participation. A certificate of satisfactory completion of a department-approved continuing education offering issued by the sponsor or instructor constitutes sufficient evidence of satisfactory completion for purposes of meeting the continuing education requirement.

567—134.20(455B) License renewal procedures.

134.20(1) Renewal applications shall be made on a form provided by the department and received by the department or postmarked no later than November 1 of the expiration year of the license at issue. The renewal application shall be accompanied by the \$200 renewal fee as specified in subrule 134.19(3) and proof of environmental liability insurance as required under subrule 134.19(5). Applications received after the November 1 deadline, but before the January 1 expiration date, will be accepted and will require an additional \$50 late fee.

134.20(2) To be eligible for renewal, the licensee shall fulfill all continuing education requirements, along with any other requirements set forth in each license classification rule under Part C of this chapter. The department will consider all past disciplinary actions against the licensee when evaluating renewal eligibility.

567—134.21(455B) Conflict of interest. A licensed individual or a licensed company may not conduct a UST installation inspection at any facility at which the licensee is engaged in professional services which are regulated under Part C of this chapter, e.g., installations, modifications, repairs, or replacements of UST systems. A person working for a licensed company as an installer, liner, remover, or tester shall not provide services as an installation inspector on sites where UST systems are being installed or lined by the person's prior employer until six months after leaving the prior employer's licensed company. If a licensed individual leaves the employment of a licensed company, the licensed company shall notify the department within 30 days of that occurrence.

567—134.22(455B) Duty to report. Any UST professional licensed under Part C of this chapter has a duty to report suspected and confirmed releases to the owner/operator of the UST site and to the department.

567—134.23(455B) OSHA safety requirements. All licensed individuals and companies regulated under Part C of this chapter shall conduct their work as required by OSHA safety requirements defined under 29 CFR § 1910 (2006). OSHA standards apply whenever flammable, combustible, or hazardous materials are present, especially during the following activities:

1. Excavating, placing underground storage tank systems in excavations, and ballasting underground storage tank systems with flammable, combustible, or hazardous materials.
2. Purging, cleaning, and removal of underground storage tank systems which have contained flammable, combustible, or hazardous materials.
3. Testing as a part of an installation or after the system has been placed in service.

567—134.24(455B) Installers.

134.24(1) Licensure qualifications. An installer of an underground storage tank system shall apply for a license as an installer and shall indicate on the license application the types of installations and upgrade procedures the installer intends to use. In addition to the licensing requirements listed under rule 134.19(455B), an installer must:

- a.* Provide documentation of at least two years of relevant experience;

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b. Provide documentation of manufacturer certification for past installations and proof of current certification for future work including, but not limited to, tank systems, piping systems, leak detection and monitoring systems, and corrosion protection systems; and

c. Have completed at least 40 hours of OSHA training.

134.24(2) *Renewal qualifications.* To be eligible for license renewal, an installer shall:

a. Fulfill the department's continuing education requirements in rule 134.19(455B);

b. Maintain manufacturer certification if available and notify the department within 30 days if the certification is lost; and

c. Complete the annual eight-hour Hazardous Waste Operations and Emergency Response (HAZWOPER) refresher course.

134.24(3) *Responsibilities of installers.* A licensed installer shall be on site during the performance of all work, including subcontracted work, for which the owner/operator has contracted to have completed by the installer. The licensed installer is responsible for all UST-related work at the site and must ensure that the performance of the work and the finished work conform to industry standards and codes and manufacturers' requirements. The licensed installer is responsible for ensuring that all local installation permits and notice requirements are satisfied. Tank installation includes all work associated with the placement of the tanks, pipes, pumps, dispensers, gauging systems, monitoring systems, corrosion protection, containment devices, and ancillary systems which, if installed incorrectly, could cause or delay detection of a leak. Tank installation specifically includes excavation, equipment placement, backfilling, piping, electrical work, testing calibration, and start-up. Tank installation also includes installation of the appropriate equipment to meet National Emissions Standards for Hazardous Air Pollutants (NESHAP) requirements (40 CFR § 63.6580, Subpart ZZZZ), including submerged fill and vapor balance systems (Stage 1 vapor recovery) and the testing of those systems. Installers shall have on their person at all times while on a UST job site a 40-hour general site worker program identification card or any valid refresher card that complies with OSHA standards.

134.24(4) *Documentation of work performed.* Installing a new UST system or upgrading a UST system requires an installer to submit a copy of DNR Form 148, signed by the owner, to the department. Each licensed installer responsible for the new system installation or the upgrading of an existing system shall sign DNR Form 148 as required by 567—paragraph 135.3(3)“e.”

567—134.25(455B) Testers. A tester of underground storage tank systems shall apply for licensing as a tester and note on the license application the systems and method(s) of testing the tester will use. In addition to the licensing requirements listed under rule 134.19(455B), a tester shall provide documentation of at least two years of relevant experience, documentation of manufacturer certification for past testing, and proof of current certification for future work.

134.25(1) *Renewal qualifications.* To be eligible for license renewal, a tester shall fulfill the department's continuing education requirements in rule 134.19(455B) and shall maintain manufacturer certification or notify the department within 30 days if the certification is lost.

134.25(2) *Documentation of work performed.* A copy of the test results shall be attached to DNR Form 148 when testing is done in connection with a new installation or the upgrading of an existing underground storage tank system. A precision test is required when the system is covered and is ready to be placed into service; a volumetric, nonvolumetric, or vacuum test may be used as a method for testing the system and a hydrostatic pressure test may be used for testing the lines. Systems used for leak detection or monitoring (such as statistical inventory reconciliation, vapor or water monitoring wells, or tracer-type tests) shall not be acceptable as a precision test at the completion of the installation of a new system or the upgrading of an existing system. Automatic in-tank gauging may be acceptable if third-party U.S. EPA approval as a precision test has been received for testing tanks.

a. The test results shall identify the tanks tested, the test method employed, and the results of the test. Test results shall be dated and signed by the licensed tester who performed the tests.

b. The original DNR Form 148 without attachments shall be mailed to the department.

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134.25(3) Exception to inspection requirement. Installation inspectors are not required for the testing of underground storage tank systems, lines, leak detection, and cathodic protection as required by 567—Chapter 135 after the system has been put into service.

567—134.26(455B) Liners. In addition to the licensing requirements listed under rule 134.19(455B), a liner shall provide documentation of at least two years of relevant experience, provide documentation of manufacturer certification for past linings and proof of current certification for future work, and have completed at least 40 hours of OSHA training.

134.26(1) Renewal qualifications. To be eligible for license renewal, a liner shall:

- a. Fulfill the department's continuing education requirements in rule 134.19(455B);
- b. Maintain manufacturer certification and immediately notify the department if the certification is lost; and
- c. Complete the annual eight-hour Hazardous Waste Operations and Emergency Response (HAZWOPER) refresher course.

134.26(2) Lining system investigation and installation requirements.

a. *Inspection of internal lining.* A steel underground storage tank that satisfies the corrosion protection requirement as set forth in 567—subparagraph 135.3(2)“b”(1) by the addition of an internal lining shall be internally inspected within ten years of the date the tank was lined and every five years thereafter. The purpose of the inspection is to determine if the lining continues to perform according to the manufacturer's specifications, state and federal rules, and national standards and codes and to determine if the tank is still structurally sound. The department accepts both manned entry and video camera periodic inspections. The lining method employed must be specifically designed for the purpose, be compatible with the product stored, and meet acceptable federal and state standards as set forth in 567—Chapter 135.

b. *Integrity testing for tanks.* Liners shall verify structural integrity, to include thickness and strength of the underground storage tanks, whenever tanks are physically entered (manned entry) for periodic inspections. The following standards must be used for lining and periodic inspections and integrity testing:

(1) Physical (manned entry) inspection. American Petroleum Institute (API) Standard 1631: Interior Lining and Periodic Inspection of Underground Storage Tanks.

(2) Video camera inspection. API Standard 1631; “Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera” developed by Ken Wilcox Associates Inc. (KWA), Methods A and C; and ASTM G-158 (approved prediction models).

(3) Repairs to lining. Standard 631 of the National Leak Prevention Association (NLPA): Entry, Cleaning, Interior Inspection, Repair and Lining of Underground Storage Tanks. Repaired lining must meet the requirements of API 1631 § 8.

(4) Documentation of the inspection. API 1631—Form C: Tank Re-Inspection Affidavit. Liners shall document any defects noted in the system including, but not limited to, holes and perforations using API 1631—Form C: Tank Re-Inspection Affidavit and shall include photographs of all methods of repair.

134.26(3) Responsibilities of liners. While on UST job sites, liners shall have on their person at all times a 40-hour general site worker program identification card or any valid refresher card that complies with OSHA standards.

134.26(4) Documentation of work performed. A liner shall submit the API 1631 report form to the department, certifying that all work was performed in accordance with applicable industry standards.

567—134.27(455B) Installation inspectors. In addition to the licensing requirements listed under rule 134.19(455B), an installation inspector shall provide documentation of at least one year of experience with underground storage installations, testing, inspecting, or design; documentation of manufacturer certification for past work; and proof of current certification for future work. An engineer who intends to apply for licensure as an installation inspector and who has met the requirements in Iowa to be a registered professional engineer (P.E.) may be exempt from the educational requirement so long as UST

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installation is in the scope of the engineer's P.E. license and regular practice as provided for in rule 134.19(455B). Engineers, however, are not exempt from fulfilling the examination requirement.

134.27(1) *Renewal qualifications.* To be eligible for license renewal, an installation inspector shall fulfill the department's continuing education requirements in rule 134.19(455B) and shall maintain manufacturer certification or notify the department within 30 days if the certification is lost.

134.27(2) *Documentation of work performed.*

a. A copy of the inspection report must be submitted within 14 days after the inspection is complete. Both the inspection form and DNR Form 148 must be received by the department before the UST system can be activated.

b. A licensed installation inspector shall inspect the job site a minimum of three times during the course of the new tank installation or system upgrade.

c. For new installations, the first inspection shall occur before the UST system is installed. The second inspection shall occur before the covering of the system, when all tanks and pipes are exposed. The inspector shall witness testing of the primary and secondary piping and testing of the secondary containment, including sumps, under-dispenser containment (UDC), and secondary containment leak detection equipment. The final inspection shall occur when all components are operational and the system has been covered, but before actual operation. The installation inspector shall be present on site, shall visually observe all inspections, and shall be able to attest to the results. A video or other recording device showing the work completed by the installer shall not be used nor shall it be an acceptable method of providing independent inspection of the work completed.

134.27(3) *Inspection required.* When concrete is cut or excavation is required that could affect the integrity or operation of the UST system or when a component that routinely contains product is installed, replaced or repaired, one inspection is required. This inspection shall occur when the component is uncovered and replaced or repaired but before operation recommences. Whenever secondary containment, such as UDC or sump, is installed, at least one inspection is required after the equipment is installed and before the system is backfilled.

134.27(4) *Inspection not required.* Replacing, repairing or installing the following does not require an inspection: drop tubes, overfill devices, spill buckets, installation of ATG systems, dispensers, submersible turbine pumps, automatic line leak detectors, internal lining and periodic inspections or lining repair, cathodic protection systems, interstitial sensors, flex connectors, and line and tank tightness testing.

134.27(5) *Pre-work notification requirement.*

a. A licensed company/individual hired by an owner/operator to perform work shall notify the owner's/operator's licensed installation inspector of choice prior to commencing work. Additionally, the owner/operator is responsible for supplying the name of the installation inspector if it is not a governmental entity to any state or local agency with rules affecting installations or upgrades.

b. The pre-work notice given to the installation inspector shall include, at a minimum, the following information:

- (1) Description of the work planned.
- (2) The licensed individual responsible for the work to be performed.
- (3) A schedule of the work to be performed.
- (4) A copy of the UST notification of intent to install form submitted to the department.

c. The installation inspector shall review the work plan, and any required changes by the installation inspector must be submitted to the company/individual prior to the beginning of the described work. An inspection schedule must be agreed upon before work commences. Changes to the work schedule, to include the inspection schedule, because of weather or unforeseen job-site conditions shall be agreed upon as soon as the extenuating circumstances are recognized.

134.27(6) *Pre-installation and installation checklists.*

a. The licensed company/individual performing the work shall submit to both the installation inspector and the department a notification of intent to install form 30 days prior to an installation or upgrade.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

b. Installation inspectors are required to use the department's installation inspection checklist. The installation inspection checklist must be submitted within 14 days following the tank installation inspection.

134.27(7) *Conflict of interest.* In addition to the conflict-of-interest provisions outlined in rule 134.21(455B), the following apply to installation inspectors:

a. If the installation inspector establishes a contract to perform inspection services for an owner/operator, or performs more than five inspections per calendar year for any one owner/operator, then the installation inspector is required to disclose that relationship in writing to the department within 30 days of the fifth inspection.

b. The department may require the owner/operator to seek alternative inspection services for any reason deemed prudent to ensure quality installations.

134.27(8) *Miscellaneous requirements.* An installation inspector has the right to postpone work or to stop work on a job if standards as outlined in Part C of this chapter are not followed by the installer. Furthermore, once an installation inspector has been placed on a job, that installation inspector cannot be replaced without the department's approval. Installation inspectors must verify that any local permit and notice requirements are in place.

567—134.28(455B) *Removers.* In addition to the licensing requirements listed under rule 134.19(455B), a remover shall provide documentation of at least two years of removal or other relevant experience and complete at least 40 hours of OSHA training. An engineer who intends to apply for licensure as a remover and who has met the requirements in Iowa to be a registered professional engineer (P.E.) may be exempt from the licensure requirements under rule 134.19(455B) so long as UST-related work is within the scope of the engineer's P.E. license and regular practice. Engineers are not exempt from fulfilling the examination requirement in subrule 134.19(6).

134.28(1) *Renewal qualifications.* To be eligible for license renewal, a remover shall:

- a.* Fulfill the department's continuing education requirements in rule 134.19(455B);
- b.* Comply with all local permitting and notice requirements;
- c.* Comply with department-issued UST closure guidance; and
- d.* Complete the annual eight-hour Hazardous Waste Operations and Emergency Response (HAZWOPER) refresher course.

134.28(2) *Responsibilities and documentation of work performed.* A licensed remover shall be on site during the performance of all UST closure-related work, including subcontracted work, for which the owner/operator has contracted to have completed by the remover. Removers are responsible for ensuring that all work performed complies with the safety requirements of OSHA. Removers shall submit to the department a notification of closure form 30 days prior to the scheduled removal or fill in place as required in 567—subrule 135.15(2). Removers shall submit to the department the closure report within 45 days of removal or fill in place as required in 567—paragraph 135.15(3) "e." Removers shall ensure that all local permits and notice requirements are satisfied. Removers shall have on their person at all times while on a UST job site a 40-hour general site worker program identification card or any valid refresher card that complies with OSHA standards. A remover may collect soil and groundwater samples as required by 567—subrule 135.15(3) only if the remover is a certified groundwater professional under 567—Chapter 134, Part A.

567—134.29(455B) *Disciplinary actions.*

134.29(1) *General policy.* It is the policy of the department to enforce standards of professional and ethical conduct which are generally accepted within the professions which qualify a person for licensure in Iowa under Part C of this chapter. The department intends to investigate and enforce standards of conduct by a licensee which fall within the scope of the licensee's professional relationship with the department, the licensee's clients, and other state regulatory agencies. The department may impose disciplinary actions which may include, but are not limited to, notice of deficiency; probationary notices; and suspension, revocation, and denial of a license. The criteria identified in subrules 134.20(1) and

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

134.20(2) will be utilized by the department in deciding whether to issue an initial license or to renew a previously issued license.

134.29(2) *Notice of deficiency or probation.* A notice of deficiency or probationary notice shall not be an appealable decision. The recipient of a notice may contest the basis for the notice in writing, and such response shall be made part of the licensee's record. A person subject to a notice to suspend or revoke a license may appeal the notice as provided in 567—Chapter 7.

134.29(3) *Suspension.*

a. The department may suspend the license of any individual or company for good cause for either a single act or omission or repeated acts or omissions. The suspension of a company or individual licensee shall prevent the company or individual licensee from engaging in activities for which the license is required. The suspension may require the licensee to take remedial measures intended to correct or prevent future acts or omissions. Good cause includes, but is not limited to:

- (1) A violation of these rules.
- (2) Negligent misrepresentation of material facts in a report submitted to the department.
- (3) Incompetence on the part of the licensee as evidenced by errors in the performance of duties and activities for which the license was issued.
- (4) Repeated failure to submit reports of activities to the department or the owner/operator as provided in this chapter.

b. The department may require that the licensee complete a special training program, examination, or other remedial measures sponsored or approved by the department and designed to strengthen the specific weakness in the licensee's performance of duties as identified in the suspension order.

c. A licensed company or individual shall immediately surrender the applicable license to the department as of the effective date of a suspension order. The department may reinstate the license if it is determined that the company or individual has satisfied the terms of the suspension order and the license is not expired.

134.29(4) *Revocation.*

a. The department may revoke the license of a company or individual for one or more of the following:

- (1) Willful disregard of, or willful or repeated violations of, this chapter or 567—Chapter 135.
- (2) Fraudulent omissions or misstatements of material facts in a report or in other written or oral communications with the department.
- (3) A knowing and willful failure to detect and report a material violation of UST operation and maintenance standards.
- (4) Acts or omissions warranting suspension after a license was previously suspended.

b. A licensee shall immediately surrender the license after the effective date of the revocation decision.

ARC 7602B

HISTORICAL DIVISION[223]

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 303.1 and 303.1A, the Department of Cultural Affairs hereby gives Notice of Intended Action to amend Chapter 21, "Membership in the Society," Iowa Administrative Code.

The proposed amendment revises language in subrule 21.3(2) to reflect the actual number of award programs, which had been increased from four to seven in a previous rule making.

HISTORICAL DIVISION[223](cont'd)

Public comments concerning the proposed amendment will be accepted until 4:30 p.m. on March 31, 2009. Interested persons may submit written or oral comments by contacting Kristen Vander Molen, Department of Cultural Affairs, Historical Building, 600 East Locust Street, Des Moines, Iowa 50319-0290; fax (515)281-6975; E-mail kristen.vandermolen@iowa.gov. Persons who wish to convey their views orally should contact the Department of Cultural Affairs at (515)281-4228.

Because of the nature of the amendment, a public hearing is not warranted.

This amendment is intended to implement Iowa Code chapter 303.

The following amendment is proposed.

Amend subrule 21.3(2), introductory paragraph, as follows:

21.3(2) *Award programs.* Awards shall be made in ~~four~~ seven programs.

ARC 7626B

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 sections 225C.6 and 331.438(4), the Department of Human Services proposes to amend Chapter 25, "Disability Services Management," Iowa Administrative Code.

The proposed amendments define the role of the "county of residence" as it relates to the central point of coordination process for services to persons with mental illness, chronic mental illness, mental retardation, developmental disabilities, or brain injury. Under these amendments, all new applications for services would be directed to a person's county of residence rather than the county of legal settlement. The person may be eligible for the services that are outlined in the management plan for the county of residence. These services would be purchased according to the contracted rates of the county of residence.

Under current rules, a person must apply to the central point of coordination for the consumer's county of legal settlement, regardless of where the person is living, and may be eligible only for services listed in the management plan of the county of legal settlement. This sometimes leads to confusion for applicants and may be a barrier to applying for services.

These amendments may result in a county's paying for services that are not in its county management plan or paying a different rate than the county pays for persons living in the county. These changes are in line with what was intended by the Mental Health, Mental Retardation, Developmental Disabilities, and Brain Injury Commission's original January 2004 restructuring report.

These amendments do not provide for waivers in specified situations because waivers would lead to uncertainty among applicants and providers.

Any interested person may make written comments on the proposed amendments on or before April 2, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

The Department will also hold a public hearing for the purpose of receiving comments on these proposed amendments on Thursday, April 2, 2009, from 10 to 11 a.m. in Northeast Conference Room 2, Fifth Floor, Hoover State Office Building, Des Moines, Iowa. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Bureau of Policy Analysis and Appeals at (515)281-8440 in advance of the scheduled date to request that appropriate arrangements be made.

These amendments are intended to implement Iowa Code sections 331.424A, 331.439, and 331.440.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions in rule **441—25.11(331)**:

“*Commission*” means the mental health, mental retardation, developmental disabilities, and brain injury commission established in Iowa Code section 225C.5.

“*County of residence*” means the county in Iowa where, at the time an adult applies for or receives services, the adult is living and has established an ongoing presence with the declared, good-faith intention of living permanently or for an indefinite period. The county where a person is “living” does not mean the county where a person is present for the purpose of receiving services in a hospital, a correctional facility, a halfway house for community corrections or substance abuse treatment, a nursing facility, an intermediate care facility for persons with mental retardation, or a residential care facility or for the purpose of attending a college or university. For an adult who is an Iowa resident and who falls within the exclusion for county where a person is “living” as described in this rule, the county where the adult is physically present and receiving services shall be the county of residence. The county of residence of an adult who is a homeless person is the county where the adult usually sleeps.

ITEM 2. Amend paragraphs **25.13(1)“i”** and **“l”** as follows:

i. Access points. The county shall designate access points and their function in the enrollment process. A process shall be included to ensure that applications received by an access point are forwarded by the end of the working day during which they are received to the consumer’s county of residence ~~and, when known, county of legal settlement, or the county departmental office for those with state case status.~~ The county shall provide training to designated access points on the intake process and use of the application form.

l. Consumer access. The manual shall describe how the county will provide access to appropriate, flexible, cost-effective community services and supports to meet the consumer needs in the least restrictive environment possible. This may include guidelines for individualized services and supports and may vary by eligibility group and type of service and support. The manual shall describe how the county of residence will ensure access to services and supports while legal settlement is determined or in dispute.

ITEM 3. Amend subrule 25.13(2) as follows:

25.13(2) Plan administration section. The plan administration section of the policies and procedures manual shall specifically outline procedures for administering the plan at the consumer level. These procedures shall include, but shall not be limited to:

a. Application (intake) procedure. The plan administration section of the manual shall describe an application process that is readily accessible to applicants and their families or authorized representatives. This procedure shall describe where applicants can apply for services and how and when the applications will reach the CPC office. It shall outline an application review process including, but not limited to, how additional needed information shall be gathered to complete an application, a timeline for the review process, and qualifications of the professional reviewing the application.

(1) Applications shall be accepted and processed by the applicant’s county of residence. If an applicant applies to the CPC of the county of residence and has legal settlement in another county, the application process shall be performed by the CPC of the applicant’s county of residence in accordance with the county of residence’s management plan, and the applicant’s county of legal settlement shall be responsible for the cost of the services or other supports authorized at the rates reimbursed by the county of residence.

(2) If the county of legal settlement has implemented a waiting list in accordance with Iowa Code section 331.439(5), the services and other supports for the person shall be authorized by the county of residence in accordance with the county of legal settlement’s waiting list provisions.

(3) If the county of residence has implemented a waiting list, the services and other supports for the person shall be authorized by the county of residence in accordance with the county of residence’s waiting list provisions.

b. No change.

HUMAN SERVICES DEPARTMENT[441](cont'd)

c. Notice of decision. The review process shall ensure a prompt screening for eligibility and initial decision to approve or reject the application or to gather more information. ~~A The policies and procedures manual shall include the process for development of a written notice of decision which explains the action taken on the application and the reasons for that action shall be sent to the applicant or authorized representative or, in the case of minors, the family or the applicant's authorized representative.~~ The time frame for sending a written notice of decision shall be included. ~~If the consumer is placed on a waiting list for funding, the notice of decision shall include an estimate of how long the consumer is expected to be on the waiting list and the process for the consumer or authorized representative to obtain information regarding the consumer's status on the waiting list. The notice of decision shall outline the applicant's right to appeal and include a description of the appeal process.~~

(1) The notice of decision shall:

1. Explain the action taken on the application and the reasons for that action;

2. State what services are approved and name the service providers;

3. Outline the applicant's right to appeal; and

4. Describe the appeal process.

(2) If the applicant is placed on the county of residence's waiting list for funding, the notice issued by the county of residence shall also include:

1. An explanation of waiting-list status;

2. An estimate of how long the applicant is expected to be on the waiting list; and

3. The process for the applicant or authorized representative to obtain information regarding the applicant's status on the waiting list.

(3) The county of residence shall send the notice of decision to:

1. The applicant (or the family in the case of a minor) or the applicant's authorized representative;

2. The applicant's county of legal settlement (if different from the county of residence); and

3. The listed service providers.

(4) If the applicant's county of legal settlement is different from the county of residence, the county of legal settlement shall sign the notice of decision accepting legal settlement and return it to:

1. The county of residence; and

2. The listed service providers.

(5) If the applicant is placed on the county of legal settlement's waiting list for funding, the county of legal settlement shall add to the notice of decision:

1. An explanation of waiting-list status;

2. An estimate of how long the applicant is expected to be on the waiting list; and

3. The process for the applicant or authorized representative to obtain information regarding the consumer's status on the waiting list.

d. to f. No change.

g. Service funding authorization and reauthorization. The plan administration section of the manual shall describe who makes the funding authorization and reauthorization decisions and the qualifications of that individual. The procedures shall describe the criteria for authorization and reauthorization of funding and a timeline for responding to the request for funding. ~~The procedures shall describe a process for coordinating the authorization of payment for services and supports with the county of legal settlement for persons with legal settlement in another county, or with the county departmental office for those with state case status. If the county of legal settlement and the county of residence mutually decide, the county of legal settlement may perform the intake and enrollment procedures.~~ For consumers whose county of residence differs from the county of legal settlement, the following procedures shall be used:

(1) The county of legal settlement may continue to authorize services for any consumer receiving services on or before June 30, 2007, even if the service is not in the management plan of the county of residence.

(2) The consumer shall apply for additional services with the CPC of the county of residence. The same procedure shall be followed as for a new applicant.

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(3) Once an applicant has been enrolled with the county of legal settlement, the county of legal settlement shall manage reauthorizations of enrollment, such as gathering annual updates of income and resources to confirm continuing eligibility.

(4) The county of legal settlement may also work directly with the consumer or service provider to do periodic service reauthorizations. Services and supports funding must be reauthorized in accordance with the management plan of the county of residence.

(5) A written notice of reauthorization for service funding shall be sent to:

1. The consumer;
 2. The county of residence; and
 3. The listed service providers.
- h. to j. No change.*

ITEM 4. Amend rule 441—25.14(331), introductory paragraph, as follows:

441—25.14(331) Policies and procedures manual review. The policies and procedures manual shall be submitted by April 1, 2000, as a part of the county's management plan for the fiscal year beginning July 1, 2000. The director, in consultation with the ~~state county management committee~~ commission, shall review all county management plans submitted by the dates specified. Based on the recommendations of the ~~state county management committee~~ commission, and if the director finds the county policies and procedures manual in compliance with these rules and state and federal laws, the director may approve the manual. A manual approved by the director for the fiscal year beginning July 1, 2000, shall remain in effect subject to amendment.

ITEM 5. Amend rule 441—25.15(331), introductory paragraph, as follows:

441—25.15(331) Amendments. An amendment to the manual shall be submitted to the department at least 45 days ~~prior to~~ before the date of implementation. ~~Prior to~~ Before implementation of any amendment to the manual, the director must approve the amendment. When an amendment substantially changes a county's policies and procedures manual, the department shall present the amendment to the ~~state county management committee~~ commission.

ITEM 6. Amend rule 441—25.16(331) as follows:

441—25.16(331) Reconsideration. Counties dissatisfied with the director's decision on a manual or an amendment may file a letter with the director requesting reconsideration. The letter of reconsideration must be received within 30 working days of the date of the notice of decision and shall include a request for the director to review the decision and the reasons for dissatisfaction. Within 30 working days of the receipt of the letter requesting reconsideration, the director, in consultation with the ~~state county management committee~~ commission, will review both the reconsideration request and evidence provided. The director shall issue a final decision, in writing.

ITEM 7. Amend rule 441—25.17(331), introductory paragraph, as follows:

441—25.17(331) Management plan annual review. The county shall prepare a management plan annual review for the county stakeholders, the department of human services and the ~~state county management committee~~ commission. The management plan annual review shall be submitted to the department for informational purposes by December 1. The management plan annual review shall incorporate an analysis of the data associated with the services managed during the preceding fiscal year by the county or by a managed care entity on behalf of the county. The management plan annual review shall include, but not be limited to:

ARC 7604B**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 2009 Iowa Acts, House File 64, section 5, the Department of Human Services proposes to amend Chapter 58, "Emergency Assistance," Iowa Administrative Code.

The proposed amendments adopt a new division intended to implement the Iowa Unmet Needs Disaster Grant Program (IUNDGP). This new program provides state assistance to address unmet disaster-related expenses that cannot be met by other financial assistance. The program provides for reimbursement for repair or replacement of personal property, home repair, mental health services, food assistance, child care, and temporary housing to households whose income is less than 300 percent of the federal poverty guidelines. The amount of assistance available to a household is capped at \$2,500.

The program is administered by the Department of Human Services in coordination with the Recovery Iowa Office and local Long-Term Recovery Committees established in affected areas. The Long-Term Recovery Committees will receive applications from affected households and will certify the households' residence and unmet disaster-related expenses and determine eligibility for assistance. Department staff will issue notices and payments and process any appeals.

These amendments do not provide for waivers in specified situations, since the changes benefit the households affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 7603B**. The purpose of this Notice is to solicit comment on that filing, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before April 1, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement 2009 Iowa Acts, House File 64, division II.

ARC 7629B**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," Iowa Administrative Code.

This amendment adjusts the premiums assessed for the coverage group "Medicaid for employed people with disabilities (MEPD)." Iowa Code section 249A.3, subsection 2, paragraph "a," specifies that a person in this group whose gross income exceeds 150 percent of the federal poverty level shall

HUMAN SERVICES DEPARTMENT[441](cont'd)

pay a premium based on a sliding fee schedule. The maximum premium must be commensurate with the cost of group health insurance for state employees. The Iowa State Plan for Medical Assistance, approved by the federal Centers for Medicare and Medicaid Services as a condition of federal funding, provides that the maximum premium shall be equal to 7.5 percent of the person's gross income.

The cost of state employee health insurance changes each year in January. The cost of state employees' health insurance for 2009 has gone down. Therefore, premiums for MEPD members are being reduced. The proposed amendments have smaller changes in the amount of the premium at lower income levels, where most premium payers fall, to ensure that low-income premium payers do not face large premium increases due to small increases in income. The changes to the poverty level increments are required to keep the top premium at 7.5 percent of income.

The Department of Health and Human Services announces new poverty level guidelines annually, usually in late January. The date on which the MEPD premiums will be revised is being changed because there is insufficient time to amend the premium amounts by April 1 without emergency rules.

These amendments do not provide for waivers in specific situations because all members should be subject to the same income-based premiums. A member who feels that exceptional circumstances justify a different premium may request a waiver under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before April 1, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code section 249A.3(2)“a.”

The following amendments are proposed.

ITEM 1. Amend paragraph **75.1(39)“b”** as follows:

b. Eligibility for a person whose gross income is greater than 150 percent of the federal poverty level for an individual is conditional upon payment of a premium. Gross income includes all earned and unearned income of the conditionally eligible person. A monthly premium shall be assessed at the time of application and at the annual review. The premium amounts and the federal poverty level increments above 150 percent of the federal poverty level used to assess premiums will be adjusted annually on ~~April~~ August 1.

(1) and (2) No change.

(3) Premiums shall be assessed as follows:

IF THE INCOME OF THE APPLICANT IS ABOVE:	THE MONTHLY PREMIUM IS:
150% of Federal Poverty Level	\$ 29 <u>25</u>
180% of Federal Poverty Level	\$ 53 <u>40</u>
220% of Federal Poverty Level	\$ 80 <u>55</u>
240% <u>250%</u> of Federal Poverty Level	\$ 110 <u>70</u>
262% <u>280%</u> of Federal Poverty Level	\$ 140 <u>85</u>
318% <u>310%</u> of Federal Poverty Level	\$ 170 <u>100</u>
342% <u>340%</u> of Federal Poverty Level	\$ 200 <u>120</u>
390% <u>370%</u> of Federal Poverty Level	\$ 230 <u>140</u>
425% <u>400%</u> of Federal Poverty Level	\$ 260 <u>165</u>
<u>430%</u> of Federal Poverty Level	\$ <u>190</u>
460% of Federal Poverty Level	\$ 291 <u>220</u>
500% <u>490%</u> of Federal Poverty Level	\$ 323 <u>255</u>
548% <u>530%</u> of Federal Poverty Level	\$ 354 <u>295</u>
607% <u>575%</u> of Federal Poverty Level	\$ 392 <u>340</u>

HUMAN SERVICES DEPARTMENT[441](cont'd)

IF THE INCOME OF THE APPLICANT IS ABOVE:	THE MONTHLY PREMIUM IS:
666% <u>620%</u> of Federal Poverty Level	\$430 <u>390</u>
725% <u>670%</u> of Federal Poverty Level	\$474 <u>452</u>
824% of Federal Poverty Level	\$535

(4) to (11) No change.

ITEM 2. Amend paragraph **75.1(39)“d,”** introductory paragraph, as follows:

d. For purposes of this ~~rule~~ subrule, the following definitions apply:

ARC 7630B

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,” Iowa Administrative Code.

The proposed amendments provide the Department’s annual updates of the statewide average cost of nursing facility services to a private-pay resident and the statewide average charges or maximum Medicaid rate for various levels of institutional care.

The statewide average cost of nursing facility services to a private-pay resident is determined by a survey of nursing facilities, including freestanding facilities, hospital-based skilled nursing facilities, and facilities serving special populations. This monthly average cost has increased from \$4,342.03 to \$4,598.61 (equivalent to \$151.27 per day). This amount is used to determine the period of ineligibility for Medicaid payment of nursing facility care and other long-term care services that is required when a person has transferred assets for less than market value to obtain Medicaid eligibility. The amount transferred is divided by this monthly average cost to determine the number of months of ineligibility. Since the cost has gone up, the resulting periods of ineligibility will be slightly shorter.

Iowa Code chapter 633C requires the Department to determine annually and publish the statewide average charges or maximum Medicaid rate for various levels of institutional care. These amounts are used to regulate the disposition of funds in a medical assistance income (Miller-type) trust. A medical assistance income trust allows a person whose income is above the Medicaid income limit for long-term care (currently \$2,022 per month) but is less than the cost of care in a medical institution to attain eligibility by depositing the income in a trust. An increase in the average charge allows more people to qualify for Medicaid using this method.

Changes in the average charge or maximum figures are as follows:

- Nursing facility care: an increase to \$4,189 per month (previously \$3,923). This figure is based on data from freestanding facilities only, since the cost of special care is considered separately.
- ICF/MR care: an increase to \$20,960 per month (previously \$17,954).
- Mental health institute care: an increase to \$17,758 per month (previously \$16,363).
- Care in a psychiatric medical institution for children: an increase to \$5,044 per month (previously \$4,975).

These amendments do not provide for waivers in specified situations since the basis for the figures is set by statute.

Any interested person may make written comments on the proposed amendments on or before April 1, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and

HUMAN SERVICES DEPARTMENT[441](cont'd)

Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code section 249A.4 and Iowa Code chapter 633C.

The following amendments are proposed.

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 department shall determine the average statewide cost to a private-pay resident for nursing facilities and update the cost annually. For the period from July 1, ~~2008~~ 2009, through June 30, ~~2009~~ 2010, this average statewide cost shall be ~~\$4,342.03~~ \$4,598.61 per month or ~~\$142.83~~ \$151.27 per day.

ITEM 2. Amend paragraph **75.24(3)"b"** 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 633C.1~~ to ~~633.711 633C.5~~, the average statewide charges and Medicaid rates for the period from July 1, ~~2008~~ 2009, to June 30, ~~2009~~ 2010, shall be as follows:

(1) The average statewide charge to a private-pay resident of a nursing facility is ~~\$3,923~~ \$4,189 per month.

(2) and (3) Rescinded IAB 7/7/04, effective 7/1/04.

(4) The maximum statewide Medicaid rate for a resident of an intermediate care facility for the mentally retarded is ~~\$17,954~~ \$20,960 per month.

(5) The average statewide charge to a resident of a mental health institute is ~~\$16,363~~ \$17,758 per month.

(6) The average statewide charge to a private-pay resident of a psychiatric medical institution for children is ~~\$4,975~~ \$5,044 per month.

(7) No change.

ARC 7631B

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 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Chapter 83, "Medicaid Waiver Services," and Chapter 90, "Case Management for People With Mental Retardation, Chronic Mental Illness, or Developmental Disabilities," Iowa Administrative Code.

The proposed amendments make the following changes related to the provision of case management services under the Medicaid program:

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Redefine the scope of case management services to closely match the language of federal regulations published at 72 Federal Register 68,077 (December 4, 2007) that, following a moratorium, become effective on April 1, 2009. These amendments will ensure that case management services funded by Iowa Medicaid are consistent with the federal regulations.
- Clarify the role of the case manager in ensuring the health, safety, and welfare of members, including requirements for monitoring in response to incident reports.
- Remove the requirement for preauthorization for members not covered under the Iowa Plan managed behavioral care contract and add quality assurance oversight.
- Lengthen from 30 days to 60 days the period that case management may be provided to Medicaid members before they transition from an institution to a community setting.
- Change the basis of reimbursement for case management from a monthly unit to a 15-minute unit as required by federal regulations.
- Delete the scope of service for case management for the home- and community-based (HCBS) habilitation services and elderly and brain injury waiver programs and instead refer to the case management scope of service in 441—Chapter 90. Case management services provided through the HCBS habilitation services program and the HCBS brain injury waiver and elderly waiver programs will be required to meet the same service requirements as case management provided under 441—Chapter 90.

Specific waivers are not provided because the changes are required by federal regulations, which do not allow for exceptions, or should apply to all targeted case management services. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before April 2, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

The Department will also hold a public hearing for the purpose of receiving comments on these proposed amendments on Thursday, April 2, 2009, from 1:30 to 3 p.m. at the Iowa Medicaid Enterprise, Room 128, 100 Army Post Road, Des Moines, Iowa. Persons with disabilities who require assistive services or devices to observe or participate should contact the Bureau of Policy Analysis and Appeals at (515)281-8440 in advance of the scheduled date to request that appropriate arrangements be made.

These amendments are intended to implement Iowa Code sections 249A.4, 249A.26, and 249A.27.

The following amendments are proposed.

ITEM 1. Amend paragraphs **78.27(2)“d”** and **“e”** as follows:

d. Needs assessment. The member's case manager has completed an assessment of the member's need for service, and, based on that assessment, the Iowa Medicaid enterprise medical services unit has determined that the member is in need of home- and community-based habilitation services. A member who is not eligible for Medicaid case management services under 441—Chapter 90 shall receive case management as a home- and community-based habilitation service. The designated case manager shall:

(1) Complete a needs-based evaluation that meets the standards for assessment established in 441—subrule ~~24.4(2)~~ 90.5(1) before services begin and annually thereafter.

(2) Use the evaluation results to develop a comprehensive service plan as specified in subrule 78.27(4).

e. Plan for service. The department has approved the member's plan for home- and community-based habilitation services. A service plan that has been validated through ISIS shall be considered approved by the department. Home- and community-based habilitation services provided before department approval of a member's eligibility for the program cannot be reimbursed.

(1) The member's comprehensive service plan shall be completed annually according to the requirements of subrule 78.27(4). A service plan may change at any time due to a significant change in the member's needs.

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~(2) —The member shall receive at least one billable unit of service other than case management per calendar quarter.~~

~~(3) (2)~~ The member's habilitation services shall not exceed the maximum number of units established for each service in 441—subrule 79.1(2).

~~(4) (3)~~ The cost of the habilitation services shall not exceed unit expense maximums established in 441—subrule 79.1(2).

ITEM 2. Amend paragraph **78.27(5)“e”** as follows:

e. Service costs are not reimbursable while the member is in a medical institution, including but not limited to a hospital or nursing facility, except case management provided when the member is transitioning from the institution to a community setting as provided in 441—Chapter 90.

ITEM 3. Amend subrule 78.27(6) as follows:

78.27(6) Case management. Case management assists members who reside in a community setting or are transitioning to a community setting in gaining access to needed home and community based habilitation services, as well as medical, social, educational, housing, transportation, vocational, and other appropriate services, regardless of the funding source for the services in order to ensure the health, safety, and welfare of the member.

a. Scope. Case management services shall be provided as set forth in ~~rule~~ rules 441—90.5(249A) and 90.8(249A). ~~The case manager shall be responsible for the following activities:~~

- ~~(1) —Explaining the member's right to freedom of choice.~~
- ~~(2) —Ensuring that all unmet needs of the member are identified in the service plan.~~
- ~~(3) —Retaining the comprehensive service plan, as specified in rule 441—79.3(249A).~~
- ~~(4) —Explaining to the member what abuse is, and how to report abuse.~~
- ~~(5) —Explaining to the member how to make a complaint about the member's services or providers.~~
- ~~(6) —Monitoring the service plan, with review occurring regularly.~~
- ~~(7) —Meeting with the member face to face at least quarterly.~~
- ~~(8) —Assessing and revising the service plan at least annually to determine achievement, continued need, or changes in goals or intervention methods. The review shall include the member using the service and shall involve the interdisciplinary team.~~
- ~~(9) —Notifying the member of any changes in the service plan by sending the member a notice of decision. When the change is an adverse action such as a reduction in services, the notice shall be sent ten days before the change and shall include appeal rights.~~

b. Exclusion. Payment shall not be made for case management provided to a member who is eligible for case management services under 441—Chapter 90.

ITEM 4. Amend subrule 78.37(17) as follows:

78.37(17) Case management services. Case management services are services that assist ~~a consumer~~ Medicaid members who reside in a community setting or are transitioning to a community setting in gaining access to needed medical, social, educational, housing, transportation, vocational, and other appropriate services needed for the consumer to remain in the consumer's home in order to ensure the health, safety, and welfare of the member. Case management is provided at the direction of the ~~consumer member~~ and the interdisciplinary team established pursuant to 441—subrule 83.22(2).

a. Case management services shall ~~include:~~ be provided as set forth in rules 441—90.5(249A) and 90.8(249A).

- ~~(1) —A comprehensive assessment of the consumer's needs, which must be made within 30 days of referral to case management.~~
- ~~(2) —Development and implementation of a service plan to meet those needs.~~
- ~~(3) —Coordination, authorization, and monitoring of all services.~~
- ~~(4) —A face to face meeting by the case manager with the consumer at least quarterly.~~
- ~~(5) —Monitoring of the consumer's health, safety, and welfare.~~
- ~~(6) —Evaluation of outcomes.~~
- ~~(7) —Periodic reassessment and revision of the service plan as needed but at least annually.~~
- ~~(8) —Assurance that consumers have a choice of providers.~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

b. Case management shall not include the provision of direct services by the case managers.

c. Payment for case management shall not be made until the consumer is enrolled in the waiver. Payment shall be made only for case management ~~activity~~ services performed on behalf of the consumer during a month when the consumer is enrolled.

~~d. — A unit of service is one month.~~

ITEM 5. Amend subrule 78.43(1) as follows:

78.43(1) Case management services. Individual case management services means ~~activities provided, using an interdisciplinary process, to persons with a brain injury to ensure that the consumer has received a comprehensive evaluation and diagnosis, to give assistance to the consumer in obtaining appropriate services and living arrangements, that assist members who reside in a community setting or are transitioning to a community setting in gaining access to~~ coordinate the delivery of needed medical, social, educational, housing, transportation, vocational, and other appropriate services, and to provide monitoring in order to ensure the continued appropriate provision of services and the appropriateness of the selected living arrangement health, safety, and welfare of the member.

a. Case management services shall be provided as set forth in rules 441—90.5(249A) and 90.8(249A).

b. The service is to shall be delivered in such a way as to enhance the capabilities of consumers and their families to exercise their rights and responsibilities as citizens in the community. The goal is to enhance the ability of the consumer to exercise choice, make decisions, take risks ~~which~~ that are a typical part of life, and fully participate as members of the community.

c. It is essential that the The case manager must develop a relationship with the consumer so that the abilities, needs and desires of the consumer can be clearly identified and communicated and the case manager can help to ensure that the system and specific services are responsive to the needs of the individual consumers.

d. Those Members who are at the ICF/MR level of care ~~where the~~ whose county has voluntarily chosen to participate in the HCBS brain injury waiver are eligible for targeted case management and, therefore, are not eligible for case management as a waiver service.

~~Case management services shall consist of the following components:~~

~~a. — Intake, which includes ensuring that there is sufficient information to identify all areas of need for services and appropriate living arrangements.~~

~~b. — Assurance that a service plan is developed which addresses the consumer's total needs for services and living arrangements.~~

~~c. — Assistance to the consumer in obtaining the services and living arrangements identified in the service plan.~~

~~d. — Coordination and facilitation of decision making among providers to ensure consistency in the implementation of the service plan.~~

~~e. — Monitoring of the services and living arrangements to ensure their continued appropriateness for the consumer.~~

~~f. — Crisis assistance to facilitate referral to the appropriate providers to resolve the crisis. The intent and purpose of the individual case services are to facilitate the consumer's access to the service system and to enable consumers and their families to make decisions on their own behalf by providing:~~

~~(1) — Information necessary for decision making.~~

~~(2) — Assistance with decision making and participation in the decision making process affecting the consumer.~~

~~(3) — Assistance in problem solving.~~

~~(4) — Assistance in exercising the consumer's rights.~~

ITEM 6. Amend paragraph 79.1(1)“d” as follows:

~~Monthly fee~~ Fee for service with cost settlement. Providers Effective July 1, 2009, providers of MR/CMI/DD case management services are shall be reimbursed on the basis of a payment rate for a month's provision 15-minute unit of service for each client enrolled in an MR/CMI/DD case management program for any portion of the month based on reasonable and proper costs for service provision. The

HUMAN SERVICES DEPARTMENT[441](cont'd)

fee will be determined by the department with advice and consultation from the appropriate professional group and will reflect the amount of resources involved in service provision.

(1) Providers are reimbursed throughout each fiscal year on the basis of a projected ~~monthly unit~~ rate for each participating provider. The projected rate is based on reasonable and proper costs of operation, pursuant to federally accepted reimbursement principles (generally Medicare or OMB A-87 principles) with.

(2) Payments are subject to annual retrospective cost settlement based on submission of actual costs of operation and service utilization data by the provider on ~~financial and statistical reports~~ Form 470-0664, Financial and Statistical Report. The cost settlement represents the difference between the amount received by the provider during the year for covered services and the amount supported by the actual costs of doing business, determined in accordance with an accepted method of cost appointment.

(3) The methodology for determining the reasonable and proper cost for service provision assumes the following:

- (1) 1. The indirect administrative costs shall be limited to 20 percent of other costs.
- (2) 2. Mileage shall be reimbursed at a rate no greater than the state employee rate.
- (3) 3. The rates a provider may charge are subject to limits established at 79.1(2).
- (4) 4. Costs of operation shall include only those costs ~~which that~~ pertain to the provision of services which are authorized under rule 441—90.3(249A).

ITEM 7. Amend subrule **79.1(2)**, provider category “HCBS waiver service providers,” numbered item “**17**,” as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
17. Case management	Fee schedule <u>with cost settlement. See 79.1(1)“d.”</u>	For brain injury waiver: \$598.68 per month <u>Retrospective cost-settled rate.</u> For elderly waiver: \$70 per month.

ITEM 8. Amend subrule **79.1(2)**, provider category “Home- and community-based habilitation services,” numbered item “**1**,” as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
1. Case management	Fee schedule based on MR/CMI/DD case management rates as set under <u>with cost settlement. See 79.1(1)“d.”</u>	\$598.68 per month <u>Retrospective cost-settled rate.</u>

ITEM 9. Amend subrule **79.1(2)**, provider category “MR/CMI/DD case management providers,” as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
MR/CMI/DD <u>Targeted case management providers</u>	Monthly fee <u>Fee for service with cost settlement. See 79.1(1)“d”</u>	Retrospective cost-settled rate.

ITEM 10. Amend subparagraph **79.1(24)“a”(1)** as follows:

- (1) A unit of case management is ~~one month~~ 15 minutes.

ITEM 11. Amend subparagraph **79.3(2)“d”(33)** as follows:

(33) Case management services, including HCBS case management services:

- 1. Form 470-3956, MR/CMI/DD Case Management Service Authorization Request, for services authorized before May 1, 2007.
- 2. Notice of decision for service authorization.
- 3. Service notes or narratives.

HUMAN SERVICES DEPARTMENT[441](cont'd)

4. Social history.
5. ~~Individual treatment~~ Comprehensive service plan.
6. Reassessment of member needs.
7. Incident reports in accordance with 441—subrule 24.4(5).

