



IOWA ADMINISTRATIVE BULLETIN

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September 17, 2003

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PREFACE

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

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

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

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

Subscriptions and Distribution	Telephone:	(515)281-3568
	Fax:	(515)281-8027
KATHLEEN K. BATES, Administrative Code Editor	Telephone:	(515)281-3355
STEPHANIE A. HOFF, Assistant Editor	Fax:	(515)281-8157
		(515)281-4424

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

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Legislative Services Agency
Capitol Building
Des Moines, IA 50319
Telephone: (515)281-3568

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Jan. 3 '03	Jan. 22 '03	Feb. 11 '03	Feb. 26 '03	Feb. 28 '03	Mar. 19 '03	Apr. 23 '03	July 21 '03
Jan. 17	Feb. 5	Feb. 25	Mar. 12	Mar. 14	Apr. 2	May 7	Aug. 4
Jan. 31	Feb. 19	Mar. 11	Mar. 26	Mar. 28	Apr. 16	May 21	Aug. 18
Feb. 14	Mar. 5	Mar. 25	Apr. 9	Apr. 11	Apr. 30	June 4	Sept. 1
Feb. 28	Mar. 19	Apr. 8	Apr. 23	Apr. 25	May 14	June 18	Sept. 15
Mar. 14	Apr. 2	Apr. 22	May 7	May 9	May 28	July 2	Sept. 29
Mar. 28	Apr. 16	May 6	May 21	May 23	June 11	July 16	Oct. 13
Apr. 11	Apr. 30	May 20	June 4	June 6	June 25	July 30	Oct. 27
Apr. 25	May 14	June 3	June 18	June 20	July 9	Aug. 13	Nov. 10
May 9	May 28	June 17	July 2	July 4	July 23	Aug. 27	Nov. 24
May 23	June 11	July 1	July 16	July 18	Aug. 6	Sept. 10	Dec. 8
June 6	June 25	July 15	July 30	Aug. 1	Aug. 20	Sept. 24	Dec. 22
June 20	July 9	July 29	Aug. 13	Aug. 15	Sept. 3	Oct. 8	Jan. 5 '04
July 4	July 23	Aug. 12	Aug. 27	Aug. 29	Sept. 17	Oct. 22	Jan. 19 '04
July 18	Aug. 6	Aug. 26	Sept. 10	Sept. 12	Oct. 1	Nov. 5	Feb. 2 '04
Aug. 1	Aug. 20	Sept. 9	Sept. 24	Sept. 26	Oct. 15	Nov. 19	Feb. 16 '04
Aug. 15	Sept. 3	Sept. 23	Oct. 8	Oct. 10	Oct. 29	Dec. 3	Mar. 1 '04
Aug. 29	Sept. 17	Oct. 7	Oct. 22	Oct. 24	Nov. 12	Dec. 17	Mar. 15 '04
Sept. 12	Oct. 1	Oct. 21	Nov. 5	Nov. 7	Nov. 26	Dec. 31	Mar. 29 '04
Sept. 26	Oct. 15	Nov. 4	Nov. 19	***Nov. 19***	Dec. 10	Jan. 14 '04	Apr. 12 '04
Oct. 10	Oct. 29	Nov. 18	Dec. 3	Dec. 5	Dec. 24	Jan. 28 '04	Apr. 26 '04
Oct. 24	Nov. 12	Dec. 2	Dec. 17	***Dec. 17***	Jan. 7 '04	Feb. 11 '04	May 10 '04
Nov. 7	Nov. 26	Dec. 16	Dec. 31	Jan. 2 '04	Jan. 21 '04	Feb. 25 '04	May 24 '04
Nov. 19	Dec. 10	Dec. 30	Jan. 14 '04	Jan. 16 '04	Feb. 4 '04	Mar. 10 '04	June 7 '04
Dec. 5	Dec. 24	Jan. 13 '04	Jan. 28 '04	Jan. 30 '04	Feb. 18 '04	Mar. 24 '04	June 21 '04
Dec. 17	Jan. 7 '04	Jan. 27 '04	Feb. 11 '04	Feb. 13 '04	Mar. 3 '04	Apr. 7 '04	July 5 '04
Jan. 2 '04	Jan. 21 '04	Feb. 10 '04	Feb. 25 '04	Feb. 27 '04	Mar. 17 '04	Apr. 21 '04	July 19 '04

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
8	Friday, September 26, 2003	October 15, 2003
9	Friday, October 10, 2003	October 29, 2003
10	Friday, October 24, 2003	November 12, 2003

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*****

PUBLICATION PROCEDURES

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

The Administrative Code Division uses QuickSilver XML Publisher, version 1.5.3, to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the publication of rule-making documents, we request that you send your document(s) as an attachment(s) to an E-mail message, addressed to both of the following:

bruce.carr@legis.state.ia.us and
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Please note that changes made prior to publication of the rule-making documents are reflected on the hard copy returned to agencies, but not on the diskettes; diskettes are returned unchanged.

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

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2003 SUMMER EDITION

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To All Agencies:

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

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
DENTAL EXAMINERS BOARD[650]		
Public health supervision by dentists, 10.5, 10.6 IAB 9/17/03 ARC 2783B	Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa	October 16, 2003 10 a.m.
Monitoring nitrous oxide inhalation analgesia, 29.1, 29.6 IAB 9/17/03 ARC 2785B	Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa	October 7, 2003 10 a.m.
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Job retention program; workforce training and economic development program operating costs, 7.28 to 7.35, 20.19 IAB 9/17/03 ARC 2755B	Northwest Conference Room Second Floor 200 E. Grand Ave. Des Moines, Iowa	October 8, 2003 3 p.m.
Workforce training and economic development funds, ch 9 IAB 9/17/03 ARC 2754B	Northwest Conference Room Second Floor 200 E. Grand Ave. Des Moines, Iowa	October 8, 2003 1 p.m.
Endow Iowa grants program, ch 46 IAB 9/17/03 ARC 2753B	Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	October 16, 2003 3 to 4 p.m.
Community economic betterment program, 53.6(1) IAB 9/17/03 ARC 2752B	Northwest Conference Room Second Floor 200 E. Grand Ave. Des Moines, Iowa	October 8, 2003 2 p.m.
EDUCATIONAL EXAMINERS BOARD[282]		
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EDUCATION DEPARTMENT[281]		
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EDUCATION DEPARTMENT[281] (Cont'd)

Iowa public charter schools, ch 68 IAB 9/17/03 ARC 2740B (ICN Network)	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 10, 2003 3:30 to 5 p.m.
	1400 Second St. NW Elkader, Iowa	October 10, 2003 3:30 to 5 p.m.
	9184 B 265th St. Clear Lake, Iowa	October 10, 2003 3:30 to 5 p.m.
	St. Edmond High School 501 N. 22nd St. Fort Dodge, Iowa	October 10, 2003 3:30 to 5 p.m.
	Halverson Ctr. 24997 Hwy 92 Council Bluffs, Iowa	October 10, 2003 3:30 to 5 p.m.
	4401 Sixth St. SW Cedar Rapids, Iowa	October 10, 2003 3:30 to 5 p.m.
	DMACC, Carroll Campus 906 N. Grant Rd. Carroll, Iowa	October 10, 2003 3:30 to 5 p.m.
	3601 West Avenue Rd. Burlington, Iowa	October 10, 2003 3:30 to 5 p.m.
	1520 Morningside Ave. Sioux City, Iowa	October 10, 2003 3:30 to 5 p.m.
	Marshalltown High School 1602 S. Second Ave. Marshalltown, Iowa	October 10, 2003 3:30 to 5 p.m.
	Cedar Falls High School 1015 Division St. Cedar Falls, Iowa	October 10, 2003 3:30 to 5 p.m.
	1382 Fourth Ave. NE Sioux Center, Iowa	October 10, 2003 3:30 to 5 p.m.
	Scott Community College 500 Belmont Rd. Bettendorf, Iowa	October 10, 2003 3:30 to 5 p.m.
	Indian Hills Community College Bldg. 1, 525 Grandview Ave. Ottumwa, Iowa	October 10, 2003 3:30 to 5 p.m.
	1405 N. Lincoln Creston, Iowa	October 10, 2003 3:30 to 5 p.m.
	Central Jr.-Sr. High School 308 310th St. Fenton, Iowa	October 10, 2003 3:30 to 5 p.m.

EMERGENCY MANAGEMENT DIVISION[605]

Local emergency management commissions, 7.3(4) IAB 9/3/03 ARC 2737B (See also ARC 2738B)	Division Conference Room, Level A Hoover State Office Bldg. Des Moines, Iowa	September 24, 2003 9 a.m.
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ENVIRONMENTAL PROTECTION COMMISSION[567]