ITEM 12. Amend paragraph **83.22(2)“a”** as follows:

a. Case management. ~~As a condition of eligibility, all consumers~~ Consumers under the elderly waiver shall receive case management services from a provider qualified pursuant to 441—subrule 77.33(21). Case management services shall be provided as set forth in rules 441—90.5(249A) and 90.8(249A). ~~The case manager shall be responsible for doing the following:~~

- ~~(1) Making a comprehensive assessment of the consumer’s needs within 30 days of referral to case management.~~
- ~~(2) Initiating development and review of the service plan as required by this subrule.~~
- ~~(3) Ensuring that the consumer exhausts all services available under the state Medicaid plan before accessing the waiver.~~
- ~~(4) Ensuring that all unmet needs of the consumer are identified in the service plan.~~
- ~~(5) Explaining the following to the consumer:~~
 - ~~1. What abuse is and how to report abuse.~~
 - ~~2. How to file a complaint about the consumer’s services or providers.~~
 - ~~3. The consumer’s right to freedom of choice.~~
- ~~(6) Verifying that providers of consumer-directed attendant care are adequately skilled to meet the needs of the consumer.~~

ITEM 13. Amend **441—Chapter 90**, title, as follows:

TARGETED CASE MANAGEMENT FOR PEOPLE WITH MENTAL RETARDATION,
CHRONIC MENTAL ILLNESS, OR DEVELOPMENTAL DISABILITIES

ITEM 14. Amend **441—Chapter 90**, preamble, as follows:

PREAMBLE

These rules define and structure medical assistance targeted case management services provided in accordance with Iowa Code section 225C.20 for ~~consumers~~ Medicaid members with mental retardation (~~MR~~), chronic mental illness (~~CMI~~), or a developmental disability (~~DD~~) and ~~consumers~~ members eligible for the home- and community-based services (HCBS) children’s mental health waiver. Provider accreditation standards are set forth in 441—Chapter 24.

Case management is a method to manage multiple resources effectively for the benefit of Medicaid ~~consumers~~ members. The service is designed to ~~help consumers gain~~ ensure the health, safety, and welfare of members by assisting them in gaining access to appropriate and necessary medical services and interrelated social ~~and~~ educational, housing, transportation, vocational, and other services. ~~Case management ensures that necessary evaluations are conducted; individual service and treatment plans are developed, implemented, and monitored; and reassessment of consumer needs and services occurs on an ongoing and regular basis.~~

ITEM 15. Rescind the definition “MR/CMI/DD case management” in rule **441—90.1(249A)**.

ITEM 16. Amend rule **441—90.1(249A)**, definitions of “Adult” and “Targeted population,” as follows:

“*Adult*” means a person 18 years of age or older on the first day of the month in which service begins.

“*Targeted population*” means people who meet one of the following criteria:

1. An adult who is identified with a primary diagnosis of mental retardation, chronic mental illness or developmental disability; or
2. A child who is eligible to receive HCBS mental retardation waiver or HCBS children’s mental health waiver services according to 441—Chapter 83; ~~or.~~

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~~3. — A child who has a primary diagnosis of mental retardation or developmental disability, resides in a child welfare decategorization county, and is likely to become eligible to receive HCBS mental retardation waiver services.~~

ITEM 17. Adopt the following **new** definitions in rule **441—90.1(249A)**:

“*Major incident*” means an occurrence involving a member using the service that:

1. Results in a physical injury to or by the member that requires a physician’s treatment or admission to a hospital; or
2. Results in a member’s death or the death of another person; or
3. Requires emergency mental health treatment for the member; or
4. Requires the intervention of law enforcement; or
5. Requires a report of child abuse pursuant to Iowa Code section 232.69 or a report of dependent adult abuse pursuant to Iowa Code section 235B.3; or
6. Constitutes a prescription medication error or a pattern of medication errors that leads to the outcome in paragraph “1,” “2,” or “3.”
7. Results when a member’s location is unknown by provider staff who are assigned responsibility for oversight.

“*Member*” means a person who has been determined to be eligible for Medicaid under 441—Chapter 75.

“*Rights restriction*” means limitations not imposed on the general public in the areas of communication, mobility, finances, medical or mental health treatment, intimacy, privacy, type of work, religion, place of residence, and people with whom a person may share a residence.

“*Targeted case management*” means services furnished to assist members who are part of a targeted population who reside in a community setting or are transitioning to a community setting in gaining access to needed medical, social, educational, housing, transportation, vocational, and other services in order to ensure the health, safety, and welfare of the member. Case management is provided to a member on a one-to-one basis by one case manager.

ITEM 18. Amend rule 441—90.2(249A) as follows:

441—90.2(249A) Eligibility. A person who meets all of the following criteria shall be eligible for ~~MR/CMI/DD~~ targeted case management:

90.2(1) The person is eligible for Medicaid or is conditionally eligible under 441—subrule 75.1(35).

90.2(2) The person is a member of the targeted population.

90.2(3) The person ~~does not reside~~ resides in a medical institution community setting or is ~~within 30 days of discharge~~ transitioning to a community setting from a medical institution Medicaid-covered short-term or long-term institutional stay.

a. In the case of a short-term institutional stay of less than 180 consecutive days, a person may be considered to be transitioning to a community setting during the last 14 days before discharge.

b. In the case of a long-term institutional stay of 180 or more consecutive days, a person may be considered to be transitioning to a community setting during the last 60 days before discharge.

c. Eligibility for persons transitioning to a community setting is contingent upon a successful transition.

90.2(4) The person has applied for ~~MR/CMI/DD~~ targeted case management in accordance with the policies of the provider.

90.2(5) ~~The person has been authorized~~ person’s need for MR/CMI/DD targeted case management has been determined in accordance with rule 441—90.3(249A).

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ITEM 19. Amend rule 441—90.3(249A), catchwords, as follows:

441—90.3(249A) Authorization and Determination of need for service.

ITEM 20. Rescind and reserve subrule **90.3(1)**.

ITEM 21. Amend subrules 90.3(2) and 90.3(3) as follows:

90.3(2) Need for service. Assessment of the need for targeted case management is required at least annually as a condition of payment under the medical assistance program. The department case management provider shall determine the initial and ongoing need for service based on evidence presented by the MR/CMI/DD case management provider, including diagnostic reports, documentation of provision of services, and information supplied by the consumer member and other appropriate sources. The evidence shall be documented in the member's file and shall demonstrate that all of the following criteria are met:

a. The consumer member has a need for MR/CMI/DD targeted case management to manage multiple resources pertaining to needed medical, and interrelated social, and educational, housing, transportation, vocational, and other services for the benefit of the consumer member.

b. The consumer member has functional limitations and lacks the ability to independently access and sustain involvement in necessary services.

c. The consumer member is not receiving other paid benefits under the medical assistance program or under a Medicaid managed health care plan that serve the same purpose as MR/CMI/DD targeted case management.

90.3(3) Managed health care. For consumers members receiving MR/CMI/DD targeted case management under a Medicaid managed health care the Iowa plan for behavioral health as described in 441—Chapter 88, Division IV, the department delegates authorization and determination of need for service to the managed health care Iowa plan contractor.

a. The managed health care Iowa plan contractor shall authorize determine the need for targeted case management services according to the criteria and procedures set forth in this chapter subrule 90.3(2).

b. The Iowa plan contractor is not required to pay for targeted case management services that it has not authorized or that are provided during a month of Medicaid ineligibility.

ITEM 22. Rescind and reserve subrule **90.3(4)**.

ITEM 23. Amend rule 441—90.4(249A) as follows:

441—90.4(249A) Application. The provider shall process an application for MR/CMI/DD targeted case management no later than 30 days after receipt of the application. The provider shall refer the applicant to the department's service unit if other services are needed or requested.

90.4(1) Application ~~record~~ process and documentation. The application shall include the consumer's member's name, the nature of the request for services, and a summary of any evaluation activities completed. The provider shall inform the applicant in writing of the applicant's right to choose the provider of case management services and, at the applicant's request, shall provide a list of other case management agencies from which the applicant may choose. The provider shall maintain this documentation for at least five years.

90.4(2) No change.

90.4(3) Delayed services. The application shall be approved and the consumer member put on the referral list for assignment to a case manager when MR/CMI/DD targeted case management cannot begin immediately because there is no opening on a caseload. The provider shall notify the applicant or the applicant's legally authorized representative in writing of approval and placement on the referral list. If an applicant is on a referral list for more than 90 days from the date of application, this shall be considered a denial of service.

90.4(4) Denying applications. The provider shall deny applications for service when:

a. to d. No change.

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- e.* The applicant is receiving ~~MR/CMI/DD~~ targeted case management from another Medicaid provider; or
- f.* The applicant does not have a need for ~~MR/CMI/DD~~ targeted case management.

ITEM 24. Rescind rule 441—90.5(249A) and adopt the following new rule in lieu thereof:

441—90.5(249A) Service provision.

90.5(1) Covered services. The following shall be included in the assistance that case managers provide to members in obtaining services:

a. Assessment. The case manager shall perform a comprehensive assessment and periodic reassessment of the member's individual needs using Form 470-4694, Targeted Case Management Comprehensive Assessment, to determine the need for any medical, social, educational, housing, transportation, vocational or other services. The comprehensive assessment shall address all of the member's areas of need, strengths, preferences, and risk factors, considering the member's physical and social environment. A face-to-face reassessment must be conducted at a minimum annually and more frequently if changes occur in the member's condition. The assessment and reassessment activities include the following:

- (1) Taking the member's history, including current and past information and social history in accordance with 441—subrule 24.4(2), and updating it annually.
- (2) Identifying the needs of the member and completing related documentation.
- (3) Gathering information from other sources, such as family members, medical providers, social workers, legally authorized representatives, and others as necessary to form a complete assessment of the member.

b. Service plan. The case manager shall develop and periodically revise a comprehensive service plan based on the risk factors identified in the risk assessment portion of the comprehensive assessment. The case manager shall ensure the active participation of the member and work with the member or the member's legally authorized representative and other sources to choose providers and develop the goals. This plan shall:

- (1) Document the parties participating in the development of the plan.
- (2) Specify the goals and actions to address the medical, social, educational, housing, transportation, vocational or other services needed by the member.
- (3) Identify a course of action to respond to the member's assessed needs, including identification of all providers, services to be provided, and time frames for services.
- (4) Document services identified to meet the needs of the member which the member declined to receive.
- (5) Include an individualized crisis intervention plan that identifies the supports available to the member in an emergency. A crisis intervention plan shall identify:
 1. Any health and safety issues applicable to the individual member based on the risk factors identified in the member's comprehensive assessment.
 2. An emergency backup support and crisis response system, including emergency backup staff designated by providers, to address problems or issues arising when support services are interrupted or delayed or the member's needs change.

- (6) Include a discharge plan.
- (7) Be revised at least annually, and more frequently if significant changes occur in the member's medical, social, educational, housing, transportation, vocational or other service needs or risk factors.

c. Referral and related activities. The case manager shall perform activities to help the member obtain needed services, such as scheduling appointments for the member, and activities that help link the member with medical, social, educational, housing, transportation, vocational or other service providers or other programs and services that are capable of providing needed services to address identified needs and risk factors and to achieve goals specified in the service plan.

d. Monitoring and follow-up. The case manager shall perform activities and make contacts that are necessary to ensure the health, safety, and welfare of the member and to ensure that the service plan is effectively implemented and adequately addresses the needs of the member. At a minimum,

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monitoring shall include assessing the member, the places of service (including the member's home when applicable), and all services. Monitoring may also include review of service provider documentation. Monitoring shall be conducted to determine whether:

- (1) Services are being furnished in accordance with the member's service plan, including the amount of service provided and the member's attendance and participation in the service.
- (2) The member has declined services in the service plan.
- (3) Communication is occurring among all providers to ensure coordination of services.
- (4) Services in the service plan are adequate, including the member's progress toward achieving the goals and actions determined in the service plan.
- (5) There are changes in the needs or status of the member. Follow-up activities shall include making necessary adjustments in the service plan and service arrangements with providers.

e. Contacts. Case management contacts shall occur as frequently as necessary and shall be conducted and documented as follows:

(1) The case manager shall have at least one face-to-face contact with the member every three months.

(2) The case manager shall have at least one contact per month with the member, the member's legally authorized representative, the member's family, service providers, or other entities or individuals. This contact may be face-to-face or by telephone. The contact may also be by written communication, including letters, E-mail, and fax, when the written communication directly pertains to the needs of the member. A copy of any written communication must be maintained in the case file.

(3) The case manager shall have contacts with non-eligible persons that are directly related to identifying the member's needs and care as necessary for the purpose of helping the member access services, identifying needs and supports to assist the member in obtaining services, providing case managers with useful feedback, and alerting case managers to changes in the member's needs.

(4) When applicable, documentation of case management contacts shall include:

1. The name of the service provider.
2. The need for and occurrences of coordination with other case managers within the same agency or of referral or transition to another case management agency.

90.5(2) Exclusions. Payment shall not be made for activities otherwise within the definition of case management when any of the following conditions exist:

a. The activities are an integral component of another covered Medicaid service.
b. The activities constitute the direct delivery of underlying medical, social, educational, housing, transportation, vocational or other services to which a member has been referred. Such services include, but are not limited to:

- (1) Services under parole and probation programs.
- (2) Public guardianship programs.
- (3) Special education programs.
- (4) Child welfare and child protective services.
- (5) Foster care programs.

c. The activities are integral to the administration of foster care programs, including but not limited to the following:

- (1) Research gathering and completion of documentation required by the foster care program.
- (2) Assessing adoption placements.
- (3) Recruiting or interviewing potential foster care parents.
- (4) Serving legal papers.
- (5) Home investigations.
- (6) Providing transportation.
- (7) Administering foster care subsidies.
- (8) Making placement arrangements.

d. The activities for which a member may be eligible are integral to the administration of another nonmedical program, such as a guardianship, child welfare or child protective services, parole, probation,

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or special education program, except for case management that is included in an individualized education program or individualized family service plan consistent with Section 1903(c) of the Social Security Act.

e. The activities duplicate institutional discharge planning.

90.5(3) Transition to a community setting. Case management services may be provided to members transitioning to a community setting during the 60 days before discharge from a medical institution when the following requirements are met:

a. Case management services shall be coordinated with institutional discharge planning, but shall not duplicate institutional discharge planning.

b. The amount, duration, and scope of case management services shall be documented in the member's plan of care, which must include case management services before and after discharge, to facilitate a successful transition to community living.

c. Payment shall be made only for services provided by community case management providers.

d. Claims for reimbursement for case management shall not be submitted until the member's discharge from the medical institution and enrollment in community services.

90.5(4) Rights restrictions. Member rights may be restricted only with the consent of the member or the member's legally authorized representative and only if the service plan includes:

a. Documentation of why there is a need for the restriction;

b. A plan to restore those rights or a reason why restoration is not necessary or appropriate; and

c. Documentation that periodic evaluations of the restriction are conducted to determine continued need.

90.5(5) Documentation. Service documentation shall also meet the requirements set forth in rule 441—79.3(249A) and 441—subrule 24.4(4).

ITEM 25. Strike “MR/CMI/DD” wherever it appears in rules **441—90.6(249A)** and **441—90.7(249A)** and insert “targeted” in lieu thereof.

ITEM 26. Strike “consumer” wherever it appears in rules **441—90.6(249A)** and **441—90.7(249A)** and insert “member” in lieu thereof.

ITEM 27. Adopt the following **new** rules 441—90.8(249A) and 441—90.9(249A):

441—90.8(249A) Terminating services.

90.8(1) Targeted case management shall be terminated when:

a. The member does not meet eligibility criteria under rule 441—90.2(249A); or

b. The member has achieved all goals and objectives of the service; or

c. The member has no current need for targeted case management; or

d. The member receiving targeted case management based on eligibility under an HCBS waiver is no longer eligible for the waiver; or

e. The member or the member's legally authorized representative requests termination; or

f. The member is unwilling or unable to accept further services; or

g. The member or the member's legally authorized representative fails to provide access to information necessary for the development of the service plan or implementation of targeted case management.

90.8(2) The provider shall notify the member or the member's legally authorized representative in writing of the termination of targeted case management, in accordance with 441—subrule 7.7(1).

441—90.9(249A) Appeal rights.

90.9(1) Appeal to the provider. After notice of an adverse decision by the provider of targeted case management, the member or the member's representative may request an appeal as provided in the appeal process established by the provider.

90.9(2) Appeal to the department. After notice of an adverse decision by the department pertaining to authorization and need for service, the member or the member's representative may request reconsideration by the department by sending a letter to the department not more than 30 days after

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the date of the notice of adverse decision. The member or the member's representative may appeal an adverse reconsideration decision by the department as provided in 441—Chapter 7.

90.9(3) *Appeal to the managed health care contractor.* After notice of an adverse decision by a managed health care plan, the member or the member's representative may request a review as provided in rule 441—88.68(249A).

ARC 7627B**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 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

The proposed amendment updates references to the Code of Federal Regulations relating to payment methodology for prescription drugs. The regulations have been reorganized since the rule was last amended. The amendment does not represent a change in state policy.

This amendment does not provide for waivers in specified situations because the Department does not have the authority to waive federal regulations.

Any interested person may make written comments on the proposed amendment on or before April 1, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

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

The following amendment is proposed.

Amend subrule 79.1(8) as follows:

79.1(8) *Drugs.* The amount of payment shall be based on several factors, subject to the upper limits in 42 CFR ~~447.331-332~~ 447.500 to 447.520 as amended to ~~April 18, 2002~~ October 7, 2008. The Medicaid program relies on information published by Medi-Span to classify drugs as brand-name or generic.

a. Effective June 25, 2005, reimbursement for covered generic prescription drugs shall be the lowest of the following, as of the date of dispensing:

(1) No change.

(2) The maximum allowable cost (MAC), defined as the upper limit for multiple source drugs established in accordance with the methodology of Centers for Medicare and Medicaid Services as described in 42 CFR ~~447.332~~ 447.514, plus the professional dispensing fee specified in paragraph "g."

(3) and (4) No change.

b. to j. No change.

ARC 7635B**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) and 2008 Iowa Acts, chapter 1188, section 14, the Department of Human Services proposes to amend Chapter 86, "Healthy and Well Kids in Iowa (HAWK-I) Program," Iowa Administrative Code.

The proposed amendments would:

- Increase the HAWK-I income limits from 200 percent of the federal poverty level to 300 percent of the federal poverty level (\$5,513 per month for a family of four) beginning July 1, 2009.
- Implement increased monthly cost sharing for children with gross family income between 250 and 300 percent of the federal poverty level (\$20 per month per child up to a maximum of \$40 per family).

The eligibility change was enacted in 2008 Iowa Acts, chapter 1188, as the "HAWK-I Expansion Program." This legislation also gives the HAWK-I Board the authority to set cost-sharing amounts for children with family income between 200 and 300 percent of the federal poverty level.

These amendments do not provide for waivers in specified situations because expanded coverage is a benefit to the families affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before April 1, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code chapter 514I.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions in rule **441—86.1(514I)**:

"Earned income" means the earned income of all parents, spouses, and children under the age of 19 who are not students who are living together in accordance with subrule 86.2(3). Income shall be countable earned income when a person produces it as a result of the performance of services. "Earned income" includes:

1. All income in the form of a salary, wages, tips, bonuses, and commissions earned as an employee, and
2. The net profit from self-employment determined by comparing gross income produced from self-employment with the allowable costs of producing the income. The allowable costs of producing self-employment income shall be determined by the costs allowed for income tax purposes. Additionally, the cost of depreciation of capital assets identified for income tax purposes shall be allowed as a cost of doing business for self-employed persons. Losses from a self-employment enterprise may not be used to offset income from any other source.

"Gross countable income" means gross income minus exemptions permitted by paragraph 86.2(2)"b."

"Gross income" means a combination of the following:

1. Earned income,
2. Unearned income, and
3. Recurring lump-sum income prorated over the time the income is intended to cover.

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“*Recurring lump-sum income*” means earned and unearned lump-sum income that is received on a regular basis. These payments may include, but are not limited to:

1. Annual bonuses.
2. Lottery winnings that are paid out annually.

“*Self-employed*” means that a person satisfies any of the following conditions:

1. The person is not required to report to the office regularly except for specific purposes such as sales training meetings, administrative meetings, or evaluation sessions; or
2. The person establishes the person’s own working hours, territory, and methods of work; or
3. The person files quarterly reports of earnings, withholding payments, and FICA payments to the Internal Revenue Service.

“*Unearned income*” means cash income of all parents, spouses, and children under the age of 19 who are living together in accordance with subrule 86.2(3) that is not gained by labor or service. The available unearned income shall be the amount remaining after the withholding of taxes (Federal Insurance Contribution Act, state and federal income taxes). Examples of unearned income include, but are not limited to:

1. Social security benefits, meaning the amount of the entitlement before withholding of a Medicare premium.
2. Child support and alimony payments received for a member of the family.
3. Unemployment compensation.
4. Veterans benefits.

ITEM 2. Amend subrule 86.2(2), introductory paragraph, as follows:

~~**86.2(2) Income.** Countable income shall not exceed 200 percent of the federal poverty level for a family of the same size when determining initial and ongoing eligibility for the program.~~

ITEM 3. Rescind paragraph **86.2(2)“a”** and adopt the following **new** paragraph in lieu thereof:

a. Gross countable income. In determining initial and ongoing eligibility for the HAWK-I program, gross countable income shall not exceed 300 percent of the federal poverty level for a family of the same size.

ITEM 4. Rescind and reserve subrule **86.8(1)**.

ITEM 5. Amend subrule 86.8(2) as follows:

~~**86.8(2) Premium amount.** The premium amount shall be \$10 per month per child up to a maximum of \$20 per month per family. Premiums under the HAWK-I program shall be assessed as follows:~~

a. No premium is charged if:

(1) The eligible child is an American Indian or Alaskan Native;

(2) The family’s gross countable income is less than 150 percent of the federal poverty level for a family of the same size; or

(3) A combination of the family’s unearned income plus 80 percent of the gross earned income after exclusions permitted by paragraph 86.2(2) “b” is less than 150 percent of the federal poverty level for a family of the same size.

b. If the family’s gross countable income is equal to or exceeds 250 percent of the federal poverty level for a family of the same size, the premium is \$20 per child per month with a \$40 monthly maximum per family.

c. In all other cases, the premium is \$10 per child per month with a \$20 monthly maximum per family.

ARC 7607B**MEDICINE BOARD[653]****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 147.76 and 148.13, the Board of Medicine hereby proposes to amend Chapter 9, "Permanent Physician Licensure," Iowa Administrative Code.

The proposed amendment states that the preliminary notice of denial is a public record and that the applicant will be notified of the appeal process.

The Board approved the amendment to Chapter 9 during a regularly scheduled meeting on February 12, 2009.

Any interested person may present written comments on this proposed amendment not later than 4:30 p.m. on March 31, 2009. Such written materials should be sent to Mark Bowden, Executive Director, Board of Medicine, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686; or sent by E-mail to mark.bowden@iowa.gov.

There will be a public hearing on March 31, 2009, at 1:30 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medicine office is located at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa.

This amendment is intended to implement Iowa Code chapters 147 and 148.

The following amendment is proposed.

Amend subrule 9.15(1) as follows:

9.15(1) Preliminary notice of denial. Prior to the denial of licensure to an applicant, the board shall issue a preliminary notice of denial that shall be sent to the applicant by regular, first-class mail at the address provided by the applicant. The preliminary notice of denial shall be in writing, is a public record and shall cite the factual and legal basis for denying the application, notify the applicant of the time for appeal process, and specify the date upon which the denial will become final if it is not appealed.

ARC 7617B**NATURAL RESOURCE COMMISSION[571]****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 subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to rescind Chapter 15, "General License Regulations," Iowa Administrative Code, and to adopt a new Chapter 15 with the same title.

The proposed amendment replaces current Chapter 15 with a new chapter in order to make the rules pertaining to license sales, refunds, and administration consistent with the new electronic license sales contract for the Electronic Licensing System of Iowa 2 and the associated equipment upgrades and to present the rules in an order that is more intuitive and that allows for future changes. The rules in new Divisions II, III, and IV, which pertain to violations and the wildlife violator compact, special licenses, and education and certification programs, have been reorganized, but the content of the rules remains

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largely unchanged. Changes to the substance of those rules will be proposed in a future rule making. No fee changes have been made.

Any interested person may make written suggestions or comments concerning new Chapter 15 on or before March 31, 2009. Such written materials should be directed to Mark Warren, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-6794; or E-mail Mark.Warren@dnr.iowa.gov. Persons who wish to convey their views orally should contact Mark Warren at (515)281-8907 or at his office on the fourth floor of the Wallace State Office Building.

This amendment is intended to implement Iowa Code chapters 321G, 456A, 462A, 481A, 481B, 482, 483A, 484A, and 484B.

The following amendment is proposed.

Rescind 571—Chapter 15 and adopt the following **new** chapter in lieu thereof:

CHAPTER 15
GENERAL LICENSE REGULATIONS

571—15.1(483A) Scope. The purposes of this chapter are to provide rules for license sales, refunds and administration; implement the wildlife violator compact and penalties for multiple offenses; administer special licenses available for hunting and fishing; and describe and implement certification and education programs of the department of natural resources.

DIVISION I
LICENSE SALES, REFUNDS AND ADMINISTRATION

571—15.2(483A) Definitions. For the purposes of this division, the following definitions shall apply:

“*Administration fee*” means the fee collected by the department to pay a portion of the cost of administering the sale of licenses through electronic means.

“*Department*” means the department of natural resources.

“*Director*” means the director of the department of natural resources.

“*License*” means any license or privilege issued by the department to an individual for hunting or fishing in the state of Iowa. Multiple types of licenses are described in these rules.

“*Licensee*” means the person who applies for and receives a license under these rules from the department.

“*License seller*” means a retail business establishment, an office of a governmental entity, or a nonprofit corporation designated by the director to issue licenses to the public.

“*Retail*” means the sale of goods or commodities to the ultimate consumer, as opposed to the sale of goods or commodities for further distribution or processing.

“*Wholesale*” means the sale of goods or commodities for resale by a retailer, as opposed to the sale of goods or commodities to the ultimate consumer.

571—15.3(483A) Form of licenses. Every license shall contain a general description of the licensee. At the time of application, the applicant for a license must provide the applicant’s date of birth and either a social security number or a valid Iowa driver’s license number. The license shall be signed by the applicant and shall clearly indicate the privilege granted.

571—15.4(483A) Administration fee. An administration fee of 50 cents per privilege purchased shall be collected from the purchaser at the time of purchase, except upon the issuance of free landowner deer and turkey hunting licenses, free annual hunting and fishing licenses, free lifetime fishing licenses, and free group home fishing licenses.

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571—15.5(483A) Electronic license sales.

15.5(1) Designation as license seller. The director may designate a retail business establishment, an office of a governmental entity, or a nonprofit corporation as a seller of electronically issued licenses in accordance with the provisions of this rule. The provisions of 571—15.6(483A) shall not apply to a license seller engaging in, or applying to engage in, the electronic sale and issuance of licenses.

15.5(2) Application. Application forms to sell electronically issued licenses may be secured by a written or in-person request to the Licensing Section, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034. The following information must be provided on the application form:

- a.* The legal name, address, and telephone number of the entity applying for designation;
- b.* The hours open for business and general service to the public;
- c.* A brief statement of the nature of the business or service provided by the applicant;
- d.* Type of Internet connection (dial up or high speed) used for accessing the electronic licensing system; and
- e.* A signature by an owner, partner, authorized corporate official, or public official of the entity applying for designation.

15.5(3) Application review.

a. The director shall approve or deny the application to sell electronically issued licenses based upon the following criteria:

- (1) The need for a license seller in the area;
- (2) The hours open for business or general service to the public;
- (3) The potential volume of license sales;
- (4) The apparent financial stability and longevity of the applicant;
- (5) The number of point-of-sale (POS) terminals available to the department; and
- (6) Type of Internet connection (dial up or high speed) used for accessing the electronic licensing system.

b. If necessary, the department may utilize a waiting list for license seller designation. The order of priority for the waiting list will be determined by the time of submittal of a complete and correct application and receipt of the required security deposit, as outlined in the application.

15.5(4) Issuance of electronic licensing equipment. Upon the director's approval of an application under this rule and designation of a license seller for electronic license sales, the equipment necessary to conduct such sales will be issued to the license seller by the department subject to the following terms and conditions:

a. Prior to the issuance of the electronic licensing equipment, the approved license seller shall furnish to the department an equipment security deposit in an amount to be determined by the department.

b. Prior to the issuance of the electronic licensing equipment, the approved license seller shall enter into an electronic license sales agreement with the department which sets forth the terms and conditions of such sales, including the authorized amounts to be retained by the license seller.

c. Prior to the issuance of the electronic licensing equipment, the approved license seller shall furnish to the department a signed authorization agreement for electronic funds transfer pursuant to subrule 15.5(5).

d. Electronic licensing equipment and supplies must be stored in a manner to provide protection from damage, theft, and unauthorized access. Any damage to or loss of equipment or loss of moneys derived from license sales is the responsibility of the license seller.

e. Upon termination of the agreement by either party, all equipment and supplies, as outlined in the agreement, must be returned to the department. Failure to return equipment and supplies in a usable condition, excluding normal wear and tear, will result in the forfeiture of deposit in addition to any other remedies available to the department by law.

15.5(5) License fees. All moneys received from the sale of licenses, less and except the agreed-upon service fee, must be immediately deposited and held in trust for the department.

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a. All license sellers must furnish to the department a signed authorization agreement for electronic funds transfer authorizing access by the department to a bank account for electronic transfer of license fees received by the license seller.

b. The amount of money due for accumulated sales will be drawn electronically by the department on a weekly basis. The license seller shall be given notice of the amount to be withdrawn at least two business days before the actual transfer of funds occurs. The license seller is responsible for ensuring that enough money is in the account to cover the amount due.

c. License sellers may accept or decline payment in any manner other than cash, such as personal checks or credit cards, at their discretion. Checks or credit payments must be made payable to the license seller, not to the department. The license seller shall be responsible for ensuring that the license fee is deposited in the electronic transfer account, regardless of the payment or nonpayment status of any check accepted by the license seller.

15.5(6) Upon the termination of the electronic license sales agreement pursuant to subrule 15.5(7) or 15.5(8), the department may disconnect or otherwise block the license seller's access to the electronic licensing system.

15.5(7) Equipment shut down and termination. The department reserves the right to disconnect the license seller's access to the electronic licensing system or terminate the seller's electronic license sales agreement for cause. Cause shall include, but is not limited to, the following:

a. Failing to deposit license fees into the electronic transfer account in a sum sufficient to cover the amount due for accumulated sales;

b. Charging or collecting any fees in excess of those authorized by law;

c. Discriminating in the sale of a license in violation of state or federal law;

d. Knowingly making a false entry concerning any license sold or knowingly issuing a license to a person who is not eligible for the license issued;

e. Using license sale proceeds, other than the service fee, for personal or business purposes;

f. Disconnecting or blocking access to the electronic licensing system for a period of 30 days or more; or

g. Violating any of these rules or the terms of the electronic license sales agreement. Repeated violations of these rules may result in termination of the license seller's electronic license sales agreement.

15.5(8) Voluntary termination. A license seller may terminate its designation and the electronic license sales agreement at its discretion by providing written notice to the department. Voluntary termination shall become effective 30 days after the department's receipt of notice.

571—15.6(483A) Paper license sales. Paper licenses shall be sold only in the event that the electronic licensing system is no longer available.

15.6(1) *Depository designation.* The director may designate a retail business establishment, an office of a governmental entity, or a nonprofit corporation as a depository for the sale of hunting and fishing licenses in accordance with the provisions of this rule.

15.6(2) *Application.*

a. An application form to act as a depository may be secured by a written or in-person request to the Licensing Section, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034. Requests for an application form may be made through department field staff or field officers. The applicant must provide the following information on the form:

(1) The name of the retail business establishment, governmental entity, or nonprofit corporation, and location(s) and telephone numbers.

(2) A general description of the type of retail business establishment, governmental entity, or nonprofit corporation.

(3) The form of ownership if a retail business establishment. If a partnership, the full names and addresses of all partners must be provided. If a corporation, the date and state of incorporation must be provided.

(4) If a governmental entity, the name and title of the responsible official.

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- (5) If a nonprofit corporation, the date and state of incorporation.
- (6) The hours and days open to the public.
- (7) The contact information of the person signing the application.
- (8) The name, address, and telephone number of three credit references, including the bank used by the retail business establishment, governmental entity, or nonprofit corporation.

b. The application form contains a statement by which the applicant agrees to the terms and conditions as set forth in this rule. The application form must be signed by the owner if a sole proprietorship; by a partner if a partnership; by an authorized corporate official if a corporation; or by the elected or appointed official administratively in charge of the governmental entity. The signature must be attested to by a notary public.

15.6(3) Security. The applicant under this rule must provide security, either a surety bond from an association or corporation whose business is assuring the fidelity of others and which has the authority by law to do business in this state, a collateral assignment of a certificate of deposit, or a letter of credit.

a. Condition of security. A surety bond required by this rule shall generally provide that the applicant render a true account of and turn over all moneys, license blanks, and duplicates when requested to do so by the director or an authorized representative and that the applicant comply with all applicable provisions of the application, the Iowa Administrative Code, and the Iowa Code.

b. Amount of security. All forms of security required by this rule shall be in the amount of \$5,000 each or a larger amount as jointly agreed to by the department and the depository.

c. Term of bond. The bond required by this rule shall run continuously from the date the application is approved.

d. Termination of bond. The surety or principal may terminate the bond at any time by sending written notice by certified mail, return receipt requested, to the Director, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034. The termination shall become effective 30 days after the receipt of the notice by the director.

e. Collateral assignment of a certificate of deposit and letters of credit. Collateral assignments of certificates of deposit and letters of credit shall be subject to the following terms and conditions:

(1) Certificates of deposit shall be assigned, in writing, to the department, and the assignment shall be recorded on the books of the bank issuing the certificate.

(2) Banks issuing these certificates shall waive all rights of setoff or liens which they have or might have against these certificates.

(3) Certificates of deposit shall be automatically renewed unless the director approves, in writing, release of the funds. Letters of credit shall be without reservation and shall remain in effect continuously, or as otherwise agreed to by the director.

(4) The director will release the certificates of deposit or approve the cancellation of a letter of credit upon termination of a license depository agreement if all licenses and moneys have been accounted for satisfactorily or if the depository provides a satisfactory surety bond in lieu thereof.

15.6(4) Multiple establishment locations. An application and security may be submitted for retail business establishments with multiple locations. For purposes of reporting and for determining the amount of the security, each application will be considered on a case-by-case basis and as mutually agreed upon by the depository and the director.

15.6(5) Approval of application and security. The director will approve the application upon the receipt of a satisfactory bond, collateral assignment of deposit, or letter of credit and a determination that the credit references are satisfactory. However, the director reserves the right not to approve any application received from a party whose depository agreement has previously been terminated by the department for cause. Upon approval by the director, the department will provide the depository with license blanks, reporting forms, and instructions.

15.6(6) Depository reporting standards. All depositories shall comply with the following reporting standards:

a. Monthly reports. A full and complete monthly sales report, including duplicate copies of the licenses sold and a check or other monetary instrument in the amount due, shall be remitted to the department the following month on a prescheduled due date. A depository that does not provide

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the monthly report to the department within 10 days after the due date shall be considered seriously delinquent. However, if the depository's office or business is operated on a seasonal basis, a monthly report is not required for any month that the office or business is not open to the public.

b. Annual report. An annual report for all sales for the calendar year and all unused license blanks for the year shall be remitted to the department by January 31 of each year. A depository will be considered seriously delinquent if the annual report is not received by February 15. An annual report shall also be submitted at the time a depository is terminated for any reason during the calendar year. This report must be received within 15 days after the director issues or, in the case of a voluntary termination, receives the notice of termination.

15.6(7) Accountability. The depository shall be fully accountable to the state for all proceeds collected from the sale of licenses. This accountability shall not be diminished by reason of bankruptcy, fire loss, theft loss, or other similar reason.

15.6(8) Probation.

a. A depository shall be placed on probation under any of the following circumstances:

(1) The depository is seriously delinquent for the second time during any consecutive six-month period.

(2) The depository fails to correct a serious delinquency within ten days.

(3) A check is returned by the bank due to insufficient funds.

b. Notice of probation shall be sent to the depository by certified mail, return receipt requested.

c. The probation will be automatically canceled after six months of satisfactory performance by the depository.

15.6(9) Termination of depository agreement. A depository may terminate the agreement at any time by notifying the director by certified mail, return receipt requested. The termination shall be effective 30 days after the receipt of the notice by the director and after the depository has fully accounted for all moneys and unused license blanks. The director may terminate the depository agreement and require an immediate and full accounting of all moneys and unused license blanks under any of the following circumstances:

a. The occurrence of a third serious delinquency during any consecutive six-month period.

b. When an insufficient funds check is received by the department, not correcting the deficiency within 10 days after proper notice by the director.

c. Failing to correct a serious delinquency within 15 calendar days.

d. Knowingly placing a date, other than the correct date, on any license.

e. Knowingly selling a resident license to a nonresident or selling a license to a person not qualified for such license.

f. Charging more than the statutory writing fee.

g. Refusing to sell a license to any individual by reason of creed, sexual orientation, gender identity, religion, pregnancy or public accommodation.

h. Canceling a bond, certificate of deposit, or letter of credit or allowing one to expire.

i. Failing to make a full and complete monthly sales report and monthly remittance.

j. Knowingly making a false entry on any license being sold or knowingly issuing any license to a person to whom issuance of that license is improper.

15.6(10) Forms available from the department. Copies of the forms required for application, bond, monthly reports, and collateral as assignment may be obtained by written or in-person request to the Licensing Section, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034.

571—15.7(483A) Lost or destroyed license blanks.

15.7(1) Accountability for license blanks. Whenever a depository or county recorder requests to be relieved from accountability for license blanks that have been lost or destroyed, the depository or county recorder (recorder) shall file a bond for the face value of such lost or destroyed license blanks and provide an explanation to the director.

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15.7(2) Explanation.

a. The depositary or recorder shall submit a written statement in the form of an affidavit regarding the facts and circumstances surrounding the alleged loss or destruction. Pictures, drawings, or other pertinent information may be attached and referenced in the statement. The loss or destruction must relate to one or a combination of the following reasons:

- (1) Loss or destruction by fire.
- (2) Loss from theft.
- (3) Loss while in transit.
- (4) Loss from natural causes, including but not limited to floods, tornadoes, and severe storms.
- (5) Loss or accidental destruction during the course of normal business operations or facility maintenance and repair.

b. The statement must also include a specific description of the precautions and procedures normally utilized by the recorder or depositary to prevent or to guard against the loss or destruction described, and a further statement as to why the precautions or procedures failed in this particular instance.

c. The director shall consider the written explanation as provided. The director shall also consider the past record of the depositary or recorder regarding losses and destructions and the past record of the depositary or recorder regarding prompt and accurate reporting. The director may direct department staff to further investigate the circumstances and facts.

(1) If the director determines that the depositary or recorder exercised reasonable and prudent care, the director shall relieve the depositary or recorder of accountability upon the filing of a bond.

(2) If the director determines that there was gross negligence by the depositary or recorder and holds the depositary or recorder accountable, the depositary or recorder may file a request for a contested case proceeding as provided in 571—Chapter 7 of the Iowa Administrative Code.

15.7(3) Bond. The depositary or recorder shall provide a bond in the amount of the face value of the lost or destroyed licenses. The bond shall be on a bond form provided by the department. The bond shall be conditioned to the effect that the depositary or recorder agrees to surrender the subject licenses to the department in the event that they are located at any future time; or in the event of proof showing that any or all of the subject licenses have been issued, the depositary, recorder, or sureties jointly and severally agree to pay the state the face value of all licenses covered by the bond.

a. For a face amount of \$500 or less, the personal bond of the depositary or recorder is sufficient. One additional personal surety is required for a face amount up to \$1,000; and two personal sureties, in addition to the depositary or recorder, are required if the face amount is more than \$1,000.

b. A corporate surety authorized to do business in Iowa may be provided in lieu of the personal sureties required, in addition to the depositary or recorder.

c. The value assigned to a lost or destroyed blank license form shall be \$25. This amount will be paid by the depositary to the department, except as relief from such payment is provided according to this rule.

571—15.8(483A) Refund or change requests for special deer and turkey hunting licenses and general licenses.

15.8(1) Invalid applications. Deer and turkey hunting license applications that are received after the closing date for acceptance of applications and applications that are invalid on their face will be returned unopened to the applicant. Any license fee related to an application determined invalid by a computer analysis or other analysis after the application has been processed will be refunded to the applicant, less a \$10 invalid application fee to compensate for the additional processing cost related to an invalid application.

15.8(2) Death of licensee. The fee for a deer or turkey hunting license will be refunded to the licensee's estate when the licensee's death predates the season for which the license was issued and a written request from the licensee's spouse, executor or estate administrator is received by the department within 90 days of the last date of the season for which the license was issued.

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15.8(3) National or state emergency. The fee for a deer or turkey hunting license will be refunded if the licensee is a member of the National Guard or a reserve unit and is activated for a national or state emergency which occurs during the season for which the license was issued. A written refund request must be received by the department within 90 days of the last date of the season for which the license was issued.

15.8(4) License changes. The department will attempt to change an applicant's choice of season or type of license if a written or telephonic request is received by the licensing section in sufficient time (usually 20 days) before the license is printed and if the requested change does not result in disadvantage to another applicant. A change request made by telephone must be verified in writing by the requester before the change request will be honored. The department's ability to accommodate requests to change the season or license type is dependent on workload and processing considerations. If the department cannot accommodate a request to change a season or license type, the license will be issued as originally requested by the applicant. No refund will be allowed. The department will not change the name on the license from that submitted on the application.

15.8(5) Duplicate purchases of general hunting and fishing licenses. Upon a showing of sufficient documentation (usually a photocopy of the licenses) that more than one hunting or fishing license was purchased by or for a single person, the department will refund the amount related to the duplicate purchase. A written request for refund, with supporting documentation, must be received by the licensing section within 90 days of the date on the face of the duplicate licenses.

15.8(6) Other refund requests. Except as previously described in this rule, the department will not issue refunds for any licenses, stamps or licenses related to fishing and hunting.

571—15.9 to 15.15 Reserved.

DIVISION II
MULTIPLE OFFENDER AND WILDLIFE VIOLATOR COMPACT

571—15.16(481A,481B,482,483A,484A,484B) Multiple offenders—revocation and suspension of hunting, fishing, and trapping privileges from those persons who are determined to be multiple offenders.

15.16(1) Definitions. For the purpose of this rule, the following definitions shall apply:

“Department” means the Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034.

“License” means any paid or free license, permit, or certificate to hunt, fish, or trap listed in Iowa Code chapters 481A, 481B, 482, 483A, 484A, 484B, and 716, including the authorization to hunt, fish, or trap pursuant to any reciprocity agreements with neighboring states.

“Licensee” means the holder of any license.

“Multiple offender” means any person who has equaled or exceeded five points for convictions in Iowa Code chapters 481A, 481B, 482, 483A, 484A, 484B, and 716 during a consecutive three-year period as provided in 15.16(3).

“Revocation” means the taking or cancellation of an existing license.

“Suspension” means to bar or exclude one from applying for or acquiring licenses for future seasons.

15.16(2) Record-keeping procedures. For the purpose of administering this rule, it shall be the responsibility of the clerk of district court for each county to deliver, on a weekly basis, disposition reports of each charge filed under Iowa Code chapters 481A, 481B, 482, 483A, 484A, 484B, and 716 to the department. Dispositions and orders of the court of all cases filed on the chapters listed in this subrule shall be sent to the department regardless of the jurisdiction or the department of the initiating officer.

a. License suspensions. In the event of a license suspension pursuant to Iowa Code section 481A.133, the clerk of court shall immediately notify the department.

b. Entering information. Upon receipt of the disposition information from the clerks of court, the department will, on a monthly basis, enter this information into a computerized system that is directly

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accessible by the department of public safety communications system for use by the department's licensing section, and all state and local law enforcement officers. Direct access through the department of public safety communications system will be available as soon as practical and is dependent on the development of appropriate computer linkage by the department of public safety.

c. Disposition report information. Information from the disposition report that will be entered into a computerized system which includes but may not be limited to the following:

County of violation, name of defendant, address of defendant, social security or driver's license number, date of birth, race, sex, height, weight, date and time of violation, charge and Iowa Code section, officer name/C-number who filed charge, and date of conviction.

15.16(3) Point values assigned to convictions. For the purposes of defining a multiple offender, the person shall be classified as a multiple offender when the person equals or exceeds a total of five points during a consecutive three-year period using the values attached to the following offenses. Multiple citations and convictions of the same offense will be added as separate convictions:

- a.* Convictions of the following offenses shall have a point value of three attached to them:
- (1) Illegal sale of birds, game, fish, or bait.
 - (2) More than the possession or bag limit for any species of game or fish.
 - (3) Hunting, trapping, or fishing during the closed season.
 - (4) Hunting by artificial light.
 - (5) Hunting from aircraft, snowmobiles, all-terrain vehicles or motor vehicle.
 - (6) Any violation involving threatened or endangered species.
 - (7) Any violations of Iowa Code chapter 482, except sections 482.6 and 482.14.
 - (8) Any violation of nonresident license requirements.
 - (9) No fur dealer license (resident or nonresident).
 - (10) Illegal taking or possession of protected nongame species.
 - (11) The taking of any fish, game, or fur-bearing animal by illegal methods.
 - (12) Illegal taking, possession, or transporting of a raptor.
 - (13) Hunting, fishing, or trapping while under license suspension or revocation.
 - (14) Illegal removal of fish, minnows, frogs, or other aquatic wildlife from a state fish hatchery.
 - (15) Any fur dealer violations except failure to submit a timely annual report.
 - (16) Any resident or nonresident making false claims to obtain a license.
 - (17) Illegal taking or possession of hen pheasant.
 - (18) Applying for or acquiring a license while under suspension or revocation.
 - (19) For a repeat offense of acquiring a hunting license without hunter safety certification.
 - (20) Taking game from the wild—see Iowa Code section 481A.61.
 - (21) Violation of Iowa Code section 483A.27(7).
 - (22) Any violation of Iowa Code Supplement section 716.8 as amended by 2008 Iowa Acts, House File 2612, section 21, while hunting deer.
- b.* Convictions of the following offenses shall have a point value of two attached to them:
- (1) Hunting, fishing, or trapping on a refuge.
 - (2) Illegal possession of fur, fish, or game.
 - (3) Chasing wildlife from or disturbing dens.
 - (4) Trapping within 200 yards of an occupied building or private drive.
 - (5) Possession of undersized or oversized fish.
 - (6) Snagging of game fish.
 - (7) Shooting within 200 yards of occupied building or feedlot.
 - (8) No valid resident license relating to deer or turkey.
 - (9) Illegal importation of fur, fish, or game.
 - (10) Failure to exhibit catch to an officer.
 - (11) Trapping or poisoning game birds, or poisoning game animals.
 - (12) Violations pertaining to private fish hatcheries and aquaculture.
 - (13) Violations of the fur dealers reporting requirements.
 - (14) Violation of Iowa Code section 481A.126 pertaining to taxidermy.

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- (15) Loaded gun in a vehicle.
 - (16) Attempting to take any fish, game, or fur-bearing animals by illegal methods.
 - (17) Attempting to take game before or after legal shooting hours.
 - (18) Wanton waste of fish, game or fur-bearing animals.
 - (19) Illegal discharge of a firearm pursuant to Iowa Code section 481A.54.
 - (20) Any violation of Iowa Code section 482.14 pertaining to commercial fishing.
 - (21) Failure to tag deer or turkey.
 - (22) Applying for or obtaining more than the legal number of licenses allowed for deer or turkey.
 - (23) Illegal transportation of game, fish or furbearers.
 - (24) Violation of Iowa Code section 483A.27, except subsection (7).
- c. All other convictions of provisions in Iowa Code chapters 481A, 481B, 482, 483A, 484A, and 484B shall have a point value of one attached to them.

15.16(4) Length of suspension or revocation.

a. The term of license suspension or revocation shall be determined by the total points accumulated during any consecutive three-year period, according to the following: 5 points through 8 points is one year, 9 points through 12 points is two years, and 13 points or over is three years.

b. Any person convicted of a violation of any provision of Iowa Code chapters 481A, 481B, 482, 483A, 484A, and 484B under the circumstances described in Iowa Code subsection 481A.135(2) shall have an additional suspension of one year. Any person convicted of a violation of any provision of Iowa Code chapters 481A, 481B, 482, 483A, 484A, and 484B under the circumstances described in Iowa Code subsection 481A.135(3) shall have an additional suspension of two years. Any person convicted of a violation of any provision of Iowa Code chapters 481A, 481B, 482, 483A, 484A, and 484B under the circumstances described in Iowa Code subsection 481A.135(4) shall have an additional suspension of three years. The foregoing provisions apply whether or not a person has been found guilty of a simple misdemeanor, serious misdemeanor or aggravated misdemeanor pursuant to Iowa Code subsections 481A.135(2), 481A.135(3) and 481A.135(4). If a magistrate suspends the privilege of a defendant to procure another license and the conviction contributes to the accumulation of a point total that requires the department to initiate a suspension, the term of suspension shall run consecutively up to a maximum of five years. After a five-year suspension, remaining time will be calculated at a concurrent rate.

15.16(5) Points applicable toward suspension or revocation. If a person pleads guilty or is found guilty of an offense for which points have been established by this rule but is given a suspended sentence or deferred sentence by the court as defined in Iowa Code section 907.1, the assigned points will become part of that person's violation record and apply toward a department suspension or revocation.

15.16(6) Notification of intent to suspend or revoke license. If a person reaches a total of five or more points, the department shall provide written notice of intent to revoke and suspend hunting, fishing, or trapping licenses as provided in 571—Chapter 7. If the person requests a hearing, it shall be conducted in accordance with 571—Chapter 7.

15.16(7) Dates of suspension or revocation. The suspension or revocation shall be effective upon failure of the person to request a hearing within 30 days of the notice described in 15.16(6) or upon issuance of an order affirming the department's intent to suspend or revoke the license after the hearing. The person shall immediately surrender all licenses and shall not apply for or obtain new licenses for the full term of the suspension or revocation.