Small unit exemption, 22.1(2) IAB 9/17/03 ARC 2775B	East Conference Room 7900 Hickman Rd. Urbandale, Iowa	October 7, 2003 1 p.m.
Drinking water program; operator and laboratory certification, amendments to chs 40 to 44, 81, 83 IAB 9/17/03 ARC 2779B	Conference Room Public Library 507 Poplar Atlantic, Iowa	October 7, 2003 10 a.m.
	Delaware County Community Center 200 E. Acres Manchester, Iowa	October 8, 2003 10 a.m.
	Helen Wilson Gallery Public Library 120 E. Main Washington, Iowa	October 10, 2003 10 a.m.
	Muse-Norris Conference Ctr, NIACC 500 College Dr. Mason City, Iowa	October 13, 2003 10 a.m.
	Conference Room, Suite I 401 SW Seventh St. Des Moines, Iowa	October 14, 2003 10 a.m.
Water quality standards, 61.2, 61.3, 62.8(2) IAB 9/17/03 ARC 2776B	Arrowhead AEA 824 Flindt Dr. Storm Lake, Iowa	October 15, 2003 10 a.m.
	Municipal Utilities Conference Room 15 W. Third St. Atlantic, Iowa	October 7, 2003 2 p.m.
	City Hall Meeting Room 400 Claiborne Dr. Decorah, Iowa	October 9, 2003 7 p.m.
	Community Meeting Room 15 N. Sixth St. Clear Lake, Iowa	October 10, 2003 1 p.m.
	Community Center 530 W. Bluff St. Cherokee, Iowa	October 13, 2003 11 a.m.
	Public Library Meeting Room A 123 S. Linn St. Iowa City, Iowa	October 15, 2003 11 a.m.
	Fifth Floor Conference Rooms Wallace State Office Bldg. Des Moines, Iowa	October 17, 2003 1 p.m.

GROW IOWA VALUES BOARD[264]

Grow Iowa values fund financial assistance; university and college financial assistance program; organization and structure; uniform rules, amend chs 1, 3; adopt chs 2, 4, 51 to 55 IAB 9/17/03 ARC 2747B	Main Conference Room Second Floor 200 E. Grand Ave. Des Moines, Iowa	October 8, 2003 3 to 5 p.m.
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LOTTERY AUTHORITY, IOWA[531]

General, adopt chs 1 to 6, 11 to 14, 18 to 20; rescind 705—chs 1 to 8, 11, 13, 14 IAB 9/17/03 ARC 2770B (See also ARC 2771B herein)	2015 Grand Ave. Des Moines, Iowa	October 10, 2003 9 a.m. (If requested)
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NATURAL RESOURCE COMMISSION[571]

Wholesale and retail bait dealers' licenses, 15.1(1) IAB 9/3/03 ARC 2728B	Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	September 23, 2003 9 a.m.
Removal of bobcat from list of threatened species, 77.2(2) IAB 9/3/03 ARC 2733B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	September 25, 2003 11 a.m.
Fishing regulations, 81.1, 81.2 IAB 9/3/03 ARC 2730B	Musser Public Library 304 Iowa Ave. Muscatine, Iowa	September 25, 2003 7 p.m.
	Hadley Auditorium University of Dubuque 2000 University Dr. Dubuque, Iowa	September 30, 2003 7 p.m.
	Board of Supervisors Room Clinton County Administrative Bldg. 1900 N. Third Clinton, Iowa	October 1, 2003 7 p.m.
Permissive catch on Missouri River, 82.2(1) IAB 9/3/03 ARC 2731B	Fourth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 7, 2003 1 p.m.
Taking and possession of mussels for sport, 87.2 IAB 9/3/03 ARC 2729B	Fourth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 7, 2003 1:30 p.m.
Antlerless-only deer licenses for nonresidents, 94.8(2) IAB 9/3/03 ARC 2732B	Fourth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	September 30, 2003 2 p.m.
Wild turkey spring hunting—archery-only license, 98.2(1) IAB 9/3/03 ARC 2734B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	September 25, 2003 10 a.m.

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Occupational therapists, amendments to chs 205, 206, 208 to 210 IAB 9/17/03 ARC 2746B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	October 9, 2003 9 to 11 a.m.

UTILITIES DIVISION[199]

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Temperature trigger for cold weather protections, 19.4(15), 20.4(15) IAB 9/3/03 ARC 2725B	Hearing Room 350 Maple St. Des Moines, Iowa	October 14, 2003 10 a.m.
Intrastate access service charges, 22.14(2) IAB 8/6/03 ARC 2680B	Hearing Room 350 Maple St. Des Moines, Iowa	September 23, 2003 10 a.m.
Eligible telecommunications carrier designation for wireless carriers, 39.2(5), 39.5 IAB 9/17/03 ARC 2773B	Hearing Room 350 Maple St. Des Moines, Iowa	December 10, 2003 10 a.m.
Iowa broadband initiative, ch 43 IAB 9/17/03 ARC 2782B (See also ARC 2620B , IAB 7/23/03)	Hearing Room 350 Maple St. Des Moines, Iowa	October 22, 2003 10 a.m.

CITATION of Administrative Rules

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

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

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

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

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

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

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

The following list will be updated as changes occur:

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ARC 2788B**ADMINISTRATIVE SERVICES
DEPARTMENT[11]****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 2003 Iowa Acts, House File 534, section 4, the Department of Administrative Services proposes to rescind 401—Chapter 1, “Department Organization,” 471—Chapter 1, “Organization and Operation,” and rule 581—19.1(19A), “State System of Personnel”; and to adopt 11—Chapter 1, “Department Organization,” Iowa Administrative Code.

The purpose of this new chapter is to convert rules regarding department organization from the former departments of General Services, Personnel, and Information Technology and the accounting function of the Department of Revenue and Finance to the new Department of Administrative Services and consolidate common rules into a single chapter that sets forth the organization and mission of the new Department.

Public comments concerning the proposed amendments will be accepted until 3:30 p.m. on October 7, 2003. Interested persons may submit written, oral or electronic comments by contacting Carol Stratemeyer, Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104; telephone (515) 281-6134; fax (515)281-6140; E-mail Carol.Stratemeyer@iowa.gov.

These amendments were also Adopted and Filed Emergency on August 29, 2003, and are published herein as **ARC 2780B**. The content of that submission is incorporated by reference.

These amendments are intended to implement 2003 Iowa Acts, House File 534, sections 2, 3, 4, 18, 29, 58 and 84.

ARC 2781B**AGRICULTURE AND LAND
STEWARDSHIP DEPARTMENT[21]****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 159.5(11), the Department of Agriculture and Land Stewardship gives Notice of Intended Action to rescind Chapter 59, “Sorghum,” Iowa Administrative Code.

The purpose of this rule making is to eliminate an obsolete chapter which is not necessary and is largely unenforceable.

Any interested person may make written suggestions or comments on the proposed amendment prior to 4:30 p.m. on

October 7, 2003. Such written material should be directed to Ron Rowland, Consumer Protection and Animal Health Division Director, Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319. Comments may also be submitted by fax to (515) 281-4282 or by E-mail to Ron.Rowland@idals.state.ia.us.

This amendment is intended to implement Iowa Code section 159.5(11).

The following amendment is proposed.

Rescind and reserve **21—Chapter 59**.

ARC 2784B**DENTAL EXAMINERS BOARD[650]****Notice of Termination**

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on March 5, 2003, as **ARC 2327B**, amending Chapter 1, “Administration,” and Chapter 10, “General Requirements,” Iowa Administrative Code.

The Notice proposed to amend the definition of “general supervision of a dental hygienist” and adopt a new definition of “collaborative agreement.”

The Board is terminating the rule making commenced in **ARC 2327B** based on written and oral comments. The Board is proposing an alternative rule to address hygiene services provided in public health settings. Notice of Intended Action on the new proposed rule is published herein as **ARC 2783B**.

ARC 2783B**DENTAL EXAMINERS BOARD[650]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby gives Notice of Intended Action to amend Chapter 10, “General Requirements,” Iowa Administrative Code.

This amendment allows a dentist to provide public health supervision to a dental hygienist who is providing services within the scope of practice of dental hygiene in a public health setting. The amendment defines public health settings and details the responsibilities of each licensee operating under public health supervision.

Both the dentist and the dental hygienist working under public health supervision are responsible for maintaining contact and communication with each other. The dentist and the dental hygienist must also have a written supervision agreement that provides age- and procedure-specific standing orders for the performance of dental hygiene services. The standing orders must include consideration for medically compromised patients and medical conditions for which no services can be provided prior to a dental exam. The spe-

DENTAL EXAMINERS BOARD[650](cont'd)

sific location where services will be provided must be specified. The agreement must also limit the length of time in which further hygiene services can be provided to a patient unless a dental exam has taken place.

The application of initial pit and fissure sealants by a dental hygienist under public health supervision prior to a dental exam shall also follow the supervising dentist's age- and procedure-specific protocols and be based on a dental hygiene assessment.

The dental hygienist must provide each patient, parent, or guardian a written plan for referral to a dentist. Patients must also sign a consent form that notifies the patient that the services that will be received do not take the place of regular dental checkups and are meant for people who otherwise would not have access to services. The supervision agreement must also specify a procedure for creating and maintaining dental records for patients, including where these records are to be located.

The dentist and dental hygienist must maintain the supervision agreement and review the agreement at least biennially. A copy of the agreement must be available to the Board upon request. To facilitate public health programs, a copy of the agreement must also be filed with the Oral Health Bureau of the Iowa Department of Public Health. The hygienist is also responsible for providing summary reports to the Department of Public Health to enable the Department to assess the impact of public health supervision to public health programs.

This amendment is subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7.

Any interested person may make written comments or suggestions on the proposed amendment on or before October 7, 2003. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687. E-mail may be sent to jhart@bon.state.ia.us.

Also, there will be a public hearing on October 16, 2003, beginning at 10 a.m. in the Conference Room, 400 SW 8th Street, Suite D, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment. Any person who plans to attend the public hearing and who may have special requirements, such as hearing or mobility impairments, should contact the Board and advise of specific needs.