15.16(8) Magistrate authority. This chapter does not limit the magistrate authority as described in Iowa Code section 483A.21.

15.16(9) Suspension for failure to comply with a child support order. The department is required to suspend or deny all licenses of an individual upon receipt of a certificate of noncompliance with child support obligation from the Iowa child support recovery unit pursuant to Iowa Code section 252J.8(4).

a. The receipt by the department of the certificate of noncompliance shall be conclusive evidence. Pursuant to Iowa Code section 252J.8(4), the person does not have a right to a hearing before the department to contest the denial or suspension action taken due to the department's receipt of a certificate of noncompliance with a child support obligation but may seek a hearing in district court in accordance with Iowa Code section 252J.9.

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b. Suspensions for noncompliance with a child support obligation shall continue until the department receives a withdrawal of the certificate of noncompliance from the Iowa child support recovery unit.

c. After the department receives a withdrawal of the certificate of noncompliance, an individual may obtain a new license upon application and the payment of all applicable fees.

571—15.17(456A) Wildlife violator compact. The department has entered into the wildlife violator compact (the compact) with other states for the uniform enforcement of license suspensions. The compact, a copy of which may be obtained by contacting the department's law enforcement bureau, is adopted herein by reference. The procedures set forth in this rule shall apply to license suspensions pursuant to the wildlife violator compact.

15.17(1) Definitions. For purposes of this rule, the following definitions shall apply:

"*Compliance*" with respect to a citation means the act of answering a citation through an appearance in a court or through the payment of all fines, costs, and surcharges, if any.

"*Department*" means the Iowa department of natural resources.

"*Home state*" means the state of primary residence of a person.

"*Issuing state*" means a participating state that issues a fish or wildlife citation to a person.

"*License*" means any license, permit, or other public document which conveys to the person to whom it was issued the privilege of pursuing, possessing, or taking any fish or wildlife regulated by statute, law, regulation, ordinance, or administrative rule of a participating state.

"*Participating state*" means any state which enacts legislation to become a member of the wildlife violator compact. Iowa is a participating state pursuant to Iowa Code section 456A.24(14).

15.17(2) Suspension of licenses for noncompliance. Upon the receipt of a valid notice of failure to comply, as defined in the compact, the department shall issue a notice of suspension to the Iowa resident. The notice of suspension shall:

a. Indicate that all department-issued hunting (including furbearer) or fishing licenses shall be suspended, effective 30 days from the receipt of the notice, unless the department receives proof of compliance.

b. Inform the violator of the facts behind the suspension with special emphasis on the procedures to be followed in resolving the matter with the court in the issuing state. Accurate information in regard to the court (name, address, telephone number) must be provided in the notice of suspension.

c. Notify the license holder of the right to appeal the notice of suspension within 30 days of receipt. Said appeal shall be conducted pursuant to 571—Chapter 7 but shall be limited to the issues of whether the person so notified has a pending charge in the issuing state, whether the person has previously received notice of the violation from the issuing state, and whether the pending charge is subject to a license suspension for failure to comply pursuant to the terms of the compact.

d. Notify the license holder that, prior to the effective date of suspension, a person may avoid suspension through an appearance in the court with jurisdiction over the underlying violations or through the payment of all fines, costs, and surcharges associated with the violations.

e. Indicate that, once a suspension has become effective, the suspension may only be lifted upon the final resolution of the underlying violations.

15.17(3) Reinstatement of licenses. Any license suspended pursuant to this rule may be reinstated upon the receipt of an acknowledgement of compliance from the issuing state, a copy of a court judgment, or a certificate from the court with jurisdiction over the underlying violations and the payment of applicable Iowa license fees.

15.17(4) Issuance of notice of failure to comply. When a nonresident is issued a citation by the state of Iowa for violations of any provisions under the jurisdiction of the natural resource commission which is covered by the suspension procedures of the compact and fails to timely resolve said citation by payment of applicable fines or by properly contesting the citation through the courts, the department shall issue a notice of failure to comply.

a. The notice of failure to comply shall be delivered to the violator by certified mail, return receipt requested, or by personal service.

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b. The notice of failure to comply shall provide the violator with 14 days to comply with the terms of the citation. The violator may avoid the imposition of the suspension by answering a citation through an appearance in a court or through the payment of all fines, costs, and surcharges, if any.

c. If the violator fails to achieve compliance, as defined in this rule, within 14 days of receipt of the notice of failure to comply, the department shall forward a copy of the notice of failure to comply to the home state of the violator.

15.17(5) Issuance of acknowledgement of compliance. When a person who has previously been issued a notice of failure to comply achieves compliance, as defined in this rule, the department shall issue an acknowledgement of compliance to the person who was issued the notice of failure to comply.

15.17(6) Reciprocal recognition of suspensions. Upon receipt of notification from a state that is a member of the wildlife violator compact that the state has suspended or revoked any person's hunting or fishing license privileges, the department shall:

a. Enter the person's identifying information into the records of the department.

b. Deny all applications for licenses to the person for the term of the suspension or until the department is notified by the suspending state that the suspension has been lifted.

571—15.18 to 15.20 Reserved.

DIVISION III
SPECIAL LICENSES

571—15.21(483A) Fishing license exemption for patients of substance abuse facilities.

15.21(1) Definition. For the purpose of this rule, the definition of "substance abuse facility" is identical to the definition of "facility" in Iowa Code subsection 125.2(9).

15.21(2) Procedure. Each substance abuse facility may apply to the department of natural resources for a license exempting patients from the fishing license requirement while fishing as a supervised group as follows:

a. Application shall be made on a form provided by the department and shall include the name, address and telephone number of the substance abuse facility including the name of the contact person. A general description of the type of services or care offered by the facility must be included as well as the expected number of participants in the fishing program and the water bodies to be fished.

b. A license will be issued to qualifying substance abuse facilities and will be valid for all patients under the care of that facility.

c. Patients of the substance abuse facility must be supervised by an employee of the facility while fishing without a license pursuant to this rule. An employee of the substance abuse facility must have the license in possession while supervising the fishing activity of patients.

d. Notwithstanding the provisions of this rule, each employee of the substance abuse facility must possess a valid fishing license while participating in fishing.

571—15.22(481A) Authorization to use a crossbow for deer and turkey hunting during the bow season by handicapped individuals.

15.22(1) Definitions. For the purpose of this rule:

"Bow and arrow" means a compound, recurve, or longbow.

"Crossbow" means a weapon consisting of a bow mounted transversely on a stock or frame and designed to fire a bolt, arrow, or quarrel by the release of the bow string, which is controlled by a mechanical or electric trigger and a working safety.

"Handicapped" means a person possessing a physical impairment of the upper extremities that makes a person physically incapable of shooting a bow and arrow. This includes difficulty in lifting and reaching with arms as well as difficulty in handling and fingering.

15.22(2) Application for authorization card. An individual requesting use of a crossbow for hunting deer or turkey must submit an application for an authorization card on forms provided by the department. The application must include a statement signed by the applicant's physician declaring that

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the individual is not physically capable of shooting a bow and arrow. A first-time applicant must submit the authorization card application no later than ten days before the last day of the license application period for the season the person intends to hunt.

15.22(3) Authorization card—issuance and use. Approved applicants will be issued a card authorizing the individual to hunt deer and turkey with a crossbow. The authorization card must be carried with the license and on the person while hunting deer and turkey and must be exhibited to a conservation officer upon request.

15.22(4) Validity and forfeiture of authorization card. A card authorizing the use of a crossbow for hunting deer and turkey will be valid for as long as the person is incapable of shooting a bow and arrow. If a conservation officer has probable cause to believe the person's handicapped status has improved, making it possible for the person to shoot a bow and arrow, the department may, upon the officer's request, require the person to obtain in writing a current physician's statement.

If the person is unable to obtain a current physician's statement confirming that the person is incapable of shooting a bow and arrow, the department may initiate action to revoke the authorization card pursuant to 571—Chapter 7.

15.22(5) Restrictions. Crossbows equipped with pistol grips and designed to be fired with one hand are illegal for taking or attempting to take deer or turkey. All projectiles used in conjunction with a crossbow for deer hunting must be equipped with a broadhead with at least three blades.

571—15.23(483A) Free hunting and fishing license for low-income persons 65 years of age and older or low-income persons who are permanently disabled.

15.23(1) Purpose. Pursuant to Iowa Code subsection 483A.24(15), the department of natural resources will issue a free annual combination hunting and fishing license to low-income persons who meet the age status or permanently disabled status as defined.

15.23(2) Definitions.

“Age status” means a person who has achieved the sixty-fifth birthday.

“Low-income person” means a person who is a recipient of a program administered by the state department of human services for persons who meet low-income guidelines.

“Permanently disabled” means a person who meets the definition in Iowa Code section 483A.4.

15.23(3) Procedure. Each person shall apply to the department of natural resources for a license as follows:

a. Application shall be made on a form provided by the department and shall include the name, address, height, weight, color of eyes and hair, date of birth, and gender of the applicant. In addition, applicants shall include a copy of an official document such as a birth certificate if claiming age status, or a copy of an award letter from the Social Security Administration or private pension plan if claiming permanent disabled status. The applicant shall indicate on the application which low-income assistance program the applicant is receiving. The application shall include an authorization allowing the department of human services to verify that the applicant is a recipient of the low-income assistance program checked on the application.

b. The free annual combination license will be issued by the department upon receipt of a properly completed application. The license will be valid until January 10 of the subsequent year. Proof of eligibility must be submitted each year in order to obtain a free license.

c. A person whose income falls below the federal poverty guidelines, but is not a recipient of a state assistance program, may apply for this license by providing the following:

(1) A statement listing income from all sources (i.e., social security, retirement income, wages, dividends and interest, cash gifts, rents and royalties, and other cash income).

(2) A copy of any available document that verifies income (i.e., income tax return, bank statement, social security statement, or other document the applicant considers supportive of income status).

(3) A signed statement by the applicant that the applicant's annual cash income does not exceed the federal poverty limit for the current year.

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Federal poverty guidelines are published in February of each year and will be the income standard for applicants from that time until the new limits are available in the subsequent year. The income limit will be shown on the application and will be available upon request from the department.

571—15.24(483A) Free lifetime fishing license for persons who have severe physical or mental disabilities.

15.24(1) Purpose. Pursuant to Iowa Code subsection 483A.24(9), the department of natural resources will issue a free lifetime fishing license to Iowa residents 16 or more years of age who have severe mental or physical disabilities who meet the definitions of “severe mental disability” and “severe physical disability” in 15.24(2).

15.24(2) Definitions. For the purposes of this rule, the following definitions apply:

“*Severe mental disability*” means a person who has severe, chronic conditions in all of the following areas which:

1. Are attributable to a mental impairment or combination of mental and physical impairments;
2. Are likely to continue indefinitely;
3. Result in substantial functional limitations in three or more of the following areas of major life activities: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and
4. Reflect the person’s need for a combination and sequence of services which are of lifelong or an extended duration and are individually planned and coordinated.

“*Severe physical disability*” means a disability that limits or impairs the person’s ability to walk under any of the following circumstances:

1. The person cannot walk 200 feet without stopping to rest.
2. The person cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device.
3. The person is restricted by lung disease to such an extent that the person’s forced expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than 60 mm/hg on room air at rest.
4. The person must use portable oxygen.
5. The person has a cardiac condition to the extent that the person’s functional limitations are classified in severity as Class 3 or Class 4 according to standards set by the American Heart Association. They include:
 - Class 3—Persons with cardiac disease resulting in marked limitation of physical activity. The person is comfortable at rest, but less than ordinary activity causes fatigue, palpitation, dyspnea, or angina pain.
 - Class 4—Persons with cardiac disease resulting in inability to carry on any physical activity without discomfort. Symptoms of heart failure or the anginal syndrome may be present even at rest. If any physical activity is undertaken, discomfort is increased.
6. The person is severely limited in the person’s ability to walk due to an arthritic, neurological, or orthopedic condition.

15.24(3) Procedure. Each person shall apply to the department of natural resources for a license as follows:

- a. Application shall be made on a form provided by the department and shall include the name, address, home telephone number, height, weight, eye and hair color, date of birth, and gender of the applicant.
- b. The application shall be signed and certified by the applicant’s attending physician and, based upon the criteria listed in this rule, declare that the applicant has a severe mental or physical disability.

571—15.25(483A) Transportation tags for military personnel on leave from active duty.

15.25(1) Military transportation tags for deer and turkey. The military transportation tag shall include the following information: name, birth date, current address of military person; species and sex

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of animal taken; date of kill; and weapon used. Only conservation officers of the department shall be authorized to issue military transportation tags.

15.25(2) *Annual limit for military transportation tags.* A person receiving a military transportation tag shall be limited to one military deer tag and one military turkey tag annually.

15.25(3) *Regulations apply to military personnel.* With the exception of the license requirement exemption set forth in Iowa Code section 483A.24(6), all hunting and fishing regulations shall apply to active duty military personnel.

571—15.26 to 15.40 Reserved.

DIVISION IV
EDUCATION AND CERTIFICATION PROGRAMS

571—15.41(483A) Hunter safety and ethics education program. This division clarifies the term “hunting license” as used in Iowa Code section 483A.27 in relation to the hunter safety and ethics education course requirement, clarifies the need for exhibiting a hunter safety and ethics education course certificate when applying for a deer or wild turkey license, and explains the requirements for individuals who wish to demonstrate their knowledge of hunter safety and ethics to qualify for purchase of an Iowa hunting license.

571—15.42(483A) Testing procedures.

15.42(1) *General testing procedures.* Upon completion of the required curriculum, each person shall score a minimum of 75 percent on the written or oral test provided by the department and demonstrate safe handling of a firearm. Based on the results of the written or oral test and demonstrated firearm safe handling techniques as prescribed by the department, the volunteer instructor shall determine the persons who shall be issued a certificate of completion.

15.42(2) *Special testing out provisions.* Any person born after January 1, 1972, who does not complete the required ten-hour hunter safety and ethics course (as described in Iowa Code section 483A.27, subsection (1)), must meet the following requirements to be eligible to purchase an Iowa hunting license:

a. To comply with Iowa Code section 483A.27, subsection (5), an individual must pass a written examination compiled by the department of natural resources under the direct supervision of a state conservation officer or certified hunter safety instructor.

b. If the applicant does not pass the examination by a score of 95 percent or more, the applicant must then wait seven days to take the examination again.

c. If the applicant does not pass the second examination with a score of 95 percent or more, the applicant must successfully complete the ten-hour safety and ethics course to obtain a certificate of completion (as described in Iowa Code section 483A.27, subsection (2)).

15.42(3) *Exemptions.* The following groups of individuals do not need hunting licenses and therefore do not need to satisfactorily complete a hunter safety and ethics education course:

a. Landowners and tenants. Owners or tenants of land and their children when hunting on the land which they own or on which they are tenants.

b. Residents under 16. Residents of the state under 16 years of age accompanied by their parent or guardian or in the company of any other competent adult if the adult accompanying said minor possesses a valid hunting license, providing, however, there is one licensed adult accompanying each person under 16 years of age.

15.42(4) *Deer and wild turkey license applications.* Individuals are not required to exhibit a certificate showing satisfactory completion of a hunter safety and ethics education course only when applying for a deer or wild turkey license.

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571—15.43(321G,462A,483A) Volunteer bow and fur harvester education instructors, snowmobile and all-terrain vehicle (ATV) safety instructors, boating safety instructors and hunter education instructors.

15.43(1) Purpose. Pursuant to Iowa Code sections 321G.23(2), 462A.3 and 483A.27(4), the department will certify volunteer instructors to teach bow, fur harvester, snowmobile, ATV, boating and hunter education courses.

15.43(2) Definitions. For the purpose of this rule:

“*Certified instructor*” means a person who has met all criteria in this rule for one or more of the above-named courses.

“*Course*” means the department’s bow, fur harvester, snowmobile, ATV, boating and hunter education and ethics courses.

“*Department*” means the department of natural resources.

“*Instructor applicant*” means a person who has applied to become a certified volunteer instructor for one of the above-named courses.

15.43(3) Minimum qualifications. The following conditions must be satisfied before any person can become a certified instructor. Failure to meet these conditions will result in the denial of the application. An applicant may be disqualified if the applicant has accumulated any habitual offender points pursuant to rule 571—15.16(481A,481B,482,483A,484A,484B), or other license suspension by the court or department. The instructor applicant will be notified of the denial by the recreational safety coordinator. An instructor applicant shall:

a. Submit an application as provided by the department to the local conservation officer or recreational safety officer.

b. Be at least 18 years of age.

c. Have experience in handling equipment, such as firearms, bows and arrows, furbearer traps, snowmobiles, ATVs and various navigational vessels, that is necessary for the various prescribed courses.

d. Have completed the course as defined in subrule 15.43(2).

e. Attend and pass an instructor’s training and certification course administered by the department.

f. Submit to a background check. This check will include, but not be limited to, a criminal history check as provided by the department of public safety. A record of a felony conviction will disqualify the applicant. A record of serious or aggravated misdemeanors may disqualify the applicant based on type of offense and year committed.

g. Successfully complete the apprenticeship as required in subrule 15.43(4).

15.43(4) Instructor applicant apprenticeship. In addition to subrule 15.43(3), the following conditions must be satisfied to complete the instructor applicant apprenticeship:

a. Participate in one course.

b. Apprentice with a certified instructor.

The recreational safety officer may make the determination as to which certified instructor will be supervising the instructor applicant during the apprenticeship.

15.43(5) Certified education instructor responsibilities. A certified instructor has the following responsibilities:

a. To complete all prerequisites to becoming an instructor as provided in subrules 15.43(3) and 15.43(4).

b. To follow all policies and procedures as set forth in the current “Instructor Procedures Manual.”

c. To assist in the recruitment and training of additional volunteer instructors.

d. To recruit and train students in the applied-for prescribed course program.

e. To actively promote the program in the instructor’s county and to arrange for publicity for each new class.

f. To maintain order and discipline in the classroom and outdoor classroom at all times.

g. To accurately fill out required forms and reports for each class and mail that material to the recreational safety coordinator within 15 days after completion of the course.

h. To teach the course as prescribed by the department.

i. To maintain a file on all students that the instructor teaches.

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j. To actively participate in one course every two years. If this requirement is not met, the instructor's certification may be terminated after notification by letter by the recreational safety coordinator. The person may reapply to become a volunteer safety education instructor pursuant to subrule 15.43(3).

k. To attend a minimum of one continuing education instructor workshop every three years for hunter education as provided by the department.

15.43(6) *Grounds for revocation of instructor certification.* The department may, at any time, seek to revoke the instructor certification of any person who:

- a.* Fails to meet the instructor responsibilities as outlined in subrules 15.43(4) and 15.43(5).
- b.* Fails to follow the policies and procedures as set forth in the current "Instructor Procedures Manual."
- c.* Falsifies any information as may be required by the department.
- d.* Handles any equipment in an unsafe manner, or allows any student or other instructor to handle equipment in a reckless or unsafe manner.
- e.* Is convicted of or forfeits bond for any fish and game, snowmobile, ATV or navigation violation of this state or any other state.
- f.* Uses abusive or foul language while conducting a course.
- g.* Participates in a course while under the influence of alcohol or any illegal drug.
- h.* Has substantiated complaints filed against the instructor by the public, department personnel or other certified instructor(s).
- i.* Fails to meet the requirements in subrule 15.43(5), paragraphs "j" and "k."
- j.* Is convicted of a felony or an aggravated or serious misdemeanor as defined in the statutes of this state. This would also include any felonies or comparable misdemeanors of any other state.
- k.* Receives compensation directly or indirectly from students for time spent preparing for or participating in a course.

15.43(7) *Termination of certification.* Any certified instructor has the right, at any time, to voluntarily terminate certification. If an instructor voluntarily terminates certification or certification is terminated by the department, the instructor must return to the department the certification card and all materials that were provided.

15.43(8) *Compensation for instructors.* Instructor applicants and certified instructors shall not receive any compensation for their time either directly or indirectly from students while preparing for or participating in a course. However, instructor applicants and certified instructors may require students to pay for actual course-related expenses involving facilities, meals or materials other than those provided by the department.

15.43(9) *Hearing rights.* If the department seeks to revoke an instructor certification pursuant to subrule 15.43(6), the department shall provide written notice of intent to revoke the certification as provided in 571—Chapter 7. If the certified instructor requests a hearing, it shall be conducted in accordance with 571—Chapter 7.

These rules are intended to implement Iowa Code chapters 321G, 456A, 462A, 481A, 481B, 482, 483A, 484A, and 484B.

ARC 7615B**NATURAL RESOURCE COMMISSION[571]****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 subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 71, "Nursery Stock Sale to the Public," Iowa Administrative Code.

This chapter provides for the descriptions of plants made available through the State Nursery, the obligations of customers purchasing plants from the State Nursery, and the prices of such plants.

The proposed amendments update the prices of plants made available for sale under these rules.

Any interested person may make written suggestions or comments on the proposed amendments on or before March 31, 2009. Written comments may be mailed or hand-delivered to the Forestry Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; by fax: (515)281-6794; or by E-mail: paul.tauke@dnr.iowa.gov. Persons who wish to convey their views orally should contact the Forestry Bureau by telephone at (515)281-5034 or in person at the Forestry Bureau offices on the fourth floor of the Wallace State Office Building.

These amendments are intended to implement Iowa Code sections 456A.20 and 461A.2 and 1989 Iowa Acts, chapter 311, section 16.

The following amendments are proposed.

ITEM 1. Amend subrule 71.3(1) as follows:

71.3(1) Prices for hardwoods shall be as follows:

- a. ~~Oak~~, Aspen, oak, hickory, walnut, pecan and basswood, 6" to 16"—\$40 per hundred plants.
- b. ~~Oak~~, Aspen, oak, hickory, walnut, pecan and basswood, 17" and larger—~~\$45~~ \$55 per hundred plants.
- c. Other hardwood tree species, 6" to 16"—\$37 per hundred plants.
- d. Other hardwood tree species, 17" and larger—~~\$42~~ \$52 per hundred plants.

ITEM 2. Amend subrule 71.3(2) as follows:

71.3(2) Prices for shrubs shall be as follows:

- a. Elderberry, buttonbush, dogwood, and Nanking cherry, 6" to 16"—\$37 per hundred plants.
- b. Elderberry, buttonbush, dogwood, and Nanking cherry, 17" and larger—~~\$42~~ \$52 per hundred plants.
- c. Other shrub species, 6" to 16"—\$40 per hundred plants.
- d. Other shrub species, 17" and larger—~~\$45~~ \$55 per hundred plants.

ITEM 3. Amend subrule 71.3(3) as follows:

71.3(3) Prices for conifers shall be as follows:

- a. Conifers, 6" to 16"—\$25 per hundred plants.
- b. Conifers, 17" and larger—~~\$30~~ \$40 per hundred plants.

ITEM 4. Amend subrule 71.3(4) as follows:

71.3(4) Prices for wildlife packets shall be ~~\$90~~ \$110 each.

ITEM 5. Amend subrule 71.3(5) as follows:

71.3(5) Prices for songbird packets shall be ~~\$20~~ \$25 each.

ARC 7632B**REVENUE DEPARTMENT[701]****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 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 10, "Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments," Chapter 38, "Administration," Chapter 40, "Determination of Net Income," Chapter 41, "Determination of Taxable Income," Chapter 43, "Assessments and Refunds," Chapter 46, "Withholding," Chapter 48, "Composite Returns," Chapter 50, "Apportionment of Income for Resident Shareholders of S Corporations," Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," Chapter 54, "Allocation and Apportionment," Chapter 59, "Determination of Net Income," Chapter 86, "Inheritance Tax," Chapter 88, "Generation Skipping Transfer Tax," Chapter 89, "Fiduciary Income Tax," and Chapter 104, "Hotel and Motel—Filing Returns, Payment of Tax, Penalty, and Interest," Iowa Administrative Code.

These amendments clarify existing rules and remove obsolete rules or rule provisions.

Item 1 amends rule 701—10.3(422,450,452A) and the implementation clause to provide that interest due on unpaid tax is not subject to waiver.

Item 2 amends subrule 10.8(1) to provide for an additional exception to the penalty for failure to file relating to Iowa inheritance tax if a disclaimer is filed by a beneficiary.

Item 3 amends subrule 10.8(2) to provide for an additional exception to the penalty for failure to pay relating to Iowa inheritance tax if a disclaimer is filed by a beneficiary.

Item 4 rescinds and reserves rules 701—10.20(422,423) and 701—10.21(422,423), which are obsolete rules regarding penalty for retail sales tax.

Item 5 rescinds and reserves rule 701—10.30(423), which is an obsolete rule regarding penalty for use tax.

Item 6 rescinds and reserves rule 701—10.85(422), which is an obsolete rule regarding penalty for inheritance tax.

Item 7 rescinds and reserves rule 701—10.90(451), which is an obsolete rule regarding penalty for estate tax.

Item 8 rescinds and reserves rule 701—10.96(450A), which is an obsolete rule regarding penalty for generation skipping tax. Rule 701—10.97(422) is also rescinded, but the content is adopted as subrule 88.3(15) in Item 45.

Item 9 rescinds and reserves rules 701—10.101(422) and 701—10.102(422), which are obsolete rules regarding penalty for fiduciary income tax. Rule 701—10.103(422) is also rescinded, but the content is adopted as subrule 89.7(1) in Item 47.

Item 10 rescinds and reserves rules 701—10.110(423A) and 701—10.111(423A), which are obsolete rules regarding penalty for hotel and motel tax.

Items 11 and 12 amend subrule 10.115(2) and the implementation clause for rule 701—10.115(421) by citing an Iowa Supreme Court case regarding the application of payments and to provide guidance for the application of payments in situations where more than one tax period is involved.

Item 13 amends rule 701—38.12(422) to remove obsolete provisions regarding the indexation of the standard deduction for inflation for tax years ending prior to January 1, 1996, for individual income tax.

Item 14 amends the introductory paragraph in rule 701—38.14(422) to remove a reference to a Department publication that no longer exists.

Item 15 amends subrule 38.14(2) to remove an obsolete provision regarding tax information that the Department can obtain from the Internal Revenue Service.

REVENUE DEPARTMENT[701](cont'd)

Item 16 amends paragraph 40.2(1)“a” to provide that original issue discount on United States Treasury obligations are exempt from Iowa income tax.

Item 17 amends paragraph 40.2(2)“a” to provide that interest from Federal Agricultural Mortgage Corporation obligations is subject to Iowa income tax.

Item 18 amends subrule 40.16(2) to provide that nonresidents of Iowa who earn compensation in Iowa and at least one other state for an airline company or merchant marine company are only subject to the income tax laws of their state of residence.

Item 19 amends subrule 40.16(5) by adding an example regarding how nonresidents of Iowa are taxed on income from intangible personal property for individual income tax.

Item 20 amends subrule 40.21(6) to correct a reference from corporation income tax to individual income tax.

Item 21 amends rule 701—40.30(422) to remove an obsolete provision regarding percentage depletion for tax years beginning before January 1, 1987, and to include the current provision for percentage depletion for tax years beginning on or after January 1, 1987, for individual income tax.

Item 22 amends rule 701—40.31(422) to remove an obsolete provision regarding away-from-home expenses for state legislators for tax years beginning before January 1, 1987, and to include the current provision for away-from-home expenses for state legislators for tax years beginning on or after January 1, 1987, for individual income tax.

Item 23 amends subrule 40.38(8) by citing an Iowa Supreme Court case regarding the capital gains exclusion for individual income tax.

Item 24 amends rule 701—40.43(422) by striking the last unnumbered paragraph.

Item 25 amends subrule 40.46(4) to correct a reference that has changed due to Department reorganization.

Item 26 amends rule 701—40.53(422), introductory paragraph, to provide that the College Savings Iowa Plan and the Iowa Advisor 529 Plan are eligible for deductions related to contributions to the Iowa Educational Savings Plan Trust for individual income tax.

Item 27 rescinds and reserves subrule 41.5(5), which is an obsolete subrule regarding the deduction for payments of tuition and textbooks for individual income tax.

Item 28 amends rule 701—43.8(422), introductory paragraph, to remove an obsolete provision regarding the livestock production credit for individual income tax.

Item 29 rescinds and adopts new subrule 43.8(1) to remove obsolete provisions regarding the livestock production tax credit for individual income tax.

Item 30 rescinds and reserves paragraph 43.8(2)“i,” which is an obsolete provision regarding the livestock production tax credit for individual income tax.

Item 31 amends subrule 46.4(2) to add two new provisions that provide that nonresidents of Iowa who earn compensation in Iowa and at least one other state for an airline company or merchant marine company are not subject to Iowa withholding tax.

Items 32 and 33 amend subrules 48.9(1) and 48.9(2) to clarify the due date of composite returns.

Item 34 amends rule 701—50.1(422), introductory paragraph, to remove obsolete provisions regarding the S corporation apportionment credit.

Item 35 rescinds and reserves rule 701—50.8(422), which is an obsolete subrule regarding the S corporation apportionment credit.

Item 36 amends paragraph 52.1(1)“d” to cite additional court cases and provide additional examples regarding intangible property located or having a situs within Iowa which would create a filing requirement for corporation income tax.

Item 37 amends subrule 52.1(4) to add an additional example regarding the taxation of corporations having only intangible property located or having a situs in Iowa for corporation income tax.

Items 38 and 39 amend subrule 52.5(4), introductory paragraph and paragraphs “a” and “b,” to remove obsolete provisions regarding the alternative minimum tax credit for corporation income tax.

Item 40 amends subrule 52.18(4), introductory paragraph, to provide clarification on what tax period the historic preservation and cultural and entertainment district tax credit can be claimed for corporation income tax.

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Items 41 to 43 amend paragraph 54.6(1)“f,” rule 701—54.9(422) and rule 701—59.29(422) to correct references that have changed due to Department reorganization. This is similar to the change in Item 25.

Item 44 adopts new subrules 86.2(11) and 86.2(12) to set forth the penalty and interest provisions for unpaid Iowa inheritance tax.

Item 45 adopts new subrules 88.3(14) and 88.3(15) to set forth the penalty and interest provisions for unpaid Iowa generation skipping transfer tax.

Item 46 adopts new rule 701—89.6(422) to set forth the penalty provisions for unpaid Iowa fiduciary income tax.

Item 47 adopts new subrule 89.7(1) to set forth the interest provisions for unpaid Iowa fiduciary income tax.

Item 48 adopts new rule 701—104.8(423A) to set forth the penalty and interest provisions for unpaid Iowa hotel and motel tax.

Item 49 adopts new rule 701—104.9(423A) to set forth the provisions for waiver of penalty for Iowa hotel and motel tax.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than April 13, 2009, to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before March 31, 2009. Such written comments should be directed to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by April 3, 2009.

These amendments are intended to implement Iowa Code chapters 421, 422, 423, and 423A.

The following amendments are proposed.

ITEM 1. Amend rule 701—10.3(422,450,452A) as follows:

701—10.3(422,423,450,452A) Interest on refunds and unpaid tax.

10.3(1) Interest on refunds. For those taxes on which interest accrues on refunds under Iowa Code sections 422.25(3), 422.28, 450.94, and 452A.65, interest shall accrue through the month in which the refund is mailed to the taxpayer and no further interest will accrue unless the department did not use the most current address as shown on the latest return or refund claim filed with the department.

10.3(2) Interest on unpaid tax. Interest due on unpaid tax is not a penalty, but rather it is compensation to the government for the period the government was deprived of the use of money. Therefore, interest due cannot be waived. Vick v. Phinney, 414 F.2d 444, 448 (5th CA 1969); Time, Inc. v. United States, 226 F.Supp. 680, 686 (S.D. N.Y. 1964); In Re Jeffco Power Systems, Dep't of Revenue Hearing Officer decision, Docket No. 77-9-6A-A (1978); Waterloo Courier, Inc. v. Iowa

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Department of Revenue and Finance, Case No. LACV081252, Black Hawk County District Court, December 30, 1999.

This rule is intended to implement Iowa Code sections 422.25(3), 422.28, 423.47, 450.94 and 452A.65.

ITEM 2. Adopt the following **new** paragraph **10.8(1)“f”**:

f. Effective for estates with disclaimers filed on or after July 1, 2007, penalty will not be imposed for a late-filed Iowa inheritance tax return if the sole reason for the late-filed inheritance tax return is due to a beneficiary's decision to disclaim property or disclaim an interest in property from the estate. However, for the penalty to be waived, the Iowa inheritance tax return must be filed and all tax must be paid to the department within the later of nine months from the date of death or 60 days from the delivery or filing date of the disclaimer pursuant to Iowa Code section 633E.12.

ITEM 3. Adopt the following **new** paragraph **10.8(2)“i”**:

i. Effective for estates with disclaimers filed on or after July 1, 2007, penalty will not be imposed for failure to pay Iowa inheritance tax if the sole reason for the failure to pay Iowa inheritance tax is due to a beneficiary's decision to disclaim property or disclaim an interest in property from the estate. However, for the penalty to be waived, the Iowa inheritance tax return must be filed and all tax must be paid to the department within the later of nine months from the date of death or 60 days from the filing date of the disclaimer pursuant to Iowa Code section 633E.12.

ITEM 4. Rescind and reserve rules **701—10.20(422,423)** and **701—10.21(422,423)**.

ITEM 5. Rescind and reserve rule **701—10.30(423)**.

ITEM 6. Rescind and reserve rule **701—10.85(422)**.

ITEM 7. Rescind and reserve rule **701—10.90(451)**.

ITEM 8. Rescind and reserve rules **701—10.96(450A)** and **701—10.97(422)**.

ITEM 9. Rescind and reserve rules **701—10.101(422)** to **701—10.103(422)**.

ITEM 10. Rescind and reserve rules **701—10.110(423A)** and **701—10.111(423A)**.

ITEM 11. Amend subrule 10.115(2) as follows:

10.115(2) *Partial payments made after notices of assessments are issued.* Where partial payments are made after a notice of assessment is issued, the department will reapply payments to penalty, interest, and then to tax due until the entire assessed amount is paid. See *Ashland Oil Inc. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990). If penalty, interest, and tax are due and owing for more than one tax period, any payment must be applied first to the penalty, then the interest, then the tax for the oldest tax period, then to the penalty, interest, and tax to the next oldest tax period, and so on until the payment is exhausted.

Where there are both agreed- and unagreed-to items as a result of an examination, the taxpayer and the department may agree to apply payments to the penalty, interest, and then to tax due on the agreed-to items of the examination when all of the penalty, interest, and tax on the agreed-to items are paid. In these instances, subsequent payments will not be applied to penalty and interest accrued on the agreed-to items of the examination.

ITEM 12. Amend rule **701—10.115(421)**, implementation sentence, as follows:

This rule is intended to implement ~~1994 Iowa Acts, chapter 1133, section 1~~ Iowa Code section 422.25(4).

ITEM 13. Amend rule 701—38.12(422) as follows:

701—38.12(422) Indexation of the optional standard deduction for inflation. Effective for tax years beginning on or after January 1, 1990, the optional standard deduction is indexed or increased by the cumulative standard deduction factor computed by the department of revenue. The cumulative standard deduction factor is the product of the annual standard deduction factor for the 1989 calendar year and all standard deduction factors for subsequent annual calendar years. The annual standard deduction factor

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is an index, to be determined by the department of revenue by October 15 of the calendar year, which reflects the purchasing power of the dollar as a result of inflation during the fiscal year ending in that calendar year preceding the calendar year for which the annual standard deduction factor is to apply. ~~In determining the annual standard deduction factor for tax years beginning on or after January 1, 1990, but prior to January 1, 1996, the department shall use the annual percentage change, but not less than 0 percent, in the implicit price deflator for the gross national product computed for the second quarter of the calendar year by the Bureau of Economic Analysis of the U.S. Department of Commerce and shall add one-half of that percentage change to 100 percent, rounded to the nearest one-tenth of 1 percent. For tax years beginning on or after January 1, 1996, the department shall use the annual percentage change, but not less than 0 percent, in the gross domestic product price deflator computed for the second quarter of the calendar year by the Bureau of Economic Analysis of the United States Department of Commerce and shall add all of that percentage change to 100 percent, rounded to the nearest one-tenth of 1 percent. The annual standard deduction factor shall not be less than 100 percent.~~

This rule is intended to implement Iowa Code section 422.4 as amended by 1996 Iowa Acts, Senate File 2449.

ITEM 14. Amend rule 701—38.14(422), introductory paragraph, as follows:

701—38.14(422) Information returns for reporting income payments to the department of revenue. Effective January 1, 1993, every person, every corporation, or agent of a person or corporation, lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the state or of any political subdivision of the state, having control, receipt, custody, or disposal of any of the income items described in subrule 38.14(1), ~~are to~~ shall file information returns with the department of revenue by the last day of February following the end of the year in which the payments were made. For purposes of this rule, “every person” is every individual who is a resident of this state. For purposes of this rule, “every corporation” includes all corporations ~~who~~ that have a place of business in this state. ~~Information about submitting information returns to the department, including submitting the returns on magnetic tape or diskettes, is included in department of revenue publication, “State of Iowa Income Information Return Reporting Guidelines,” which is available from the Taxpayer Services Section, P.O. Box 10457, Des Moines, Iowa 50306, or by telephone at (515)281-3114.~~

ITEM 15. Amend subrule 38.14(2), introductory paragraph, as follows:

38.14(2) Information on income payments available from the Internal Revenue Service. The department can obtain information from the Internal Revenue Service on many income payments made to individuals in the tax year, ~~to the extent the income payments were made to residents of Iowa. Therefore, those entities making income payments to nonresidents of Iowa will not be relieved of the responsibility for making information returns to the department on those payments, because of the availability of information on income payments from the IRS.~~ The following is a list of federal reporting forms and the types of information available on those forms from the Internal Revenue Service for residents of Iowa:

ITEM 16. Amend paragraph **40.2(1)“a”** as follows:

a. *United States Government obligations:* United States Treasury—Principal and interest from bills, bonds, and notes issued by the United States Treasury exempt under 31 U.S.C. Section 3124[a].

1. Series E, F, G, H, and I bonds
2. United States Treasury bills
3. U.S. Government certificates
4. U.S. Government bonds
5. U.S. Government notes
6. Original issue discount (OID) on a United States Treasury obligation

ITEM 17. Amend paragraph **40.2(2)“a”** as follows:

- a. *Federal agency obligations:*
1. Federal or State Savings and Loan Associations
 2. Export-Import Bank of the United States

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3. Building and Loan Associations
4. Interest on federal income tax refunds
5. Postal Savings Account
6. Farmers Home Administration
7. Small Business Administration
8. Federal or State Credit Unions
9. Mortgage Participation Certificates
10. Federal National Mortgage Association
11. Federal Home Loan Mortgage Corporation (Freddie Mac)
12. Federal Housing Administration
13. Federal National Mortgage Association (Fannie Mae)
14. Government National Mortgage Association (Ginnie Mae)
15. Merchant Marine (Maritime Administration)
16. Federal Agricultural Mortgage Corporation (Farmer Mac)

ITEM 18. Amend subrule **40.16(2)**, seventh unnumbered paragraph, as follows:

If nonresidents are employed in this state at intervals throughout the year, as would be the case if employed in operating trains, planes, motor buses, or trucks and similar modes of transportation, between this state and other states and foreign countries, and who are paid on a daily, weekly or monthly basis, the gross income from sources within this state is that portion of the total compensation for personal services which the total number of working days employed within the state bears to the total number of working days both within and without the state. If paid on a mileage basis, the gross income from sources within this state is that portion of the total compensation for services which the number of miles traveled in Iowa bears to the total number of miles traveled both within and without the state. If paid on some other basis, the total compensation for personal services must be apportioned between this state and other states and foreign countries in such a manner as to allocate to Iowa that portion of the total compensation which is reasonably attributable to personal services performed in this state. Any alternative method of allocation is subject to review and change by the director. However, pursuant to ~~the Amtrak Reauthorization and Improvement Act of 1990~~ federal law, nonresidents who earn compensation in Iowa and one or more other states for a railway company, an airline company, a merchant marine company, or for a motor carrier are only subject to the income tax laws of their state of residence, and the compensation would not be considered gross income from sources within Iowa.

ITEM 19. Amend subrule **40.16(5)** by adopting the following **new** example:

EXAMPLE G - A nonresident is a partner in a family partnership in which the other partners are members of the same family. The other partners are residents of Iowa. The partnership invests in mutual funds, interest-bearing securities and stocks which produce interest, dividend and capital gain income for the partnership. The partners who are Iowa residents make the decisions in Iowa on what investments should be made by the partnership. The distributive share of interest, dividend and capital gain income reported by the nonresident would be included in net income allocated to Iowa since it was derived from a business carried on within the state. *Jensen, Herman A. & Vineta L.*, Docket No. 88-20-1-0014, Letter of Findings (1992).

ITEM 20. Amend subrule 40.21(6) as follows:

40.21(6) If the employee for which an additional deduction for wages was allowed fails to successfully complete a probationary period and the taxpayer has already filed an Iowa ~~corporation~~ individual income tax return taking the additional deduction for wages, the taxpayer shall file an amended return adding back the additional deduction for wages. The amended return shall state the name and social security number of the employee who failed to successfully complete a probationary period.

ITEM 21. Amend rule 701—40.30(422) as follows:

701—40.30(422) Percentage depletion. ~~For tax years beginning on or after January 1, 1986, but before January 1, 1987, add to net income the amount that percentage depletion of an oil, gas, or geothermal~~

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~~well computed under Section 613 of the Internal Revenue Code is in excess of cost depletion computed under Section 611 of the Internal Revenue Code. For tax years beginning on or after January 1, 1987, the percentage depletion that is an addition to net income is the depletion described in Section 57(a)(1) of the Internal Revenue Code only to the extent the depletion applies to an oil, gas, or geothermal well. This depletion is an item of tax preference for federal minimum tax purposes for tax years beginning after December 31, 1986.~~

This rule is intended to implement Iowa Code section 422.7.

ITEM 22. Amend rule 701—40.31(422) as follows:

701—40.31(422) Away-from-home expenses of state legislators. ~~For tax years beginning on or after January 1, 1981, but before January 1, 1987, state legislators may claim a deduction on the Iowa return of up to \$50 per “legislative day” for away from home expenses incurred in performing the trade or business of a state legislator. For purposes of this deduction, a “legislative day” is any day during a tax year in which the legislature was in session (includes any day in which the legislature was not in session for a period of four consecutive days) or any day in which the legislature was not in session, but the legislator’s physical presence was formally recorded at a committee meeting of the legislature. For federal income tax purposes, there is a requirement that in order for a state legislator to deduct away from home expenses, the state legislator’s personal residence in the legislative district must be more than 50 miles from the state capitol. However, legislators may claim the deduction for away from home expenses on their state returns even in instances when their personal residences are less than 50 miles from the state capitol. State legislators whose away from home expenses such as expenses for food and lodging exceed \$50 per legislative day may claim deductions for these expenses if they itemize these expenses when they file their state returns. For tax years beginning on or after January 1, 1987, state legislators whose personal residences in their legislative districts are more than 50 miles from the state capitol may claim the same deductions for away-from-home expenses as are allowed on their federal income tax returns under Section 162(h)(1)(B) of the Internal Revenue Code. These individuals may claim deductions for meals and lodging per “legislative day” in the amount of per diem allowance for federal employees in effect for the tax year. The portion of this per diem allowance which is equal to the daily expense allowance authorized for state legislators in Iowa Code section 2.10 may be claimed as an adjustment to income. The balance of the per diem allowance for federal employees must be allocated between lodging expenses and meal expenses and is deductible as a miscellaneous itemized deduction. However, only 50 percent of the amount attributable to meal expenses may be deducted for tax years beginning on or after January 1, 1994.~~

State legislators whose personal residences in their legislative districts are 50 miles or less from the state capitol may claim a deduction for meals and lodging of \$50 per “legislative day.” However, in lieu of either of the deduction methods previously described in this rule, any state legislator may elect to itemize adjustments to income for amounts incurred for meals and lodging for the “legislative days” of the state legislator.

This rule is intended to implement Iowa Code section 422.7.

ITEM 23. Amend subrule **40.38(8)**, eleventh unnumbered paragraph, as follows:

Capital gains from the sale of an ownership interest in a partnership, limited liability company or other entity are not eligible for the capital gain exclusion. *Ranniger v. Iowa Department of Revenue and Finance*, Iowa Supreme Court, No. 11, 06-0761, March 21, 2008.

ITEM 24. Amend rule **701—40.43(422)**, second unnumbered paragraph, as follows:

~~For purposes of this exemption, a member of the caregiver’s family includes a spouse, parent, stepparent, child, stepchild, brother, stepbrother, sister, stepsister, lineal ancestor such as grandparent and great grandparent, and lineal descendant such as grandchild and great grandchild, and those previously described relatives that are related by marriage or adoption. Those licensed health care professionals that are not eligible for this exemption include medical doctors, doctors of osteopathy, physician assistants, psychologists, podiatrists, chiropractors, physical therapists, occupational therapists, nurses, dentists, dental hygienists, optometrists, speech pathologists, and audiologists.~~

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ITEM 25. Amend subrule **40.46(4)**, first unnumbered paragraph, as follows:

The request for an alternative method should be filed with the ~~Policy Section, Compliance~~ Taxpayer Services and Policy Division, P.O. Box 10457, Des Moines, Iowa 50306. The request must set forth the alternative method for allocation to Iowa of the compensation of the nonresident professional team member. In addition, the request must specify, in detail, why the method for allocation of the compensation set forth in this rule is not equitable, as well as why the alternative method for allocation of the compensation is more equitable than the method provided in this rule. The burden of proof is on the nonresident professional team member to show that the alternative method is more equitable than the method provided in the rule.

ITEM 26. Amend rule 701—40.53(422), introductory paragraph, as follows:

701—40.53(422) Deduction for contributions by taxpayers to the Iowa educational savings plan trust and addition to income for refunds of contributions previously deducted. The Iowa educational savings plan trust was created so that individuals can contribute funds on behalf of beneficiaries in accounts administered by the ~~secretary~~ treasurer of state to cover future higher education costs of the beneficiaries. The Iowa educational savings plan trust includes the college savings Iowa plan and the Iowa advisor 529 plan. The following subrules provide details on how individuals' net incomes are affected by contributions to beneficiaries' accounts, interest and any other earnings earned on beneficiaries' accounts, and refunds of contributions which were previously deducted.

ITEM 27. Rescind and reserve subrule **41.5(5)**.

ITEM 28. Amend rule 701—43.8(422), introductory paragraph, as follows:

701—43.8(422) Livestock production credit refunds for corporate taxpayers and individual taxpayers. For tax years beginning on or after January 1, 1996, corporate and individual taxpayers who own certain livestock, have livestock production operations in Iowa in the tax year, and who meet certain qualifications are eligible for a livestock production credit refund. The amount of a livestock production credit refund is determined by adding together for each head of livestock in the taxpayer's operation the product of 10 cents for each corn equivalent deemed to have been consumed by that animal in the taxpayer's operation in the tax year. ~~However, for tax years beginning in the 1996 and the 1997 calendar years, only qualified taxpayers that have cow-calf livestock production operations described in paragraph "i" of subrule 43.8(2) will be eligible for the livestock production credit refunds and for~~ For tax years beginning on or after January 1, 1998, only qualified taxpayers that have cow-calf livestock operations described in paragraph "o" of subrule 43.8(2) will be eligible for the livestock production refunds, notwithstanding the other types of livestock operations mentioned in this rule. Note that the livestock production credit refund is also available to taxpayers who meet the qualifications described in subrule 43.8(1) and operate certain types of poultry operations in this state and own the poultry in the operations. The amounts of the livestock production credit refunds for these taxpayers are determined on the basis of 10 cents for each corn equivalent deemed to have been consumed by the chickens or the turkeys in the taxpayers' poultry operations in the tax year. However, the amount of livestock production credit refund may not exceed \$3,000 per livestock or poultry operation for a tax year. In addition, the amount of livestock production credit refund per taxpayer for a tax year may not exceed \$3,000. Therefore, if a particular taxpayer is involved in a cow-calf beef operation, a sheep-ewe flock operation, and a farrow-to-finish hog operation, the maximum livestock production credit refund for this taxpayer may not exceed \$3,000.

ITEM 29. Rescind subrule 43.8(1) and adopt the following new subrule in lieu thereof:

43.8(1) Qualifications for the livestock production credit refunds. For tax years beginning on or after January 1, 1997, individual and corporate taxpayers will be eligible for the livestock production credit refund if the taxpayer's federal taxable income is \$99,600 or less. In the case of married taxpayers, their combined federal taxable income must be considered to determine if they are eligible for the credit.

For each tax year beginning after 1997, the federal taxable income specified previously in this subrule shall be multiplied by the cumulative index factor for that tax year to calculate the federal taxable income

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that will be used to determine whether a taxpayer is eligible for the livestock production refund that is authorized for that tax year. "Cumulative index factor" means the product of the annual index factor for the 1997 calendar year and all annual index factors for subsequent calendar years. The annual index factor equals the annual inflation factor for that calendar year as computed in Iowa Code section 422.4 for purposes of indexation of the tax rates for individual income tax.

ITEM 30. Rescind and reserve paragraph **43.8(2)“i.”**

ITEM 31. Amend subrule **46.4(2)** by adopting the following new numbered paragraphs **“13”** and **“14”**:

13. Wages paid to nonresidents of Iowa who earn compensation from regularly assigned duties in Iowa and one or more states for an airline company. In accordance with Public Law 103-272 enacted by Congress, airline employees who are nonresidents of Iowa are subject only to the income tax laws of their states of residence or the state in which they perform 50 percent or more of their duties.

14. Wages paid to nonresidents of Iowa who earn compensation from regularly assigned duties in Iowa for a merchant marine company. In accordance with Public Law 106-489 enacted by Congress, interstate waterway workers who are nonresidents of Iowa are subject only to the income tax laws of their states of residence.

ITEM 32. Amend subrule 48.9(1) as follows:

48.9(1) A composite return of income must be filed on or before the due date. The due date is the last day of the fourth month following the close of the ~~taxpayer's taxable tax year~~ of the partners, shareholders, employees, beneficiaries, estates or trusts included in the composite return, or the last day of the period covered by an extension of time granted by the department. When the due date falls on a Saturday, Sunday, or legal holiday, the composite return is due the first business day following the Saturday, Sunday, or legal holiday. If a return is placed in the mail, properly addressed, postage paid, and postmarked on or before the due date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to Composite Return Processing, Department of Revenue, P.O. Box 10469, Des Moines, Iowa 50306.

ITEM 33. Amend subrule 48.9(2), introductory paragraph, as follows:

48.9(2) Extension of time for filing composite returns. ~~If the taxpayer has paid at least 90 percent of the tax required to be shown due~~ has been paid by the due date and ~~has not filed a~~ no return was filed by the due date, the director will consider that the taxpayer has requested an extension of time to file the return and will automatically grant an extension of up to six months to file the return. The taxpayer does not have to file an application for extension form with the department to get the automatic extension to file the return within the six-month period after the due date and not be subject to penalty. However, if the taxpayer wants to make a tax payment to ensure that at least 90 percent of the tax has been paid on or before the due date, the payment should be made with the Iowa Tax Voucher form. This form can be requested from the Taxpayer Services Section, P.O. Box 10457, Des Moines, Iowa 50306, or by telephone at (515)281-3114.

ITEM 34. Amend rule 701—50.1(422), introductory paragraph, as follows:

701—50.1(422) Apportionment of income for resident shareholders of S corporations. ~~For tax years beginning on or after January 1, 1996, and before January 1, 1998, resident shareholders of S corporations which are value added corporations and which carry on business within and without Iowa may, at their election, determine the S corporation income allocable to sources within Iowa by allocation and apportionment of the S corporation income. For tax years beginning on or after January 1, 1998, resident shareholders of all S corporations which carry on business within and without Iowa may, at their election, determine the S corporation income allocable to sources within Iowa by allocation and apportionment of the S corporation income. For tax years beginning on or after January 1, 1996, and before January 1, 1997, in order to take advantage of this provision, the taxpayers must first file their return reporting all income to Iowa and then file a refund claim based on allocation and~~

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~~apportionment.~~ Estates and trusts which are shareholders in S corporations cannot take advantage of these apportionment provisions.

ITEM 35. Rescind and reserve rule **701—50.8(422)**.

ITEM 36. Amend paragraph **52.1(1)“d”** as follows:

d. Intangible property located or having a situs within Iowa. Intangible property does not have a situs in the physical sense in any particular place. *Wheeling Steel Corporation v. Fox*, 298 U.S. 193, 80 L.Ed. 1143, 56 S.Ct. 773 (1936); *McNamara v. George Engine Company, Inc.*, 519 So.2d 217 (La. App. 1988). The term “intangible property located or having a situs within Iowa” means generally that the intangible property belongs to a corporation with its commercial domicile in Iowa or, regardless of where the corporation which owns the intangible property has its commercial domicile, the intangible property has become an integral part of some business activity occurring regularly in Iowa. *Beidler v. South Carolina Tax Commission*, 282 U.S. 1, 75 L.Ed. 131, 51 S.Ct. 54 (1930); *Geoffrey, Inc. v. South Carolina Tax Commission*, 437 S.E.2d 13 (S.C. 1993), cert. denied, 114 S.Ct. 550 (1993); *Kmart Properties, Inc. v. Taxation & Revenue Department of New Mexico*, 131 P. 3d 27 (N.M. Ct. App. 2001), rev'd on other issues, 131 P. 3d 22 (N.M. 2005); *Secretary, Department of Revenue v. Gap (Apparel), Inc.*, 886 So. 2d 459 (La.Ct.App. 2004); *A & F Trademark v. Tolson*, 605 S.E. 2d 187 (N.C.App. 2004), cert. denied 126 S.Ct. 353 (2005); *Lanco, Inc. v. Director, Division of Taxation*, 879 A.2d 1234 (N.J.Super.A.D. 2005), aff'd, 908 A.2d 176 (N.J. 2006) (per curiam), cert. denied 127 S. Ct. 2974 (June 18, 2007); *Geoffrey, Inc. v. Oklahoma Tax Commission*, 132 P. 3d 632 (Okla. Ct. Civ. App. 2005), cert. denied (Mar. 20, 2006), as corrected (Apr. 12, 2006); *FIA Card Services, Inc. v. Tax Comm'r*, 640 S.E.2d 226 (W. Va. 2006), cert. denied, 127 S.Ct. 2997 (June 18, 2007); *Capital One Bank v. Commissioner of Revenue*, 899 N.E.2d 76 (Mass. 2009); *Geoffrey, Inc. v. Commissioner of Revenue*, 899 N.E.2d 87 (Mass. 2009). The following is a noninclusive list of types of intangible property: copyrights, patents, processes, trademarks, trade names, franchises, contracts, bank deposits including certificates of deposit, repurchase agreements, mortgage loans, consumer loans, business loans, shares of stocks, bonds, licenses, partnership interests including limited partnership interests, leaseholds, money, evidences of an interest in property, evidences of debts such as credit card debt, leases, an undivided interest in a loan, rights-of-way, and interests in trusts.

The term also includes every foreign corporation which has acquired a commercial domicile in Iowa and whose property has not acquired a constitutional tax situs outside of Iowa.

ITEM 37. Adopt the following new example in subrule **52.1(4)**:

EXAMPLE 9: J, a corporation with a commercial domicile in State X, earns income from mortgages that the corporation has purchased. J has no physical presence in Iowa and no other contact with Iowa. J earns interest income from the mortgages on property located in Iowa. Under these circumstances, the interest income is an integral part of business activity in Iowa. Accordingly, J is required to file an Iowa income tax return and include the interest income from the mortgages related to Iowa property in the numerator of the apportionment factor.

ITEM 38. Amend subrule 52.5(4), introductory paragraph, as follows:

52.5(4) Alternative minimum tax credit for minimum tax paid in a prior tax year. Minimum tax paid by a taxpayer in prior tax years commencing with tax years beginning on or after January 1, 1987, ~~by a taxpayer~~ can be claimed as a tax credit against the taxpayer's regular income tax liability in a subsequent tax year. Therefore, 1988 is the first tax year that the minimum tax credit is available for use and the credit is based on the minimum tax paid by the taxpayer for 1987. ~~However, only the portion of the minimum tax which is attributable to those adjustments and tax preferences which are “deferral items” qualifies for the minimum tax credit for tax years beginning before January 1, 1990. “Deferral items” are those tax preferences and adjustments which result in a temporary change in a taxpayer's tax liability. An example of a “deferral item” is the tax preference for accelerated depreciation of real property placed in service before 1987. On the other hand, the portion of the minimum tax which is attributable to the “exclusion item” for appreciated property charitable deduction does not qualify for the minimum tax credit. The appreciated property charitable deduction tax preference is the only state “exclusion~~

REVENUE DEPARTMENT[701](cont'd)

item,” although there are several “exclusion items” which are used to compute federal minimum tax. For tax years beginning on or after January 1, 1990, the entire amount of minimum tax paid qualifies for the minimum tax credit, and there is no longer any distinction between “deferral items” and “exclusion items.” The minimum tax credit may only be used against regular income tax for a tax year to the extent that the regular tax is greater than the tentative minimum tax for the tax year. If the minimum tax credit is not used up against the regular tax for a tax year, the remaining credit is carried to the following tax year to be applied against the regular income tax liability for that period.

ITEM 39. Amend paragraphs 52.5(4)“a” and “b” as follows:

a. *Computation of minimum tax credit on Form Schedule IA 8801C 8827.* The minimum tax credit is computed on Form Schedule IA 8801C 8827 from information on Form Schedule IA 4626 for the prior tax year years, from Form IA 1120 and Form Schedule IA 4626 for the current year and from Form Schedule IA 8801C 8827 for the prior tax year (applies in 1989 and in subsequent tax years) years.

Form IA 8801C is in three parts. In the first part, a calculation is made to determine the portion of the minimum tax paid in the prior year, if any, which is attributable to the exclusion item for appreciated property charitable deduction. In the second portion of Form IA 8801C, the minimum tax attributable to the appreciated property charitable deduction from Part I, is subtracted from the total minimum tax paid for the prior year. The remaining amount of minimum tax is attributable to the deferral tax preference items and adjustment items. This remaining amount, if any, is added to the minimum tax carryover credit from the IA 8801C for the prior tax year, if any. This total is compared to the regular income tax liability less the credits set forth in Iowa Code section 422.33, less the tentative minimum tax for the current year and the lesser amount is the allowable minimum tax credit for the current year.

The final part of Form IA 8801C is used to compute the minimum tax credit, if any, which will be carried over to the next tax year. The carryover credit is computed by subtracting the allowable credit for the current tax year from the total of the minimum tax credit attributable to the deferral items and the carryover credit from the prior tax years.

b. — EXAMPLE. Taxpayer had a 1989 taxable income of \$300,000 and an accelerated depreciation tax preference of \$80,000. In 1988 the taxpayer had taxable income of \$345,000 and tax preferences of \$145,000 which consisted of \$110,000 of accelerated depreciation and \$35,000 of appreciated property charitable deduction. The minimum tax credit for 1989 was computed on Form IA 8801C using data from IA 4626 for 1988 and from IA 4626 for 1989 and IA 1120 for 1989.

Form IA 8801C

Part I.	Computation of Minimum Tax on Exclusion Items	
Line 11	- Gross tax on exclusion items	-0-
Line 12	- Less regular tax minus credits	\$33,900
Line 13	- Net minimum tax on exclusion items	-0-
Part II.	Computation of Allowable Credit for 1989	
Line 14	- Enter amount from line 17 IA 4626 for 1988	\$ 1,380
Line 15	- Enter amount from line 13 part I	-0-
Line 16	- Subtract line 15 from line 14	\$ 1,380
Line 17	- Enter credit carryforward from 1987	-0-
Line 18	- Add lines 16 and 17	\$ 1,380
Line 19	- Enter 1989 regular tax liability	\$28,500
Line 20	- Enter 1989 tentative minimum tax	\$27,360
Line 21	- Subtract line 20 from line 19	\$ 1,140
Line 22	- Allowable minimum tax credit for 1989. Enter smaller of line 18 or 21.	\$ 1,140
Part III.	Computation of Minimum Tax Credit Carryovers	

REVENUE DEPARTMENT[701](cont'd)

Line 23	- Enter amount from line 18 part II	\$ 1,380
Line 24	- Enter amount from line 22 part II	\$ 1,140
Line 25	- Carryforward of minimum tax credit to 1990. Subtract line 24 from line 23.	\$ 240

b. Examples of computation of the minimum tax credit and carryover of the credit.

EXAMPLE 1. Taxpayer reported \$5,000 of minimum tax for 2007. For 2008, taxpayer reported regular tax less credits of \$8,000 and the minimum tax liability is \$6,000. The minimum tax credit is \$2,000 for 2008 because, although the taxpayer had an \$8,000 regular tax liability, the credit is allowed only to the extent that the regular tax exceeds the minimum tax. Since only \$2,000 of the carryover credit from 2007 was used, there is a \$3,000 minimum tax carryover credit to 2009.

EXAMPLE 2. Taxpayer reported \$2,500 of minimum tax for 2007. For 2008, taxpayer reported regular tax less credits of \$8,000 and the minimum tax liability is \$5,000. The minimum tax credit is \$2,500 for 2008 because, although the regular tax less credits exceeded the minimum tax by \$3,000, the credit is allowed only to the extent of minimum tax paid for prior tax years. There is no minimum tax carryover credit to 2009.

ITEM 40. Amend subrule 52.18(4), introductory paragraph, as follows:

52.18(4) *Completion of the historic preservation and cultural and entertainment district project and claiming the historic preservation and cultural and entertainment district tax credit on the Iowa return.* After the taxpayer completes an authorized rehabilitation project, the taxpayer must get a certificate of completion of the project from the state historic preservation office of the department of cultural affairs. After verifying the taxpayer's eligibility for the historic preservation and cultural and entertainment district tax credit, the state historic preservation office, in consultation with the Iowa department of economic development, ~~is to~~ shall issue a historic preservation and cultural and entertainment district tax credit certificate, which ~~is to~~ shall be attached to the taxpayer's income tax return for the tax year in which the rehabilitation project is completed or the year the credit was reserved, whichever is the later. For example, if a project was completed in 2008 and the credit was reserved for the state fiscal year ending June 30, 2010, the credit can be claimed on the 2009 calendar year return that is due on April 30, 2010. The tax credit certificate is to include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation project, the date the project was completed, the year the tax credit was reserved, and the amount of the historic preservation and cultural and entertainment district tax credit. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 52.18(6). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, where the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary should be provided with the certificate. The tax credit certificate should be attached to the income tax return for the period in which the project was completed. If the amount of the historic preservation and cultural and entertainment district tax credit exceeds the taxpayer's income tax liability for the tax year for which the credit applies, the taxpayer is entitled to a refund of the excess portion of the credit at a discounted value for tax periods ending prior to July 1, 2007. However, the refund cannot exceed 75 percent of the allowable tax credit. The refund of the tax credit is to be computed on the basis of the following table:

ITEM 41. Amend paragraph **54.6(1)"f,"** first unnumbered paragraph, as follows:

If a taxpayer does not believe that the method of apportionment set forth in this subrule reasonably attributes income to business activities within Iowa, the taxpayer may request the use of an alternative method of apportionment. The request must be filed at least 60 days before the due date of the return, considering any extensions of time to file, in which the taxpayer wishes to use an alternative method of apportionment. The request should be filed with ~~Policy Section, Compliance~~ Policy Section, Compliance Taxpayer Services and Policy Division, P.O. Box 10457, Des Moines, Iowa 50306-0457. The taxpayer must set forth in detail the extent of the taxpayer's business operations within and without the state, along with the reasons why the apportionment method set forth in this subrule is inappropriate. In addition, the taxpayer must set

REVENUE DEPARTMENT[701](cont'd)

forth a proposed method of apportionment and the reasons why the proposed method of apportionment more reasonably attributes income to business activities in Iowa.

ITEM 42. Amend rule **701—54.9(422)**, seventh unnumbered paragraph, as follows:

All requests to use an alternative method of allocation and apportionment submitted to the department will be considered by the compliance division if the request is the result of an audit or by the ~~policy section of the compliance~~ taxpayer services and policy division if the request is received prior to audit. If the department concludes that the statutory method of allocation and apportionment is, in fact, both inapplicable and inequitable, the department shall prescribe a special method. The special method of allocation and apportionment prescribed by the department may be that requested by the taxpayer or some other method of allocation and apportionment which the department deems to equitably attribute income to business activities carried on within Iowa.

ITEM 43. Amend rule **701—59.29(422)**, seventh unnumbered paragraph, as follows:

All requests to use an alternative method of allocation and apportionment submitted to the department will be considered by the compliance division if the request is the result of an audit or by the ~~policy section of the compliance~~ taxpayer services and policy division if the request is received prior to audit. If the department concludes that the statutory method of allocation and apportionment is, in fact, both inapplicable and inequitable, the department shall prescribe a special method. The special method of allocation and apportionment prescribed by the department may be that requested by the taxpayer or some other method of allocation and apportionment which the department deems to equitably attribute income to business activities carried on within Iowa.

ITEM 44. Adopt the following **new** subrules 86.2(11) and 86.2(12):

86.2(11) Penalties. See rule 701—10.6(421) for the calculation of penalty for deaths occurring on or after January 1, 1991.

86.2(12) Interest on tax due. All tax which has not been paid on or before the last day of the ninth month following the death of the individual whose death is the event imposing the inheritance tax draws interest at the rate prescribed by Iowa Code section 421.7, to be computed on a monthly basis with each fraction of a month counted as a full month. See rule 701—10.2(421) for the interest rate to use for a specific calendar year. Interest applies equally to tax that is delinquent and tax that is due under an extension of time to pay.

ITEM 45. Adopt the following **new** subrules 88.3(14) and 88.3(15):

88.3(14) Penalties. See rule 701—10.6(421) for the calculation of penalty for deaths occurring on or after January 1, 1991.

88.3(15) Interest on tax due. All tax which has not been paid on or before the last day of the ninth month following the death of the individual whose death is the event imposing the federal generation skipping transfer tax draws interest at the rate prescribed by Iowa Code section 421.7, to be computed on a monthly basis with each fraction of a month counted as a full month. See rule 701—10.2(421) for the interest rate to use for a specific calendar year. Interest applies equally to tax that is delinquent and tax that is due under an extension of time to pay.

ITEM 46. Adopt the following **new** rule 701—89.6(422):

701—89.6(422) Penalties. See rule 701—10.6(421) for the calculation of penalty for tax periods beginning on or after January 1, 1991.

ITEM 47. Adopt the following **new** subrule 89.7(1):

89.7(1) Interest on unpaid tax. Tax not paid within the time prescribed by law, including the period during an extension of time, draws interest at the rate described in rule 701—10.2(421). Payments made are first credited to penalty and interest due and then to the tax liability. See *Ashland Oil Co. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990).

REVENUE DEPARTMENT[701](cont'd)

ITEM 48. Adopt the following **new** rule 701—104.8(423A):

701—104.8(423A) Interest and penalty.

104.8(1) Penalties. See rule 701—10.6(421) for the calculation of penalty for tax periods beginning on or after January 1, 1991.

104.8(2) Interest. Tax not paid by the due date of the return shall draw interest at the rate described in rule 701—10.2(421). Payments made are first credited to penalty and interest due and then to the tax liability. See *Ashland Oil Co. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990).

ITEM 49. Adopt the following **new** rule 701—104.9(423A):

701—104.9(423A) Request for waiver of penalty. See rule 701—10.6(421) for the statutory provisions to penalty for tax periods beginning on or after January 1, 1991.

ARC 7601B**TRANSPORTATION DEPARTMENT[761]****Notice of Intended Action**

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 307.10, 307.12, 321.449 and 321.450, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 520, "Regulations Applicable to Carriers," Iowa Administrative Code.

Iowa Code section 321.449 requires the Department to adopt rules consistent with the Federal Motor Carrier Safety Regulations (FMCSR) promulgated under United States Code, Title 49, and found in 49 Code of Federal Regulations (CFR), Parts 385 and 390 to 399. Iowa Code section 321.450 requires the Department to adopt rules consistent with the Federal Hazardous Materials Regulations (HMR) promulgated under United States Code, Title 49, and found in 49 CFR Parts 107, 171 to 173, 177, 178 and 180. To ensure the consistency required by statute, the Department annually adopts the specified parts of 49 CFR as adopted by the United States Department of Transportation.

Commercial vehicles transporting goods in interstate commerce are subject to the FMCSR on the effective dates specified in the Federal Register (FR). Commercial vehicles transporting hazardous materials in interstate commerce or transporting certain hazardous materials intrastate are subject to the HMR on the effective dates specified in the FR. The adoption of the federal regulations by the Department will extend the enforcement of the regulations to commercial vehicles operated intrastate unless exempted by statute.

Proposed federal regulations are published in the FR to allow a period for public comment, and, after adoption, the final regulations are published in the FR. Each year a revised edition of 49 CFR is published, incorporating all of the final regulations adopted during the year. Although revised editions of 49 CFR are usually dated October or November, the publication is not actually available in Iowa for several months after that date.

The amendments to the FMCSR and the HMR that have become final and effective since the 2007 edition of the CFR are listed in the information below. The parts affected are followed by FR citations.

Amendments to the FMCSR and Federal HMRParts 172 and 178 (FR Vol. 72, No. 201, Page 59146, 10-18-07)

This correction from the Pipeline and Hazardous Materials Safety Administration (PHMSA) corrects editorial errors in Parts 172 and 178 of the final rule issued October 1, 2007. Effective date: October 18, 2007.

TRANSPORTATION DEPARTMENT[761](cont'd)

Part 172 (FR Vol. 73, No. 4, Pages 1089-1115, 01-07-08)

This final rule from the PHMSA amends the HMR by revising and correcting editorial errors to the list of hazardous substances and reportable quantities in Part 172. The Environmental Protection Agency (EPA) requires PHMSA to list and regulate all hazardous substances designated by the EPA. This final rule enables shippers and carriers to identify the affected hazardous substances, comply with all applicable regulatory requirements, and make the required notifications if the release of a hazardous substance occurs. Effective date: March 31, 2008.

Parts 171, 172, 173, 175, 177, 178, 180 (FR Vol. 73, No. 18, Pages 4699-4720, 01-28-08)

This final rule from the PHMSA amends the HMR to update, clarify or provide relief from certain requirements governing the classification, packaging, or labeling of hazardous materials transported in commerce. In addition, PHMSA is updating references to consensus standards, revising and clarifying certain hazard communication requirements, and clarifying transportation requirements applicable to dry ice, detonator assemblies, and explosives. PHMSA is also expanding exceptions from regulation for small quantities of hazardous materials. Effective date: October 1, 2008.

Part 172 (FR Vol. 73, No. 137, Page 40914, 07-16-08)

This correction from the PHMSA corrects an editorial error in Part 172 of the final rule issued January 28, 2008. Effective date: October 1, 2008.

Parts 171, 172, 173, 175, 176, 178, 179 and 180 (FR Vol. 73, No. 191, Pages 57001-57008, 10-01-08)

This final rule from the PHMSA corrects editorial errors, makes minor regulatory changes and, in response to requests for clarification, improves the clarity of certain provisions in the HMR. The amendments contained in this rule are nonsubstantive changes. Effective date: October 1, 2008.

Part 172 (FR Vol. 73, No. 191, Pages 57008-57010, 10-01-08)

This correction from the PHMSA corrects editorial errors in Part 172 of the final rule issued October 1, 2007. Effective date: October 1, 2008.

Various portions of the federal regulations and Iowa statutes allow some exceptions when the exceptions will not adversely impact the safe transportation of commodities on the nation's highways. Granting additional exceptions for drivers and the motor carrier industry in Iowa would adversely impact the safety of the traveling public in Iowa.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: tracy.george@dot.iowa.gov.
5. Be received by the Office of Policy and Legislative Services no later than March 31, 2009.

A meeting to hear requested oral presentations is scheduled for Thursday, April 2, 2009, at 10 a.m. at the Iowa Department of Transportation's Motor Vehicle Division offices located at 6310 S.E. Convenience Boulevard, Ankeny, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

The proposed amendments may have an impact on small business. A request for a regulatory analysis pursuant to Iowa Code section 17A.4A must be submitted to the Office of Policy and Legislative Services at the address listed in this Notice by April 13, 2009.

These amendments are intended to implement Iowa Code chapter 321.

Proposed rule-making actions:

ITEM 1. Amend paragraph **520.1(1)“a”** as follows:

a. Motor carrier safety regulations. The Iowa department of transportation adopts the Federal Motor Carrier Safety Regulations, 49 CFR Parts 385 and 390-399 (October 1, ~~2007~~ 2008).

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 2. Amend paragraph **520.1(1)“b”** as follows:

b. Hazardous materials regulations. The Iowa department of transportation adopts the Federal Hazardous Materials Regulations, 49 CFR Parts 107, 171-173, 177, 178, and 180 (October 1, ~~2007~~ 2008).

ARC 7619B

AGRICULTURAL DEVELOPMENT AUTHORITY[25]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 175.6, the Agricultural Development Authority hereby amends Chapter 6, "Beginning Farmer Tax Credit Program," Iowa Administrative Code.

The definition of "Eligible applicant" in rule 25—6.1(175) is being amended. The initial rule making for this program tied this definition to the definition found in 2006 Iowa Acts, Senate File 2268. This definition limited an eligible beginning farmer to a maximum net worth of \$300,000. During the 2008 legislative session, this net worth was raised to \$500,000. It is believed that due to the nature of the tax credit program, the maximum net worth should remain at \$300,000 at this time. Beginning farmers utilizing the program have lower capital requirements than the loan program and therefore the lower net worth maximum is appropriate.

In subrule 6.5(1), the lease limitations are further expanded. This amendment will limit modifications that are permissible to earlier approved leases with the program. Only changes needed due to life-changing events by either party will be permitted. Any changes that would result in an increased cost to the State of Iowa will not be permitted. This amendment will close a potential loophole that might have allowed for misuse of the program. Several participants had attempted to materially change the original terms of a lease before its expiration. The intent of the legislation was to require a two-year to five-year lease term, so the beginning farmer participant had fixed lease terms to operate during the lease. Allowing arbitrary changes during the term of the lease violates this intent.

Pursuant to Iowa Code section 17A.4(3), the Agricultural Development Authority finds that notice and public participation are unnecessary because the Authority is entering a peak time for new applications and potential changes to leases. By implementing these amendments on an emergency basis, the Authority will be able to implement the changes during this peak time and ensure that potential problems have been addressed.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Agricultural Development Authority further finds that the normal effective date of these amendments, 35 days after publication, should be waived and these amendments be made effective upon filing, as they confer a benefit upon Iowa's low-income and beginning farmers.

These amendments are intended to implement Iowa Code chapter 175 as amended by 2006 Iowa Acts, Senate File 2268.

The Authority adopted these amendments on November 25, 2008.

These amendments became effective February 19, 2009.

The following amendments are adopted.

ITEM 1. Amend rule **25—6.1(175)**, definition of "Eligible applicant," as follows:

"Eligible applicant" means an individual who ~~is a beginning farmer as defined in Iowa Code section 175.12~~ has a net worth of less than \$300,000 and who satisfies all of the criteria contained in 2006 Iowa Acts, Senate File 2268, and provisions of these rules relating to recipient eligibility, and who operates or will operate a farm.

ITEM 2. Amend subrule 6.5(1) as follows:

6.5(1) Either the beginning farmer or the taxpayer shall immediately notify the authority of any material changes in the agricultural assets transfer agreement. The authority shall act upon these changes pursuant to 2006 Iowa Acts, Senate File 2268, section 2. Material changes cannot result in an increase in the original tax credit amount approved. Death of a party to the lease, divorce, or sale of the property

AGRICULTURAL DEVELOPMENT AUTHORITY[25](cont'd)

will be considered eligible material changes. Sale of the property will be considered only if the original lease terms remain in effect and the asset purchaser is determined to be eligible for the program.

[Filed Emergency 2/19/09, effective 2/19/09]

[Published 3/11/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/09.

ARC 7613B

COMMUNITY ACTION AGENCIES DIVISION[427]

Adopted and Filed Emergency

Pursuant to Iowa Code section 541A.5, the Commission on Community Action Agencies hereby adopts new Chapter 14, "Individual Development Accounts (IDAs)," Iowa Administrative Code.

Individual development accounts (IDAs) are established in Iowa Code chapter 541A. These rules establish the policies and procedures governing IDAs in replacement of 441—Chapter 10, Iowa Administrative Code.

The IDA is a tax-benefited means for an individual whose annual household income does not exceed 200 percent of the federal poverty level to accumulate assets and earnings on assets for long-term purposes that lead to family self-sufficiency. Withdrawal of funds from an individual's IDA is intended to be used for any or all of the following purposes: educational costs at an institution of higher learning; job training costs; purchase of a primary residence; capitalization of a small business start-up; an improvement to a primary residence which increases the tax basis of the property; emergency medical costs for the account holder or for a member of the account holder's family which is limited to a single withdrawal during the life of the account in an amount not to exceed 10 percent of the account balance at the time of the withdrawal; purchase of an automobile; or purchase of assistive technology, home or vehicle modification, or other device or physical improvement to assist an account holder or family member with a disability.

Contributions of up to \$2,000 made to an account by the individual are eligible for state match payments at a 1:1 ratio. Income earned on assets in an account is not subject to state income taxes.

Adults may transfer account assets to another individual's account without tax or penalty. Transfer of funds from a child's account is prohibited, and withdrawals must be for purposes approved by the operating organization.

The Division of Community Action Agencies shall administer the IDA program in partnership with local community organizations. The Division will issue requests for proposals (RFPs) for organizations to design and operate local IDA projects. Within the constraints of these rules and the enabling legislation, the local organizations shall have maximum flexibility to design an IDA project that best suits the needs of their local communities. Review criteria used to select local IDA operating organizations will include: safety and security of the investment mechanism, ability to link individual deposits with other services, performance requirements, matching funding for accounts, innovation and creativity in planning and implementation, and reporting and evaluation plans. The Division shall approve the establishment of the local IDA programs through an agreement with the selected operating organizations.

The Division finds, pursuant to Iowa Code section 17A.4(3), that notice and public participation are impracticable and contrary to the public interest because there is an immediate need to have rules in place governing the administration of IDAs. In addition, in 2008 Iowa Acts, chapter 1178, section 17, the General Assembly authorized the Division to adopt emergency rules.

The Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that these rules should become effective immediately upon filing on February 16, 2009, as directed in 2008 Iowa Acts, chapter 1178, section 17(1).

These rules are also published herein under Notice of Intended Action as **ARC 7614B** to allow for public comment.

COMMUNITY ACTION AGENCIES DIVISION[427](cont'd)

These rules became effective February 16, 2009.

These rules are intended to implement Iowa Code chapter 541A and 2008 Iowa Acts, chapter 1178, divisions III and IV.

The following amendment is adopted.

Adopt the following **new** 427—Chapter 14:

CHAPTER 14
INDIVIDUAL DEVELOPMENT ACCOUNTS (IDAs)

427—14.1(541A) Definitions.

“Account holder” means an individual who is the owner of an individual development account.

“Administrator” means the administrator of the division of community action agencies of the Iowa department of human rights.

“Charitable contributor” means an individual, company or organization that makes a contribution through a nonprofit association described in Section 501(c)(3) of the Internal Revenue Code, which association makes a deposit to an individual development account and which association is exempt from taxation under Section 501(a) of the Internal Revenue Code.

“Division” means the division of community action agencies of the Iowa department of human rights.

“Federal poverty level” means the poverty income guidelines established annually for a calendar year and published in the Federal Register by the United States Department of Health and Human Services.

“Financial institution” means a financial institution including, but not limited to, a bank, savings and loan, or credit union approved by the division to accept IDAs.

“Household” means the adults related by blood, marriage or adoption, or who are unrelated but have maintained a stable family relationship together over a period of time, and individuals under 18 years of age related to the above adults by marriage, blood or adoption who are living together. Living together refers to domicile as evidenced by the parties’ intent to maintain a home for their family and does not include a temporary visit.

“Individual contributor” means an individual who makes a deposit to an individual development account and is not the account holder or a charitable contributor.

“Individual development account” or *“IDA”* means an investment account which has the characteristics described in Iowa Code section 541A.2 and is operated by the operating organization.

“Individual development account state match fund” means the fund established in the state treasury under the authority of the division into which are deposited funds for payment to operating organizations for state match payments to IDAs and administrative costs to implement the IDA program.

“Minor account holder” means an account holder who is younger than 18 years of age.

“Operating organization” means an entity selected by the division for involvement in operating individual development accounts directed to the eligible target population.

“Source of principal” means any of the following sources of a deposit:

1. Deposits made by the account holder.
2. Deposits of state match payments.
3. Deposits of individual development account moneys that are transferred from another individual development account holder. The moneys transferred from another individual development account shall be considered to be a deposit of principal made by the account holder.
4. Deposits made on behalf of the account holder by an individual contributor or a charitable contributor.

427—14.2(541A) Establishment of individual development accounts. An investment account qualifies as an individual development account (IDA) when it is established and operates in accordance with the following:

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14.2(1) *Operating organization.* The investment account shall be established through an operating organization.

14.2(2) *Account.* The account shall be opened at a financial institution and kept in the name of an individual account holder.

14.2(3) *Deposits.* Deposits made to an individual development account are also known as sources of principal and shall be made in any of the manners indicated in the definition of “sources of principal” in rule 427—14.1(541A).

14.2(4) *Investment of funds.* The funds deposited in the individual development account may be invested in any investment that the financial institution is authorized to offer to the public.

14.2(5) *Income.* The account earns income.

14.2(6) *Maximum deposits of principal.* The total of all sources of principal in an individual development account may not exceed \$30,000.

427—14.3(541A) Individual development account state match fund. An individual development account state match fund is created in the state treasury under the authority of the division, the administrator of the individual development account (IDA) program. Funds in the state match fund shall be used by the division to provide the state match payment for account holder deposits in accordance with Iowa Code section 541A.3 and for the costs of administration of the IDA program. At least 85 percent of the funds appropriated to the fund shall be used for state match payments, and the remainder may be used for the administrative costs of the operating organization. Interest or earnings on moneys deposited in the fund shall be credited to the fund. Notwithstanding Iowa Code section 8.33, moneys appropriated to the fund shall not revert to any other fund.

427—14.4(541A) Eligibility, state match payments and state tax provisions.

14.4(1) *Eligibility based on countable household income level.* Eligibility shall be based on the account holder’s household income for the calendar year preceding the calendar year in which the IDA will be opened. The household income shall not exceed 200 percent of the federal poverty level as published in the same year. If an account holder’s household income exceeds 200 percent of the federal poverty level in any subsequent year following the year that the account holder established the account, the account shall remain open, but the account holder shall not be eligible to receive the state savings match payment for deposits made during the year following the year when the household income exceeds 200 percent of the federal poverty level. If the prospective account holder files an income tax return on a fiscal-year basis, the household income must nonetheless be computed on a calendar-year basis.

14.4(2) *Countable household income.* The household’s countable income shall be the Iowa net income as defined in Iowa Code section 422.7 with the following inclusions and exclusions:

a. Inclusions to the extent not already included in Iowa net income are as follows:

- (1) Capital gains.
- (2) Alimony.
- (3) Child support money.
- (4) Cash public assistance and relief, except property tax relief under Iowa Code chapter 425, division II.
- (5) The gross payment amount of any pension or annuity including, but not limited to, railroad retirement benefits.

- (6) Military retirement and veterans’ disability pensions.
- (7) Interest which is received from local, state or federal government securities.
- (8) Workers’ compensation.
- (9) The gross amount of disability income or “loss of time” insurance.

b. Exclusions are as follows:

- (1) Gifts from nongovernmental sources.
- (2) Surplus foods, including food assistance.
- (3) Payments received by an individual under the age of 18 under the federal Social Security Act.
- (4) Other in-kind relief supplied by a governmental agency.

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c. Income shall not be reduced by either a net operating loss carryover or by a capital loss carryover.

14.4(3) Determination of income status and eligibility.

a. In lieu of calculating countable household income as provided in subrule 14.4(2) to determine income status and eligibility of an individual to hold an IDA, the operating organization may use evidence of the individual's enrollment in a program with income eligibility restrictions that are equal to or less than the maximum household income provided in subrule 14.4(1) as sufficient for determining an individual's eligibility to hold an IDA.

b. In order to determine the amount of countable household income of the individual seeking to open an IDA and to maintain household income records on an annual basis, the operating organization shall use any of the following methods or other methods deemed appropriate by the operating organization to obtain accurate income information:

(1) The operating organization shall ask both the individual who wishes to establish an IDA and other members of the individual's household who have filed federal or state income tax returns to furnish a copy of the returns with attached W-2 statements, to sign a release of information form permitting the operating organization to receive from the Iowa department of revenue summary information indicating the Iowa net income, or to receive a copy of the state income tax return for the specific calendar year used to establish income eligibility to participate in the IDA program and for specified successive calendar years during which the IDA account is open. The operating organization shall protect the confidentiality of this information.

(2) If the individual and members of the individual's household have not filed federal or state income tax returns for the calendar year used to determine eligibility, the operating organization shall ask the individual to provide copies of available financial records of the household to determine the amount of countable income for the calendar year used to determine eligibility.

(3) The operating organization may also ask the individual seeking to hold an IDA to sign a release of information form allowing the operating organization to obtain individual and household income records held by agencies administering the programs as referenced in paragraph 14.4(3) "a" above. The operating organization shall use this information to verify and maintain household income records of individuals seeking to hold an IDA, thereby facilitating the administration of the IDA program. The operating organization shall maintain the confidentiality of this information. Countable household income determinations shall include the amount of the cash assistance provided through the programs referred to in paragraph 14.4(3) "a."

(4) If an individual has minimal or no financial records and the operating organization determines that the totality of the individual's circumstances corroborates a credible explanation for the absence of said records, the operating organization may accept a written self-declaration from the individual as sufficient to document initial income eligibility to hold an IDA.

c. The operating organization shall obtain and maintain income information records from the account holder and all members of the account holder's family on a yearly basis to determine continued IDA eligibility.

14.4(4) Exemption from income tax for income earned on assets in an IDA. Income earned on principal in an IDA shall be exempt from state income tax even if the account holder's household income is greater than 200 percent of the federal poverty level for the tax year.

14.4(5) State match payments. The operating organization shall determine the account holder's countable household income and account deposits on an annual basis for the purpose of computing the state match payment. The operating organization shall file with the division a claim for a state match payment on behalf of the account holder by April 30 of the year following the year in which the account holder made deposits into the IDA. The claim shall be filed on a form provided by the division. The division shall make a payment of a savings match on a 1:1 ratio on amounts of up to \$2,000 that an eligible account holder deposited in the account holder's account the previous year. The total state savings match for all years shall not exceed \$2,000 for any IDA. Neither the moneys transferred to an IDA from another IDA nor the state match received by the account holder pursuant to this subrule shall be considered an account holder deposit for purposes of determining a state match payment. The division

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or operating organization shall make the state match payment directly to the IDA in the manner deemed appropriate by the division.

14.4(6) Tax implications. IDAs shall be subject to department of revenue rule 701—40.44(422, 541A).

427—14.5(541A) Requests for proposals—operation of IDAs.

14.5(1) Issuance of requests for proposals. The division shall issue requests for proposals (RFPs) for operating organizations interested in operating an IDA program. The RFP shall require the operating organization to provide information in its proposal regarding the financial institution that the operating organization will use for the proposed IDA program. The division shall include such information in evaluating proposals submitted in response to the RFP.

14.5(2) Review criteria used to evaluate and select proposals responding to the RFP. The division shall evaluate and select proposals submitted by operating organizations in response to the RFP based upon, but not limited to, the criteria as provided in the RFP and the following criteria, which shall be ongoing responsibilities of the operating organization:

a. The project shall provide for a safe and secure investment mechanism for IDAs using a financial institution approved by the division. This provision shall include assurances to contributors that a process is in place to ensure that contributions will be used for approved purposes as provided in subrule 14.6(1).

b. The proposed project shall link the making of an account holder's contributions to an IDA with other services provided by or outcomes identified by the operating organization in the proposal. The proposed project shall include mechanisms for the operating organizations to monitor and enforce the identified outcomes and services.

c. The operating organization shall provide documentation establishing experience and ability to execute the project as proposed. Minimum capabilities shall include: an ability to provide financial education including asset-specific education, ability to link with tax preparation assistance, familiarity and ability to work with the proposed target population, and a strong record of successful management.

d. The operating organization's proposal shall include a commitment by the operating organization to provide independent matching funds for contributions made by account holders to an IDA on not less than a 1:1 ratio.

e. The proposal shall include a monitoring and evaluation plan for certifying the proposed project's outcomes.

f. The proposal shall include agreement and acknowledgment by the operating organization that it shall have ongoing responsibility for:

(1) Certifying that an investment account is an IDA based on its having the characteristics described in Iowa Code section 541A.2.

(2) Certifying annually the income eligibility of each account holder and the amount of contributions made by the account holder to the IDA during the preceding tax year, in order to determine the account holder's eligibility for the state match payment for such year.

(3) Recording annually the contributions made by the account holder, individual and charitable contributors, and the state.

(4) Submitting information regarding the IDA and account holders to the division as requested.

14.5(3) Additional evaluation criteria in the RFP. The division may include additional evaluation criteria in the RFP including, but not limited to: ability to network with other agencies or to form a communitywide consortium of agencies, if desirable, to operate IDAs; ability to form an effective working relationship with banks or other financial institutions; and ability to raise funds to provide an independent match on account holder deposits.

14.5(4) Other considerations and guidelines. Other considerations and guidelines in implementing IDAs are:

a. The division shall have authority to designate and limit the number of locations where IDA projects shall be implemented, taking into account demographic characteristics and geographic considerations.

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b. The division shall require all IDA operating organizations and projects to comply with any federal individual development account program requirements for drawing federal funding.

c. The division and the operating organization shall enter into an agreement that specifies the responsibilities of both parties, which agreement shall incorporate by reference the provisions of the RFP.

d. The operating organization shall maintain a clear and precise audit trail of all deposits and withdrawals of funds in IDAs. All withdrawals from an IDA shall require a signature of approval from the operating organization. Upon the termination of the agreement between the operating organization and the division or upon the discontinuance of the IDA program for any reason, the IDA accounts under the management of that operating organization shall terminate and the funds in the IDAs shall be distributed to the account holders, unless the operating organization and a successor operating organization located in the same geographic area and operating an IDA program approved by the division enter into an agreement for the transfer of IDA accounts to the successor operating organization. The division shall have authority to review and approve in advance the agreement between the two operating organizations.

e. Upon the termination of an operating organization's relationship with the financial institution holding its IDA accounts, the operating organization managing the accounts shall enter into an agreement with a division-approved successor financial institution to hold the accounts and shall arrange for the transfer of the accounts to the new financial institution. The new agreement shall be subject to the division's review and advance approval.

f. If an account holder moves to another location in the state not served by the operating organization but which is served by another operating organization with a division-approved IDA program, the original operating organization shall arrange for the transfer of the account to a financial institution that has an agreement with the operating organization in the new location. If there is no operating organization in the new location, the IDA account shall be closed, with funds in the account distributed to the account holder; alternatively, the operating organization and the account holder may jointly agree to maintain the account under the management of the existing operating organization and financial institution. The operating organization shall provide a written notification to the division of all transfers of IDA accounts to the management of a new operating organization.

427—14.6(541A) Authorized withdrawals of principal and income.

14.6(1) *Approved purposes for withdrawal of funds from an IDA.* An account holder may withdraw principal and income earned on principal from an IDA only with the written approval of the operating organization and only for the following approved purposes:

a. Educational costs at an accredited institution of higher education, which costs include, but are not limited to, tuition, laboratory fees or other fees for use of facilities, books and other supplies.

b. Training costs for an accredited or licensed training program, or training program approved by the division, which costs include, but are not limited to, tuition, laboratory fees or other fees for use of facilities, books and other supplies.

c. Purchase of a primary residence.

d. Capitalization of a small business start-up.

e. An improvement to a primary residence which increases the tax basis of the property.

f. Emergency medical costs for the account holder or for a member of the account holder's family. However, only one withdrawal from an IDA can be made for this purpose, and the amount of the withdrawal shall not exceed 10 percent of the account balance at the time of the withdrawal.

g. Purchase of an automobile.

h. Purchase of assistive technology, home or vehicle modification, or other device or physical improvement to assist an account holder or family member with a disability.

14.6(2) *Conditions on withdrawals of principal and income.* An account holder may withdraw funds from the account holder's IDA subject to the following conditions:

a. Any amount of principal and income earned on principal, provided the sum is authorized under subrule 14.6(1) and in accordance with the procedure for authorized withdrawals set forth under subrule 14.6(3).

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b. If the account holder is 59½ years of age or older, any amount of principal and income earned on principal. Such withdrawals shall not require the approval of the operating organization.

14.6(3) Procedures for account holder deposits and withdrawals. The following procedures (or such other procedures as agreed upon by the operating organization and financial institution to facilitate authorized withdrawals) shall apply to account holder deposits and withdrawals from an IDA:

a. For deposits, the account holder shall fill out and sign a deposit form provided by the operating organization, indicating the amount and date of a deposit by the account holder into the IDA and shall submit the form to the financial institution. The form shall be signed by the financial institution, which shall send copies to the account holder and the operating organization.

b. For a withdrawal, the account holder shall fill out and sign a withdrawal form provided by the operating organization, indicating the amount, date, and the purpose of the withdrawal. The account holder shall submit the form to the operating organization or its designated agent for approval and signature. The operating organization shall retain a copy and submit the withdrawal form to the financial institution to implement the electronic transfer of the funds or issuance of a check, payable to the account of the vendor as payment for an approved purpose for the withdrawal; or, if neither electronic transfer nor check issuance is possible or cost-effective, then the financial institution shall issue a two-party payee check made out to the account holder and to the vendor. If the approved purpose is for capitalization of a small business, the check shall be payable to the account holder's business account at a financial institution and to the vendor requiring payment for providing the service or product relative to the account holder's business.

427—14.7(541A) Notice of nonapproved withdrawals and closure of the account.

14.7(1) Nonapproved withdrawals and attempted withdrawals for nonapproved purposes. The financial institution shall notify the operating organization within five calendar days of any withdrawals or attempted withdrawals that appear to be nonapproved. The financial institution shall refuse to release any funds that do not have the written authorization of approval from the operating organization.

14.7(2) Closure of an IDA by the operating organization. The operating organization may close an IDA if the operating organization determines any of the following:

a. The account holder has withdrawn funds from the account for a purpose not authorized by subrule 14.6(1), or funds have been withdrawn under false pretenses and have been used for purposes other than for the approved purposes indicated at the time of the withdrawal.

b. There has been no activity in the IDA during the preceding 12 months.

c. The account holder has not complied with terms of an IDA participation agreement between the account holder and the operating organization, after being provided notice of the requirement to comply with the agreement by the operating organization.

427—14.8(541A) Transfers of assets of an IDA.

14.8(1) Transfers by an adult account holder. An adult account holder may transfer all or part of the assets in the adult account holder's IDA to any other account holder's IDA. Upon compliance by the operating organization and financial institution with the requirements of rule 427—14.6(541A), IDA account holders who have transferred funds into another individual's IDA account and any beneficiaries of the transferee's IDA account shall sign a waiver of liability form releasing the operating organization and the financial institution from civil liability and responsibility for the wrongful withdrawals of funds by the account holder due to the account holder's false representation of the purpose of the withdrawal, resulting in the loss to the account balance of deposited principal funds, including individual and charitable contributions, transferred funds, and the state match payments.

14.8(2) No transfers of assets from a minor account holder's IDA. Neither a minor account holder nor the parents or legal guardian of such minor account holder shall have the right or ability to transfer assets from the minor account holder's IDA to the IDA of any other account holder.

14.8(3) Transfers when the account holder dies. At the time an IDA is established, the account holder shall name a contingent beneficiary(ies) or an account holder transferee to whom the assets of the account holder's IDA shall be transferred upon the account holder's death. Upon the account holder's death, the

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account assets shall be transferred to the named contingent beneficiary or to the transferee's IDA, as applicable. A named beneficiary or transferee may be changed at the discretion of the account holder. If the named beneficiary or transferee is deceased or otherwise does not accept the transfer, the assets of the deceased account holder's IDA shall be transferred to the IDA state match fund.

These rules are intended to implement Iowa Code chapter 541A.

[Filed Emergency 2/16/09, effective 2/16/09]

[Published 3/11/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/09.

ARC 7603B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of 2009 Iowa Acts, House File 64, section 5, the Department of Human Services amends Chapter 58, "Emergency Assistance," Iowa Administrative Code.

These amendments adopt a new division intended to implement the Iowa Unmet Needs Disaster Grant Program (IUNDGP). This new program provides state assistance to address unmet disaster-related expenses that cannot be met by other financial assistance. The program provides for reimbursement for repair or replacement of personal property, home repair, mental health services, food assistance, child care, and temporary housing to households whose income is less than 300 percent of the federal poverty guidelines. The amount of assistance available to a household is capped at \$2,500.

The program is administered by the Department of Human Services in coordination with the Recovery Iowa Office and local Long-Term Recovery Committees established in affected areas. The Long-Term Recovery Committees will receive applications from affected households and will certify the households' residence and unmet disaster-related expenses and determine eligibility for assistance. Department staff will issue payments and process any appeals.

These amendments do not provide for waivers in specified situations, since the changes benefit recipients in the programs affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on February 11, 2009.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because 2009 Iowa Acts, House File 64, section 5, authorizes the Department to adopt rules without notice and public participation, and also because notice and public participation are contrary to the public interest in that there is an urgent need to make this assistance available as soon as possible.

The Department finds that these amendments confer a benefit upon households affected. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

These amendments are also published herein under Notice of Intended Action as **ARC 7604B** to allow for public comment.

These amendments are intended to implement 2009 Iowa Acts, House File 64, division II.

These amendments became effective February 11, 2009.

The following amendments are adopted.

ITEM 1. Reserve rules **441—58.46** to **441—58.50**.

ITEM 2. Adopt the following **new** division heading and preamble in 441—Chapter 58:

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DIVISION IV
IOWA UNMET NEEDS DISASTER GRANT PROGRAM

PREAMBLE

This division implements a new program of state assistance to address unmet disaster-related expenses that cannot be met by other financial assistance, as authorized by 2009 Iowa Acts, Senate File 64. The rules provide for reimbursement for repair or replacement of personal property, home repair, mental health services, food assistance, child care, and temporary housing to households whose income is less than 300 percent of the federal poverty guidelines. The amount of assistance available to a household is capped at \$2,500.

The program is administered by the department of human services in coordination with the recovery Iowa office and local long-term recovery committees established in affected areas. The long-term recovery committees will receive applications from affected households and will certify the households' residence and unmet disaster-related expenses and determine eligibility for assistance. Department staff will issue payments and process any appeals.