This amendment was approved at the August 21, 2003, regular meeting of the Board of Dental Examiners.

This amendment is intended to implement Iowa Code chapter 153.

The following amendment is proposed.

Renumber **650—10.5(147,153,272C)** as **650—10.6(147,153,272C)**, and adopt the following **new** rule 650—10.5(153):

650—10.5(153) Public health supervision allowed. A dentist who meets the requirements of this rule may provide public health supervision to a dental hygienist if the dentist has an active Iowa license and the services are provided in public health settings.

10.5(1) Public health settings defined. For the purposes of this rule, public health settings are limited to schools; Head Start programs; federally qualified health centers; public health dental vans; free clinics; nonprofit community health centers; and federal, state, or local public health programs.

10.5(2) Public health supervision defined. "Public health supervision" means all of the following:

a. The dentist authorizes and delegates the services provided by a dental hygienist to a patient in a public health setting, with the exception that hygiene services may be rendered without the patient's first being examined by a licensed dentist;

b. The dentist is not required to provide future dental treatment to patients served under public health supervision;

c. The dentist and the dental hygienist have entered into a written supervision agreement that details the responsibilities of each licensee, as specified in subrule 10.5(3); and

d. The dental hygienist has an active Iowa license with a minimum of three years of clinical practice experience.

10.5(3) Licensee responsibilities. When working together in a public health supervision relationship, a dentist and dental hygienist shall enter into a written agreement that specifies the following responsibilities.

a. The dentist providing public health supervision must:

(1) Be available to provide communication and consultation with the dental hygienist;

(2) Have age- and procedure-specific standing orders for the performance of dental hygiene services. Those standing orders must include consideration for medically compromised patients and medical conditions for which a dental evaluation must occur prior to the provision of dental hygiene services;

(3) Specify a period of time, no more than 12 months, in which an examination by a dentist must occur prior to providing further hygiene services. However, this examination requirement does not apply to educational services, assessments, screenings, and fluoride if specified in the supervision agreement; and

(4) Specify the location or locations where the hygiene services will be provided under public health supervision.

b. A dental hygienist providing services under public health supervision may provide assessments; screenings; data collection; and educational, therapeutic, preventive, and diagnostic services as defined in rule 10.3(153), except for the administration of local anesthesia or nitrous oxide inhalation analgesia, and must:

(1) Maintain contact and communication with the dentist providing public health supervision;

(2) Practice according to age- and procedure-specific standing orders as directed by the supervising dentist, unless otherwise directed by the dentist for a specific patient;

(3) Provide to the patient, parent, or guardian a written plan for referral to a dentist and assessment of further dental treatment needs;

(4) Have each patient sign a consent form that notifies the patient that the services that will be received do not take the place of regular dental checkups at a dental office and are meant for people who otherwise would not have access to services; and

(5) Specify a procedure for creating and maintaining dental records for the patients that are treated by the dental hygienist, including where these records are to be located.

c. The written agreement for public health supervision must be maintained by the dentist and the dental hygienist and must be made available to the board upon request. The dentist and dental hygienist must review the agreement at least biennially.

d. A copy of the agreement shall be filed with the Oral Health Bureau, Iowa Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319.

DENTAL EXAMINERS BOARD[650](cont'd)

10.5(4) Reporting requirements. Each dental hygienist who has rendered services under public health supervision must complete a summary report at the completion of a program or, in the case of an ongoing program, at least annually. The report shall be filed with the oral health bureau of the Iowa department of public health on forms provided and include information related to the number of patients seen and services provided to enable the department to assess the impact of the program. The department will provide summary reports to the board on an annual basis.

This rule is intended to implement Iowa Code section 153.15.

ARC 2785B**DENTAL EXAMINERS BOARD[650]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby gives Notice of Intended Action to amend Chapter 29, "Deep Sedation/General Anesthesia, Conscious Sedation and Nitrous Oxide Inhalation Analgesia," Iowa Administrative Code.

Item 1 of the amendments adds a new definition of "monitoring nitrous oxide inhalation analgesia." Item 2 of the amendments establishes minimum training standards for a dental hygienist who monitors a patient under nitrous oxide inhalation analgesia. A dentist must delegate the task, provide direct supervision, and dismiss the patient following completion of the procedure. The hygienist must also immediately report any adverse reactions to the supervising dentist.

These amendments are not subject to waiver or variance as the rules establish minimum training standards and supervision requirements that must be followed in order to protect public health, safety, and welfare.

Any interested person may make written comments or suggestions on the proposed amendments on or before October 7, 2003. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687. E-mail may be sent to jhart@bon.state.ia.us.