ITEM 3. Adopt the following new rules 441—58.51(83GA,HF64) to 441—58.58(83GA,HF64):

441—58.51(83GA,HF64) Definitions.

“Department” means the Iowa department of human services.

“Household” means all adults and children who lived in the pre-disaster residence who request individual assistance (not including landlords or other businesses), as well as any persons, such as infants, spouses, or part-time residents, who were not present at the time of the disaster but who are expected to return during the assistance period.

“Iowa disaster recovery case management” means the entity that oversees the operation of local long-term recovery committees, including ensuring that each county declared a presidential disaster area on and after May 24, 2008, and before August 14, 2008, has a long-term recovery committee.

“Long-term recovery committee” means a county-based committee that performs direct work with households seeking assistance for unmet needs and certifies the assistance that each household may receive. The committee operates the voucher system for certified goods and submits documented claims to the department for reimbursement of voucher-related expenses.

“Unmet need” means an item or service needed to overcome a disaster-related hardship, injury, or adverse condition due to an eligible federally declared disaster resulting in costs or damages related to personal property, home repair, food assistance, mental health assistance, child care, or temporary housing for which the household has not received adequate assistance from any federal, state, nonprofit, or faith-based agency.

441—58.52(83GA,HF64) Program implementation. The Iowa unmet needs disaster grant program (IUNDGP) shall be in effect upon enactment on February 2, 2009, and shall be retroactively applicable to May 24, 2008. Within the funds appropriated, this program is available for households affected by natural disasters in areas that the President of the United States declared a disaster area after May 24, 2008, and before August 14, 2008.

441—58.53(83GA,HF64) Application for assistance. To request financial assistance for unmet disaster needs expenses, the household shall complete Form 470-4689, Iowa Unmet Needs Disaster Grant Application, and submit the application to the local long-term recovery committee.

58.53(1) Application forms are available from the local long-term recovery committee or the rebuild Iowa office. Individuals can find their local long-term recovery committee by calling the rebuild Iowa office toll-free at (866)849-0323.

58.53(2) The application shall include:

- a. A declaration of the household's annual gross income.
- b. A release of confidential information to personnel involved in administering the program.
- c. An assurance that the household had no insurance coverage for claimed items.

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d. A commitment to refund any part of a grant awarded that is duplicated by insurance or by any other assistance program, such as but not limited to other state assistance, local community development groups, charities or faith-based agencies, the Small Business Administration, or the Federal Emergency Management Administration.

e. A short, written narrative of the disaster event and how the disaster caused the loss being claimed.

f. A copy of a photo identification document for each adult applicant.

g. When vehicle damage is claimed, current copies of the vehicle registration and liability insurance card.

441—58.54(83GA, HF64) Eligibility criteria. To be eligible for assistance, an applicant household must meet all of the following conditions:

58.54(1) The household's residence was located in the area identified by a presidential disaster declaration occurring on or after May 24, 2008, and before August 14, 2008, and the household verifies occupancy at that residence.

58.54(2) Household members are citizens of the United States or are legally residing in the United States.

58.54(3) The household's self-declared annual income is at or less than 300 percent of the federal poverty level for a household of that size.

a. Poverty guidelines are updated annually.

b. All income available to the household is counted, including wages, child support, interest from investments or bank accounts, social security benefits, and retirement income.

58.54(4) The household has disaster-related expenses not covered by insurance, or the claim is less than or equal to the deductible amount. This program will not reimburse the amount of the insurance deductible when the claim exceeds the deductible amount.

58.54(5) The household has not previously received assistance from this program or another program, such as but not limited to other state assistance, local community development groups, charities or faith-based agencies, the Small Business Administration, or the Federal Emergency Management Administration, for the same loss.

441—58.55(83GA, HF64) Eligible categories of assistance. The maximum assistance available to a household for a single disaster is \$2,500. Reimbursement is available under the program for the following disaster-related expenses:

1. Personal property.
2. Home repair.
3. Food assistance.
4. Mental health assistance.
5. Child care.
6. Temporary housing.

441—58.56(83GA, HF64) Eligibility determination and payment.

58.56(1) Committee duties. The long-term recovery committee shall enter into an agreement with the department. The committee shall perform the following duties, including specifying who is approved to certify eligibility for unmet needs grants on behalf of the long-term recovery committee.

a. Accept the household's application.

b. Certify that:

- (1) The address provided on the application is a valid address in the disaster-affected area,
- (2) Disaster-related expenses were a result of the covered disaster,
- (3) The household has presented reasonable documentation or receipts for expenses incurred, or has reasonable estimates for eligible costs for issuance of a voucher to secure specific eligible goods or services to be obtained, and
- (4) Funds remain available.

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c. Determine the amount of assistance the household is eligible to receive by category of assistance and provide the rationale for that amount.

d. Provide the signature of long-term recovery committee staff making the certification and the date of certification.

e. Notify the applicant household of the certification decision.

f. Submit a copy of the household's Form 470-4689, Iowa Unmet Needs Disaster Grant Application, to:

(1) The Rebuild Iowa Disaster Recovery Case Management, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319, and

(2) The Department of Human Services, Division of Results-Based Accountability, 1305 East Walnut Street, Des Moines, Iowa 50319-0114.

58.56(2) *Committee administrative expenses.* The department shall pay each long-term recovery committee a fee for administrative costs equal to 3 percent of paid grants the committee processes each month.

58.56(3) *Duties of disaster case management office.* Designated disaster staff in the rebuild Iowa disaster case management office shall:

a. Ensure that a long-term recovery committee is available in each county affected.

b. Coordinate contact between applicants and their long-term recovery committee.

c. Support the first-level reconsideration process.

58.56(4) *Duties of the department.* Designated disaster staff in the department of human services shall:

a. Process grant payments to the household or vendor and administrative fee payments to the long-term recovery committee.

b. Support the second-level reconsideration process.

c. Process appeals.

441—58.57(83GA, HF64) Contested cases.

58.57(1) *First-level reconsideration.* The household may request reconsideration of the long-term recovery committee decision regarding certification of eligible unmet needs and the amount of reimbursement awarded.

a. To request reconsideration, the household shall submit a written request to the Rebuild Iowa Disaster Recovery Case Management, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319, within 15 days of the date of the long-term recovery committee's notification to the household of its certification decision.

b. The rebuild Iowa disaster recovery case management shall review any additional evidence or documentation submitted, issue a reconsideration decision within 15 days of receipt of the request, and notify the household of the reconsideration decision.

58.57(2) *Second-level reconsideration.* The household may request reconsideration of the rebuild Iowa disaster recovery case management decision regarding certification of eligible unmet needs and the amount of reimbursement awarded.

a. To request reconsideration, the household shall submit a written request to the Iowa Department of Human Services, Division of Results-Based Accountability, 1305 East Walnut Street, Des Moines, Iowa 50319-0114, within 15 days of the date of the notification to the household of the first-level reconsideration decision from rebuild Iowa disaster recovery case management.

b. The department shall review any additional evidence or documentation submitted, issue a reconsideration decision within 15 days of receipt of the request, and notify the household of the reconsideration decision.

58.57(3) *Appeal.* The household may appeal the department reconsideration decision according to procedures in 441—Chapter 7.

a. Appeals must be submitted in writing, either on Form 470-0487 or 470-0487(S), Appeal and Request for Hearing, or in any form that provides comparable information, to the DHS Appeals Section,

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1305 East Walnut Street, Des Moines, Iowa 50319-0114, within 15 days of the date of the second-level reconsideration decision.

b. A written appeal is filed on the date the envelope sent to the department is postmarked or, when the postmarked envelope is not available, on the date the appeal is stamped received by the department.

441—58.58(83GA, HF64) Discontinuance of program. The Iowa unmet needs disaster grant program administered under this chapter shall be discontinued upon exhaustion of allocated funds or on June 30, 2010, whichever occurs first.

These rules are intended to implement 2009 Iowa Acts, House File 64, division II.

[Filed Emergency 2/11/09, effective 2/11/09]

[Published 3/11/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/09.

ARC 7637B**ADMINISTRATIVE SERVICES DEPARTMENT[11]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 8A.104, the Department of Administrative Services hereby amends Chapter 66, "Conduct of Employees," Iowa Administrative Code.

Notice of Intended Action for this amendment was published in the January 14, 2009, Iowa Administrative Bulletin as **ARC 7501B**.

This amendment is made pursuant to 2008 Iowa Acts, chapter 1191, section 38 (new Iowa Code section 68B.2A(4)), which shifts to the Iowa Ethics and Campaign Disclosure Board jurisdiction for rule making regarding executive branch state employees' involvement in outside employment or activities that may constitute conflict of interest.

No comments were received during the public comment period which ended on February 3, 2009.

This amendment is intended to implement Iowa Code section 8A.104.

This amendment will become effective April 15, 2009.

The following amendment is adopted.

Rescind and reserve rule **11—66.3(68B)**.

[Filed 2/20/09, effective 4/15/09]

[Published 3/11/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/09.

ARC 7628B**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 214.10, 214A.2 and 215.24, the Department of Agriculture and Land Stewardship hereby amends Chapter 85, "Weights and Measures," Iowa Administrative Code.

The amendments require that pumps for ethanol blended gasoline classified as higher than E-10 have a "for flex fuel vehicle only" sticker on the pump or pump handle and shall not have an octane rating posted. Blender pumps selling ethanol blended gasoline classified as higher than E-10 must have at least two hoses per pump.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 7370B** on November 19, 2008.

The comments received were, in general, supportive of the provisions.

The provision on requiring the designation of the volume percent of ethanol or biodiesel to be displayed was eliminated because of a change in federal regulations. The "for flex fuel vehicle only" sticker was amended to allow placement on the pump as well as the pump handle.

These amendments are intended to implement Iowa Code chapter 214A as amended by 2008 Iowa Acts, House File 2689 [chapter 1169].

These amendments will become effective April 15, 2009.

The following amendments are adopted.

ITEM 1. Adopt the following **new** subrule 85.48(11):

85.48(11) Ethanol blended gasoline classified as higher than E-10 shall have a visible, legible "for flex fuel vehicle only" sticker on the pump or pump handle.

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ITEM 2. Rescind and reserve subrules **85.48(12)** and **85.48(13)**.

ITEM 3. Amend subrule 85.48(14) as follows:

85.48(14) Octane rating of fuel offered for sale shall be posted on the pump in a conspicuous place. However, no octane rating shall be posted on the pump for ethanol blended gasoline classified as higher than E-10.

ITEM 4. Adopt the following **new** rule 21—85.50(214,214A,215):

21—85.50(214,214A,215) Blender pumps. Motor fuel blender pumps or blender pumps installed or modified after November 1, 2008, which sell both ethanol blended gasoline classified as higher than E-10 and gasoline need to have at least two hoses per pump.

This rule is intended to implement Iowa Code section 214A.2.

[Filed 2/20/09, effective 4/15/09]

[Published 3/11/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/09.

ARC 7623B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby amends Chapter 23, "Emission Standards for Contaminants," Iowa Administrative Code.

The purpose of the rule making is to remove from the state air quality rules certain federal regulations that the United States Court of Appeals for the District of Columbia Circuit (the D.C. Court) recently vacated. The federal programs vacated by the D.C. Court that are addressed in this rule making are the National Emission Standards for Hazardous Air Pollutants (NESHAP) for industrial, commercial and institutional boilers and process heaters and the NESHAP for brick and structural clay products manufacturing.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 3, 2008, as **ARC 7395B**. A public hearing was held on January 5, 2009. The Department did not receive any oral or written comments at the public hearing. The Department received two sets of written comments before the public comment period closed on January 6, 2009.

The public comments submitted are described below for the respective items. Additionally, the submitted comments and the Department's response to those comments are summarized in more detail in a responsiveness summary available from the Department. In response to comments, the Department made minor changes to the adopted amendments from those published under Notice.

Over the last year and a half, the D.C. Court has issued rulings on several significant federal regulations promulgated by the U.S. Environmental Protection Agency (EPA). The D.C. Court found the regulations to be unauthorized under the federal Clean Air Act (CAA) or otherwise deficient. Although the D.C. Court vacated the federal regulations, the regulations were adopted by reference and therefore are still in effect and enforceable by the Department. The vacatur of these federal programs have elicited uncertainty and confusion for regulated industries and for state and local air quality agencies. In response to these vacatur, the Department is removing the now-vacated federal regulations that were adopted by reference.

Section 112 of the CAA as amended in 1990 requires EPA to develop a list of source categories or subcategories that emit or have the potential to emit hazardous air pollutants (HAP) and further requires EPA to issue regulations for these source categories or subcategories. Section 112 also requires certain subject sources to meet maximum achievable control technology (MACT) for controlling HAP.

EPA issues the MACT standards for listed source categories and subcategories under the NESHAP program. EPA promulgated the NESHAP with MACT standards for brick and structural clay products

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manufacturing (Brick MACT) on May 16, 2003. EPA promulgated the NESHAP with MACT standards for institutional, commercial and industrial boilers and process heaters (Boiler MACT) on September 13, 2004. The Brick MACT and the Boiler MACT were adopted by reference into the existing state air quality rules.

Section 112 includes provisions to require MACT for major sources of HAP emissions in the event that EPA does not issue MACT standards. Under Section 112(g), if EPA has not set applicable emission limits for a category of listed HAP sources, construction of a new major source or modification of an existing major source in the source category may not occur unless the Administrator (or delegated state or local agency) determines on a case-by-case basis that the unit will meet standards equivalent to MACT. Under Section 112(j), if EPA fails to promulgate a standard for a listed category or subcategory by the dates established in the CAA, states must conduct a case-by-case MACT determination for each subject source category or subcategory and include the MACT requirements in each facility's Title V Permit. EPA has delegated authority to the Department to implement and enforce both Sections 112(g) and 112(j) in Iowa.

The D.C. Court issued its decision to vacate the Brick MACT on March 13, 2007, and issued the mandate making the decision final and effective on June 18, 2007. EPA did not appeal the decision to the U.S. Supreme Court. The D.C. Court's decision is available online at <http://pacer.cadc.uscourts.gov/docs/common/opinions/200703/03-1202a.pdf>.

The D.C. Court issued its decision to vacate the Boiler MACT on June 8, 2007, and issued the mandate making the decision final and effective on July 30, 2007. EPA did not appeal the decision to the U.S. Supreme Court. The D.C. Court's decision is available online at <http://pacer.cadc.uscourts.gov/docs/common/opinions/200706/04-1385a.pdf>.

Because of the D.C. Court vacatur, it now appears that Sections 112(g) and 112(j) apply to sources affected by the vacated Boiler and Brick MACTs. Additionally, EPA entered into a D.C. Court-ordered agreement that includes several options, including a schedule requiring EPA to repropose a Boiler MACT by July 31, 2009, and to repromulgate a final Boiler MACT standard by July 31, 2010. EPA has not provided a schedule for repromulgating the Brick MACT.

At the Department's Air Quality Client Contact meetings on August 14, 2008, and November 13, 2008, the Department discussed the implications of the Boiler MACT vacatur with stakeholders. At the meetings, the Department outlined a tentative Section 112(j) time line for owners and operators of facilities with boilers and process heaters. The Department sent follow-up letters to affected facilities on September 16, 2008, and on December 31, 2008.

Since only three brick and structural clay products manufacturing facilities exist in the state, the Department will be working with these facilities individually to develop the Section 112(j) requirements as needed.

Item 1 amends paragraph 23.1(4)“dd,” which adopts by reference the federal provisions for the Boiler MACT. The amendment removes most of the explanatory text from the paragraph. The change is being made because the D.C. Court vacated the Boiler MACT. The amendment also includes a paragraph explaining the vacatur and indicating that the adoption by reference of federal regulations under 40 CFR Part 63, Subpart DDDDD, is rescinded. The Department received comments from EPA Region VII on this item, suggesting that the Department clarify the amendment to state that the adoption by reference of the federal regulations is rescinded rather than stating that the federal regulations are no longer adopted by reference. The Department is making the suggested changes to the adopted amendments. The paragraph is being preserved as a placeholder because EPA is required to repromulgate the Boiler MACT and may do so under the same federal subpart.

Item 2 amends paragraph 23.1(4)“dj,” which adopts by reference the federal provisions for the Brick MACT. The amendment removes most of the explanatory text from the paragraph. The change is being made because the D.C. Court vacated the Brick MACT. The amendment also includes a paragraph explaining the vacatur and indicating that the adoption by reference of federal regulations under 40 CFR Part 63, Subpart JJJJJ, is rescinded. The Department received comments from EPA Region VII on this item, suggesting that the Department clarify the amendment to state that the adoption by reference of the federal regulations is rescinded rather than stating that the federal regulations are no longer

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adopted by reference. The Department is making the suggested changes to the adopted amendments. The paragraph is being preserved as a placeholder because EPA is required to repromulgate the Brick MACT and may do so under the same federal subpart.

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

These amendments will become effective on April 15, 2009.

The following amendments are adopted.

ITEM 1. Amend paragraph **23.1(4)“dd”** as follows:

dd. Emission standards for industrial, commercial and institutional boilers and process heaters. These standards apply to new and existing major sources with industrial, commercial or institutional boilers and process heaters. ~~For purposes of these standards, a boiler is defined as an enclosed device using controlled flame combustion and having the primary purpose of recovering thermal energy in the form of steam or hot water. Waste heat boilers, as defined in the federal rule, are excluded from these standards. For purposes of these standards, a process heater is defined as an enclosed device using controlled flame, that is not a boiler, and the unit's primary purpose is to transfer heat indirectly to a process material (liquid, gas, or solid) or to a heat transfer material for use in a process unit, instead of generating steam. Process heaters are devices in which the combustion gases do not directly come into contact with process materials. Process heaters do not include units used for comfort or space heat, food preparation for on-site consumption, or autoclaves. (Part 63, Subpart DDDDD)*~~

*As of April 15, 2009, the adoption by reference of Part 63, Subpart DDDDD, is rescinded. On July 30, 2007, the United States Court of Appeals for the District of Columbia Circuit issued its mandate vacating 40 CFR Part 63, Subpart DDDDD, in its entirety, and requiring EPA to repromulgate final standards for industrial, commercial or institutional boilers and process heaters at new and existing major sources.

ITEM 2. Amend paragraph **23.1(4)“dj”** as follows:

dj. Emission standards for hazardous air pollutants for brick and structural clay products manufacturing. These standards apply to new and existing brick and structural clay products manufacturing facilities that are, are located at, or are part of a major source of hazardous air pollutant emissions. ~~The brick and structural clay products manufacturing source category includes those facilities that manufacture brick including, but not limited to, face brick, structural brick, and brick pavers; clay pipe; roof tile; extruded floor and wall tile; or other extruded, dimensional clay products. Additional applicability criteria and exemptions from these standards are contained in the applicable subpart. (Part 63, Subpart JJJJ)*~~

*As of April 15, 2009, the adoption by reference of Part 63, Subpart JJJJ, is rescinded. On June 18, 2007, the United States Court of Appeals for the District of Columbia Circuit issued its mandate vacating 40 CFR Part 63, Subpart JJJJ, in its entirety, and requiring EPA to repromulgate final standards for brick and structural clay products manufacturing at new and existing major sources.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/09.

ARC 7625B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.173 and 455B.197, the Environmental Protection Commission hereby adopts amendments to Chapter 60, “Scope of Title—Definitions—Forms—Rules of Practice,” Chapter 62, “Effluent and Pretreatment Standards: Other Effluent Limits or Prohibitions,” Chapter 63, “Monitoring, Analytical, and Reporting

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Requirements,” and Chapter 64, “Wastewater Construction and Operation Permits,” Iowa Administrative Code.

Pursuant to Iowa Code section 455B.173(3), the Commission is required to establish, modify, or repeal rules relating to the location, construction, operation, and maintenance of disposal systems. Iowa Code section 455B.173(3) specifies the conditions under which the Director shall issue, revoke, suspend, modify, or deny permits for the operation, installation, construction, addition to, or modification of any disposal system, or for the discharge of any pollutant. These amendments fulfill the Commission’s and the Department’s requirements pursuant to Iowa Code section 455B.173(3).

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 10, 2008, as **ARC 7152B**. Three public hearings were held throughout the state with notice of the hearings sent to various individuals, organizations, and associations, and to statewide news network organizations. Comments were received from 170 persons and organizations. A responsiveness summary addressing the comments may be obtained from the Department of Natural Resources. At its October 14, 2008, meeting, the Administrative Rules Review Committee (ARRC) requested that the Department perform an Informal Regulatory Analysis of the Notice. The Informal Regulatory Analysis was presented to the ARRC at its December 10, 2008, meeting.

The amendments have been modified from those published under Notice based on the comments received during the public comment period and additional input received from stakeholders about the Informal Regulatory Analysis. The modifications to the final amendments add or remove minor phrases for clarification, change the definition of and requirements for bypasses, reduce the monitoring requirements, and remove the language on substantial compliance. The following summary describes the amendments and the changes that have been made since publication of the Notice. The summary does not detail all of the amendments, but it highlights the amendments that will have the greatest impact on wastewater treatment facilities and the State of Iowa and the amendments that have been changed from the Notice.

1. Chapter 60

The amendments to Chapter 60 include the addition of several definitions, the addition of newer permit application forms, and clarification of the language concerning permit applications and permit amendments. Several definitions are added to Chapter 60. The terms are from the Code of Federal Regulations, Iowa Code section 455B.171, the Wastewater Design Standards, other Administrative Code chapters, or as suggested by NPDES permit writers. The new definitions are being added to Chapter 60 because the terms are used in one or more of 567—Chapters 60 to 69.

Five changes have been made to the definitions for Chapter 60 as published under Notice. First, the definition of “bypass” has been changed, and the definition of “sanitary sewer overflows” has been removed based on stakeholder comments. The definition of “bypass” provides clarification of what is considered to be a bypass, but is not more stringent than the Code of Federal Regulations. Second, the definitions of “high quality resource waters” and “high quality waters” have been removed from Chapter 60; these terms are already defined in 567—Chapter 61. Third, the language “made with the consent of the permittee” has been incorporated in the definition for “minor permit amendment.” This language is from the Code of Federal Regulations and has been included to comply with federal regulations. Fourth, the language “or contribute to” has been removed from the definition of “pass through” at the request of stakeholders and in order to comply with the definition of “pass through” in the Code of Federal Regulations. Fifth, a second sentence has been added to the definition of “private sewage disposal system” to conform to the recently adopted rules for 567—Chapter 69.

The newer permit application forms are added to Chapter 60 in order to make the list of permit application forms complete. The amendments clarify the application requirements for NPDES and operation permits by including a description of a complete permit application, when a permit application is due, the procedure for addressing incomplete applications, how to submit a permit amendment request, and how to request a variance from monitoring requirements in a permit.

Three changes have been made to the language concerning permit applications in the final amendments. For completeness, additional forms and form numbers have been added to the list of application forms proposed in the Notice. For clarification purposes, the phrase “in the case of existing

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discharges” has been added to the last sentence of subparagraph 60.4(2)“a”(2) regarding incomplete permit applications. At the suggestion of the commenters, the sentence “For a POTW, permission to submit an application at a later date may be granted by the director” has been added to subparagraph 60.4(2)“a”(1) regarding complete permit applications, as required by the Code of Federal Regulations. This sentence has also been added to the corresponding application language in 567—64.8(455B).

An additional minor change has been made to the language concerning permit amendments. At the request of the commenters, the language concerning the request to amend a compliance schedule will remain the same. The Department proposed in the Notice to require the submittal of such a request at least 60 days in advance, but the final amendments retain the current language that requires a request to amend a compliance schedule to be made at least 30 days in advance.

2. Chapter 62

The amendments to Chapter 62 include language on prohibited discharges, on the derivation of effluent limits in permits using Total Maximum Daily Load (TMDL) allocations, on the reuse of treated effluent, and on the calculation of the 30-day average percent removal of five-day Carbonaceous Biochemical Oxygen Demand (CBOD₅). The language on prohibited discharges is taken from the Code of Federal Regulations, which lists pollutants that cannot be discharged to public or private domestic sewage treatment works. The amendment on the reuse of treated final effluent is taken from a Department policy document and clarifies the requirements for the reuse of treated effluent for irrigation of golf courses. The only change from the Notice in the amendments to Chapter 62 is the deletion of a phrase for clarification in subrule 62.10(1) pertaining to the reuse of treated effluent.

Chapter 62 currently states that effluent limitations in permits shall be determined using the calculated wasteload allocations. The language on the derivation of effluent limits does not include a reference to TMDLs. The Code of Federal Regulations requires states to implement TMDLs through NPDES permits for point-source discharges; thus, the amendments to Chapter 62 include language on using approved TMDLs to establish permit limits.

The amendments on the calculation of the 30-day average percent removal for secondary treatment clarify how to calculate the percent removal based on the monitoring adopted in Chapter 63. One of the adopted monitoring changes to Chapter 63 requires domestic treatment facilities to measure five-day Biochemical Oxygen Demand (BOD₅) in raw wastewater and CBOD₅ in effluent wastewater. BOD₅ is an appropriate measure of raw wastewater strength and is useful for the future design of wastewater treatment plants. CBOD₅ is an appropriate measure of effluent wastewater strength and is currently used in NPDES permits. The federal secondary treatment standards require that the 30-day average percent removal of either BOD₅ or CBOD₅ in wastewater be not less than 85 percent. Because the amendments to Chapter 63 require monitoring of both BOD₅ and CBOD₅, it is necessary to specify how the percent removal shall be calculated. The amendments add a description of the 85 percent removal calculation to the secondary effluent limits listed in Chapter 62.

3. Chapter 63

The amendments to Chapter 63 replace the language on bypasses and upsets, update monitoring requirements for all NPDES permits by adding new monitoring, and rescind the monitoring table for inorganic waste discharges (Table V) and incorporate the monitoring for inorganic waste discharges into a rule-referenced document cited in rule 63.3(455B).

The language about bypasses has been changed from that in the Notice. The language in rule 63.6(455B) no longer includes references to sanitary sewer overflows, as the U.S. EPA has not yet modified the Code of Federal Regulations to specifically discuss sanitary sewer overflows. Based on stakeholder comments, several other minor changes have been made to the language about bypasses in the final rule. The language on anticipated bypasses has been modified to allow for notification ten days ahead of the anticipated bypass rather than two weeks. The unanticipated bypass or upset notification language no longer includes the statement that notification by voicemail is unacceptable. The language has also been changed to indicate that required additional monitoring, sampling, and analysis pertain only to a bypass or upset. The language about bypasses was also modified to require only the submission of additional information concerning steps taken to minimize the effect of a bypass, rather than any information on bypass.

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The Department, after discussions with stakeholders and a thorough review of the federal regulations, has decided to adopt bypass requirements that provide more detail than the federal regulations regarding reporting, public notice, monitoring, and cleanup of bypasses. These requirements will not impose significant additional costs to regulated entities.

The adopted bypass requirements in the final rule concerning requests for anticipated bypasses provide more clarity than the federal regulations. The federal regulations require submittal of prior notice of an anticipated bypass, but do not describe what "prior notice" consists of. The adopted requirements for an anticipated bypass set out the information that should be included in a written request for an anticipated bypass. The requirements concerning the written request ("prior notice") are necessary to clarify what a regulated entity must do in the case of an anticipated bypass. The anticipated costs of this change will include the operator time to prepare and submit the written request and the postage to mail the request to the Department. These costs are negligible, as anticipated bypasses occur only rarely.

The public notice requirements in the final rule for bypasses add detail not present in the federal requirements. The Department believes that the public and downstream users should be informed when a bypass has occurred. The adopted language in the final rule allows the Department to determine when public notice is necessary; thus, many small or precipitation-related bypasses will not require public notice. The anticipated costs of this change will include the operator time to prepare the notice and the cost of publishing the notice. The costs to regulated entities of this final rule cannot be quantified, as the occurrence of bypasses that could require public notice cannot be predicted with any certainty.

The requirements in the final rule that describe the required written reports for unanticipated bypasses comply with the section of the federal regulations that requires a written submission concerning the circumstances of noncompliance which may endanger human health or the environment. A different section of the Code of Federal Regulations requires a written submission only for bypasses which exceed any effluent limitation. The adopted rule requires a written submission for all bypasses, whether or not they exceed effluent limitations in the permit. Written reports are required for all bypasses in the final rule because either bypasses that occur in the collection system will not have any effluent limitations or it will be unknown whether there is an exceedance of an effluent limitation. In order for the Department to adequately address problems created by bypasses, it is important to have a detailed description of all bypasses that may pose a risk to human health or the environment, whether or not the bypass has exceeded an effluent limitation in the permit. The anticipated costs of this change will include the operator time to prepare and submit the written report with the required monthly operation reports. These costs will be negligible, as facilities already report bypasses on their monthly operation reports.

The bypass and upset requirements in the final rule on additional monitoring, sampling, or analysis of a bypass or upset require additional steps beyond the federal regulations. Additional monitoring, sampling, or analysis of a bypass or upset is necessary to determine the effect of the bypass or upset upon human health and the environment. Without sampling data, it is only possible to guess at the effect of a bypass or upset. When the effects of a bypass could be detrimental to human health or the environment, additional disinfection and cleanup are warranted. The cleanup and disinfection requirements in the final rule will ensure that bypasses are dealt with appropriately. The anticipated costs of this change will include the sampling costs and the operator time to take and record samples of a bypass or upset and the disinfection costs and operator time to disinfect or clean up a bypass. The costs of this change to regulated entities cannot be quantified, as bypasses and upsets cannot be predicted with any certainty, and any sampling, disinfection, or cleanup that may be required will be different for different bypasses and upsets.

When additional monitoring, sampling, or analysis is required to determine the effects of a bypass or upset, such analyses must be submitted to the Department. The anticipated costs of this change will include the postage to mail the sample data to the Department. Regulated entities will incur little, if any, cost from the additional data submittal in the final rule.

The current monitoring requirements in Chapter 63 have not been updated in more than 20 years. The final amendments update the minimum monitoring requirements for organic waste dischargers by increasing some of the current requirements and by adding new parameters. The increase in the current monitoring allows for better operational control and compliance monitoring, thereby ensuring

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that all facilities will meet permit requirements and are properly operated. The new monitoring for Total Nitrogen (TN), Total Phosphorus (TP), and Total Kjeldahl Nitrogen (TKN) gives the facilities and the Department needed information on the nutrient levels coming from dischargers of organic wastes. Effluent limits for TN, TP, and TKN will not be included in permits at this time. The data from the new monitoring will assist the Department in the development of nutrient standards and TMDLs and will help ensure that appropriate limits are placed in TMDLs for point source dischargers.

The monitoring tables in the final amendments have been significantly changed from those in the Notice. The changes were made due to stakeholder comments and to reduce the impact of new monitoring requirements on small wastewater facilities. In Table I for Controlled Discharge Lagoons (CDLs), four changes were made. First, the requirement to monitor TN and TP has been removed for all CDLs. In conjunction with the removal of TN and TP monitoring, the TN and TP superscript has been moved to Table II for continuously discharging facilities. Second, all of the sample frequencies for CDLs have been changed to per drawdown rather than per week or per month in order to clarify when effluent sampling is required. Third, the sampling frequency for *E.coli* monitoring for the CDLs with a Population Equivalent (PE) greater than 100 has been changed from once every two weeks to twice per drawdown, so that *E.coli* sampling frequencies will be similar to the sampling frequencies for other parameters. Fourth, with the exception of one-cell CDLs, the monitoring frequencies for the parameters in the less than 100 PE category have been reduced to match the current rules. The monitoring for two- and three-cell CDLs with a PE of less than 100 does not increase. For one-cell lagoons with a PE of less than 100, a superscript has been added to indicate that the sampling frequencies for Total Suspended Solids (TSS) and Carbonated Biochemical Oxygen Demand (CBOD₅) will be twice per drawdown to allow for better operational control and compliance monitoring of one-cell lagoons as these lagoons do not meet the current wastewater design standards.

In the final amendments, the two tables that were proposed in the Notice for continuously discharging facilities (Tables II and III) have been combined into one table (Table II). The table in the final amendments is similar to the current Table II in Chapter 63. Six changes have been made to Tables II and III from the Notice. First, as noted above, the tables were combined. This combination is an effect of the next five changes, which resulted in identical monitoring for all types of continuously discharging facilities. Second, the TN and TP requirements were changed. TN and TP monitoring was removed for facilities with a PE of less than 1000. In addition, the TN, TP and TKN monitoring was reduced by half for the facilities with a PE of greater than 1000. The language in the new TN and TP superscript that was moved from Table I was also modified to discuss TN analysis and TN and TP reporting in more detail.

Third, a superscript was added to Table II that states ammonia nitrogen monitoring is required only for facilities with ammonia nitrogen limits. This superscript is the same as an existing superscript in Table II of Chapter 63. Fourth, the monitoring frequencies for most of the parameters in the less than 100 and the 101 to 500 PE categories were reduced to the levels in the current Table II of Chapter 63. This change was made to reduce the impact of new monitoring requirements on small wastewater facilities. The frequency of the monitoring for ammonia nitrogen and *E.coli* for the less than 100 and the 101 to 500 PE categories was not reduced, due to the monthly ammonia limits and *E.coli* geometric mean required by 567—Chapter 61 (Water Quality Standards). Fifth, the monitoring frequencies for all of the parameters in the 501 to 1000 PE category, with the exceptions of TSS and *E.coli*, were reduced to the levels in the current Table II of Chapter 63. The monitoring frequency for TSS is higher than that in the current Table II in order to provide better operational control and compliance monitoring, and the *E.coli* monitoring frequency must comply with the Water Quality Standards. Sixth, the TSS monitoring for the facilities with a PE between 1000 and 15,000 has decreased from that in the Notice.

The changes to the monitoring tables in the final amendments result in less cost from the new monitoring for small communities and semipublic facilities (e.g., mobile home parks, campgrounds). The continuing costs to the small facilities are due to the *E.coli* and influent wastewater sampling requirements. These requirements have not been removed from the final amendments, as they are necessary to ensure that these facilities meet Water Quality Standards and comply with the Federal Code of Regulations.

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The minimum monitoring table in Chapter 63 for inorganic waste dischargers does not include monitoring requirements for several types of industrial dischargers. Due to the complexity of inorganic wastes and the diversity in industrial discharges, the development of a single table to cover all inorganic waste discharges is impractical. Thus, the final amendments rescind Table V and incorporate the monitoring for inorganic waste discharges into the rule-referenced document, “Supporting Document for Permit Monitoring Frequency Determination,” which is cited in rule 63.3(455B). The new document quantifies the factors requiring additional monitoring in rule 567—63.3(455B) and sets out a procedure for the derivation of monitoring requirements. The final rule-referenced document describes how to determine the monitoring requirements for the large number of industrial discharges that are not covered by existing Table V.

At the suggestion of the commenters, rule 63.9(455B) has been modified from the Notice to include a phrase that specifies that the additional monitoring required to be included in the calculation and reporting of data shall be “performed at the compliance monitoring point and analyzed according to 40 CFR Part 136.” This phrase was added to clarify the proposed language.

4. Chapter 64

The amendments to Chapter 64 add two classes of facilities that are exempted from obtaining operation permits; clarify the language regarding the issuance and denial of operation and NPDES permits; clarify the public notice requirements for NPDES permits; and add language on public requests to amend, revoke and reissue, or terminate permits.

Chapter 64 currently includes nine types of facilities and discharges that are exempted from obtaining operation and NPDES permits. The amendments add exemptions for privately owned geothermal heat pumps that do not discharge to a navigable water and pretreatment systems discharging to another disposal system. The current language in Chapter 64 is not descriptive of when, how, and under what circumstances operation and NPDES permits may be drafted, issued, or denied. The amendments differentiate, specify the procedures, and specify the permit rationale requirements for each occurrence. The public notice requirements for NPDES permits are expanded in the final amendments to include language on the public notice of public hearings and the responses to comments.

The current rules allow for the amendment, revocation and reissuance, and termination of permits only under certain conditions. The amendments expand the existing language to incorporate the other conditions for permit changes from both existing practice and federal regulations and include language from the Code of Federal Regulations that allows interested persons to submit requests to the Department for the amendment, revocation and reissuance, and termination of permits. Previously, only permittees were allowed to submit such requests. The final amendments allow interested persons to submit such requests for cause and allow the Director to act upon such requests by denying, amending, reissuing, or terminating permits.

Four changes have been made to Chapter 64 as published under Notice. First, the language on substantial compliance was removed from the final amendments. Permits currently may not be reissued if permittees have not substantially complied with permit conditions. The amendments proposed in the Notice clarified substantial compliance, because current rule language does not specify what constitutes substantial compliance with permit conditions. The final amendments to Chapter 64 do not include the language on substantial compliance proposed in the Notice because the Department is considering altering the language concerning permit reissuance. When a final decision is made on how to factor substantial compliance into the permit reissuance process, Chapter 64 will be revisited.

Second, language has been added to the operation permit exemption for private sewage disposal systems to reflect the newly adopted changes to 567—Chapter 69. Third, a phrase has been added to the language that sets forth the permit as a shield provision in the Notice. The language in the Notice stated that compliance with a permit is compliance with certain provisions of federal law, and the language was modified to include a statement that compliance with a permit is also compliance with certain provisions of state law. This change was based on stakeholder comments. Fourth, a phrase that had been proposed in two locations was removed in one location so there will not be duplicate rules.

Additional information on Iowa’s Water Quality Standards and the Department’s rules can be found on the Department’s Web site at <http://www.iowadnr.gov/water/npdes/rulemaking.html>.

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These amendments may have an impact upon small businesses.

These amendments are intended to implement Iowa Code sections 455B.173, 455B.197 and 455B.105(11).

These amendments shall become effective April 15, 2009.

The following amendments are adopted.

ITEM 1. Amend rule 567—60.1(455B,17A) as follows:

567—60.1(455B,17A) Scope of title. The department has jurisdiction over the surface water and groundwater of the state to prevent, abate and control water pollution, by establishing standards for water quality and for direct or indirect discharges of wastewater to waters of the state and by regulating potential sources of water pollution through a system of general rules or specific permits. The construction and operation of any wastewater disposal system and the discharge of any pollutant to a water of the state ~~requires~~ require a specific permit from the department, unless exempted by the department.

This chapter provides general definitions applicable in this title and rules of practice, including forms, applicable to the public in the department's administration of the subject matter of this title.

Chapter 61 contains the water quality standards of the state, including classification of surface waters. Chapter 62 contains the standards or methods for establishing standards relevant to the discharge of pollutants to waters of the state. Chapter 63 identifies monitoring, analytical and reporting requirements pertaining to permits for the operation of wastewater disposal systems. Chapter 64 contains the standards and procedures for obtaining construction, operation and ~~discharge~~ NPDES permits for wastewater disposal systems other than those associated with animal feeding operations. Chapter 65 specifies minimum waste control requirements and permit requirements for animal feeding operations. Chapter 66 specifies restrictions on pesticide application to waters. Chapter 67 contains standards for the land application of sewage sludge. Chapter 68 contains standards and licensing requirements applicable to commercial septic tank cleaners. Chapter 69 specifies guidelines for private sewage disposal systems.

ITEM 2. Adopt the following new definitions in rule **567—60.2(455B)**:

"Application for a construction permit" means the engineering report, plans and specifications and other data deemed necessary by the department for the construction of a proposed wastewater disposal system or part thereof.

"Application for an operation permit" means a written application for an operation or NPDES permit made on forms provided by the department.

"Approved pretreatment program" means a program administered by a publicly owned treatment works that meets the criteria established in 40 CFR Part 403 and which has been approved by the director.

"Average dry weather flow" or *"ADW"* means the daily average flow when the groundwater is at or near normal and runoff is not occurring.

"Average wet weather flow" or *"AWW"* means the daily average flow for the wettest 30 consecutive days for mechanical plants or for the wettest 180 consecutive days for controlled discharge lagoons.

"Bypass" means the diversion of waste streams from any portion of a treatment facility or collection system. A bypass does not include internal operational waste stream diversions that are part of the design of the treatment facility, maintenance diversions where redundancy is provided, diversions of wastewater from one point in a collection system to another point in a collection system, or wastewater backups into buildings that are caused in the building lateral or private sewer line.

"Combined sewer overflow" means the discharge from a combined sewer system at a point prior to the treatment works.

"Combined sewer system" means a wastewater collection system owned by a municipality which conveys sanitary wastewater (domestic, commercial, and industrial) and storm water through a single pipe system to the treatment plant.

"Construction permit" means a written approval from the director to construct a wastewater disposal system or part thereof in accordance with the plans and specifications approved by the department.

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“Discharge of a pollutant” means any addition of any pollutant or combination of pollutants to navigable waters or waters of the state from any point source. “Discharge of a pollutant” includes additions of pollutants into navigable waters or waters of the state from surface runoff which is collected or channeled by human activity; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. “Discharge of a pollutant” does not include an addition of pollutants by any indirect discharger.

“Disposal system” means a system for disposing of sewage, industrial waste, or other wastes, or for the use or disposal of sewage sludge. “Disposal system” includes sewer systems, treatment works, point sources, dispersal systems, and any systems designed for the usage or disposal of sewage sludge.

“Indirect discharger” means a non-domestic discharger introducing pollutants to a publicly owned treatment works.

“Industrial waste” means any liquid, gaseous, radioactive, or solid waste substance resulting from any process of industry, manufacturing, trade, or business, or from the development of any natural resource.

“Interference” means a discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

1. Inhibits or disrupts a POTW, its treatment process or operations, or its sludge processes, use or disposal; and
2. Is a cause of a violation of any requirement of a POTW NPDES permit including an increase in the magnitude or duration of a violation or the prevention of sewage sludge use or disposal.

“Major permit amendment” or *“major modification”* means a permit modification that is not a minor permit amendment as defined in this rule.

“Maximum wet weather flow” or *“MWW”* means the total maximum flow received during any 24-hour period when the groundwater is high and runoff is occurring.

“Minor permit amendment” or *“minor modification”* means a permit modification made with the consent of the permittee that occurs as a result of any of the following:

1. Correction of a typographical error;
2. Modification of the monitoring and reporting requirements in the permit to include more frequent monitoring or reporting;
3. Revision of an interim date in a compliance schedule, provided that the new date is not more than 120 days after the date specified in the permit and does not interfere with the attainment of the final compliance date;
4. Change in facility name or ownership;
5. Deletion of a point source outfall that does not result in the discharge of pollutants from other outfalls; or
6. Incorporation of an approved local pretreatment program.

“New source” means any building, structure, facility or installation from which there is or may be a discharge of pollutants to a navigable water, the construction of which commenced after the promulgation of standards of performance under Section 306 of the Act which are applicable to such source, provided that:

1. The building, structure, facility or installation is constructed at a site at which no other source is located; the building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or the production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors, such as the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.
2. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting

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the criteria of paragraph "1" but otherwise alters, replaces, or adds to existing process or production equipment.

3. Construction of a new source as defined pursuant to this rule has commenced if the owner or operator has:

- Begun, or caused to begin, as part of a continuous on-site construction program, any placement, assembly, or installation of facilities or equipment; or significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
- Entered into a binding contractual obligation for the purchase of facilities or equipment which is intended to be used in the operation of the new source within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this definition.

"Operation permit" means a written permit by the director authorizing the operation of a wastewater disposal system or part thereof or discharge source and, if applicable, the discharge of wastes from the disposal system or part thereof or discharge source to waters of the state. An NPDES permit will constitute the operation permit in cases where there is a discharge to a water of the United States and an NPDES permit is required by the Act.

"Other waste" means heat, garbage, municipal refuse, lime, sand, ashes, offal, oil, tar, chemicals, and all other wastes which are not sewage or industrial waste.

"Pass through" means a discharge which, alone or in conjunction with a discharge or discharges entering the treatment facility from other sources, exits a POTW or semipublic sewage disposal system in quantities or concentrations which cause a violation of any requirement of the treatment facility's NPDES permit including an increase in the magnitude or duration of a violation.

"Permit rationale" means a document that sets forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing a draft operation or NPDES permit.

"Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, or vessel or other floating craft, from which pollutants are or may be discharged. "Point source" does not include return flows from irrigated agriculture or agricultural storm water runoff.

"Pollutant" means sewage, industrial waste, or other waste.

"Population equivalent" means the calculated number of people who would contribute an equivalent amount of biochemical oxygen demand (BOD) per day as the system in question, assuming that each person contributes 0.167 pounds of five-day, 20 degrees Celsius, BOD per day.

"Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical, or biological processes, by process changes, or by other means, except as prohibited in 40 CFR 403.6(d).

"Pretreatment requirements" means any substantive or procedural requirement related to pretreatment, other than a national pretreatment standard, imposed on an industrial user.

"Pretreatment standard" or *"national pretreatment standard"* means any regulation containing pollutant discharge limits promulgated by EPA in accordance with Section 307(b) and (c) of the Act, which applies to industrial users. "Pretreatment standard" includes prohibitive discharge limits established pursuant to 40 CFR 403.5.

"Private sewage disposal system" means a system which provides for the treatment or disposal of domestic sewage from four or fewer dwelling units or the equivalent of less than 16 individuals on a continuing basis. This includes domestic waste, whether residential or nonresidential, but does not include industrial waste of any flow rate.

"Semipublic sewage disposal system" means a system for the treatment or disposal of domestic sewage which is not a private sewage disposal system and which is not owned by a city, a sanitary sewer

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district, or a designated and approved management agency under Section 208 of the Act (33 U.S.C. 1288).

“*Severe property damage*” means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. “Severe property damage” does not mean economic loss caused by delays in production.

“*Sewage*” means the water-carried waste products from residences, public buildings, institutions, or other buildings, including the bodily discharges from human beings or animals together with such groundwater infiltration and surface water as may be present.

“*Sewage from vessels*” means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under Section 312 of the Act.

“*Significant industrial user*” means an industrial user of a POTW that meets any one of the following conditions:

1. Discharges an average of 25,000 gallons per day or more of process wastewater excluding sanitary, noncontact cooling and boiler blowdown wastewater;
2. Contributes a process waste stream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW;
3. Is subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N; or
4. Is designated by the department as a significant industrial user on the basis that the contributing industry, either singly or in combination with other contributing industries, has a reasonable potential for adversely affecting the operation of or effluent quality from the POTW or for violating any pretreatment standards or requirements.

Upon a finding that an industrial user meeting the criteria in paragraph “1” or “2” of this definition has no reasonable potential for adversely affecting the operation of the POTW or for violating any pretreatment standard or requirement, the department may, at any time on its own initiative or in response to a request received from an industrial user or POTW, determine that an industrial user is not a significant industrial user.

“*Water of the state*” means any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.

ITEM 3. Amend rule **567—60.2(455B)**, definitions of “CFR,” “Major,” “Navigable water,” and “Regional administrator,” as follows:

“*CFR*” or “*Code of Federal Regulations*” means the ~~Code of Federal Regulations as published by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402~~ federal administrative rules adopted by the United States in effect as of July 1, 2008. The amendment of the date contained in this definition shall constitute the amendment of all CFR references contained in 567—Chapters 60 to 69, Title IV, unless a date of adoption is set forth in a specific rule.

“*Major*,” ~~means for municipalities, means a facility having a discharge flow or an average wet weather design flow of 1.0 mgd million gallons per day (MGD) or greater. For industries #~~ “major” means a facility which is designated by EPA as being a major industry based on the EPA point rating system ~~which uses pounds of wastes discharged for each facility.~~

“*Navigable water*” means a water of the United States as defined in 40 CFR Part 122.2.

“*Regional administrator*” means the regional administrator of the United States Environmental Protection Agency, Region VII, ~~726 Minnesota Avenue~~ 901 N. 5th Street, Kansas City, Kansas 66101.

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ITEM 4. Rescind the definitions of “Dry weather design flow,” “High quality resource waters,” “High quality waters,” “Major contributing industry” and “Standard methods” in rule 567—60.2(455B).

ITEM 5. Amend rule 567—60.3(455B,17A), introductory paragraph, as follows:

567—60.3(455B,17A) Forms. The following forms ~~are~~ shall be used ~~by the public~~ to apply for departmental approvals and to report on activities related to the wastewater programs of the department. Electronic forms may be obtained from the appropriate regional field office. All forms Paper forms may be obtained from ~~the Environmental Protection Division, Administrative Support Station, Iowa Department of Natural Resources, Henry A. Wallace Building, 900 East Grand Avenue, Des Moines, Iowa 50319-0032~~ the Web site of the department or by contacting the appropriate regional field office. Properly completed application forms ~~should~~ and all attachments shall be submitted in accordance with the instructions, ~~to the Wastewater Permits Section, Environmental Protection Division.~~ Reporting forms ~~should~~ shall be submitted to the appropriate field office. (See rule 567—1.4(455B))

ITEM 6. Amend subrule 60.3(2) as follows:

60.3(2) Operation and NPDES permit application forms.

a. Form 30 — public or private domestic ~~sewerage~~ sewer systems (municipal and semipublic facilities) 542-3220.

(1) Part A — basic information for all applicants.

(2) Part B — expanded effluent testing data.

(3) Part C — toxicity testing data.

(4) Part D — industrial user discharges and RCRA/CERCLA wastes.

(5) Part E — combined sewer systems.