Also, there will be a public hearing on October 7, 2003, beginning at 10 a.m. in the Conference Room, 400 SW 8th Street, Suite D, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any person who plans to attend the public hearing and who may have special requirements, such as hearing or mobility impairments, should contact the Board and advise of specific needs.

These amendments were approved at the August 21, 2003, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapters 147 and 153.

The following amendments are proposed.

ITEM 1. Amend rule **650—29.1(153)** by adopting the following **new** definition:

"Monitoring nitrous oxide inhalation analgesia" means continually observing the patient receiving nitrous oxide and recognizing and notifying the dentist of any adverse reactions or complications.

ITEM 2. Adopt **new** subrule 29.6(5) and renumber subrules **29.6(5)** and **29.6(6)** as **29.6(6)** and **29.6(7)**.

29.6(5) A dental hygienist may monitor a patient under nitrous oxide inhalation analgesia provided all of the following requirements are met:

a. The hygienist has completed a board-approved course of training or has received equivalent training while a student in an accredited school of dental hygiene;

b. The task has been delegated by a dentist and is performed under the direct supervision of a dentist;

c. Any adverse reactions are immediately reported to the supervising dentist; and

d. The dentist dismisses the patient following completion of the procedure.

ARC 2755B**ECONOMIC DEVELOPMENT, IOWA
DEPARTMENT OF[261]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 7, "Iowa Jobs Training Program," and Chapter 20, "Accelerated Career Education (ACE) Program," Iowa Administrative Code.

The proposed amendments update the rules to incorporate legislative changes enacted during the 2003 Session of the General Assembly. The amendments to Chapter 7 add two new components: job retention and projects funded with moneys from the Grow Iowa Values Fund. The amendments to Chapter 20 add new rules applicable to applications for projects funded with moneys from the Grow Iowa Values Fund.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on October 8, 2003. Interested persons may submit written or oral comments by contacting Mike Fastenau, Bureau of Business Finance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone number (515) 242-4831; E-mail mike.fastenau@ided.state.ia.us.

A public hearing to receive comments about the proposed amendments will be held on October 8, 2003, at 3 p.m. at the above address in the northwest conference room on the second floor.

These amendments are intended to implement Iowa Code chapters 260F and 260G as amended by 2003 Iowa Acts, House File 692, and House File 683.

The following amendments are proposed.

ITEM 1. Amend 261—Chapter 7 by renumbering rules **261—7.28(260F)** to **7.33(260F)** as **261—7.30(260F)** to **7.35(260F)** and adopting the following **new** rules:

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

261—7.28(80GA,HF692,HF683) Special requirements for job retention program projects.

7.28(1) Purpose. The purpose of the job retention program established by 2003 Iowa Acts, House File 683, is to provide training to employees of businesses that are major employers in the state and that are incurring a major investment in retooling at their facilities in order to be more competitive in the world marketplace.

7.28(2) Definitions. In addition to the definitions in rule 261—7.3(260F), the following definitions shall apply to the job retention program:

“Act” means 2003 Iowa Acts, House File 683, section 77, in which the job retention program is established.

“Grow Iowa values board” means the board established by 2003 Iowa Acts, House File 692, section 78.

“Grow Iowa values fund” means the fund established by 2003 Iowa Acts, House File 692, section 84.

“Participating business” means a business for which a job retention project is being undertaken.

“Workplace” means the facility where new capital investment and employment are occurring and that meets the requirements of the job retention program.

7.28(3) Eligibility requirements.

a. To be eligible, a business shall meet one of the following requirements:

(1) Employ at least 1000 employees at the workplace location; or

(2) Represent at least 4 percent or more of the county’s resident labor force as based upon the most recent annual labor force statistics from the department of workforce development; and

b. To be eligible, a business shall meet both of the following requirements:

(1) Provide a commitment that the participating business shall invest at least \$15 million to retool the workplace and upgrade the facilities of the participating business; and

(2) Provide a commitment that the participating business shall not move the business operation out of this state or close the business operation for at least ten years following the date of the agreement.

7.28(4) Funding assistance. Assistance under this program may be provided under a multiyear agreement with training to be conducted over multiple fiscal years.

7.28(5) Application. The community college and business shall submit to the department an application in a form and manner as prescribed by the department.

7.28(6) Type of training allowed. Training costs as allowed in Iowa Code chapter 260F and 261—Chapter 7 are allowed under the job retention program.

7.28(7) Match requirements. Training projects funded through the job retention program of the grow Iowa values fund shall have a match provided by the business of at least 25 percent of the project’s training costs. Match may include a pro-rata cost of equipment used during the period of structured training on the equipment.

7.28(8) Application review. Applications will be reviewed utilizing the scoring criteria established under rule 261—7.21(260F). Additional considerations for job retention program applications include the size of the investment that necessitates the training needs, time period over which investment is to occur, and number of employees to be trained.