(6) Part F — certification.

b. Form 31 — treatment agreement 542-3221.

c. Form 34 — open feedlots 542-~~3225~~ 4001.

d. Form 1 — general information for industrial, manufacturing or commercial systems 542-1376. (For storm water discharge EPA Form 3510-1, also referred to as EPA Form 1, may be used.)

e. Form 2 — facilities which do not discharge process wastewater—industrial, manufacturing or commercial systems 542-1377. (For storm water discharge EPA Form 3510-2E, also referred to as EPA Form 2E, may be used.)

f. Form 3 — facilities which discharge process wastewater existing sources—industrial, manufacturing, and commercial systems 542-1378. (For storm water discharge EPA Form 3510-2C, also referred to as EPA Form 2C, may be used.)

g. Form 4 — facilities which discharge process wastewater—new sources—industrial, manufacturing or commercial systems 542-1379. (For storm water discharge EPA Form 3510-2D, also referred to as EPA Form 2D, may be used.)

h. EPA Form 2F (~~EPA Form 3510-2F~~) — application for NPDES individual permit to discharge storm water discharge associated with industrial activity 542-1380.

i. Form 5 — Certification for Industrial Facilities 542-1380.

j. NPDES Permit Application Supplement 542-1383.

~~k.~~ k. Notice of Intent for Coverage Under Storm Water NPDES General Permit No. 1 “Storm Water Discharge Associated with Industrial Activity” or General Permit No. 2 “Storm Water Discharge Associated with Industrial Activity for Construction Activities” or General Permit No. 3 “Storm Water Discharge Associated with Industrial Activity from Asphalt Plants, Concrete Batch Plants, Rock Crushing Plants and Construction Sand and Gravel Facilities” 542-1415.

~~l.~~ l. Notice of Intent for Coverage Under NPDES General Permit No. 4 “Discharge from ~~On-Site Wastewater~~ Private Sewage Treatment and Disposal Systems.” 542-1541.

~~m.~~ m. Notice of Intent for Coverage Under NPDES General Permit No. 5 “Discharge from Mining and Processing Facilities” 542-4006.

~~n.~~ n. Notice of Discontinuation From Coverage Under General Permit No. 5 542-8038.

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~~o.~~ Information Required to Accompany Application for the Municipal Separate Storm Sewer System (MS4) Permit 542-8039.

p. NPDES Application Fee Invoice for Open Feedlots and Designated Confinement Feeding Operations 542-1240.

q. NPDES Application Fee Invoice 542-1251.

r. NPDES Application Fee Invoice for a New Discharger 542-1253.

s. Storm Water Discharge — NPDES General Permit #1 Notice of Discontinuation 542-8814.

t. Storm Water Discharge — NPDES General Permit #2 Notice of Discontinuation 542-8815.

u. Storm Water Discharge — NPDES General Permit #3 Notice of Discontinuation 542-8816.

v. Public Notice of Storm Water Discharge 542-8117.

ITEM 7. Adopt the following **new** paragraph **60.3(3)“j”**:

j. Other forms as provided by the department, including electronic forms.

ITEM 8. Adopt the following **new** paragraph **60.4(1)“e”**:

e. *Fees.* Required fees shall be submitted with all applications for a construction permit as noted in 567—64.16(455B).

ITEM 9. Amend subrule 60.4(2) as follows:

60.4(2) Operation ~~permits~~ and NPDES permit applications.

a. *General.* A person ~~desiring~~ required to obtain or renew a wastewater operation permit or an Iowa NPDES permit pursuant to 567—Chapter 64, or 567—Chapter 65, or 567—Chapter 69 must complete the appropriate application form as identified in subrule 60.3(2). ~~The application shall be reviewed when it is complete, and if approvable the department shall prepare and issue the permit or proposed permit, as applicable, and transmit it to the applicant. A permit or renewal will be denied when the applicant does not meet one or more requirements for issuance or renewal of such permit.~~

(1) Complete applications. A permit application is complete and approvable when all necessary questions on the application forms have been completed and the application is signed pursuant to 567—subrule 64.3(8), and when all applicable portions of the application, including the application fee and required attachments, have been submitted. The director may require the submission of additional information deemed necessary to evaluate the application. The due date for a renewal application is 180 days prior to the expiration date of the current permit, as noted in 567—64.8(455B). For a POTW, permission to submit an application at a later date may be granted by the director. The due date for a new application is 180 days prior to the date the operation is scheduled to begin, unless a shorter period is approved by the director.

(2) Incomplete applications. Incomplete applications may be returned to the applicant for completion. Authorization to discharge will be suspended if a complete application is not submitted to the department before the expiration date of the current permit. In the case of new applications, no discharge will be allowed until an NPDES or operation permit is issued. In the case of existing discharges, if a permit application is incomplete or has not been submitted, the department shall notify the permittee of a violation of this rule and may proceed administratively on the violation or may request that the commission refer the matter to the attorney general for legal action.

(3) Other information. If a permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application, the permittee shall promptly submit such facts or information.

b. *Amendments.* A permittee seeking an amendment to its operation permit shall make a written request in the form of a detailed letter to the department which shall include the nature of and the reasons supporting the requested amendment ~~and the reasons therefor~~. A variance or amendment to the terms and conditions of a general permit shall not be granted. If a variance or amendment to a general permit is desired, the applicant must apply for an individual permit following the procedures in 567—paragraph 64.3(4)“a.”

(1) Schedules of compliance. Requests to amend a permit schedule of compliance shall be made at least 30 days prior to the next scheduled compliance date which the permittee contends it is unable to meet. The request shall include any proposed changes in the existing schedule of compliance, and any

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supporting documentation for the time extension. An extension may be granted by the department for cause. Cause ~~includes~~ may include unusually adverse weather conditions, equipment shortages, labor strikes, federal grant regulation requirements, or any other extenuating circumstances beyond the control of the requesting party. Cause does not include economic hardship, profit reduction, or failure to proceed in a timely manner.

(2) No change.

(3) Monitoring requirements. ~~A~~ An amendment request for a change in the minimum monitoring requirements in an existing permit ~~shall include the proposed changes in monitoring requirements and documentation therefor~~ is considered a variance request. A request for a variance shall include a letter and the Petition for Waiver or Variance form (542-1258). This form can be obtained from the NPDES section as noted in 60.3(455B). The requesting permittee must provide monitoring results which are frequent enough to reflect variations in actual wastewater characteristics over a period of time and are consistent in results from sample to sample. The department will evaluate the request based upon whether or not less frequent sample results accurately reflect actual wastewater characteristics and whether operational control can be maintained.

Upon receipt of a request, the department may grant, modify, or deny the request. If the request is denied, the department may notify the permittee of any violation of its permit and may proceed administratively on the violation or may request that the commission refer the matter to the attorney general for legal action.

c. Fees. Required fees shall be submitted with all permit applications as noted in 567—64.16(455B).

ITEM 10. Amend subrules 62.1(6) and 62.1(7) as follows:

62.1(6) The discharge of wastewater into a publicly owned treatment works or a ~~privately owned domestic sewage treatment works~~ semipublic sewage disposal system in volumes or quantities in excess of those to which a ~~major contributing industry~~ significant industrial user is committed in the treatment agreement described in 567—subrule 64.3(5) or a local control mechanism in the case of a POTW with a pretreatment program approved by the department is prohibited.

62.1(7) Wastes in such volumes or quantities as to exceed the design capacity of the treatment works, cause interference or pass through, or reduce the effluent quality below that specified in the operation permit of the treatment works are considered to be a waste which interferes with the operation or performance of a publicly owned treatment works or a ~~privately owned domestic sewage treatment works~~ semipublic sewage disposal system and are prohibited.

ITEM 11. Adopt the following **new** subrule 62.1(8):

62.1(8) Discharge of the following pollutants to a publicly owned treatment works, a semipublic sewage disposal system, or a private sewage disposal system is prohibited:

a. Pollutants which create a fire or explosion hazard including but not limited to waste streams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in 40 CFR 261.21;

b. Solid or viscous substances in amounts that will cause obstruction to the flow in the treatment works resulting in interference;

c. Heat in amounts which will inhibit biological activity in the treatment works resulting in interference but, in no case, heat in such quantities that the temperature of the waste stream at the treatment plant exceeds 40 degrees Celsius (104 degrees Fahrenheit) unless specifically approved by the department;

d. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;

e. Pollutants which result in the presence of toxic gases, vapors, or fumes within the treatment works in a quantity that could cause acute worker health and safety problems; and

f. Pollutants which will cause corrosive structural damage to the treatment works but, in no case, discharges with a pH lower than 5.0 standard units, unless the treatment works is specifically designed to accommodate such discharges, or wastes which would intermittently change the pH of the raw waste

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entering the treatment plant by more than 0.5 standard pH units or which would cause the pH of the raw waste entering the treatment plant to be less than 6.0 or greater than 9.0 standard units.

ITEM 12. Amend rule 567—62.3(455B), catchwords, as follows:

567—62.3(455B) Secondary treatment information: effluent standards for publicly owned treatment works and ~~privately owned domestic sewage treatment works~~ semipublic sewage disposal systems.

ITEM 13. Amend subrule 62.3(1), introductory paragraph, as follows:

62.3(1) General. The following paragraphs describe the minimum level of effluent quality attainable by secondary treatment in terms of the pollutant measurements carbonaceous biochemical oxygen demand (CBOD₅), the five-day measure of the pollutant parameter carbonaceous biochemical oxygen demand; suspended solids (SS), the pollutant parameter total suspended solids; and pH, the measure of the relative acidity or alkalinity. The pollutant measurement carbonaceous biochemical oxygen demand is used in lieu of the pollutant measurement five-day biochemical oxygen demand (BOD₅), as noted in 40 CFR 133.102. All requirements for each pollutant measurement shall be achieved by publicly owned treatment works and ~~privately owned domestic sewage treatment works~~ semipublic sewage disposal systems except as provided for in subrules 62.3(2) and 62.3(3).

ITEM 14. Amend paragraph **62.3(1)“a”** as follows:

a. Carbonaceous biochemical oxygen demand (5 day) — CBOD₅.

(1) and (2) No change.

(3) The 30-day average percent removal shall not be less than 85 percent, and the percent removal shall be calculated by adding 5 units to the effluent CBOD₅ monitoring data and comparing that value to the influent BOD₅ monitoring data. Site-specific information on the relationship between BOD₅ and CBOD₅ shall be used in lieu of the 5-unit relationship if such information is available.

ITEM 15. Amend subrule 62.3(3), introductory paragraph, as follows:

62.3(3) Treatment equivalent to secondary treatment. This subrule describes the minimum level of effluent quality attainable by facilities eligible for treatment equivalent to secondary treatment in terms of the pollutant measurements CBOD₅, SS and pH. The pollutant measurement CBOD₅ is used in lieu of the pollutant measurement BOD₅ as noted in 40 CFR 133.105. Treatment works shall be eligible at any time for consideration of effluent limitations described for treatment equivalent to secondary treatment if:

ITEM 16. Amend paragraph **62.3(3)“f”** as follows:

f. CBOD₅ limitations:

(1) and (2) No change.

(3) The 30-day average percent removal shall not be less than 65 percent, and the percent removal shall be calculated by adding 5 units to the effluent CBOD₅ monitoring data and comparing that value to the influent BOD₅ monitoring data. Site-specific information on the relationship between BOD₅ and CBOD₅ shall be used in lieu of the 5-unit relationship if such information is available.

ITEM 17. Amend subrule 62.6(3), introductory paragraph, as follows:

62.6(3) Effluent limitations. This subrule establishes effluent limitations on the discharge of pollutants from sources other than publicly owned treatment works and ~~privately owned domestic sewage treatment works~~ semipublic sewage disposal systems that are not subject to the federal effluent standards adopted by reference in 62.4(1) and 62.4(3) to ~~62.4(60)~~ 62.4(71).

ITEM 18. Amend subrule 62.6(4) as follows:

62.6(4) Pretreatment requirements for incompatible wastes. This subrule establishes pretreatment requirements for incompatible pollutants that apply to sources other than ~~those covered by 40 CFR §128.133, (i.e., sources other than existing “major contributing industries” as defined in 40 CFR §128.124)~~ significant industrial users as defined in 567—60.2(455B), and to sources that are new or existing ~~major contributing industries~~ significant industrial users for which there is no federal pretreatment standard (i.e., sources which do not fall within a point source category or, if they do

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fall within a point source category, sources for which the administrator has not yet promulgated a pretreatment standard).

a. For sources that are within a point source category adopted by reference in 62.4(455B) for which there are promulgated effluent limitation guidelines, but no promulgated pretreatment standards, the pretreatment standard for incompatible pollutants shall be the promulgated effluent limitation guideline. ~~Provided, that if the treatment works which receives the pollutants is committed in its operation permit to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall be correspondingly reduced for that pollutant.~~

b. For sources that are not subject to paragraph “*a.*,” ~~there shall be established~~ the department shall establish an effluent limitation that represents the best ~~engineering professional judgment in the department of the degree of~~ engineering professional judgment in the department of the degree of for effluent reduction that is consistent with the Act and Iowa Code chapter 455B.

e. ~~In no case shall a discharge into a publicly owned treatment works or a privately owned domestic sewage treatment works by a source subject to this subrule intermittently change the pH of the raw waste reaching the treatment plant by more than 0.5 pH unit or cause the pH of the waste reaching the plant to be less than 6.0 or greater than 9.0.~~

ITEM 19. Amend rule 567—62.7(455B) as follows:

567—62.7(455B) Effluent limitations less stringent than the effluent limitation guidelines. An effluent limitation less stringent than the effluent limitation guideline (adopted by reference in 62.4(455B)) representing the degree of effluent reduction achievable by application of the best practicable control technology currently available may be allowed in an NPDES permit if the factors relating to the equipment or facilities involved, the process applied, or other such factors related to the discharger are fundamentally different from the factors considered by the administrator in the establishment of the guidelines. An individual discharger or other interested person may submit evidence concerning such factors to the director. On the basis of such evidence or other available information and in accordance with 40 CFR 125.31, the director will make a written finding that such factors are or are not fundamentally different from the facility compared to those specified in the development document. Any such less stringent effluent limitations must, as a condition precedent, be approved by the administrator.

ITEM 20. Amend subrule 62.8(2) as follows:

62.8(2) Effluent limitations necessary to meet water quality standards. No effluent, alone or in combination with the effluent of other sources, shall cause a violation of any applicable water quality standard. When it is found that a discharge that would comply with applicable effluent standards in 62.3(455B), 62.4(455B) or 62.5(455B) or effluent limitations in 62.6(455B) would cause a violation of water quality standards, the discharge will be required to meet ~~whatever effluent limitations are necessary to achieve water quality standards, including the nondegradation policy of 567—subrule 61.2(2)~~ the water quality-based effluent limits (WQBELs) necessary to achieve the applicable water quality standards as established in 567—Chapter 61. Any such effluent ~~limitation limit~~ limit shall be ~~determined using a statistically based portion of~~ derived from the calculated waste load allocation, as described in “Supporting Document for Iowa Water Quality Management Plans,” ~~(Iowa Department of Water, Air and Waste Management, July 1976, Chapter IV Chapter IV, July 1976, as revised on June 16, 2004),~~ or the waste load allocation as required by a total maximum daily load, whichever is more stringent. The translation of waste load allocations to WQBELs shall use Iowa permit derivation methods, as described in the “Supporting Document for Iowa Water Quality Management Plans,” Chapter IV, July 1976, as revised on June 16, 2004. (Copy available upon request to the Department of Natural Resources, Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319. Copy on file with the Iowa Administrative Rules Coordinator.)

ITEM 21. Amend subrule 62.8(3) as follows:

62.8(3) Pretreatment requirements more stringent than pretreatment standards or requirements. The department or the publicly owned treatment works may impose pretreatment requirements more stringent

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than the applicable pretreatment standard of 62.4(455B) or pretreatment requirements of 62.6(455B) if such more stringent requirements are necessary to prevent violations of water quality standards, ~~or the permit limitations of the treatment works~~ interference, or pass through.

ITEM 22. Adopt the following new rule 567—62.10(455B):

567—62.10(455B) Effluent reuse. Treated final effluent may be reused in a manner noted in 62.10(1) or as specified in the NPDES permit.

62.10(1) Reuse for golf course irrigation. Treated final effluent may be reused for golf course irrigation if the conditions described in “a” and “b” are met.

a. The treated final effluent must meet one of the following conditions:

(1) A minimum total residual chlorine level of 0.5 mg/l must be maintained at a minimum of 15 minutes contact time of chlorine to wastewater prior to the irrigation of the golf course with treatment plant effluent; or

(2) Disinfected effluent shall be held in a retention pond with a detention time of at least 20 days prior to reuse as irrigation on a golf course. For this purpose, effluent may be disinfected using any common treatment technology, and either an existing pond or a pond constructed specifically for effluent retention may be used.

b. A golf course utilizing treated final effluent shall take all of the following actions:

(1) Clearly state on all scorecards that treated final effluent is used for irrigation of the golf course and oral contact with golf balls and tees should be avoided;

(2) Post signs that warn against consumption of water at all water hazards;

(3) Color code, label, or tag all piping and sprinklers associated with the distribution or transmission of the treated final effluent to clearly warn against the consumptive use of the contents; and

(4) Restrict the access of the public to any area of the golf course where spraying is being conducted.

All four of the above conditions must be met.

62.10(2) Reserved.

ITEM 23. Amend subrule 63.1(4) as follows:

63.1(4) All laboratories conducting analyses required by this chapter must be certified in accordance with 567—Chapter 83 ~~except that routine,~~ 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 63.3(4) are excluded from this requirement. All instrumentation used for conducting any analyses required by this chapter must be properly calibrated according to the manufacturer’s instructions.

ITEM 24. Amend subrule 63.2(3) as follows:

63.2(3) The permittee shall retain for a minimum of three years ~~any~~ all paper and electronic records of monitoring activities and results including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records. This retention includes but is not limited to monitoring and calibration records from pH meters, dissolved oxygen meters, total residual chlorine meters, flow meters, and temperature readings from any composite samplers. The period of retention shall be considered to be extended during the course of any unresolved litigation or when requested by the director or the regional administrator.

ITEM 25. Amend rule 567—63.3(455B) as follows:

567—63.3(455B) Minimum self-monitoring requirements in permits.

63.3(1) *Monitoring by organic waste dischargers.* The minimum self-monitoring requirements to be incorporated in operation permits for facilities discharging organic wastes shall be the appropriate requirements in Tables I, II, and IV. Additional monitoring may be specified in the operation permit based on a case-by-case evaluation of the impact of the discharge on the receiving stream, toxic or deleterious effects of wastewaters, industrial contribution to the system, complexity of the treatment process, history of noncompliance or any other factor which requires strict operational control to meet

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the effluent limitations of the permit, as described in the Supporting Document for Permit Monitoring Frequency Determination, August 2008, located on the NPDES Web site.

63.3(2) *Monitoring by inorganic waste dischargers.* ~~The minimum self-monitoring requirements to be incorporated in the operation permit for an inorganic waste discharge facilities discharging inorganic wastes shall be the appropriate requirement in Table V. Additional monitoring may be specified in the operation permit based on~~ determined on a case-by-case evaluation of the impact of the discharge on the receiving stream, toxic or deleterious effects of wastewaters, complexity of the treatment process, history of noncompliance or any other factor which requires strict control to meet the effluent limitations of the permit, as described in the Supporting Document for Permit Monitoring Frequency Determination, August 2008, located on the NPDES Web site.

63.3(3) *Monitoring of industrial contributors to significant industrial users of publicly owned treatment works.* ~~All major contributing industries and industrial contributors that are subject to national pretreatment standards shall be monitored in accordance with the requirements in Tables I, II and V, shall be determined as described in the Supporting Document for Permit Monitoring Frequency Determination, August 2008, located on the NPDES Web site. provided that the Results of such monitoring shall be submitted to the department in accordance with the reporting requirements in the operation permit. The monitoring program of a publicly owned treatment works with a pretreatment program approved by the department may be used in lieu of the tables supporting document. The results of such monitoring shall be submitted to the department in accordance with the reporting requirements in the operation permit.~~

63.3(4) *Operational monitoring.* The minimum operational monitoring to be incorporated in permits shall be the appropriate requirements in Table III. These requirements reflect minimum indicators that any adequately run system must monitor. The department recognizes that most well-run facilities will be monitored more closely by the operator as appropriate to the particular system. However, the results of ~~this monitoring~~ any monitoring beyond the requirements in Table III need not be reported to the department, but shall be maintained in accordance with 63.2(3). ~~Operational monitoring requirements may be modified or reduced at the discretion of the director when adequate justification is presented by the permittee that the reduced or modified requirements will not adversely impact the operation of the facility.~~ Additional operational monitoring may be specified in the operation permit based on a case-by-case evaluation of the impact of the discharge on the receiving stream, toxic or deleterious effects of wastewaters, complexity of the treatment process, history of noncompliance or any other factor that requires strict control to meet the effluent limitations of the permit.

63.3(5) *Modification of minimum monitoring requirements.* Monitoring requirements may be modified or reduced at the discretion of the director when requested by the permittee. Adequate justification must be presented by the permittee that the reduced or modified requirements will accurately reflect actual wastewater characteristics and will not adversely impact the operation of the facility. Requests for modification or reduction of monitoring requirements in an existing permit are considered variance requests and must follow the procedures in 567—paragraph 60.4(2)“b.” All reductions or modifications of monitoring incorporated into an operation or NPDES permit by amendment or upon reissuance of the permit are only effective until the expiration date of that permit.

63.3(6) *Impairment monitoring.* If a wastewater treatment facility is located in the watershed of an impaired water body that is listed on Iowa’s most recent Section 303(d) list (as described in 40 CFR 130.7), additional monitoring for parameters that are contributing to the impairment may be included in the operation or NPDES permit on a case-by-case basis.

ITEM 26. Amend subrule 63.5(2) as follows:

63.5(2) Reports of the self-monitoring results shall be submitted to the appropriate regional field office of the department quarterly. The quarterly reports shall cover the periods January through March, April through June, July through September, and October through December. The quarterly report for each period shall be submitted by the tenth day of the month following the quarter being reported.

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ITEM 27. Rescind rule 567—63.6(455B) and adopt the following **new** rule in lieu thereof:

567—63.6(455B) Bypasses and upsets.

63.6(1) Prohibition. Bypasses from any portion of a treatment facility or from a sanitary sewer collection system designed to carry only sewage are prohibited. The department may not assess a civil penalty against a permittee for a bypass if the permittee has complied with all of the following:

- a. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
- b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
- c. The permittee submitted the information required in 63.6(2), 63.6(3), and 63.6(5).

63.6(2) Request for anticipated bypass. Except for bypasses that occur as a result of mechanical failure or acts beyond the control of the owner or operator of a waste disposal system (unanticipated bypasses), the owner or operator shall obtain written permission from the department prior to any discharge of sewage or wastes from a waste disposal system not authorized by a discharge permit. The director may approve an anticipated bypass after considering its adverse effects if the director determines that it will meet the conditions in 63.6(1).

- a. The request for a bypass shall be submitted to the appropriate regional field office of the department at least ten days prior to the expected date of the event.
- b. The request shall be submitted in writing and shall include all of the following:
 - (1) The reason for the bypass;
 - (2) The date and time the bypass will begin;
 - (3) The expected duration of the bypass;
 - (4) An estimate of the amount of untreated or partially treated sewage or wastewater that will be discharged;
 - (5) The location of the bypass;
 - (6) The name of any body of surface water that will be affected by the bypass; and
 - (7) Any actions the owner or operator proposes to take to mitigate the effects of the bypass upon the receiving stream or other surface water.

63.6(3) Notification of unanticipated bypass or upset and public notices. In the event that a bypass or upset occurs without prior notice having been provided pursuant to 63.6(2) or as a result of mechanical failure or acts beyond the control of the owner or operator, the owner or operator of the treatment facility or collection system shall notify the department by telephone as soon as possible but not later than 12 hours after the onset or discovery.

- a. Notification shall be made by contacting the appropriate field office during normal business hours (8 a.m. to 4:30 p.m.) or by calling the department at (515)281-8694 after normal business hours.
- b. Notification shall include information on as many items listed in subparagraphs 63.6(3) "d"(1) through (6) as available information will allow.
- c. When the department has been notified of an unanticipated bypass, the department shall determine if a public notice is necessary. If the department determines that public notification is necessary, the owner or operator of the treatment facility or the collection system shall prepare a public notice.
- d. Bypasses shall be reported with the monthly operation report, as a separate attachment, that includes:

- (1) The reason for the bypass, including the amount and duration of any rainfall event that may have contributed to the bypass;
- (2) The date and time of onset or discovery of the bypass;
- (3) The duration of the bypass;
- (4) An estimate of the amount of untreated or partially treated sewage or wastewater that was discharged;

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- (5) The location of the bypass; and
- (6) The name of any body of surface water that was affected by the bypass.

63.6(4) *Monitoring, disinfection, and cleanup.* The owner or operator of the treatment facility or collection system shall perform any additional monitoring, sampling, or analysis of the bypass or upset requested by the regional field office of the department and shall comply with the instructions of the department intended to minimize the effect of a bypass or upset on the receiving water of the state. The following requirements for disinfection and cleanup apply to all bypasses:

a. The department may require temporary disinfection depending on the volume and duration of the bypass, the classification of the stream affected by the bypass, and the time of year during which the bypass occurs; and

b. The department may require cleanup of any debris and waste materials deposited in the area affected by the bypass. In conjunction with the cleanup, the department may require lime application to the ground surface or disinfection of the area with chlorine solution.

63.6(5) *Reporting of subsequent findings and additional information requested by the department.* All subsequent findings and laboratory results concerning a bypass shall be submitted in writing to the appropriate regional field office of the department as soon as they become available. Any additional information requested by the department concerning the steps taken to minimize the effects of a bypass shall be submitted within 30 days of the request.

63.6(6) *Upset.* An upset is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

a. An upset constitutes an affirmative defense to the assessment of a civil penalty for noncompliance with technology-based effluent limitations if the requirements of paragraph “*b*” of this subrule are met.

b. A permittee that wishes to establish an affirmative defense of upset shall demonstrate, through properly signed operation logs or other relevant evidence, that:

- (1) An upset occurred and that the permittee can identify the cause(s) of the upset;
- (2) The permitted facility was at the time of upset being properly operated;
- (3) The permittee submitted notice of upset in accordance with 63.6(3); and
- (4) The permittee completed any remedial measures required by the department, including monitoring, sampling, or analysis of the upset requested by the department and any instructions from the department calculated to minimize the effect of the upset on the receiving water of the state.

c. In any enforcement action proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

ITEM 28. Amend rule 567—63.7(455B) as follows:

567—63.7(455B) *Submission of records of operation.* ~~Records~~ Except as provided in subrules 63.3(4) and 63.5(1), records of operation shall be submitted to the appropriate regional field office of the department within 15 days following the close of the reporting period specified in 63.8(455B) and in accordance with monitoring requirements derived from this chapter and incorporated in the operation permit. The permittee shall report all instances of noncompliance not reported under 63.12(455B) at the time monitoring reports are submitted. If a permittee becomes aware that it failed to submit any relevant facts in any report to the director, the permittee shall promptly submit such facts or information.

ITEM 29. Amend rule 567—63.8(455B) as follows:

567—63.8(455B) *Frequency of submitting records of operation.* Except as provided in ~~subrule 63.4(2)~~ subrules 63.3(4) and 63.5(1), records of operation required by these rules shall be submitted at monthly intervals. The department may vary the interval at which records of operation shall be

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submitted in certain cases. Variation from the monthly interval shall be made only under such conditions as the department may prescribe in writing to the person concerned.

ITEM 30. Amend rule 567—63.9(455B) as follows:

567—63.9(455B) Content of records of operation. Records of operation shall include the results of all monitoring specified in or authorized by this chapter and incorporated in the operation permit. ~~Monitoring performed but not specified in the operation permit shall be recorded and maintained in accordance with 63.2(455B).~~ The results of any monitoring not specified in the operation permit performed at the compliance monitoring point and analyzed according to 40 CFR Part 136 shall be included in the calculation and reporting of any data submitted in accordance with this chapter and the operation permit.

ITEM 31. Amend rule 567—63.11(455B) as follows:

567—63.11(455B) Certification and signatory requirements in the submission of records of operation. All records of operation as required by these rules shall include certification which attests that all information contained therein is representative and accurate. Each record of operation shall contain the signature of a duly authorized representative of the corporation, partnership or sole proprietorship, municipality, or public facility which has proprietorship of the wastewater treatment or disposal system as specified in 567—subrule 64.3(8). For electronic submissions of records of operation, a signed paper copy of the record that was submitted electronically must be maintained at the facility for a minimum of three years.

ITEM 32. Adopt the following new rules 567—63.12(455B) to 567—63.14(455B):

567—63.12(455B) Twenty-four-hour reporting. All permittees shall report any permit noncompliance that may endanger human health or the environment including, but not limited to, violations of maximum daily limits for any toxic pollutant (listed as toxic under 307(a)(1) of the Act) or hazardous substance (as designated in 40 CFR Part 116 pursuant to 311 of the Act). Information shall be provided orally to the appropriate regional field office of the department within 24 hours from the time the permittee becomes aware of the circumstances. In addition, a written submission that includes a description of noncompliance and its cause; the period of noncompliance including exact dates and times; whether the noncompliance has been corrected or the anticipated time it is expected to continue; and the steps taken or planned to reduce, eliminate, and prevent a reoccurrence of the noncompliance must be provided to the regional field office within 5 days of the occurrence.

567—63.13(455B) Planned changes. The permittee shall give notice to the appropriate regional field office of the department 30 days prior to any planned physical alterations or additions to the permitted facility. Notice is required only when:

1. Notice has not been given to any other section of the department;
2. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as defined in 567—60.2(455B);
3. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices; or
4. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in the permit.

567—63.14(455B) Anticipated noncompliance. The permittee shall give notice to the appropriate regional field office of the department of any activity which may result in noncompliance with permit requirements. Notice is required only when previous notice has not been given to any other section of the department.

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ITEM 33. Rescind Table I in **567—Chapter 63** and adopt the following **new** Table I in lieu thereof:

Table I Minimum Self-Monitoring in Permits for Organic Waste Dischargers
Controlled Discharge Wastewater Treatment Plants

Wastewater Parameter	Sampling ⁵ Location	Sample Type ⁴	Frequency by P.E. ^{1,5,6}			
			< 100	101-500	501-1,000	>1,001
Flow ²	Raw	24-Hr Total	1/Week	Daily	Daily	Daily
	Final	Instantaneous	2/Week During Drawdown	Daily During Drawdown		
BOD ₅	Raw	24-Hr Composite	—	—	—	1/3 Months
CBOD ₅ ³	Final	Grab	1/Drawdown ⁷	Twice during drawdown		
Total Suspended Solids (TSS) ³	Raw	24-Hr Composite	—	—	—	1/3 Months
	Final	Grab	1/Drawdown ⁷	Twice during drawdown		
Ammonia Nitrogen	Final	Grab	1/Drawdown	Twice during drawdown		
<i>E. coli</i>	Final	Grab	1/Drawdown	1/Drawdown	Twice During Drawdown	
pH	Raw	Grab	—	—	—	1/3 Months
	Final	Grab	1/Drawdown	1/Drawdown	Twice During Drawdown	1/Week During Drawdown

Explanation of Superscripts

- 1 - The P.E. shall be computed on the basis of the original engineering design criteria for the facility and any modifications thereof. Where such design criteria are not available, the P.E. shall be computed using 0.167 pounds of BOD₅ per capita per day.
- 2 - Facilities serving a population equivalent less than 100 are not required to provide continuous flow measurement but are required to provide manual flow measurement at the specified frequency. Facilities serving a population equivalent greater than 100 are required to provide continuous flow measurement of the raw waste but need only provide manual flow measurement on the final effluent. Acceptable flow measurement and recording techniques shall be those described in "Iowa Wastewater Facilities Design Standards," Chapter 14 (14.7.2).
- 3 - In addition to the sampling required above, a grab sample of the lagoon cell contents collected at a point near the outlet structure shall be analyzed at least two weeks prior to an anticipated discharge to demonstrate that the wastewater is of such quality to meet the effluent limitations in the permit. The permittee must have the sample analyzed for 5-day carbonaceous biochemical oxygen demand (CBOD₅) and total suspended solids (TSS). The results must be compared with the 30-day average effluent limits. If the results are less than the 30-day average limits, the permittee may isolate the final cell and draw down the lagoon cell. If the pre-discharge sample results exceed the 30-day average effluent limits for either CBOD₅ or TSS, the permittee must contact the local DNR Field Office for guidance before beginning to discharge.
- 4 - Sample types are defined as:

"Grab Sample" means a representative, discrete portion of sewage, industrial waste, other waste, surface water or groundwater taken without regard to flow rate.

"24-Hour Composite" means:

 - a. For facilities where no significant industrial waste is present, a sample made by collecting a minimum of six grab samples taken four hours apart and combined in proportion to the flow rate at the time each grab sample was collected. (Generally, grab samples should be collected at 8 a.m., 12 a.m. (noon), 4 p.m., 8 p.m., 12 p.m. (midnight), and 4 a.m. on weekdays (Monday through Friday) unless local conditions indicate another more appropriate time for sample collection.)
 - b. For facilities where significant industrial waste is present, a sample made by collecting a minimum of 12 grab samples taken two hours apart and combined in proportion to the flow rate at the time each grab sample was collected. (Generally, grab samples should be collected at 8 a.m., 10 a.m., 12 a.m. (noon), 2 p.m., 4 p.m., 6 p.m., 8 p.m., 10 p.m., 12 p.m. (midnight), 2 a.m., 4 a.m., and 6 a.m. on weekdays (Monday through Friday) unless local conditions indicate another more appropriate time for sample collection.)
 - c. An automatic composite sampling device may also be used for collection of flow-proportioned or time-proportioned composite samples.

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- 5 - Raw wastewater samples shall be taken continuously (year-round) at the specified frequency. Final effluent wastewater samples shall be taken only during the drawdown period. The first final effluent sample shall be taken the third day after the drawdown begins, and subsequent samples shall be taken at the specified frequencies. For final effluent samples that are required to be taken twice during drawdown, the first sample shall be taken the third day after the drawdown begins, and the second sample shall be taken between three (3) and five (5) days before the drawdown ends.
- 6 - If a facility has a P.E. greater than 3000 or a significant industrial contributor, additional monitoring may be required.
- 7 - One-cell controlled discharge lagoons with a P.E. less than 100 will be required to perform final effluent sampling for 5-day carbonaceous biochemical oxygen demand (CBOD₅) and total suspended solids (TSS) twice during drawdown in accordance with superscript #5.

ITEM 34. Rescind Table II in **567—Chapter 63** and adopt the following **new** Table II in lieu thereof:

Table II Minimum Self-Monitoring in Permits for Organic Waste Dischargers
Continuous Discharge Wastewater Treatment Plants

Wastewater Parameter	Sampling Location	Sample Type ^{3,11}	Frequency by P.E. ^{1,6}						
			≤ 100	101-500	501-1,000	1,001-3,000	3,001-15,000	15,001-105,000	> 105,000
Flow ²	Raw or Final	24-Hr Total	1/week	Daily	Daily	Daily	Daily	Daily	Daily
BOD ₅	Raw	24-Hr Comp.	1/6 Months	1/3 Months	1/Week	1/Week	2/Week	2-5/Week ⁵	Daily
CBOD ₅	Final	24-Hr Comp.	1/3 Months	1/Month	1/Week	1/Week	2/Week	2-5/Week ⁵	Daily
Total Suspended Solids (TSS)	Raw	24-Hr Comp.	1/6 Months	1/3 Months	1/Month	1/2 Weeks	1/Week	2-5/Week ⁵	Daily
	Final	24-Hr Comp.	1/3 Months	1/3 Months	1/Month	1/2 Weeks	1/Week	2-5/Week ⁵	Daily
Ammonia Nitrogen ¹⁰	Final	24-Hr Comp.	1/Month	1/Month	1/Week	1/Week	2/Week	2-5/Week ⁵	Daily
TKN ⁸	Raw	24-Hr Comp.	—	—	—	1/2 Months	1/Month	1/Month	1/2 Weeks
Total Nitrogen ⁹	Final	24-Hr Comp.	—	—	—	1/3 Months	1/3 Months	1/2 Months	1/2 Months
Total Phosphorus ⁹	Final	24-Hr Comp.	—	—	—	1/3 Months	1/3 Months	1/2 Months	1/2 Months
pH	Raw	Grab	—	—	1/Week	1/Week	2/Week	2-5/Week ⁵	Daily
	Final	Grab	1/3 Months	1/Month	1/Week	1/Week	2/Week	5/Week	Daily
<i>E. coli</i> ^{4,7}	Final	Grab	5 samples, 1/3 Months	5 samples, 1/3 Months	5 samples, 1/3 Months	5 samples, 1/3 Months	5 samples, 1/3 Months	5 samples, 1/3 Months	5 samples, 1/3 Months
Temperature	Raw	Grab	—	—	1/Week	1/Week	2/Week	2-5/Week ⁵	Daily
	Final	Grab	1/3 Months	1/Month	1/Week	1/Week	2/Week	2-5/Week ⁵	Daily

Explanation of Superscripts

1 - See Superscript #1, Table I.

2 - See Superscript #2, Table I. Both raw and final flow monitoring may be required if the raw and final wastewater flows may be different for any reason.

3 - See Superscript #4, Table I.

4 - Analysis is required only when the facility discharges directly to a stream designated as Class A1, A2, or A3 or there is a reasonable potential for the discharge to affect a stream designated as Class A1, A2, or A3.

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5 - The frequency of sample collection and analysis shall be increased by 1/week according to the following: 15,001 to 30,000 – 2/week; 30,001 to 45,000 – 3/week; 45,001 to 75,000 – 4/week; 75,001 – 105,000 – 5/week.

6 - The requirements for significant industrial users shall be those specified in the permit for final effluent monitoring.

7 - Bacteria Monitoring. All facilities must collect and analyze a minimum of five *E. coli* samples in one calendar month during each three-month period (quarter) during the appropriate recreation season associated with the receiving stream designation as specified in 567—subrule 61.3(3). For sampling required during the recreational season, March 15 to November 15, the three-month periods are March – May, June – August, and September – November. For year-round sampling, the three-month periods are January – March, April – June, July – September, and October – December. For each three-month period, the operator must take five samples during one calendar month, resulting in 15 samples in one year for sampling required during the recreation season and 20 samples per year for sampling required year-round. The following requirements apply to the individual samples collected in one calendar month:

- a. Samples must be spaced over one calendar month.
- b. No more than one sample can be collected on any one day.
- c. There must be a minimum of two days between each sample.
- d. No more than two samples may be collected in a period of seven consecutive days.

The geometric mean must be calculated using all valid sample results collected during a month. The geometric mean formula is as follows: Geometric Mean = (Sample one × Sample two × Sample three × Sample four × Sample five...Sample N)^(1/N), which is the Nth root of the result of the multiplication of all of the sample results where N = the number of samples. If a sample result is a less than value, the value reported by the lab without the less than sign shall be used in the geometric mean calculation.

8 - Additional Total Kjeldahl Nitrogen (TKN) monitoring may be required if the facility has one or more significant industrial users or has effluent ammonia violations.

9 - Total nitrogen shall be determined by testing for Total Kjeldahl Nitrogen (TKN) and nitrate + nitrite nitrogen and reporting the sum of the TKN and nitrate + nitrite results (reported as N). Nitrate + nitrite can be analyzed together or separately. Total phosphorus shall be reported as P.

10 - Ammonia nitrogen monitoring is only required for facilities with ammonia nitrogen effluent limitations.

11- For aerated lagoons, 24-hour composite samples are not required on the final effluent; grab samples are acceptable.

ITEM 35. Amend Table III in 567—Chapter 63 as follows:

Table III Operational Monitoring Requirements in Permits

LAGOONS

Parameter	Sampling Location	Sample Type ²	Frequency by P.E. ¹						
			< 100	101-500	501-1,000	1,001-3,000	3,001-15,000	15,001-105,000	> 105,000
Cell Depth	Each Cell	Measurement	1/Week	1/Week	1/Week	2/Week	2/Week	2/Week	2/Week

AERATED LAGOONS

Parameter	Sampling Location	Sample Type ²	< 100	101-500	501-1,000	1,001-3,000	3,001-15,000	15,001-105,000	> 105,000
Dissolved Oxygen	Cell Contents	Grab	1/Month	1/2 Weeks	1/2 Weeks	1/Week	2/Week	2/Week	2/Week

TRICKLING FILTERS

Parameter	Sampling Location	Sample Type ²	< 100	101-500	501-1,000	1,001-3,000	3,001-15,000	15,001-105,000	> 105,000
Recirculation	—	Measurement	1/Week	1/Week	1/Week	2/Week	3/Week	5/Week	7/Week

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ACTIVATED SLUDGE

MLSS	Aeration Basin Contents	Grab	1/Month	1/Week	1/Week	2/Week	3/Week	5/Week	7/Week
Dissolved Oxygen	Aeration Basin Contents	Grab	1/Week	1/Week	2/Week	2/Week	3/Week	5/Week	7/Week
Temperature	Aeration Basin Contents	Grab	1/Week	1/Week	2/Week	2/Week	3/Week	5/Week	7/Week
30-Minute Settleability	Aeration Basin Contents	Grab	1/Week	1/Week	2/Week	2/Week	3/Week	5/Week	7/Week

ANAEROBIC DIGESTER

Temperature	Digester Contents	Grab	1/Week	1/Week	2/Week	2/Week	3/Week	5/Week	7/Week
pH	Digester Contents	Grab	1/Week	1/Week	2/Week	2/Week	3/Week	5/Week	7/Week
Alkalinity	Digester Contents	Grab	—	—	—	1/Week	1/Week	2/Week	2/Week
Volatile Acids	Digester Contents	Grab	—	—	—	1/Week	1/Week	2/Week	2/Week

AEROBIC DIGESTER

Dissolved Oxygen	Digester Contents	Grab	—	—	1/Week	2/Week	3/Week	5/Week	7/Week
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CHLORINATION FACILITIES

Total Residual Chlorine	Final Effluent	Grab	1/Week	1/Week	2/Week	2/Week	3/Week	5/Week	7/Week
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SEQUENCING BATCH REACTORS

<u>Total Suspended Solids</u>	<u>Aeration Basin Effluent</u>	<u>Grab³</u>	<u>1/Week</u>	<u>1/Week</u>	<u>2/Week</u>	<u>2/Week</u>	<u>3/Week</u>	<u>5/Week</u>	<u>7/Week</u>
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CLARIFIERS

<u>Settleable Solids</u>	<u>Effluent after final clarifier</u>	<u>Grab</u>	<u>1/Week</u>	<u>1/Week</u>	<u>2/Week</u>	<u>2/Week</u>	<u>3/Week</u>	<u>5/Week</u>	<u>7/Week</u>
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Explanation of Superscripts

1 - See ~~Footnote~~ Superscript #1, Table I.

2 - Alternative test methods for operational monitoring:

Dissolved Oxygen	—	Pao Titration
MLSS	—	Spectrophotometric, Centrifuge
pH	—	Colorimetric Comparator, <u>Meter</u>
30-Minute Settleability	—	Standard Methods Test 213C
Alkalinity	—	Standard Methods Test 403
Volatile Acids	—	Standard Methods Test 504A
Residual Chlorine	—	Colorimetric Comparator, <u>Meter</u>

3 - The TSS grab sample of the aeration basin effluent should be taken at the point of maximum effluent turbidity.

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ITEM 36. Rescind Table V in **567—Chapter 63**.

ITEM 37. Renumber Table VI in **567—Chapter 63** as Table V.

ITEM 38. Adopt new numbered paragraph “2” in **567—Chapter 63**, renumbered Table V, as follows:

2. *Escherichia coli* (*E. coli*) P,G Cool, 4°C 6 hours

ITEM 39. Rescind and reserve rule **567—64.1(455B)**.

ITEM 40. Amend subrule 64.2(1) as follows:

64.2(1) No person shall construct, install or modify any wastewater disposal system or part thereof or extension or addition thereto without, or contrary to any condition of, a construction permit issued by the director or by a local public works department authorized to issue such permits under 567—Chapter 9, nor shall any connection to a sewer extension in violation of any special limitation specified in a construction permit pursuant to 64.2(10), ~~paragraph “a,” “b,” or “f”~~ be allowed by any person subject to the conditions of the permit.

ITEM 41. Amend subrule 64.2(3), introductory paragraph, as follows:

64.2(3) Site approval under 64.2(2) shall be based on the criteria contained in the Ten States Standards, design manuals published by the department, applicable federal guidelines and standards, standard textbooks, current technical literature and applicable safety standards. To the extent that separation distances of this subrule conflict with the separation distances of ~~567—subrule 23.5(1) or 23.5(2)~~ Iowa Code section 455B.134(3) “f,” the greater distance shall prevail. The following separation distances from ~~treatment or lagoon water surface~~ a treatment works shall apply ~~÷ unless a separation distance exception is provided in the “Iowa Wastewater Facilities Design Standards.”~~ The separation distance from lagoons shall be measured from the water surface.

ITEM 42. Adopt the following new paragraph **64.2(8)“c”**:

c. A privately owned pretreatment facility, except an anaerobic lagoon, where a treatment unit or units provide partial reduction of the strength or toxicity of the waste stream prior to additional treatment and disposal by another person, corporation, or municipality. However, the department may require that the design basis and construction drawings be filed for information purposes.

ITEM 43. Amend subrule 64.3(1) as follows:

64.3(1) Except as ~~provided~~ otherwise provided in this subrule ~~and~~, in 567—Chapter 65, and in 567—Chapter 69, no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the director; ~~nor shall the permittee of a system to which a sewer extension has been made under a construction permit limited pursuant to 64.2(10), paragraph “a,” “b” or “f,” allow a connection to such sewer extension in violation of any special limitation in such construction permit.~~ An operation permit is not required for the following:

a. ~~Private~~ A private sewage disposal system which does not discharge into, or have the potential to reach, a designated water of the state or subsurface drainage tile - (NOTE: private sewage disposal systems under this exemption are regulated under 567—Chapter 69);

b. No change.

~~c. —Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. Provided, that this exclusion shall not be construed to apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to discharges when the vessel is being used in a capacity other than as a means of transportation.~~

~~d. —Discharges to aquaculture projects as defined in 40 CFR §122.25 (eff. 12-18-84).~~

c. A pretreatment system, the effluent of which is to be discharged directly to another disposal system for final treatment and disposal;

d. A discharge from a geothermal heat pump which does not reach a navigable water.

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~~e. — Discharges of dredged or fill material into navigable waters which are regulated under Section 404 of the Act.~~

~~f. — Any discharge of pollutants directly to another waste disposal system for final treatment and disposal, with the exception of storm water point sources. (This exclusion from requiring an operation permit applies only to the actual addition of materials into the subsequent treatment works. Plans or agreements to make such additions in the future do not relieve dischargers of the obligation to apply for and receive permits until the discharges of pollutants to navigable waters are actually eliminated. It also should be noted that, in all appropriate cases, pretreatment standards promulgated by the administrator pursuant to Section 307(b) of the Act and adopted by reference by the commission and other pretreatment standards and requirements must be complied with.)~~

~~g. — Any discharge in compliance with the instruction of an On-Scene Coordinator pursuant to 40 CFR Part 300 [The National Oil and Hazardous Substances Pollution Plan] or 33 CFR §153.10(e) [Pollution by Oil and Hazardous Substances].~~

~~h. — Water pollution from agricultural and silvicultural activities, runoff from orchards, cultivated crops, pastures, rangelands, and forestlands, except that this exclusion shall not apply to the following:~~

~~(1) — Discharges from concentrated aquatic animal production facilities as defined in 40 CFR §122.24 (eff. 12-18-84);~~

~~(2) — Discharges from concentrated animal feeding operations as defined in 40 CFR §122.23 (eff. 12-18-84);~~

~~(3) — Discharges from silvicultural point sources as defined in 40 CFR §122.27 (eff. 12-18-84);~~

~~(4) — Storm water discharge associated with industrial activity as defined in 567—Chapter 60.~~

~~i. — Return flows from irrigated agriculture.~~

ITEM 44. Amend subrule 64.3(3) as follows:

64.3(3) The owner of any disposal system or part thereof in existence before August 21, 1973, for which a permit has been previously granted by the Iowa department of health or the Iowa department of environmental quality shall submit such information as the director may require to determine the conformity of such system and its operation with the rules of the department by no later than 60 days after the receipt of a request for such information from the director. If the director determines that the disposal system does not conform to the rules of the department, the director may require the owner to make such modifications as are necessary to achieve compliance. A construction permit shall be required, pursuant to 64.2(1), prior to any such modification of the disposal system.

ITEM 45. Amend subrule 64.3(4) as follows:

64.3(4) Applications.

~~a. Individual permit. Except as provided in 64.3(4) “b,” or 64.3(4) “e,” applications for operation permits required under 64.3(1) shall be made on forms provided by the department, as noted in 567—subrule 60.3(2). The application for an operation permit under 64.3(1) shall be filed at least 180 days prior to the date operation is scheduled to begin unless a shorter period of time is approved by the director pursuant to 567—subrule 60.4(2). Permit applications for a new discharge of storm water associated with construction activity as defined in 567—Chapter 60 under “storm water discharge associated with industrial activity” must be submitted at least 60 days before the date on which construction is to commence. Applications submitted to the department must be accompanied by the appropriate permit fee as specified in rule 64.16(455B). The Upon completion of a tentative determination with regard to the permit application as described in 64.5(1) “a,” the director shall issue operation permits for applications filed pursuant to 64.3(1) within 90 days of the receipt of a complete application unless the application is for an NPDES permit or unless a longer period of time 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. No change.~~

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~~*e. — Group applications.* Group applications identified in 40 CFR Part 122.26(c)(2) as amended through June 15, 1992, that were submitted and approved by the U.S. Environmental Protection Agency will be accepted by the department as an application for an NPDES permit for a storm water discharge associated with industrial activity. A copy of the group application does not need to be submitted to the department. The department will notify a participant in a group application of the required application and individual permit fees as specified in 64.16(3)“b” if an industry specific general permit is not available for the participants in the group.~~

ITEM 46. Amend subrule 64.3(5) as follows:

64.3(5) Requirements for industries that discharge to another disposal system except storm water point sources.

a. The director may require any person discharging wastes to a publicly or privately owned disposal system to submit information similar to that required in an application for an operation permit, but no operation permit is required for such discharge.