7.28(9) Agreement.

a. The agreement between the participating business, community college and department shall include, but not be limited to, the following:

(1) The date of the agreement;

(2) The anticipated number of employees to be trained;

(3) The estimated cost of training;

(4) A statement regarding the number of employees employed by the participating business on the date of the agreement, which must equal at least the lesser of 1000 employees or 4 percent or more of the county’s resident labor force based on the most recent annual labor force statistics from the department of workforce development;

(5) A commitment that the participating business shall invest at least \$15 million to retool the workplace and upgrade the facilities of the participating business;

(6) A commitment that the participating business shall not move the business operation out of this state or close the business operation for at least ten years following the date of the agreement;

(7) Other conditions established by the Iowa department of economic development;

(8) Time frame which the investment in retooling is to occur at the affected workplace;

(9) Time frame in which training is to occur;

(10) Type of training to be undertaken.

b. A job retention project agreement entered into pursuant to this rule must be approved by the board of trustees of the applicable community college, the Iowa department of economic development, and the participating business.

c. Awards under the job retention program that exceed \$1 million shall require approval by the grow Iowa values board.

7.28(10) Reporting requirements.

a. A community college that enters into an agreement pursuant to this chapter shall submit to the grow Iowa values board an annual written report in a manner and form prescribed by the department, by the end of each calendar year. The report shall provide information regarding how the agreement affects the achievement of the goals and performance measures provided in the Act. By January 15 of each year, the department shall submit a written report to the general assembly and the governor regarding the activities of the job retention program during the previous calendar year.

b. The annual progress report submitted by the community colleges shall include the information as provided in 261—Chapter 9.

7.28(11) Events of default, options and procedures on default, remedies upon default. Rules 261—7.30(260F) to 7.32(260F) shall apply to the job retention program. In addition, should the business cease operation or not maintain its presence at the workplace location for ten years from the completion date of the training, the entire award shall be disallowed and shall be repaid by the business.

261—7.29(80GA,HF692,HF683) Special requirements for projects funded through the grow Iowa values fund.

Moneys allocated through the grow Iowa values fund to the workforce training and economic development funds of each community college for a fiscal year may be expended for the purposes allowed under Iowa Code chapter 260F, provided the use meets the requirements established under 261—Chapter 9. Moneys allocated under the workforce training and economic development fund are targeted primarily for use in projects in the areas of advanced manufacturing, information technology and insurance, and life sciences, which include the areas of biotechnology, health care technology, and nursing care technology.

7.29(1) Exemption for award limits and grow Iowa values board approval. Moneys under this rule will be exempt from maximum award limits as covered under subrules 7.5(1) and

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

7.5(2) and 7.6(1) and 7.6(2). Applications to be awarded from workforce training and economic development funds as appropriated from grow Iowa values moneys that are to exceed \$1 million require approval of the grow Iowa values board.

7.29(2) Availability of workforce training and economic development funds. For a community college to utilize the funds afforded under the grow Iowa values fund for 260F projects, the college shall prepare and submit to the department a two-year implementation plan regarding the proposed uses of the grow Iowa values moneys. The plan shall be updated annually and submitted with a progress report to the department to be approved by the grow Iowa values board. This reporting requirement will be accomplished as described in 261—Chapter 9.

ITEM 2. Amend **261—Chapter 7**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 260F as amended by ~~2001~~ 2003 Iowa Acts, House File 748 692, and House File 683, section 24.

ITEM 3. Amend 261—Chapter 20 by adopting the following **new** division:

DIVISION V - WORKFORCE TRAINING AND ECONOMIC DEVELOPMENT PROGRAM OPERATING COSTS

261—20.19(80GA, HF692, HF683) Grow Iowa values fund assistance. Moneys allocated through the grow Iowa values fund to the workforce training and economic development funds to each community college for a fiscal year may be expended for the purposes allowed under Iowa Code section 260G.3, provided the use meets the requirements established under 261—Chapter 9. Moneys allocated under the workforce training and economic development fund are targeted primarily for use in projects in the areas of advanced manufacturing, information technology and insurance, and life sciences, which include the areas of biotechnology, health care technology, and nursing care technology.

20.19(1) Use of funds. Moneys from a workforce training and economic development fund created in 2003 Iowa Acts, House File 683, section 76, may be used for program operating costs of an approved 260G project. Such use may be authorized in an agreement between a community college and an employer. The amount of grow Iowa values funds available to any single 260G project shall be determined in the same manner as program job credits under subrule 20.15(1). Workforce training and economic development funds may be used in lieu of program job credits or in addition to program job credits.

20.19(2) Availability of workforce training and economic development funds. In order for a community college to utilize the funds afforded under the grow Iowa values fund for program operating costs of 260G projects, the college shall prepare and submit to the department a two-year implementation plan regarding the proposed uses of the grow Iowa values moneys. The plan shall be updated annually and submitted with a progress report to the department to be approved by the grow Iowa values board. This reporting requirement will be accomplished as described in 261—Chapter 9.