~~Major contributing industries~~ Significant industrial users as defined in 567—Chapter 60 must submit a treatment agreement which meets the following criteria:

- (1) The agreement must be on ~~a form~~ the treatment agreement form, number 542-3221, as provided by the department; and
- (2) No change.
- (3) Be signed and dated by the ~~industrial contributor~~ significant industrial user and the owner of the disposal system accepting the wastewater; and
- (4) No change.

b. ~~A major contributing industry should~~ significant industrial user must submit a new treatment agreement form 60 days in advance of a proposed expansion, production increase or process modification that may result in discharges of sewage, industrial waste, or other waste in excess of the discharge stated in the existing treatment agreement. An industry that would become a ~~major contributing industry~~ significant industrial user as a result of a proposed expansion, production increase or process modification ~~should~~ shall submit a treatment agreement form 60 days in advance of the proposed expansion, production increase or process modification.

c. A treatment agreement form must be submitted at least 180 days before a new ~~major contributing industry~~ significant industrial user proposes to discharge into a wastewater disposal system. The owner of a wastewater disposal system shall notify the director by submitting a complete treatment agreement to be received at least ~~ten~~ 10 days prior to making any commitment to accept waste from a proposed new ~~major contributing industry~~ significant industrial user. However, the department may notify the owner that verification of the data in the treatment agreement may take longer than ~~ten~~ 10 days and advise that the owner should not enter into a commitment until the data is verified.

d. A treatment agreement form for each ~~major contributing industry~~ significant industrial user must be submitted with the facility plan or preliminary engineering report for the construction or modification of a wastewater disposal system. These agreements will be used in determining the design basis of the new or upgraded system.

e. Treatment agreement forms from ~~major contributing industries~~ significant industrial users shall be required as a part of the application for a permit to operate the wastewater disposal system receiving the wastes from the ~~major contributing industry~~ significant industrial user.

ITEM 47. Amend subrule 64.3(8) as follows:

64.3(8) Identity of signatories of ~~operation~~ permit applications. The person who signs the application for an ~~operation~~ a permit shall be:

a. Corporations. In the case of corporations, ~~a principal executive officer of at least the level of vice president~~ a responsible corporate officer. A responsible corporate officer means:

- (1) A president, secretary, treasurer, or vice president in charge of a principal business function, or any other person who performs similar policy- or decision-making functions; or
- (2) The manager of manufacturing, production, or operating facilities, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

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b. and c. No change.

d. Public facilities Municipal, state, federal, or other public agency. In the case of a municipal, state, or other public facility, ~~by either the principal executive officer,~~ or the ranking elected official. A principal executive officer of a public agency includes:

(1) The chief executive officer of the agency; or

(2) A senior executive officer having responsibility for the overall operations of a unit of the agency.

e. Storm water discharge associated with industrial activity from construction activities. In the case of a storm water discharge associated with construction activity, either the owner of the site or the general contractor.

~~The person who signs NPDES reports shall be the same, except that in the case of a corporation or a public body, monitoring reports required under the terms of the permit may be submitted by the person who is responsible for the overall operation of the facility from which the discharge originates.~~

f. Certification. Any person signing a document under paragraph "a" to "d" of this subrule shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for known violations.

The person who signs NPDES reports shall be a person described in this subrule, except that in the case of a corporation or a public body, monitoring reports required under the terms of the permit may be submitted by a duly authorized representative of the person described in this subrule. A person is a duly authorized representative if the authorization is made in writing by a person described in this subrule and the authorization specifies an individual or position having responsibility for the overall operation of the regulated facility, such as plant manager, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the corporation.

ITEM 48. Amend subrule 64.3(9) as follows:

64.3(9) When necessary to comply with present standards which must be met at a future date, an operation permit shall include a schedule for the alteration of the permitted facility to meet said standards. Such schedules shall not relieve the permittee of the duty to obtain a construction permit pursuant to 64.2(455B). When necessary to comply with a pretreatment standard or requirement which must be met at a future date, a ~~major contributing industry~~ significant industrial user will be given a compliance schedule for meeting those requirements.

ITEM 49. Amend subrule 64.3(11) as follows:

64.3(11) The director may ~~suspend or revoke~~ amend, revoke and reissue, or terminate in whole or in part any individual operation permit or coverage under a general permit for cause. Except for general permits, the director may modify in whole or in part any individual operation permit for cause. A variance or modification to the terms and conditions of a general permit shall not be granted. If a variance or modification to a general permit is desired, the applicant must apply for an individual permit following the procedures in 64.3(4) "a."

~~Cause for modification, suspension or revocation of a permit includes the following:~~

a. Permits may be amended, revoked and reissued, or terminated for cause either at the request of any interested person (including the permittee) or upon the director's initiative. All requests shall be in writing and shall contain facts or reasons supporting the request.

b. Cause under this subrule includes the following:

~~a-~~ (1) Violation of any term or condition of the permit.

~~b-~~ (2) Obtaining a permit by misrepresentation of fact or failure to disclose fully all material facts.

~~c-~~ (3) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

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~~d. (4)~~ Failure to submit such records and information as the director shall require both generally and as a condition of the operation permit in order to ensure compliance with the discharge conditions specified in the permit.

~~e. (5)~~ Failure or refusal of an NPDES permittee to carry out the requirements of 64.7(5) "c."

~~f. (6)~~ Failure to provide all the required application materials or appropriate fees.

(7) A request for a modification of a schedule of compliance, an interim effluent limitation, or the minimum monitoring requirements pursuant to 567—paragraph 60.4(2) "b."

(8) Causes listed in 40 CFR 122.62 and 122.64.

c. The permittee shall furnish to the director, within a reasonable time, any information that the director may request to determine whether cause exists for amending, revoking and reissuing, or terminating a permit, including a new permit application.

d. The filing of a request by an interested person for an amendment, revocation and reissuance, or termination does not stay any permit condition.

e. If the director decides the request is not justified, the director shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, hearings, or appeals.

f. Draft permits.

(1) If the director tentatively decides to amend, revoke and reissue, or terminate a permit, a draft permit shall be prepared according to 64.5(1).

(2) When a permit is amended under this paragraph, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the permit.

(3) When a permit is revoked and reissued under this paragraph, the entire permit is reopened just as if the permit had expired and was being reissued.

(4) If the permit amendment falls under the definition of "minor amendment" in 567—60.2(455B), the permit may be amended without a draft permit or public notice.

(5) During any amendment, revocation and reissuance, or termination proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

ITEM 50. Adopt the following **new** subrule 64.3(12):

64.3(12) No permit may be issued:

a. When the applicant is required to obtain certification under Section 401 of the Clean Water Act and that certification has not been obtained or waived;

b. When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states; or

c. To a new source or new discharger if the discharge from its construction or operation will cause or contribute to a violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge to a water segment which does not meet applicable water quality standards must demonstrate, before the close of the public comment period for a draft NPDES permit, that:

(1) There is sufficient remaining load in the water segment to allow for the discharge; and

(2) The existing dischargers to the segment are subject to compliance schedules designed to bring the segment into compliance with water quality standards.

The director may waive the demonstration if the director already has adequate information to demonstrate (1) and (2).

ITEM 51. Amend subrule 64.4(1) as follows:

64.4(1) Individual permit. ~~The director shall, when an operation permit expires and an NPDES permit is required for the discharge, and, upon proper application, issue an individual NPDES permit in accordance with 64.5(455B), 64.7(455B), 64.8(1) and 64.9(455B).~~ An individual NPDES permit is required when there is a discharge of a pollutant from any point source into navigable waters. An NPDES permit is not required for the following:

a. Reserved.

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b. Discharges of dredged or fill material into navigable waters which are regulated under Section 404 of the Act;

c. The introduction of sewage, industrial wastes or other pollutants into a POTW by indirect dischargers. (This exclusion from requiring an NPDES permit applies only to the actual addition of materials into the subsequent treatment works. Plans or agreements to make such additions in the future do not relieve dischargers of the obligation to apply for and receive permits until the discharges of pollutants to navigable waters are actually eliminated. It also should be noted that, in all appropriate cases, indirect discharges shall comply with pretreatment standards promulgated by the administrator pursuant to Section 307(b) of the Act and adopted by reference by the commission);

d. Any discharge in compliance with the instruction of an On-Scene Coordinator pursuant to 40 CFR Part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances);

e. Any introduction of pollutants from non-point source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands, except that this exclusion shall not apply to the following:

(1) Discharges from concentrated animal feeding operations as defined in 40 CFR 122.23;

(2) Discharges from concentrated aquatic animal production facilities as defined in 40 CFR 122.24;

(3) Discharges to aquaculture projects as defined in 40 CFR 122.25;

(4) Discharges from silvicultural point sources as defined in 40 CFR 122.27;

f. Return flows from irrigated agriculture; and

g. Water transfers, which are defined as activities that convey or connect navigable waters without subjecting the transferred water to intervening industrial, municipal, or commercial use.

ITEM 52. Adopt the following **new** subrule 64.4(3):

64.4(3) Effect of a permit.

a. Except for any toxic effluent standards and prohibitions imposed under Section 307 of the Act and standards for sewage sludge use or disposal under Section 405(d) of the Act, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with Sections 301, 302, 306, 307, 318, 403 and 405(a)-(b) of the Act, and equivalent limitations and standards set out in 567—Chapters 61 and 62. However, a permit may be terminated during its term for cause as set forth in 64.3(11). Compliance with a permit condition which implements a particular standard for sewage sludge use or disposal shall be an affirmative defense in any enforcement action brought for a violation of that standard for sewage sludge use or disposal.

b. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

ITEM 53. Amend subrule 64.5(1) as follows:

64.5(1) Formulation of tentative determination and draft NPDES permit. The department shall make a tentative determination to issue or deny an operation or NPDES permit for the discharge described in a ~~Refuse Act or NPDES permit~~ application in advance of the public notice ~~of~~ as described in 64.5(2).

a. If the tentative determination is to issue ~~the~~ an NPDES permit, the department shall prepare a permit rationale for each draft permit pursuant to 64.5(3) and a draft NPDES permit. The draft permit shall include the following:

~~a.~~ (1) Effluent limitations identified pursuant to 64.6(2) and 64.6(3), for those pollutants proposed to be limited.

~~b.~~ (2) If necessary, a proposed schedule of compliance, including interim dates and requirements, identified pursuant to ~~64.6(4)~~ 64.7(4), for meeting the effluent limitations and other permit requirements.

~~c.~~ (3) Any other special conditions (other than those required in 64.6(5)) which will have a significant impact upon the discharge described in the NPDES permit application.

b. If the tentative determination is to deny an NPDES permit, the department shall prepare a notice of intent to deny the permit application. The notice of intent to deny an application will be placed on public notice as described in 64.5(2).

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c. If the tentative determination is to issue an operation permit (non-NPDES permit), the department shall prepare a final permit and transmit the final permit to the applicant. The applicant will have 30 days to appeal the final operation permit.

d. If the tentative determination is to deny an operation permit (non-NPDES permit), no public notice is required. The department shall send written notice of the denial to the applicant. The applicant will have 30 days to appeal the denial.

ITEM 54. Amend subrule 64.5(2) as follows:

64.5(2) Public notice for NPDES permits.

a. Prior to the issuance of an NPDES permit, a major NPDES permit amendment, or the denial of a permit application for an NPDES permit, public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the tentative determination to issue or deny an NPDES permit for the proposed discharge. Procedures for the circulation of public notice shall include at least the procedures of subparagraphs (1) to (3).

(1) The public notice for a draft NPDES permit or major permit amendment shall be circulated by the applicant within the geographical areas of the proposed discharge by posting the public notice in the post office and public places of the city nearest the premises of the applicant in which the effluent source is located; by posting the public notice near the entrance to the applicant's premises and in nearby places; and by publishing the public notice in local newspapers and periodicals, or, if appropriate, in a newspaper of general circulation. The public notice for the denial of a permit application shall be sent to the applicant and circulated by the department within the geographical areas of the proposed discharge by publishing the public notice in local newspapers and periodicals, or, if appropriate, in a newspaper of general circulation.

(2) The public notice shall be ~~mailed~~ sent by the department to any person upon request.

(3) Upon request, the department shall add the name of any person or group to the ~~mailing distribution list, described in 567-4.2(455B)~~, to receive copies of all public notices concerning ~~proposed NPDES permits~~ the tentative determinations with respect to the permit applications within the state or within a certain geographical area and shall ~~mail~~ send a copy of all public notices to such persons.

b. 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 ~~NPDES permit application~~ and request a public hearing pursuant to 64.5(6). Written comments may be submitted by paper or electronic means. 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 determinations with respect to the ~~NPDES permit application~~. The period for comment may be extended at the discretion of the department. Pertinent and significant comments received during either the original comment period or an extended comment period shall be responded to in a responsiveness summary pursuant to 64.5(8).

c. The contents of the public notice of a ~~proposed draft NPDES permit, a major permit amendment, or the denial of a permit application for an NPDES permit~~ shall include at least the following:

(1) and (2) No change.

(3) A brief description of each applicant's activities or operations which result in the discharge described in the ~~NPDES permit application~~ (e.g., municipal waste treatment plant, corn wet milling plant, or meat packing plant).

(4) No change.

(5) A statement of the department's tentative determination to issue or deny an NPDES permit for the discharge or discharges described in the ~~NPDES permit application~~.

(6) A brief description of the procedures for the formulation of final determinations, including the 30-day comment period required by paragraph "b" of this subrule, procedures for requesting a public hearing and any other means by which interested persons may influence or comment upon those determinations.

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(7) The address ~~and~~ telephone number, and E-mail address of places at which interested persons may obtain further information, request a copy of the ~~draft permit~~ tentative determination and any associated documents prepared pursuant to 64.5(1), request a copy of the ~~fact sheet, if any,~~ permit rationale described in 64.5(3), and inspect and copy NPDES permit forms and related documents.

d. No public notice is required for a minor permit amendment, including an amendment to correct typographical errors, include more frequent monitoring requirements, revise interim compliance schedule dates, change the owner name or address, include a local pretreatment program, or remove a point source outfall that does not result in the discharge of pollutants from other outfalls.

e. No public notice is required when a request for a permit amendment or a request for a termination of a permit is denied. The department shall send written notice of the denial to the requester and the permittee only. No public notice is required if an applicant withdraws a permit application.

ITEM 55. Amend subrule 64.5(3) as follows:

64.5(3) ~~Fact sheets~~ Permit rationales and notices of intent to deny.

a. For every discharge which has a total volume of more than 500,000 gallons on any day of the year ~~When the department has made a determination to issue an NPDES permit as described in 64.5(1),~~ the department shall prepare and, upon request, shall send to any person a ~~fact sheet~~ permit rationale with respect to the application described in the public notice. The contents of such ~~fact sheets~~ permit rationales shall include at least the following information:

(1) ~~A sketch or~~ detailed description of the location of the discharge described in the NPDES permit application.

(2) A quantitative description of the discharge described in the NPDES permit application which includes: ~~at least the following: the rate or frequency of the proposed discharge (if the discharge is continuous, the average daily flow in gallons per day or million gallons per day); for thermal discharges subject to limitation under the Act, the average summer and winter discharge temperatures in degrees Fahrenheit; and the average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under Section 301, 302, 306 or 307 of the Act and regulations published thereunder.~~

1. The average daily discharge in pounds per day of any pollutants which are subject to limitations or prohibitions under 64.7(2) or Section 301, 302, 306 or 307 of the Act and regulations published thereunder; and

2. For thermal discharges subject to limitation under the Act, the average and maximum summer and winter discharge temperatures in degrees Fahrenheit.

(3) and (4) No change.

~~(5) A fuller description of the procedures for the formulation of final determinations than that given in the public notice including: the 30-day comment period required by 64.5(2); procedures for requesting a public hearing and the nature thereof; and any other procedures by which the public may participate in the formulation of the final determinations.~~

(5) An explanation of the principal facts and the significant factual, legal, methodological, and policy questions considered in the preparation of the draft permit.

(6) Any calculations or other necessary explanation of the derivation of effluent limitations.

b. When the department has made a determination to deny an application for an NPDES permit as described in 64.5(1), the department shall prepare and, upon request, shall send to any person a notice of intent to deny with respect to the application described in the public notice. The contents of such notice of intent to deny shall include at least the following information:

(1) A detailed description of the location of the discharge described in the permit application; and

(2) A description of the reasons supporting the tentative decision to deny the permit application.

c. When the department has made a determination to issue an operation permit as described in 64.5(1), the department shall prepare a short description of the waste disposal system and the reasons supporting the decision to issue an operation permit. The description shall be sent to the operation permit applicant upon request.

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d. When the department has made a determination to deny an application for an operation permit as described in 64.5(1), the department shall prepare and send written notice of the denial to the applicant only. The written denial shall include a description of the reasons supporting the decision to deny the permit application.

~~b. e.~~ Upon request, the department shall add the name of any person or group to a mailing distribution list, ~~described in 4.2(455B),~~ to receive copies of ~~fact sheets~~ permit rationales and notices of intent to deny and shall ~~mail~~ send a copy of all ~~fact sheets~~ permit rationales and notices of intent to deny to such ~~person~~ persons or groups.

ITEM 56. Amend subrule 64.5(4) as follows:

64.5(4) Notice to other government agencies. Prior to the issuance of an NPDES permit, the department shall notify other appropriate government agencies of each complete application for an NPDES permit and shall provide such agencies an opportunity to submit their written views and recommendations. Notifications may be distributed, and written views or recommendations may be submitted by paper or electronic means. Procedures for such notification shall include the procedures of paragraphs “a” to ~~“d.”~~ “f.”

a. At the time of issuance of public notice pursuant to 64.5(2), the department shall transmit the ~~fact sheet, if any,~~ public notice to any other state whose waters may be affected by the issuance of the NPDES permit and, upon request, the department shall provide such state with a copy of the NPDES application and a copy of the proposed permit prepared pursuant to 64.5(1). Each affected state shall be afforded an opportunity to submit written recommendations to the department and to the regional administrator which the director may incorporate into the permit if issued. Should the director fail to incorporate any written recommendation thus received, the director shall provide to the affected state or states and to the regional administrator a written explanation of the reasons for failing to accept any written recommendation.

b. At the time of issuance of public notice pursuant to 64.5(2), the department shall ~~mail~~ send the public notice for proposed discharges (other than minor discharges) into navigable waters and the ~~fact sheet, if any,~~ to the appropriate district engineer of the army corps of engineers.

(1) The department and the district engineer for each corps of engineers district within the state may arrange for: notice to the district engineer of minor discharges; waiver by the district engineer of the right to receive ~~fact sheets~~ public notices with respect to classes, types, and sizes within any category of point sources and with respect to discharges to particular navigable waters or parts thereof; and any procedures for the transmission of forms, period of comment by the district engineer (e.g., 30 days), and for objections of the district engineer.

(2) A copy of any written agreement between the department and a district engineer shall be forwarded to the regional administrator and shall be available to the public for inspection and copying in accordance with 567—~~Chapter 4~~ Chapter 2.

c. Upon request, the department shall ~~mail~~ send the public notice and ~~fact sheet, if any,~~ to any other federal, state, or local agency, or any affected ~~country~~ county, and provide such agencies an opportunity to respond, comment, or request a public hearing pursuant to 64.5(6).

d. The department shall ~~mail~~ send the public notice and ~~fact sheet, if any,~~ for any proposed NPDES permit within the geographical area of a designated and approved management agency under Section 208 of the Act (33 U.S.C. 1288).

e. The department shall ~~mail~~ send the public notice and ~~fact sheet, if any,~~ to the local board of health for the purpose of assisting the applicant in coordinating the applicable requirements of the Act and Iowa Code chapter 455B with any applicable requirements of the local board of health.

f. Upon request, the department shall provide any of the entities listed in 64.5(4) “a” through “e” with a copy of the permit rationale, permit application, or proposed permit prepared pursuant to 64.5(1).

ITEM 57. Amend subrule 64.5(5) as follows:

64.5(5) Public access to NPDES information. The records of the department connected with NPDES permits are available for public inspection and copying to the extent provided in 567—~~Chapter 4~~ Chapter 2.

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ITEM 58. Amend subrule 64.5(7) as follows:

64.5(7) Public notice of public hearings on proposed NPDES permits.

a. Public notice of any hearing held pursuant to 64.5(6) shall be circulated at least as widely as was the notice of the ~~NPDES~~ tentative determinations with respect to the permit application.

(1) No change.

(2) Notice shall be sent to all persons and government agencies which received a copy of the notice ~~or the fact sheet~~ for the ~~NPDES~~ permit application;

(3) and (4) No change.

b. The contents of public notice of any hearing held pursuant to 64.5(6) shall include at least the following:

(1) and (2) No change.

(3) The name of the ~~waterway~~ water body to which each discharge is made and a short description of the location of each discharge ~~on to the waterway water body;~~

(4) A brief reference to the public notice issued for each NPDES application, including ~~identification number and~~ the date of issuance;

(5) and (6) No change.

(7) A concise statement of the issues raised by the person or persons requesting the hearing;

(8) The address and telephone number of the premises where interested persons may obtain further information, request a copy of the draft NPDES permit prepared pursuant to 64.5(1), request a copy of the ~~fact sheet, if any,~~ permit rationale prepared pursuant to 64.5(3), and inspect and copy ~~NPDES~~ permit forms and related documents; ~~and~~

(9) A brief description of the nature of the hearing, including the rules and procedures to be followed; and

(10) The final date for submission of comments (paper or electronic) regarding the tentative determinations with respect to the permit application.

ITEM 59. Adopt the following new subrule 64.5(8):

64.5(8) Response to comments. At the time a final NPDES permit is issued, the director shall issue a response to significant and pertinent comments in the form of a responsiveness summary. A copy of the responsiveness summary shall be sent to the permit applicant, and the document shall be made available to the public upon request. The responsiveness summary shall:

a. Specify which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the changes; and

b. Briefly describe and respond to all significant and pertinent comments on the draft permit raised during the public comment period provided for in the public notice or during any hearing. Comments on a draft permit may be submitted by paper or electronic means or orally at a public hearing.

ITEM 60. Amend paragraph **64.7(2)“f”** as follows:

f. Any other limitation, including those:

(1) Necessary to meet water quality standards, treatment or pretreatment standards, or schedules of compliance established pursuant to any Iowa law or regulation, or to implement the ~~policy of nondegradation~~ antidegradation policy in 567—subrule 61.2(2); or

(2) to (4) No change.

ITEM 61. Reletter paragraph **64.7(2)“g”** as **“h.”**

ITEM 62. Adopt the following new paragraph **64.7(2)“g”**:

g. Limitations must control all pollutants or pollutant parameters which the director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any water quality standard, including narrative criteria, in 567—Chapter 61. When the permitting authority determines that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion of the water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 63. Amend relettered paragraph **64.7(2)“h”** as follows:

h. Any more stringent legally applicable requirements necessary to comply with a plan approved pursuant to Section 208(b) of the Act.

In any case where an NPDES permit applies to effluent standards and limitations described in paragraph “a,” “b,” “c,” “d,” “e,” “f,” ~~or “g,”~~ or “h,” the director must state that the discharge authorized by the permit will not violate applicable water quality standards and must have prepared some verification of that statement. In any case where an NPDES permit applies any more stringent effluent limitation, described in 64.7(2)“f”(1), or “g,” based upon applicable water quality standards, a waste load allocation must be prepared to ensure that the discharge authorized by the permit is consistent with applicable water quality standards.

ITEM 64. Amend subrule 64.7(5) as follows:

64.7(5) *Other terms and conditions of issued NPDES permits.* Each issued NPDES permit shall provide for and ensure the following:

a. No change.

b. That the permit may be ~~modified, suspended or revoked~~ amended, revoked and reissued, or terminated in whole or in part for the causes provided in ~~64.3(11)~~ 64.3(11)“b.”

c. No change.

d. That, if the permit is for a discharge from a publicly owned treatment works, the permittee shall provide notice to the director of the following:

(1) One hundred eighty days in advance of any new introduction of pollutants into such treatment works from ~~a source which would be a new source as defined in Section 306 of the Act~~ 567—Chapter 60 if such source were discharging pollutants;

(2) Except as specified below, 180 days in advance of any new introduction of pollutants into such treatment works from a source which would be subject to Section 301 of the Act if such source were discharging pollutants. However, the connection of such a source need not be reported if the source contributes less than ~~50,000~~ 25,000 gallons of process wastewater per day at the ~~maximum~~ average discharge, or contributes less than 5 percent of the organic or hydraulic loading of the treatment facility, or is not subject to a federal pretreatment standard adopted by reference in 567—Chapter 62, or does not contribute ~~toxic materials pollutants that may adversely affect the treatment process or any waste that may have an adverse or deleterious impact on the treatment process~~ cause interference or pass through; and

(3) No change.

Such notice shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works.

e. No change.

f. That the permittee at all times shall maintain in good working order and operate as efficiently as possible any facilities or systems of treatment and control which have been installed or are used by the permittee to achieve compliance with the terms and conditions of the permit. Proper operation and maintenance also include adequate laboratory control and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which have been installed by the permittee only when such operation is necessary to achieve compliance with the conditions of the permit.

g. to j. No change.

ITEM 65. Amend paragraphs **64.7(6)“a”** and **“b”** as follows:

a. The director shall notify the owner of a POTW of the plan of action requirement, and of an opportunity to meet with department staff to discuss the plan of action requirements. The POTW owner shall submit a plan of action to the appropriate regional field office of the department within six months of such notice, unless a longer time is needed and is authorized in writing by the director.

b. The plan of action will vary in length and complexity depending on the compliance history and physical status of the particular POTW. It must identify the deficiencies and needs of the

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system, describe the causes of such deficiencies or needs, propose specific measures (including an implementation schedule) that will be taken to correct the deficiencies or meet the needs, and discuss the method of financing the improvements proposed in the plan of action.

The plan may provide for a phased construction approach to meet interim and final limitations, where financing is such that a long-term project is necessary to meet final limitations, and shorter term projects may provide incremental benefits to water quality in the interim.

Information on the purpose and preparation of the plan can be found in the departmental document entitled "Guidance on Preparing a Plan of Action," available ~~through the records center of the department~~ from the department's regional field offices.

ITEM 66. Amend rule 567—64.8(455B) as follows:

567—64.8(455B) Reissuance of operation and NPDES permits.

64.8(1) *Individual operation and NPDES permits.* Individual operation and NPDES permits will be reissued according to the procedures identified in 64.8(1) "a" to "c."

a. Any ~~state~~ operation or NPDES permittee who wishes to continue to discharge after the expiration date of the permit shall file an application for reissuance of the permit at least 180 days prior to the expiration of the permit pursuant to 567—60.4(455B). For a POTW, permission to submit an application at a later date may be granted by the director. ~~The application may be a simple written request. However,~~ In addition, the applicant ~~for reissuance~~ must submit or have submitted information to show:

(1) That the permittee is in compliance or has substantially complied with all the terms, conditions, requirements and schedules of compliance of the expiring operation or NPDES permit.

(2) and (3) No change.

b. and c. No change.

64.8(2) No change.

64.8(3) *Continuation of expiring operation and NPDES permits.*

a. The conditions of an expired operation or NPDES permit will continue in force until the effective date of a new permit if:

(1) The permittee has submitted a complete application under 60.4(2); and

(2) The department, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit.

b. Operation and NPDES permits continued under this subrule remain fully effective and enforceable.

c. If a permittee is not in compliance with the conditions of the expiring or expired permit, the department may choose to do any of the following:

(1) Initiate enforcement action on the permit which has been continued;

(2) Issue a notice of intent to deny a permit under 64.5(1);

(3) Reissue a permit with appropriate conditions in accordance with this subrule; or

(4) Take other actions authorized by this rule.

ITEM 67. Amend rule 567—64.9(455B) as follows:

567—64.9(455B) Monitoring, record keeping and reporting by operation permit holders. Operation permit holders are subject to any applicable requirements and provisions specified in ~~567—Chapter 63~~ the operation permit issued by the department.

ITEM 68. Amend rule 567—64.10(455B) as follows:

567—64.10(455B) Silvicultural activities. The following is adopted by reference: 40 CFR 122.27 as promulgated April 1, 1983 (48 FR 14153).

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ITEM 69. Amend subrule 64.13(1) as follows:

64.13(1) The following is adopted by reference: 40 CFR 122.26 ~~as promulgated November 16, 1990 (55 FR 47990), and amended March 21, 1991 (56 FR 12098), April 2, 1992 (57 FR 11394), and December 8, 1999 (64 FR 68838).~~

ITEM 70. Amend rule 567—64.14(455B) as follows:

567—64.14(455B) Transfer of title or owner address change. If title to any disposal system or part thereof for which a permit has been issued under 64.2(455B), 64.3(455B) or 64.6(455B) is transferred, the new owners shall be subject to all terms and conditions of said permit. Whenever title to a disposal system or part thereof is changed, the department shall be notified in writing of such change within 30 days of the occurrence. No transfer of the authorization to discharge from the facility represented by the permit shall take place prior to notifying the department of the transfer of title. Whenever the address of the owner is changed, the department shall be notified in writing within 30 days of the address change. Electronic notification is not sufficient; all title transfers or address changes must be reported to the department by mail.

ITEM 71. Amend subparagraph **64.16(3)“a”(5)** as follows:

(5) Discharge from Mining and Processing Facilities, NPDES General Permit No. 5. Fees as established in ~~2006 Iowa Acts, House File 2540, section 25, Iowa Code section 455B.197~~ are to be submitted by August 30 of every year unless a multiyear fee payment was received in an earlier year. New facilities seeking General Permit No. 5 coverage ~~in any month but August~~ shall submit fees with the Notice of Intent for coverage. ~~Coverage provided by the five year, four year, or three year permit fees expires no later than the expiration date of the general permit.~~ Maximum coverage is five years, four years, ~~and three years, and one year,~~ respectively. In the event a facility is no longer eligible to be covered under General Permit No. 5, the remainder of the fees previously paid by the facility shall be applied toward its individual permit fees.

ITEM 72. Amend subparagraphs **64.16(3)“b”(3) to (6)** as follows:

(3) For operation and non-storm water NPDES permits not subject to subparagraphs (1) and (2), a single application fee of \$85 as established in ~~2006 Iowa Acts, House File 2540, section 25, Iowa Code section 455B.197~~ is due at the time of application. The application fee is to be submitted with the application form ~~(Form 30 for municipal and semipublic facilities; Form 1, 2, 2F, 3, or 4 for industrial facilities)~~ forms (as required by 567—Chapter 60) at the time of a new application, renewal application, or amendment application. Before an approved amendment request submitted by a facility holding a non-storm water NPDES permit can be processed by the department, the application fee must be submitted. Application fees will not be charged to facilities holding non-storm water NPDES permits when an amendment request is ~~submitted by DNR staff, or initiated by the director,~~ when the requested amendment is to will correct an error in the permit, or when there is a transfer of title or change in the address of the owner as noted in 64.14(455B).

(4) For every major and minor municipal facility, every semipublic facility, every major and minor industrial facility, every facility that holds an operation permit (no wastewater discharge into surface waters), and every open feedlot animal feeding operation required to hold a non-storm water NPDES permit, an annual fee as established in ~~2006 Iowa Acts, House File 2540, section 25, Iowa Code section 455B.197~~ is due by August 30 of each year.

(5) For every municipal water treatment facility with a non-storm water NPDES permit, no fee is charged (as established in ~~2006 Iowa Acts, House File 2540, section 25, Iowa Code section 455B.197~~).

(6) For a new facility, an annual fee as established in ~~2006 Iowa Acts, House File 2540, section 25, Iowa Code section 455B.197~~ is due 30 days after the new permit is issued.

ITEM 73. Amend paragraph **64.16(3)“c”** as follows:

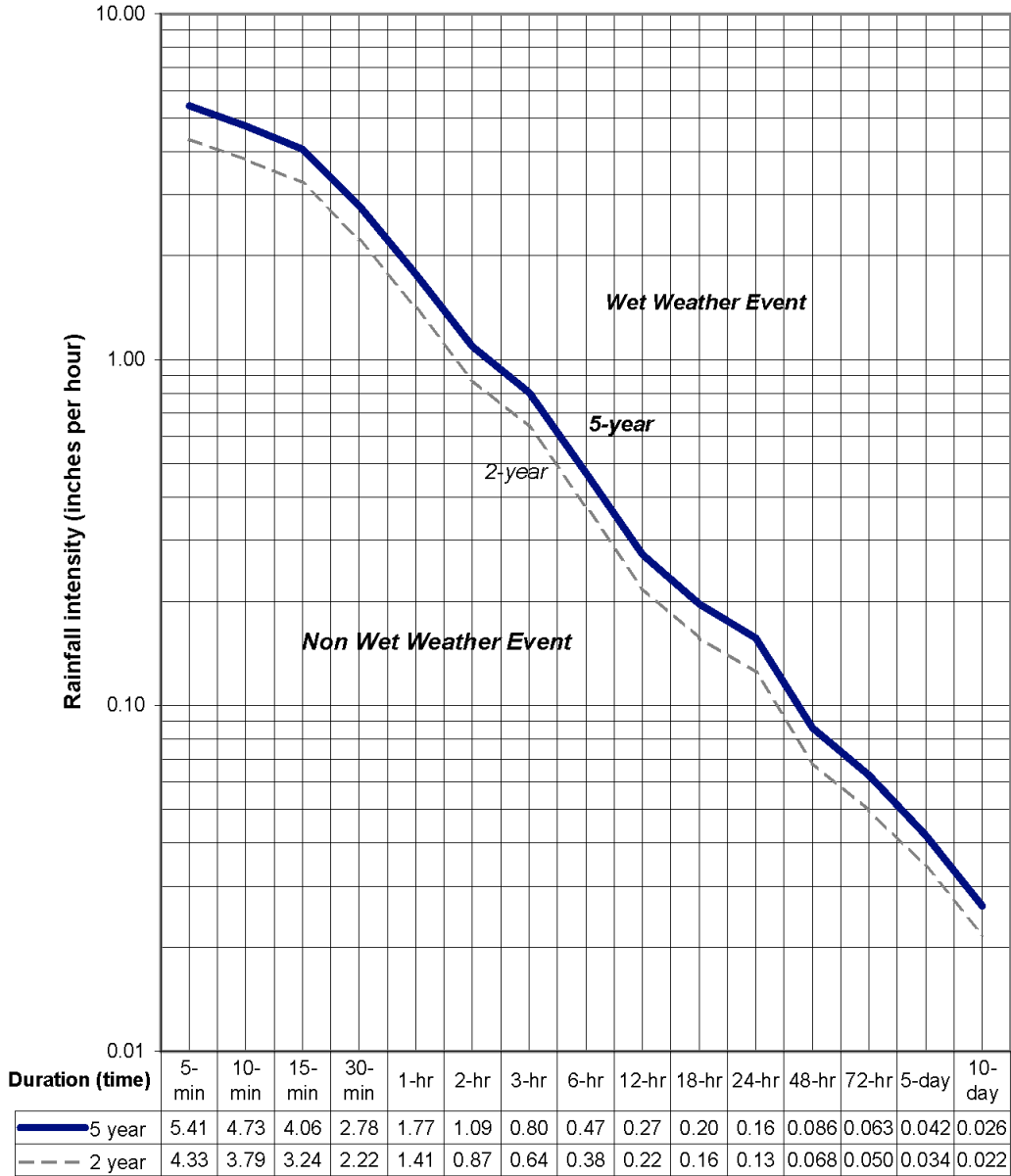
c. Wastewater construction permit fees. A single construction permit fee as established in ~~2006 Iowa Acts, House File 2540, section 25, Iowa Code section 455B.197~~ is due at the time of construction permit application submission.

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ITEM 74. Rescind Appendix A in 567—Chapter 64 and adopt the following **new** Appendix A in lieu thereof:

**APPENDIX A
Rainfall Intensity - Duration - Frequency Curve
(5 and 2 year Return Intervals)**

Data Source: Rainfall Frequency Atlas of the Midwest, Illinois State Water Survey, 1982.



Rainfall intensity data points (inches per hour)

[Filed 2/19/09, effective 4/15/09]

[Published 3/11/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/09.

ARC 7621B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.474, the Environmental Protection Commission hereby amends Chapter 135, "Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks," Iowa Administrative Code.

The Commission adopted rules that were published in the July 2, 2008, Iowa Administrative Bulletin as **ARC 6892B**. The rules were scheduled to take effect on August 6, 2008. The rules contained some provisions that were relatively uncontroversial and some provisions that were controversial. The more controversial rules in part established a policy and procedure for the assessment of the potential risk of impact from underground storage tank (UST) petroleum releases to public water supply wells (PWSWs) which are located outside the actual or modeled contaminated groundwater plume. The rules established an assessment protocol in which owners and operators of USTs and the Department shared responsibility to initially conduct sufficient assessment of soil and groundwater contamination to determine the likelihood that a UST release could impact a PWSW. If sufficient evidence of potential or actual impact was established, the rules placed responsibility on the owner and operator to conduct further risk assessment and corrective action as necessary to protect human health and safety.

In response to public comment, some of which supported and some of which objected to the rules, the Administrative Rules Review Committee (ARRC) at a public meeting on July 8, 2008, imposed a 70-day delay on the entire rule making (**ARC 6892B**) pursuant to Iowa Code section 17A.4(6). The ARRC requested that the primary stakeholders and Department staff attempt to reach a resolution of their differences. The 70-day delay, by law, expired October 16, 2008.

The Department and other stakeholders reached an agreement which generally provides for the Department and the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board (UST Fund) to enter into an intergovernmental agreement (28E Agreement) to jointly develop and implement a study of the risk to PWSWs from UST petroleum releases. The study is funded by public funds under the control of the UST Fund. The stakeholder agreement also required that the Commission agree to initiate a rule making to rescind those parts of the adopted rules in **ARC 6892B** which are controversial and relate to the PWSW risk assessment protocol and to amend Chapter 135 to clarify the responsibility of owners and operators to undertake further assessment and corrective action in the event the study confirms unacceptable risk to PWSWs. The stakeholders agreed not to object to the noncontroversial parts of the rule making published as **ARC 6892B**.

On October 14, 2008, the ARRC voted to impose a partial delay until adjournment of the 2009 Session of the General Assembly pursuant to Iowa Code section 17A.8(9). (See the November 5, 2008, Iowa Administrative Bulletin.) In recognition of the stakeholder agreement, the ARRC imposed a session delay only on those more controversial portions of the adopted rules published as **ARC 6892B** which dealt with the PWSW assessment protocol. The effect of the partial delay was that the prior 70-day delay on the remainder of the rule making expired October 16, 2008. The rules not subject to the session delay became effective October 17, 2008.

At a public meeting held on November 10, 2008, the Commission reviewed and approved the proposed stakeholder agreement, including the 28E Agreement and the Notice of Intended Action (**ARC 7400B**) for these final adopted rules.

The terms of the 28E Agreement are generally accepted as being sufficient to protect PWSWs during the study. The terms of the 28E Agreement explicitly acknowledge that, in the event sufficient proof of unreasonable risk to a PWSW is established during the study, the UST Fund would provide funding to take necessary corrective action under two basic circumstances: (1) When the UST site claimant is otherwise "fund eligible," assessment and corrective action to address risk to the PWSW would be treated as a fund-eligible cost; and (2) When the Department has issued a no further action certificate (NFA certificate) prior to a determination of risk to the PWSW, the UST Fund shall agree to provide funding for corrective action pursuant to the authority granted in Iowa Code section 455G.9(1)"k." This

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provision generally specifies that the Department and UST Fund enter into an agreement to provide a funding mechanism to address unreasonable risk which is discovered after issuance of an NFA certificate and which is not the result of a release which occurs after the release for which the NFA certificate has been issued.

Under the 28E Agreement, it is possible that the study could result in establishing sufficient proof of risk to a PWSW which is located outside the actual or modeled groundwater plume. In recognition of this fact, the EPC, with the support of the participating stakeholders, has adopted language to clarify the authority of the Commission, under 567—Chapter 135, to require the responsible UST owner and operator to undertake further assessment and corrective action consistent with the risk-based corrective action rules 567—135.8(455B) through 567—135.12(455B) when the Tier 2 groundwater model is shown to be underpredictive.

The amendments contained herein, which were published as a Notice of Intended Action on December 3, 2008, as **ARC 7400B**, rescind those parts of the rules adopted in **ARC 6892B** that established the policy and procedure for conducting risk assessments for PWSWs outside the actual or modeled plume. One person provided two comments on the Notice of Intended Action. The first was a suggestion to change the Preamble to reflect that if during the course of the PWSW study an existing well or area is determined to be at risk for petroleum contamination, the Department would take measures to prohibit the permitting of construction of wells in the vulnerable aquifer. While it is prudent to take such measures as suggested to prevent risk, this type of action is addressed under a different chapter, 567—Chapter 43, not 567—Chapter 135. The second concern pertained to the language of subrule 135.8(1), new paragraph “e” (Item 2). At its February 17, 2009, public meeting, the Commission agreed to address this concern by amending 135.8(1)“e” to require further assessment of only the groundwater ingestion pathway if the site presents an unreasonable risk to a public water supply well and the model used to obtain the pathway clearance underpredicts movement of the contaminant plume.

The Commission adopted these amendments at its public meeting on February 17, 2009.

These amendments are intended to implement Iowa Code section 455B.474.

These amendments shall become effective April 15, 2009.

The following amendments are adopted.

ITEM 1. Rescind the definition of “Sensitive area” in rule **567—135.2(455B)**.

ITEM 2. Adopt the following **new** paragraph **135.8(1)“e”**:

e. Pathway reevaluation. Prior to issuance of a no further action certificate in accordance with 135.12(10) and Iowa Code section 455B.474(1)“h”(3), if it is determined that the conditions for an individual pathway that has been classified as “no action required” no longer exist, or the site presents an unreasonable risk to a public water supply well and the model used to obtain the pathway clearance underpredicts the actual contaminant plume, the individual pathway shall be further assessed consistent with the risk-based corrective action provisions in rules 567—135.8(455B) through 567—135.12(455B).

ITEM 3. Rescind and reserve paragraph **135.9(4)“f.”**

ITEM 4. Amend paragraphs **135.10(4)“a”** and **“b”** as follows:

a. Pathway completeness. Unless cleared at Tier 1, this pathway is complete and must be evaluated under any of the following conditions: (1) the first encountered groundwater is a protected groundwater source; or (2) there is a drinking water well or a non-drinking water well within the modeled groundwater plume or the actual plume as provided in 135.10(2)“j” and 135.10(2)“k.” ~~A public water supply screening and risk assessment must be conducted in accordance with 135.10(4)“f” for this pathway.~~

b. Receptor evaluation. All drinking and non-drinking water wells located within 100 feet of the largest actual plume (defined to the appropriate target level for the receptor type) must be tested, at a minimum, for chemicals of concern as part of the receptor evaluation. Actual plumes refer to groundwater plumes for all chemicals of concern. Untreated or raw water must be collected for analysis unless it is determined to be infeasible or impracticable. ~~The certified groundwater professional or the~~

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~~department may request additional sampling of drinking water wells and non-drinking water wells as part of its evaluation.~~

All existing drinking water wells and non-drinking water wells within the modeled plume or the actual plume as provided in paragraph “a” must be evaluated as actual receptors. Potential receptors only exist if the groundwater is a protected groundwater source. Potential receptor points of exposure are those points within the modeled plume or actual plume that exceed the potential point of exposure target level. The point(s) of compliance for actual receptor(s) is the receptor. The point(s) of compliance for potential receptor(s) is the potential receptor point of exposure as provided in 135.10(2) “j” and 135.10(2) “k.”

ITEM 5. Rescind and reserve paragraph **135.10(4)“f.”**

ITEM 6. Rescind and reserve paragraph **135.10(11)“h.”**

[Filed 2/19/09, effective 4/15/09]

[Published 3/11/09]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/09.

ARC 7605B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6 and 2008 Iowa Acts, Senate File 2425, section 12, the Department of Human Services amends Chapter 51, “Eligibility,” and Chapter 52, “Payment,” Iowa Administrative Code.

These amendments implement the annual adjustments to eligibility and payment levels in the State Supplementary Assistance Program that are necessary to meet the federal “pass-along” requirements specified in Title XVI of the Social Security Act and federal regulations at 20 CFR 416.2095 and 416.2096. The state of Iowa uses the payment levels method of compliance, which requires the state to increase the payment amounts and income limits for State Supplementary Assistance categories effective January 1 of each year as necessary to meet the minimum levels required by the federal government. The minimum levels are indexed by the cost-of-living increase in federal Social Security and Supplemental Security Income (SSI) benefits, which is 5.8 percent for calendar year 2009.

Changes necessary to meet federal pass-along requirements for 2009 are as follows:

- Increasing the income limit and payment standard for a dependent relative from \$325 per month to \$344 per month.
- Increasing the income limits for eligibility for a dependent relative supplement by \$56 per month for an eligible individual (from \$962 to \$1018) and by \$74 per month for an eligible couple (from \$1281 to \$1355).
- Increasing the family life home income limit by \$37 per month (from \$799 to \$836).
- Increasing the maximum family life home payment by \$34 per month (from \$708 to \$742).
- Increasing the maximum residential care per diem rate by \$1.19 (from \$26.95 to \$28.14).

State legislation also requires the Department to increase the personal needs allowance for residents of residential care facilities at the same percentage and at the same time as federal Social Security and SSI benefits are increased. Therefore, these amendments increase the residential care facility and family life home personal needs allowances by \$3 per month (from \$91 to \$94).

These amendments do not provide for waivers in specified situations because the amendments benefit the people affected by increasing payment levels. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

These amendments were also Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on December 31, 2008, as **ARC 7470B**. Notice of Intended Action was published on the same date as **ARC 7472B** to solicit public comment. The Department received no comments on the Notice of

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Intended Action. These amendments are identical to those Adopted and Filed Emergency and published under Notice of Intended Action.

The Council on Human Services adopted these amendments on February 11, 2009.

These amendments are intended to implement 2008 Iowa Acts, Senate File 2425, sections 12 and 32.

These amendments shall become effective on April 15, 2009, at which time the Adopted and Filed Emergency amendments are rescinded.

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 [51.4(1), 51.7, 52.1(1) to 52.1(3)] is being omitted. These amendments are identical to those published under Notice as **ARC 7472B** and Adopted and Filed Emergency as **ARC 7470B**, IAB 12/31/08.

[Filed 2/12/09, effective 4/15/09]

[Published 3/11/09]

[For replacement pages for IAC, see IAC Supplement 3/11/09.]

ARC 7606B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 234.6 and 237.3, the Department of Human Services amends Chapter 113, "Licensing and Regulation of Foster Family Homes," Chapter 156, "Payments for Foster Care and Foster Parent Training," Chapter 200, "Adoption Services," and Chapter 202, "Foster Care Services," Iowa Administrative Code.

The amendments make the following changes to rules regarding foster care and adoption:

- Amend record-check policies for foster and adoptive families to require fingerprinting only for the parent applicants, not for others in the household, unless the Department has reason to believe that a national criminal records check is warranted for other adult household members. The Department's current policy goes beyond what is required in federal legislation. Provisions for evaluating record-check findings are consolidated in the foster family care licensing rules, 441—Chapter 113.

- Amend policies on the license capacity for foster family homes to clarify the relationship between children already living with the family and the potential license capacity. The amendments specify that a license must have a capacity of at least one and that a child over the age of 18 who remains in foster care placement must be counted in the license capacity.

- Remove policies relating to "emergency" foster family care. No special emergency care homes are being designated, and variances to exceed a home's capacity for a placement may be granted under the provisions for placing a specific child. Therefore, special payment provisions for emergency foster family care beds are eliminated.

- Require foster parents who make purchases using a child's clothing allowance to submit receipts for auditing.

Except for the capacity variance provisions, these amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on December 3, 2008, as **ARC 7372B**. The Department received no comments on the Notice of Intended Action. The Department has made the following changes to the amendments as published under Notice of Intended Action:

- Amendments to Chapter 108, "Licensing and Regulation of Child-Placing Agencies," were not adopted. Those amendments have been revised. A new Notice of Intended Action will be published in the Iowa Administrative Bulletin to allow for public comment.

- Procedures for conducting record checks have been reorganized into a new subrule 113.13(1), and a requirement has been added to check the child abuse registry of any other state where any adult in

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the applicant household has lived within the last five years, as required by Public Law 109-248, the Adam Walsh Child Protection and Safety Act of 2006. Subrules 113.13(1) through 113.13(3) have been renumbered accordingly.

- A sentence has been added to new subparagraph 113.13(1)“b”(2) to allow fingerprinting of other adults living in the home if the Department believes that a national criminal records check is warranted.
- The new sentence that was proposed for the end of paragraph 113.13(1)“c” was not adopted. This provision is covered by subrule 113.13(3), paragraph “b.”
- Subrule 113.17(1) is rescinded because the Department has determined that these provisions are the responsibility of the placing worker rather than of the foster family. The provisions of proposed paragraph 113.17(1)“a” are moved to new subrule 202.5(3), and the provisions of proposed paragraphs 113.17(1)“b” and “c” are moved to new subrule 202.11(4).
- New subparagraphs (1) and (2) have been added to paragraph 200.4(1)“b” to organize the record-check procedures for adoptive families similarly to new subrule 113.13(1).
- A new Item 9 is added to insert the limitation “except for fingerprinting” in subparagraph 200.4(1)“d”(1) to match the change in subrule 113.13(4).

The Council on Human Services adopted these amendments on February 11, 2009.

These amendments are intended to implement Iowa Code sections 234.35, 237.8, and 600.8.

These amendments shall become effective on May 1, 2009.

The following amendments are adopted.

ITEM 1. Amend subrule 113.4(1) as follows:

113.4(1) Number of children. A foster family home ~~shall be licensed for the~~ may care of for up to five children ~~including~~ unless a variance is approved as described in this rule. The license capacity shall be based on the number of the foster family’s biological and adoptive children and any relative placements. The license shall be issued for at least one child. A child who has reached the age of 18 and remains eligible for foster family care shall be included in the license capacity. Any variance to this rule must:

- a. and b. No change.
- c. Meet one of the following criteria:
 - (1) No change.
 - (2) The foster parents have three or more ~~biological and adoptive children and relative placements~~ in the home and have shown the ability to parent a large number of children. A variance may be approved to allow the placement of up to three foster children as set forth in the chart below:

No. of Children in the Home (birth/relative/adoptive placements)	Maximum License Capacity:	
	Without variance	With variance
0 children	5	Not applicable
1 child	4	Not applicable
2 children	3	Not applicable
3 children	2	3
4 children	1	3
5 or more children	0 <u>Not applicable</u>	3

~~(3) — An emergency placement must be made in a foster family home that causes the home to exceed its licensed capacity. These emergency placements shall be made according to a preapproved service area plan as outlined below and are limited to a maximum of 30 days.~~

~~Before the start of each fiscal year, each service area shall submit to the central office for approval a plan for when an emergency occurs which necessitates the placement of a child in a foster family home that would exceed the licensing capacity. The plan shall define emergencies and identify a specific pool of preapproved homes which shall provide for placement of up to three additional foster children above the number that is allowed by the variances in the chart in subparagraph (2).~~

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(4) (3) A variance beyond the maximum capacity of the foster home license is needed for the placement of a specific child in foster family care. A child-specific variance shall end when that child leaves the placement or any other change brings the family into licensed capacity.

d. No change.

ITEM 2. Amend rule 441—113.13(237) as follows:

441—113.13(237) Record checks. ~~The department shall submit record~~ Record checks are required for each foster parent applicant and for anyone who is 14 years of age or older living in the home of the applicant. The purpose of the record checks is to determine whether they have any of these persons has any founded child abuse reports or criminal convictions or have has been placed on the sex offender registry. The department shall use Form 470-0643, Request for Child Abuse Information, and Form 595-1396, DHS Criminal History Record Check, Form B, for this purpose. Each person subject to record checks shall also be fingerprinted for a national criminal history check.

113.13(1) Procedure. The department's contractor for the recruitment and retention of resource families shall assist applicants in completing required record checks, including fingerprinting.

a. Iowa records. Each foster parent applicant and anyone who is 14 years of age or older living in the home of the applicant shall be checked for records with:

(1) The Iowa central abuse registry, using Form 470-0643, Request for Child Abuse Information;

(2) The Iowa division of criminal investigation, using Form 595-1396, DHS Criminal History Record Check, Form B; and

(3) The Iowa sex offender registry.

b. Other records.

(1) Each foster parent applicant and any other adult living in the household shall also be checked for records on the child abuse registry of any state where the person has lived during the past five years.

(2) Each foster parent applicant shall also be fingerprinted for a national criminal history check. Other adults living in the home may be fingerprinted if the department determines that a national criminal history check is warranted.

~~113.13(4)~~ **113.13(2) Evaluation of record.** If the applicant or anyone living in the home has a record of founded child abuse, a criminal conviction, or placement on the sex offender registry, the department shall not license the applicant as a foster family, unless an evaluation determines that the abuse or criminal conviction does not warrant prohibition of license.

~~EXCEPTION: An individual applying to be a foster parent shall not be granted a license and an evaluation shall not be performed if the applicant or anyone living in the home of the applicant has been convicted of a felony offense as set forth in Iowa Code section 237.8(2) "a." The person making the investigation shall not approve a prospective applicant and shall not perform an evaluation if the applicant or anyone living in the home of the applicant has committed a crime in another state that would be a forcible felony if the crime would have been committed in Iowa, as set forth in Iowa Code section 237.8(2) "a."~~

a. Exclusion. An evaluation shall not be performed if the person has been convicted of:

(1) A felony offense as set forth in Iowa Code section 237.8(2) "a"(4); or

(2) A crime in another state that would be a felony as set forth in Iowa Code section 237.8(2) "a"(4) if the crime were committed in Iowa.

b. Scope. The evaluation shall consider the nature and seriousness of the founded child abuse or crime in relation to:

(1) ~~the~~ The position sought or held,

(2) ~~the~~ The time elapsed since the ~~circumstances under which the~~ abuse or crime was committed,

(3) ~~the~~ The degree of rehabilitation,

(4) ~~the~~ The likelihood that the person will commit the abuse or crime again, and

(5) ~~the~~ The number of abuses or crimes committed by the person.

c. Evaluation form. The person with the founded child abuse or criminal conviction report shall complete and return Form 470-2310, Record Check Evaluation, within ten calendar days of the date on

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~~the form of receipt~~ to be used to assist in the evaluation. Failure of the person to complete and return Form 470-2310 within the specified time frame shall result in denial of licensure.

~~113.13(2) 113.13(3) Evaluation process decision.~~ The service area manager or designee shall make conduct the evaluation and make the decision. ~~Within 30 days of receipt of the completed Form 470-2310, the~~ The department shall mail to the individual on whom the evaluation was completed and to the registrant for an employee of the registrant ~~issue~~ Form 470-2386, Record Check Decision, that explains to explain the decision reached regarding the evaluation of an abuse or a crime. The department shall mail the form to the person on whom the evaluation was completed:

a. Within 30 days of receipt of the completed Form 470-2310, Record Check Evaluation, or
b. The department shall also issue Form 470-2386 when an applicant ~~When the person whose record is being evaluated fails to complete the evaluation form within the specified time frame-~~ specified in paragraph 113.13(2) "c."

~~113.13(3) 113.13(4) License renewal.~~ Foster parents applying for an annual license renewal ~~of a license may~~ shall be subject to the same checks as new applicants ~~when there is reason to believe that a founded abuse or conviction of a crime has occurred,~~ except for fingerprinting. The department shall evaluate only abuses and convictions of crimes that occurred since the last record check. The evaluation shall be conducted using the same process.

This rule is intended to implement Iowa Code section 237.8(2).

ITEM 3. Rescind and reserve subrule **113.17(1)**.

ITEM 4. Rescind the definition of "Emergency foster family care" in rule **441—156.1(234)**.

ITEM 5. Amend subrule 156.8(1) as follows:

156.8(1) Clothing allowance. When, in the judgment of the worker, clothing is needed at the time the child is removed from the child's home and placed in foster care, an allowance may be authorized, not to exceed \$250, to purchase clothing.

a. A second clothing allowance, not to exceed \$200 for family foster care and \$100 for all other levels, may be approved, not more than once within a calendar year, by the worker when a child in foster care needs clothing to replace lost clothing or because of unusual growth or weight change, and the child does not have escrow funds.

b. When clothing is purchased by the foster family, the foster family shall submit receipts to the worker within 30 days of purchase for auditing purposes, using Form 470-1952, Foster Care Clothing Allowance.

ITEM 6. Amend rule 441—156.11(234), introductory paragraph, as follows:

441—156.11(234) Emergency care. ~~Each service area shall have facilities to provide 24-hour emergency foster care. Emergency care shall not exceed 30 days in one six-month period, and the facility's policy may limit placement to less than 30 days. The following options shall be available for funding emergency care for each service area:~~

ITEM 7. Rescind and reserve subrules **156.11(1)** and **156.11(2)**.

ITEM 8. Amend paragraph **200.4(1) "b"** as follows:

b. Record checks. ~~The department shall submit record~~ Record checks are required for each applicant and for anyone who is 14 years of age or older living in the home of the applicant to determine whether they have founded child abuse reports or criminal convictions or have been placed on the sex offender registry. ~~The department shall use Form 470-0643, Request for Child Abuse Information, and Form 595-1396, DHS Criminal History Record Check, Form B, for this purpose. Each person subject to record checks shall also be fingerprinted for a national criminal history check. The department's contractor for the recruitment and retention of resource families shall assist applicants applying through the department in completing required record checks, including fingerprinting.~~

(1) Iowa records. Each applicant and anyone who is 14 years of age or older living in the home of the applicant shall be checked for records with:

1. The Iowa central abuse registry, using Form 470-0643, Request for Child Abuse Information;

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2. The Iowa division of criminal investigation, using Form 595-1396, DHS Criminal History Record Check, Form B; and

3. The Iowa sex offender registry.

(2) Other states' records. Each applicant and any other adult living in the applicant's home shall be checked for records on the child abuse registry of any state where the person has lived during the past five years.

(3) Federal records. Each applicant shall be fingerprinted for a national criminal history check. Other adults living in the home may be fingerprinted if the department determines that a national criminal history check is warranted.

(4) If the applicant, or anyone living in the home of the applicant, has a record of founded child abuse, a criminal conviction, or placement on the sex offender registry, the department shall not approve the applicant as an adoptive family, unless an evaluation determines that the abuse or criminal conviction does not warrant prohibition of approval. The evaluation shall be conducted according to procedures in 441—subrules 113.13(2) and 113.13(3) for applications for adoption through the department or procedures in 441—subrule 108.9(4) for applications for adoption through a child-placing agency.

~~EXCEPTION: The person making the investigation shall not approve a prospective applicant and shall not perform an evaluation if the applicant or anyone living in the home of the applicant has been convicted of a felony offense as set forth in Iowa Code section 600.8(2) "b." The person making the investigation shall not approve a prospective applicant and shall not perform an evaluation if the applicant or anyone living in the home of the applicant has committed a crime in another state that would be a forcible felony if the crime would have been committed in Iowa, as set forth in Iowa Code section 600.8(2) "b."~~

~~The evaluation shall consider the nature and seriousness of the abuse or crime, the time elapsed since the commission of the founded or confirmed abuse or crime, the circumstances under which the abuse or crime was committed, the degree of rehabilitation, the likelihood that the person will commit the abuse or crime again, and the number of abuses or crimes committed by the person.~~

~~The person with the founded child abuse or criminal conviction report shall complete and return Form 470-2310, Record Check Evaluation, within ten calendar days of the date on the form to be used to assist in the evaluation. Failure of the person to complete and return Form 470-2310 within the specified time frame shall result in denial of approval for adoption.~~

~~The evaluation and decision shall be made by the service area manager or designee. Within 30 days of receipt of the completed Form 470-2310, the department shall mail to the individual on whom the evaluation was completed Form 470-2386, Record Check Decision, which explains the decision reached regarding the evaluation of an abuse or crime. Form 470-2386 shall also be issued when an applicant fails to complete the evaluation form within the specified time frame.~~

(5) The department shall assess fees associated with the record checks to the adoptive applicant unless the family is being studied to adopt a child with special needs.

ITEM 9. Amend subparagraph **200.4(1)"d"(1)** as follows:

(1) The child abuse and criminal record checks shall be repeated, except for fingerprinting. If there are any founded abuses or convictions of crimes that were not evaluated in the previous home study, they shall be evaluated using the process set forth in 200.4(1) "b."

ITEM 10. Adopt the following new subrule 202.5(3):

202.5(3) The child shall have a physical examination by a physician before the initial placement in foster care or within 14 calendar days of placement. The physician shall complete a preliminary screening for dental and mental health and refer the child to a dentist or mental health professional if appropriate. To address any immediate medical needs, the child shall be seen immediately at an emergency room, an urgent care center, or other community health resource.

ITEM 11. Adopt the following new subrule 202.11(4):

202.11(4) When a child is in continuous foster care, a new physical examination shall not be required when the child transfers from one foster care placement to another unless there is some indication that

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an examination is necessary. The service worker shall obtain from the health practitioner or practitioners an annual medical review of treatment the child has received.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/09.

ARC 7616B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby rescinds Chapter 13, "Permits and Easements for Construction and Other Activities on Public Lands and Waters," and adopts new Chapter 13, "Permits and Easements for Construction and Related Activities on Public Lands and Waters," Iowa Administrative Code.

The amendment rescinds the existing chapter and adopts a new one. The new rules clarify the process that the Department of Natural Resources will utilize in evaluating applications for construction permits, easements and leases; describe standards and criteria that must be met to receive a construction permit, easement or lease; establish definitions of sovereign waters; define inspection procedures; impose civil penalties, as allowed by the Iowa Code, for failure to comply with the rules; and amend the appeals process for applications that are denied according to the standards and criteria.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 17, 2008, as **ARC 7416B**. Comments were accepted through January 9, 2009. In addition, the Department held a public hearing utilizing the Iowa Communications Network (ICN) at seven locations throughout the state. The Department received nine comments, all supporting the amendment and one seeking clarification about the impacts to existing permits.

In addition to minor grammatical revisions, the following changes have been made since the Notice of Intended Action based on departmental review. First, the Department clarified that management practices conducted by the state on its owned and managed lands are not subject to the restrictions described in this chapter. Second, the Department added Pickeral Lake to Clay County under the definition of "meandered sovereign lakes" in rule 13.3(455A,461A) as Pickeral Lake spans both Buena Vista and Clay counties. Third, the Department modified the relief available to unsuccessful applicants in rule 13.11(455A,461A), a change which conforms with Iowa Code chapter 17A. Fourth, the Department removed an ambiguous clause in rule 13.17(455A,461A) pertaining to civil penalties. Finally, the catchwords in rule 13.15(455A,461A) have been revised to more clearly reflect the content of the rule.

This amendment is intended to implement Iowa Code sections 461A.4, 461A.5A, 461A.5B, 461A.6, 461A.18, 461A.25 and 462A.3.

This amendment shall become effective April 15, 2009.

The following amendment is adopted.

Rescind 571—Chapter 13 and adopt the following **new** chapter in lieu thereof:

CHAPTER 13

PERMITS AND EASEMENTS FOR CONSTRUCTION AND RELATED ACTIVITIES ON PUBLIC LANDS AND WATERS

571—13.1(455A,461A,462A) Purpose. The commission holds lands and waters under its jurisdiction in public trust and protects the interests of all citizens in these lands and waters.

1. These rules establish procedures and regulate the evaluation and issuance of permits for construction or other related activities that alter the physical characteristics of public lands and waters under the jurisdiction of the commission, including those activities that occur over or under such lands

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and waters. However, these rules shall not apply to activities accomplished by the department and its agents that would only temporarily alter the characteristics of public lands and waters and that would be considered management practices.

2. These rules also establish procedures for issuance of easements to public utilities and political subdivisions for activities that are determined to have a permanent effect on use and enjoyment of public lands and waters under the jurisdiction of the commission.

571—13.2(455A,461A,462A) Affected public lands and waters. These rules are applicable to all fee title lands and waters under the jurisdiction of the commission; dedicated lands and waters under the jurisdiction of the commission and managed by the commission for public access to a meandered sovereign lake or meandered sovereign river; meandered sovereign lakes; meandered sovereign rivers; and sovereign islands, except those portions of the Iowa River and the Mississippi River where title has been conveyed to charter cities.

571—13.3(455A,461A) Definitions. For the purposes of this chapter, the following definitions shall apply:

“*Applicant*” means a person who applies for a permit or easement pursuant to these rules.

“*Authorized agent*” means a person, designated by the applicant, who shall be responsible to perform part or all of the proposed activity and who certifies the application according to subrule 13.9(2).

“*Canal*” means a narrow strip of water, artificially made, between two water bodies described in rule 571—13.2(455A,461A,462A).

“*Cantilever access structure*” means a structure constructed for improving the proximity of access to a lake or river, that has a support footing located entirely on littoral or riparian land above the ordinary high water line, and that extends from the footing and is completely suspended above the water at normal water elevation with no occupation of the lakebed or riverbed.

“*Channel*” means a narrow body of water that may be natural or artificially made.

“*Charter cities*” means the city of Wapello operating under special charter enacted in 1856; the city of Camanche operating under special charter enacted in 1857; the city of Davenport by chapter 84, Acts of the 47th General Assembly; the cities of Burlington, Clinton, Dubuque, Fort Madison, Keokuk, and Muscatine by chapter 249, Acts of the 51st General Assembly; and the city of Le Claire by chapter 383, Acts of the 58th General Assembly.

“*Commercial boat ramp*” means a boat ramp installed or maintained as part of a business to provide access to a public water body where use of the ramp is available to the general public.

“*Commission*” means the natural resource commission.

“*Department*” means the department of natural resources.

“*Director*” means the director of the department of natural resources or the director’s designee.

“*Easement*” means an easement authorized under Iowa Code section 461A.25.

“*Fee title lands and waters*” means lands and waters for which title is acquired by deed or testamentary devise.

“*Lease*” means a lease authorized under Iowa Code section 461A.25.

“*Littoral land*” means land abutting a lake.

“*Meandered sovereign lakes*” means those lakes which, at the time of the original federal government surveys, were surveyed as navigable and important water bodies and were transferred to the states upon their admission to the union to be transferred or retained by the public in accordance with the laws of the respective states. The state of Iowa holds sovereign title in trust for the benefit of the public to the beds of the following lakes:

County	Lake
Allamakee	Kains
	Lansing Big Lake
	Mud Hen

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	New Albin Big Lake
Buena Vista	Pickeral
	Storm
Calhoun	North Twin
	South Twin
	Tow Head
Cerro Gordo	Clear
Clay	Dan Green Slough
	Elk
	Mud
	Pickeral
	Round
	Trumbull
Delaware	Silver
Dickinson	Center
	Diamond
	East Okoboji
	Hottes
	Jemmerson Slough
	Little Spirit
	Lower Gar
	Marble
	Minnewashta
	Pleasant
	Prairie
	Silver
	Spirit
	Swan
	Upper Gar
	Welch
	West Okoboji
Emmet	Birge
	Cheerers
	East Swan
	Four Mile
	Grass
	High
	Ingham
	Iowa
	Ryan
	Tuttle
	Twelve Mile
	West Swan
Greene	Goose
Hamilton	Little Wall
Hancock	Crystal
	Eagle
	East Twin
	West Twin
Harrison	Nobles

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Johnson	Swan
Kossuth	Burt
	Goose
Monona	Blue
Osceola	Iowa
	Rush
Palo Alto	Five Island
	Lost Island
	Rush
	Silver
	Virgin
Pocahontas	Clear
	Lizard
Pottawattamie	Carter
	Manawa
Sac	Black Hawk
Winnebago	Harmon
	Rice
Woodbury	Browns
Worth	Silver
Wright	Big Wall
	Cornelia
	Elm
	Morse

“Meandered sovereign rivers” means those rivers which, at the time of the original federal government surveys, were surveyed as navigable and important water bodies and were transferred to the states upon their admission to the union to be transferred or retained by the public in accordance with the laws of the respective states upon their admission to the union. The state of Iowa holds sovereign title in trust for the benefit of the public to the beds of the following rivers:

River and description

The Mississippi River from the south boundary of the state of Minnesota to the north boundary of the state of Missouri.

The Missouri River from the south boundary of the state of South Dakota to the north boundary of the state of Missouri.

The Big Sioux River from the south boundary of the state of Minnesota to the south boundary of the state of South Dakota.

The Des Moines River from the Mississippi River to the west line of Section 7, Township 89 North, Range 32 West, Palo Alto County (west branch) and to the north line of Section 2, Township 95 North, Range 29 North, Kossuth County (east branch).

The Cedar River from the Iowa River to the west line of Section 7, Township 89 North, Range 13 West, Black Hawk County.

The Iowa River from the Mississippi River to the west line of Section 7, Township 81 North, Range 11 West, Iowa County.

The Little Maquoketa River from the Mississippi River to the west line of Section 35, Township 90 North, Range 2 East, Dubuque County.

The Maquoketa River from the Mississippi River to the west line of Section 18, Township 84 North, Range 3 East, Jackson County.

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The Nishnabotna River from the north boundary of the state of Missouri to the north line of Section 1, Township 67 North, Range 42 West, Fremont County.

The Raccoon River from the Des Moines River to the west line of Section 30, Township 78 North, Range 25 West, Polk County.

The Skunk River from the Mississippi River to the north line of Section 1, Township 73 North, Range 8 West, Jefferson County.

The Turkey River from the Mississippi River to the west line of Section 30, Township 95 North, Range 7 West, Fayette County.

The Upper Iowa River from the Mississippi River to the west line of Section 28, Township 100 North, Range 4 West, Allamakee County.

The Wapsipinicon River from the Mississippi River to the west line of Section 19, Township 86 North, Range 6 West, Linn County.

“Native stone riprap” means broken stone, dolomite, quartzite or fieldstone meeting Iowa department of transportation specification 4130, Class D.

“Ordinary high water line” means the boundary between meandered sovereign lakes and rivers, except the Mississippi River, and littoral or riparian property. *“Ordinary high water line”* is the limit where high water occupies the land so long and continuously as to wrest terrestrial vegetation from the soil or saturate the root zone and destroy its value for agricultural purposes. *“Ordinary high water line”* is the boundary between upland and wetland as defined by the U.S. Army Corps of Engineers Wetlands Delineation Manual dated January 1987. For Storm Lake in Buena Vista County and Clear Lake in Cerro Gordo County, the elevation has been established by adjudication. A list of elevations for the ordinary high water lines of meandered sovereign lakes, as determined by this definition and applicable court cases, is available on the department’s Web site.

“Ordinary high water line of the Mississippi River” means the elevation, as defined by criteria in the Code of Federal Regulations, 33 CFR Part 328.3 (November 13, 1986), promulgated by the U.S. Army Corps of Engineers, where the water exists at or below such elevation 75 percent of the time as shown by water stage records since construction of the locks and dams in the river.

“Permit” means a sovereign lands construction permit issued pursuant to this chapter.

“Permittee” means a person who receives a permit pursuant to these rules, which may also include the authorized agent if designated pursuant to these rules.

“Person” means the same as defined in Iowa Code section 4.1.

“Public boat ramp” means a boat ramp constructed to provide public access from public land to a water body.

“Public lands” means land under the jurisdiction of the commission that is owned by the state or that has been dedicated for public access to a meandered sovereign lake or meandered sovereign river.

“Public waters” means a water body under the jurisdiction of the commission that is owned by the state or that has been dedicated for public access to a meandered sovereign lake or meandered sovereign river.

“Riparian land” means land abutting a river.

“Sovereign island” means an island located within a sovereign meandered lake or a sovereign meandered river that was transferred to the state upon its admission to the union and whose title continues to be retained by the state.

“Standard riprap” means broken stone, dolomite, quartzite, fieldstone, or broken concrete meeting Iowa department of transportation specification 4130, Class D. Broken concrete shall not have reinforcing materials protruding from the surface of the riprap. Standard riprap shall not include petroleum-based materials.

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DIVISION I
PERMITS**571—13.4(455A,461A) Permits required.**

13.4(1) General. No person shall temporarily or permanently place or build any structure or alter the characteristics of public lands or waters under the jurisdiction of or managed by the commission without a permit issued by the department prior to commencement of such activities as provided in the rules of this chapter.

13.4(2) Hazardous conditions. Trees, rock, brush or other natural materials located on sovereign or dedicated lands may be removed by persons without a permit issued pursuant to these rules only after the department, in its sole discretion, determines and evidences in writing that a hazard or other detrimental condition exists and that the proposed mitigative activity is appropriate. Such activity shall be limited only to the work required to address the immediate hazard or other detrimental condition. Any removal allowed by this rule shall conform to the requirements enumerated by the department regarding such removal, or the removal shall be deemed unauthorized action resulting in damage to public lands and waters. Persons proposing to remove hazards must contact a local department official and request an exception to a permit. The department official shall inspect the hazard and provide written authorization to proceed or shall require the person to apply for a permit.

13.4(3) Impoundments. These rules do not apply to river impoundments regulated by Iowa Code chapter 462A.

13.4(4) Docks. These rules do not apply to docks regulated by 571—Chapter 16, except as specifically described herein.

571—13.5(455A,461A) Interest in real estate. A permit shall be construed to do no more than give the permit holder a license to alter an area as specifically set forth in the permit. The permit creates no interest, personal or real, in the real estate covered by the permit.

571—13.6(455A,461A,462A) Evaluation.

13.6(1) In considering complete applications, the department shall evaluate the impact of the proposed activities on public use and enjoyment of public lands or waters, on the natural resources in the areas within and surrounding the proposed activities, and the department's present and future intended management for the area against the applicant's identified and reasonable need to undertake the proposed activities and the viable alternatives that may exist with respect to the proposed activities.

13.6(2) In no event shall the department issue a permit for activities that:

a. May result in the taking, possession, transport, import, export, processing, selling, buying, transporting, or receiving any species of fish, plants or wildlife appearing on lists referenced in Iowa Code section 481B.5, unless the permittee meets one of the exemptions enumerated in rule 571—77.4(481B).

b. Have not received flood plain permits pursuant to Iowa Code chapter 455B and 567—Chapters 70 through 76, if applicable.

c. May impact a littoral or riparian property owner without the express written permission of the littoral or riparian property owner.

d. Do not comply with the review standards defined in 571—13.7(455A,461A,462A).

e. Interfere with department obligations or limitations related to federal funds or agreements or other restrictive covenants that may be applicable to the affected area.

f. Allow fill to be placed beyond the ordinary high water line of waters described in rule 571—13.2(455A,461A,462A) for purposes of regaining land lost due to erosion.

13.6(3) The department may withhold a permit when the applicant has not obtained all other required permits or licenses necessary to construct and operate the proposed activity.

571—13.7(455A,461A,462A) Review standards. Department staff shall conduct an environmental review of the application. In completing the environmental review, different bureaus and staff members of the department will provide input based on law, professional judgment, data and accepted scientific theory. The following standards shall apply to permits issued under the rules of this chapter:

NATURAL RESOURCE COMMISSION[571](cont'd)

13.7(1) *Uses of public lands and waters.* Development of public lands and public waters permitted by these rules shall be limited to projects that meet all of the following criteria. The projects:

a. Are built to minimally impact the natural resources of public recreational use and navigation on such lands and waters. Specifically, applicants must demonstrate that the project accomplishes all of the following:

- (1) Does not negatively impact water quality in or around the proposed permitted area.
- (2) Minimizes erosion and sedimentation in or around the proposed area.
- (3) Minimizes detrimental impacts to biological and botanical resources in or around the proposed area, including upland, wetland and sensitive areas and unique community structures.
- (4) Complies with laws and regulations related to threatened and endangered species, through both federal and state programs.

b. Utilize the smallest amount of public lands and public waters.

c. Do not convert the public lands and public waters to an exclusive or private use.

d. Are the only viable method for conducting the activities, and no viable alternatives to constructing on public lands exist.

13.7(2) *Shoreline erosion protection and retaining walls.* Shoreline erosion protection activities may be permitted if the activities are in compliance with 571—13.6(455A,461A,462A) and the following additional standards:

a. Shoreline erosion protection activities on meandered sovereign lakes shall be limited to placement of native stone riprap, extending to a maximum of 4 feet horizontally within or below the elevation contour line of the ordinary high water line. Placement of earth fill within the ordinary high water line shall not be allowed. Retaining walls, sheet piling, gabions or other retaining structures shall be placed at or above the ordinary high water line. When such retaining structures are placed at the ordinary high water line, they must be faced with native stone riprap.

b. Shoreline erosion protection activities on meandered sovereign rivers, except the Mississippi River, shall be limited to placement of approved in-stream erosion control structures or native stone or standard riprap. Riprap shall extend riverward from the ordinary high water line at a slope of 2 feet horizontal to 1 foot vertical (2:1). Placement of earth fill within the ordinary high water line shall not be allowed. Retaining walls, sheet piling, gabions or other retaining structures shall not be placed within the ordinary high water line. When such retaining structures are placed at the ordinary high water line, they must be faced with riprap.

c. Shoreline erosion protection activities on the Mississippi River shall be limited to placement of approved in-stream erosion control structures or native stone riprap. Riprap shall extend riverward from the ordinary high water line at a slope of 2 feet horizontal to 1 foot vertical (2:1). Placement of earth fill within the ordinary high water line shall not be allowed. Retaining walls, sheet piling, gabions or other retaining structures shall not be placed within the ordinary high water line. When such retaining structures are placed at the ordinary high water line, they must be faced with native stone riprap.

d. Retaining walls on all meandered sovereign lakes and meandered sovereign rivers. The landowner shall maintain the wall system at all times and take corrective measures to eliminate any nuisance condition, repair deterioration of the structure, eliminate erosion around the structure, and repair damage to the structure caused by the action of the water or ice. When a retaining wall or other structure placed on the shoreline prevents the public from traversing the shoreline, the landowner shall grant the public a license to walk from the landowner's property within 15 feet of the top of the wall or structure for the purpose of traversing the shoreline.

e. Notwithstanding the prohibitions in this subrule, nothing in this subrule shall prohibit activities that would be part of habitat development or natural resources mitigation projects constructed or approved by a political subdivision of the state and subject to review under these rules.

13.7(3) *Quality of the applicant.* Applicants or authorized agents who have a current violation for another project are not eligible for consideration for a permit under these rules unless and until all other noncompliant projects have been remediated and any enforcement actions related to the same have been resolved or satisfied.

NATURAL RESOURCE COMMISSION[571](cont'd)

13.7(4) *Cantilever access structures.* Permanent cantilever access structures that lawfully exist and are lawfully permitted under prior sovereign lands construction permit rules as of April 15, 2009, shall be deemed lawfully permitted under these rules. All cantilever access structures that are not lawfully installed prior to April 15, 2009, or are installed after April 15, 2009, shall be regulated as docks by 571—Chapter 16.

13.7(5) *Beaches, canals, and channels.* Permits may be granted to maintain existing beaches, canals, and channels lawfully installed as of April 15, 2009, to ensure the navigation and safety of those existing lawful beaches, canals, and channels. The department shall not permit new beaches, canals, or artificial channels or expansion of existing beaches, canals, or artificial channels, except that the department may permit new beaches, canals, and artificial channels and expansions of existing beaches, canals, and artificial channels when such establishment or expansion would be under the jurisdiction of a political subdivision of the state, would be accomplished to provide public access to the water, and would meet the review standards established by these rules.

13.7(6) *Stationary blinds.* All stationary blinds installed on lands and waters described in rule 571—13.2(455A,461A,462A) are subject to regulation by rule 571—51.6(481A) and are not subject to the requirements of these rules.

571—13.8(455A,461A) Leases or easements as a condition of permits. If a permitted structure or its use will have a continuing impact on the availability or desirability of public lands or public waters, the permit shall be conditioned on the requirement that the permittee obtain a lease or easement under Division II of this chapter. However, a lease or easement shall not be required for proposed activities that are wholly within the scope of the permittee's littoral or riparian rights.

571—13.9(455A,461A,462A) Permit application. Applicants shall apply for permits using an application form provided by the department. Applicants shall state the need for the proposed construction or use, the availability of alternatives, and the measures proposed to prevent, minimize or mitigate adverse impacts to natural resources or public use of the affected area. The department reserves the right to refuse to review incomplete applications. Each application, including all amendments, shall be signed by the applicant and authorized agent if one shall be so appointed by the applicant. The applicant's signature shall acknowledge that the application is accurate and made in good faith.

13.9(1) For purposes of this rule, the department will deem an application complete if the application meets all of the following criteria. The application:

- a. Is provided on the department's form, and all fields are completed and legible;
- b. Includes the name(s), mailing address and telephone number of the applicant(s) and authorized agent(s), if applicable;
- c. Describes the proposed activity, including:
 - (1) Physical address and legal description of the location where the proposed activity is to occur; a written description of existing natural and man-made structures and features; an aerial photograph, if possible or available; and a ground-level photograph(s) showing the area where the activity is proposed to occur;
 - (2) Schematic or design plans, including cross sections and plan views, that accurately and clearly depict the proposed activities;
 - (3) Description of the construction methods used to complete the project, the methods used to transport material to the site, and the type and amount of material to be used;
 - (4) Description of measures proposed to prevent or minimize adverse impacts on the property in the proposed area;
 - (5) Description of any borrows or disposal sites, including the location of any borrows or disposal sites and the type and amount of material to be borrowed or disposed of in them;
- d. Includes identification of the ordinary high water line, if the proposed activities are in or near a meandered sovereign lake or meandered sovereign river;
- e. Describes alternative plans to undertake the activity that may be available to the applicant;
- f. Identifies the need for the proposed activity in the proposed project area;

NATURAL RESOURCE COMMISSION[571](cont'd)

g. Provides a statement of consent for the department to enter the property during the term of the proposed permit.

13.9(2) For applications that provide for an authorized agent to perform part or all of the proposed activities, the following additional information shall be required to constitute a complete application:

- a. Statement signed by the authorized agent and applicant;
- b. Statement signed by the authorized agent acknowledging that the authorized agent is aware of such designation and is responsible to complete the identified work; and
- c. Description of the work to be completed by the authorized agent.

571—13.10(455A,461A) Additional information or analysis required for permit review.

13.10(1) The director may require an applicant to provide additional information, at the applicant's sole cost, necessary to complete review of the application, including but not limited to study of alternatives to construction on public lands and waters, social and environmental impacts of the proposed activities, professional surveys to establish the social and environmental impacts of the proposed activities, professional land surveys to delineate or show real property boundaries and other characteristics, and a professional real estate appraisal of the value that a permit may convey.

13.10(2) If the applicant does not respond to a request for additional information within 90 days of such request being made by the department, the department may withdraw the application from consideration and the applicant must reapply for the permit.

13.10(3) When the director determines that the proposed activity will significantly affect the public interest, the director may hold a public meeting in the vicinity of the proposed activity. When a public meeting is held, the director shall consider public input in conjunction with other information collected or provided as part of the application review when acting on a permit application.

571—13.11(455A,461A) Permit issued or denied. The department shall promptly review all permit applications, and the director shall issue a permit or deny all or part of an application upon completion of review. A permit may include specified conditions denying the application in part and the reasons for the conditions. The denial of a permit may include a proposed removal order. A permit denial shall be final agency action, unless the unsuccessful applicant otherwise has a constitutional right to a contested case, in which case an administrative appeal pursuant to procedures in 571—Chapter 7 shall be available. The unsuccessful applicant's request for a contested case may include a request for a variance or waiver under the provisions of Iowa Code section 17A.9A and 571—Chapter 11. The decision of the presiding officer in a contested case shall constitute final agency action.

571—13.12(455A,461A) Authorized agent. When an authorized agent is designated on the application for a permit and acknowledges the same, that authorized agent shall be responsible in the same manner as the permittee to comply with the terms of the permit issued.

571—13.13(455A,461A) Inspection. The department may inspect the location during the term of the permit to ensure that the permitted activities comply with the terms of the permit. The permittee shall grant the department the right to access the permitted activities for purposes of inspecting the permitted activities during the term of the permit. If the permittee denies permission for entry, the department may obtain an order from the Iowa district court for the county in which the permitted activities or the majority of the permitted activities occur, as needed, to enable the department to carry out its inspection duty. The intent of the inspection is to evaluate compliance with permit conditions and the impact to the natural resources and the public's recreational use of the area.

571—13.14(455A,461A) Additional information or analysis required during term of the permit. The director may require a permittee to provide additional information, at the permittee's sole cost, necessary to ensure that the permittee is complying with the terms of the permit, including but not limited to social and environmental impacts of the activities, professional surveys to establish the social and environmental impacts of the activities, professional land surveys to delineate or show real

NATURAL RESOURCE COMMISSION[571](cont'd)

property boundaries and other characteristics, and a professional real estate appraisal of the value that a permit may convey or has conveyed.

571—13.15(455A,461A) Violations; types of enforcement actions; citation and notice of violation.**13.15(1) Violations.**

a. A person shall be in violation of these rules and Iowa Code section 461A.4 in the event the person does any of the following:

(1) Performs construction on or undertakes other activities that alter the physical characteristics of public lands or waters under the jurisdiction of or managed by the commission without a permit required by these rules;

(2) Performs such work out of conformance with specific requirements enumerated in a permit issued in accordance with these rules; or

(3) Fails to comply with an order of the commission under these rules.

b. Each day of a violation shall be considered a separate offense.

13.15(2) Types of enforcement actions. A person who violates these rules shall be subject to either of the following:

a. *Criminal enforcement.* A peace officer of the state may issue a citation for each offense. A person who is found guilty of violating these rules shall be charged with a simple misdemeanor for each violation.

b. *Civil enforcement.* A civil penalty may be assessed in conformance with Iowa Code section 461A.5B and rule 571—13.17(455A,461A). Written notice of the violation(s) shall be given to the person against whom disciplinary action is being considered. The notice shall state the informal and formal procedures available for determining the matter. If agreement as to appropriate disciplinary sanction, if any, can be reached between the director and the person against whom disciplinary action is being considered, a written stipulation and settlement between the department and the person shall be entered. Such a settlement shall take into account how the corrective actions described in subrule 13.15(3) shall be accomplished. In addition, the stipulation and settlement shall recite the basic facts and violations alleged, any facts brought forth by the person, and the reasons for the particular sanctions imposed. If an agreement as to appropriate disciplinary action, if any, cannot be reached, the director may issue an administrative order as described in rule 571—13.17(455A,461A).

13.15(3) Actions to be taken upon receipt of citation or notice of violation. A person who has violated these rules shall cease the specified unauthorized activity upon receipt of a citation or as may be stipulated in the notice of violation. The notice of violation or a written notice accompanying the citation from the department shall require the person to take one or more of the following actions within a specified time:

a. Apply for a permit to authorize completion of construction or maintenance and use, as applicable;

b. Remove materials and restore the affected area to the condition that existed before commencement of the unauthorized activity;

c. Remediate the affected area in a manner and according to a plan approved by the department. The department may enforce such a remediation at the expense of the permittee, adjacent landowner or culpable party.

571—13.16(455A,461A) Removal orders. If the violation includes the unauthorized placement of materials or personal property on the public lands or public waters under the jurisdiction of the commission, and the person, who may include a permittee or authorized agent but may not, fails to comply with the action required by the notice, the director may cause a proposed removal order to be issued to the person responsible for such placement. The proposed removal order shall specify the removal action required and include notice of the right to an administrative appeal including a contested case hearing under procedures in 571—Chapter 7. The proposed decision in a contested case may be appealed to the commission under 571—Chapter 7. If there is no appeal from a proposed decision that includes a removal requirement, the proposed decision shall be presented to the director for review and adoption. A removal order approved by the director shall constitute final agency action under Iowa

NATURAL RESOURCE COMMISSION[571](cont'd)

Code sections 461A.4 and 461A.5A and may be enforced through an original action in equity filed in a district court of the state by the attorney general on behalf of the department and the commission.

571—13.17(455A,461A) Civil penalties. The department may assess a civil penalty of up to \$5,000 per offense for each violation of these rules, provided the department does not utilize a criminal citation for a violation. Each day the violation continues shall be a separate offense or violation. Penalties shall be assessed through issuance of an administrative order of the director which recites the facts and the legal requirements that have been violated and a general rationale for the prescribed fines. The order also may be combined with any other order authorized by statute for mandatory or prohibitory injunctive conditions and is subject to normal contested case and appellate review under procedures in 571—Chapter 7. The proposed decision in a contested case may be appealed to the commission under 571—Chapter 7. The commission may refer orders that include singular or cumulative penalties over \$10,000 to the attorney general's office.

571—13.18(455A,461A) Report of completion. Once an approved activity is completed, the permittee shall notify the department contact person identified in the permit of such completion through regular mail or E-mail. The permittee shall include with such notice a ground-level photograph(s) of the completed project. The activity shall be subject to final approval before the department determines that the conditions of the permit have been met.

571—13.19(455A,461A) Final inspection. Once the permittee notifies the department pursuant to rule 571—13.18(455A,461A), the department shall inspect the permitted area to ensure that the permittee has complied with the terms of the permit. Such inspection shall occur within 60 days of the department's receipt of the notice provided pursuant to rule 571—13.18(455A,461A). In the event the department does not provide final inspection within 60 days of the department's receipt of the notice provided pursuant to rule 571—13.18(455A,461A), the permittee shall be deemed compliant and the permit shall expire. The intent of this inspection is to evaluate compliance with permit conditions and the impacts to the natural resources and the public's recreational use of the area.

571—13.20(455A,461A) Permit extensions. Prior to the expiration of a permit, a permittee or an authorized agent may submit an application to the department for an extension of the permit on a form provided by the department. In evaluating whether to grant the extension, the department will consider the work completed, the work to be performed, the extent to which the permit extension is needed and the extent to which the permittee has made efforts to meet the obligations of the original permit. The department reserves the right to modify the conditions of a permit as part of any extension. An extension granted by this rule is not a project modification.

571—13.21(455A,461A) Project modifications. If projects are modified to the extent that the additional or modified work would not be allowed within the original permit, the permittee must apply for a new permit for the additional or modified work.

571—13.22(455A,461A) Transferability. Permits are transferable only upon written approval of the department and only after the department is satisfied that the permitted activities will not change and the new permittee would be eligible to receive a permit under subrule 13.7(3).

571—13.23 to 13.50 Reserved.

DIVISION II
LEASES AND EASEMENTS

571—13.51(455A,461A) Leases. Where a permitted structure or related activity will have a continuing impact on the availability or desirability of public lands or public waters or exceeds the scope of littoral or riparian rights, the permittee must enter into a lease covering the area affected by the construction.

NATURAL RESOURCE COMMISSION[571](cont'd)

Fees for leases shall be determined by 571—Chapter 18 or other methods approved by the commission and executed pursuant to Iowa Code section 461A.25. Requests for leases shall be made on the form and shall include the information required by rule 571—13.9(455A,461A,462A) under Division I of this chapter. The department may grant a lease if, in the department's sole discretion, the lease will not impair the state's intended use of the area during the term of the lease; the lease will not negatively impact a federal interest, including related deed restrictions, related to the area during the term of the lease; and the lease will not result in an exclusive use.

571—13.52(455A,461A) Easements. The director may grant an easement to political subdivisions and utility companies pursuant to Iowa Code section 461A.25, provided the following terms are met:

13.52(1) Requests for easements shall be made on the form and shall include the information required by rule 571—13.9(455A,461A,462A) under Division I of this chapter. The department may grant an easement if, in the department's sole discretion, the easement will not impair the state's intended use of the area during the term of the easement or the easement will not negatively impact a federal interest, including related deed restrictions, related to the area during the term of the agreement.

13.52(2) The value of an easement shall be determined by the director based upon a real estate appraisal or other method approved by the commission, as evidenced in the meeting minutes thereof. In addition to fees for easements, the director may assess the applicant for the reasonable transaction costs associated with the issuing of an easement including the cost of appraisals, other methods of establishing values, and land surveys. In determining the fee for an easement, the department may consider the value the proposed activity may contribute to the department's management of the affected property.

13.52(3) Recipients of any easements granted pursuant to this rule shall assume liability for structures installed pursuant to such easement and shall comply with the standards enumerated in rule 571—13.7(455A,461A,462A), as applicable, in the sole discretion of the department.

571—13.53(455A,461A) Appeals. The department and the commission are under no legal obligation to provide any person a legal interest in property under the jurisdiction of the commission. An applicant may appeal to the director a decision of the department regarding leases and easements and request that the director reconsider a condition of an easement or a lease or a denial of an easement or a lease. The determination of the director shall be final agency action.

These rules are intended to implement Iowa Code sections 455A.5, 461A.4, 461A.5A, 461A.5B, 461A.6, 461A.18, 461A.25 and 462A.3.

[Filed 2/17/09, effective 4/15/09]

[Published 3/11/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/09.

ARC 7634B

PHARMACY BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 6, "General Pharmacy Practices," Iowa Administrative Code.

The amendments authorize the transfer of prescriptions by pharmacists or pharmacist-interns from one pharmacy to another pursuant to the request of a patient and establish required procedures and record keeping relating to such transfer.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the December 31, 2008, Iowa Administrative Bulletin as **ARC 7447B**. The Board received no written comments regarding the proposed amendments. The adopted amendments are identical to those published under Notice.

PHARMACY BOARD[657](cont'd)

The amendments were approved during the February 17, 2009, meeting of the Board of Pharmacy. These amendments will become effective on April 15, 2009.

These amendments are intended to implement Iowa Code section 124.301 and Iowa Code section 155A.34 as amended by 2008 Iowa Acts, chapter 1016, section 6.

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 [6.9(3), 6.9(5), 6.9(8), 6.9(9)] is being omitted. These amendments are identical to those published under Notice as **ARC 7447B**, IAB 12/31/08.

[Filed 2/20/09, effective 4/15/09]

[Published 3/11/09]

[For replacement pages for IAC, see IAC Supplement 3/11/09.]

ARC 7636B**PHARMACY BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy hereby amends Chapter 6, "General Pharmacy Practice," Chapter 8, "Universal Practice Standards," Chapter 9, "Automated Medication Distribution Systems and Telepharmacy Services," Chapter 10, "Controlled Substances," and Chapter 21, "Electronic Data in Pharmacy Practice," Iowa Administrative Code.

The amendments require that any prescription transmitted via facsimile to a pharmacy and any electronic record maintained by a pharmacy must be clear, legible records or images of the original prescription or record. The amendments are intended to ensure that the electronic transmission or scanning of a prescription or record that was prepared in hard copy utilizing paper that includes security features, such as the appearance of a "void" message upon copying or scanning, is not rendered illegible or obscured as a result of those security features. The amendments also require that certain prescriptions for Schedule II controlled substances, if transmitted by the prescriber's agent, identify the agent by name and title. The identification of the transmitting agent by name and title is currently required on the transmission of prescriptions for noncontrolled substances and for Schedule III, IV, and V controlled substances.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the December 31, 2008, Iowa Administrative Bulletin as **ARC 7448B**. The adopted amendments are identical to those published under Notice. The Board received written comments from the National Association of Chain Drug Stores, on behalf of the Association's member pharmacies, regarding the proposed amendments. Comments suggested amending the provisions relating to identification of the prescriber's agent who transmits a prescription for a Schedule II controlled substance, specifically suggesting that the record of the prescription include the name and title of the transmitting agent if that information is provided with the prescription.

The amendments were approved during the February 17, 2009, meeting of the Board of Pharmacy. These amendments will become effective on April 15, 2009.

PHARMACY BOARD[657](cont'd)

These amendments are intended to implement Iowa Code sections 124.301, 124.306, 124.308, 155A.27, and 155A.35.

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 [6.16(4), 8.15(1), 9.18(7), 10.22(2), 21.7(3)“c,” 21.9, 21.12, 21.14 to 21.16] is being omitted. These amendments are identical to those published under Notice as **ARC 7448B**, IAB 12/31/08.

[Filed 2/20/09, effective 4/15/09]

[Published 3/11/09]

[For replacement pages for IAC, see IAC Supplement 3/11/09.]

ARC 7633B**PHARMACY BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 13, “Sterile Compounding Practices,” Iowa Administrative Code.

The amendments combine the requirements for testing and quarantine of sterile compounds into a single subrule, including rescinding a duplicative subrule, and clarify the products and criteria for quarantine and testing.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the December 31, 2008, Iowa Administrative Bulletin as **ARC 7446B**. The Board received no written comments regarding the proposed amendments. The adopted amendments are identical to those published under Notice.

The amendments were approved during the February 17, 2009, meeting of the Board of Pharmacy.

These amendments will become effective on April 15, 2009.

These amendments are intended to implement Iowa Code sections 124.301, 155A.2, 155A.13, and 155A.13A.

The following amendments are adopted.

ITEM 1. Amend subrule 13.24(4) as follows:

13.24(4) Testing and quarantine requirements. All high-risk preparations, except those for inhalation and ophthalmic administration, that are prepared in groups of 25 or more identical single-dose containers or in multiple-dose vials for administration to multiple patients, or that are exposed longer than 12 hours at 2 to 8 degrees Celsius ~~and or~~ longer than 6 hours at warmer than 8 degrees Celsius before they are sterilized, shall be quarantined and tested to ensure that the preparations are sterile and that they do not contain excessive bacterial endotoxins before they are dispensed or administered.

ITEM 2. Rescind subrule **13.24(6)**.

[Filed 2/20/09, effective 4/15/09]

[Published 3/11/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/09.

ARC 7618B**TRANSPORTATION DEPARTMENT[761]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on February 18, 2009, adopted an amendment to Chapter 164, “Traffic Safety Improvement Program,” Iowa Administrative Code.

TRANSPORTATION DEPARTMENT[761](cont'd)

Notice of Intended Action for this amendment was published in the January 14, 2009, Iowa Administrative Bulletin as **ARC 7482B**.

The DOT is changing the application deadline. The users of the traffic safety improvement program have requested that the application deadline be moved up to June 15 so approvals can be made in December, which will allow time to develop projects for the following construction season.

This rule does not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

This amendment is identical to the one published under Notice of Intended Action.

This amendment is intended to implement Iowa Code chapter 312.

This amendment will become effective April 15, 2009.

Rule-making action:

Amend paragraph **164.9(1)“b”** as follows:

b. All complete applications received before ~~August 15~~ June 15 of each year shall be evaluated for funding.

[Filed 2/18/09, effective 4/15/09]

[Published 3/11/09]

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