20.19(3) Awards in excess of \$1 million. Applications to be awarded from workforce training and economic development funds as appropriated from grow Iowa values moneys that are to exceed \$1 million require approval of the grow Iowa values board.

ITEM 4. Amend **261—Chapter 20**, implementation sentence, as follows:

These rules are intended to implement Iowa Code Supplement chapter 260G as amended by ~~2000~~ 2003 Iowa Acts, ~~chapter 1196~~ House Files 692 and 683, and 2000 Iowa Acts, chapter 1225.

ARC 2754B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to adopt new Chapter 9, “Workforce Training and Economic Development Funds,” Iowa Administrative Code.

The proposed amendment updates the rules to incorporate legislative changes enacted during the 2003 session. This new chapter establishes the workforce training and economic development funds for each community college, describes how moneys are made available to community colleges, defines allowable uses for the moneys, and establishes reporting requirements for projects involving grow Iowa values moneys.

Public comments concerning the proposed amendment will be accepted until 4:30 p.m. on October 8, 2003. Interested persons may submit written or oral comments by contacting Mike Fastenau, Bureau of Business Finance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515) 242-4831; E-mail mike.fastenau@ided.state.ia.us.

A public hearing to receive comments about the proposed amendment will be held on October 8, 2003, at 1 p.m. at the above address in the northwest conference room on the second floor.

These rules are intended to implement 2003 Iowa Acts, House File 692, and House File 683.

The following rules are proposed.

Adopt **new** 261—Chapter 9 as follows:

CHAPTER 9 WORKFORCE TRAINING AND ECONOMIC DEVELOPMENT FUNDS

261—9.1(80GA, HF683, HF692) Purpose. The purpose of the workforce training and economic development funds is to provide revenue for each community college to address the workforce development needs of the state with the primary focus of providing training and retraining of Iowa workers to develop the skills of employees employed in targeted industries or to address a workforce development need of a targeted industry. Moneys are appropriated for each community college fund from the grow Iowa values fund.

261—9.2(80GA, HF683, HF692) Definitions.

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

“Agreement” means an informal agreement between the department and a community college that provides for an allocation and authorizes the expenditure of a workforce training and economic development fund award.

“Community college” or “college” means a community college established under Iowa Code chapter 260C.

“Department” or “IDED” means the Iowa department of economic development created in Iowa Code chapter 15.

“Fund” or “funds” means the workforce training and economic development funds created by 2003 Iowa Acts, House File 683, section 78, and allocated to each community college.

“GIVF” or “grow Iowa values fund” means moneys appropriated to the grow Iowa values fund established by 2003 Iowa Acts, House File 692, section 84.

“Grow Iowa values board” or “GIVF board” means the grow Iowa values board created by 2003 Iowa Acts, House File 692, section 78.

“Iowa economic development board” or “IDED board” means the Iowa economic development board established in Iowa Code section 15.103.

“Project” means a training or educational activity funded with grow Iowa values funds.

261—9.3(80GA, HF683, HF692) Funds allocation. The department shall allocate moneys, appropriated by the general assembly or other moneys accepted by the department, for the workforce training and economic development fund established for each community college utilizing the most current distribution formula used for the allocation of state general aid to the community colleges available on July 1 of the fiscal year for which funds are being allocated. Moneys that are not used and that remain in a community college’s fund at the end of a fiscal year shall remain available to that college for expenditure in subsequent fiscal years.

261—9.4(80GA, HF683, HF692) Community college workforce and economic development plan and progress report. Each community college, to receive its allocation for the forthcoming fiscal year, shall prepare and submit to the department for the GIVF board the following items prior to start of the forthcoming fiscal year:

9.4(1) A two-year workforce training and economic development fund plan. Each college shall adopt a two-year workforce training and economic development fund plan that outlines the community college’s proposed use of the grow Iowa values fund moneys appropriated to its fund. Plans shall be based on fiscal years and must be submitted to the department by April 30 prior to the forthcoming fiscal year allocation.

9.4(2) Plan updates. Plans shall be updated annually outlining proposed uses for the next two fiscal years, and must be submitted to the department by April 30 prior to the forthcoming fiscal year allocation.

9.4(3) Progress reports. Each college shall prepare an annual progress report on the two-year plan’s implementation. This progress report shall address the following goals and performance measures established by the general assembly for the GIVF:

- a. Expanding and stimulating the state’s economy;
- b. Increasing the wealth of Iowans; and
- c. Increasing the population of the state.

The report shall be submitted in a manner and form as prescribed by IDED and shall meet the requirements of rule 261—9.8(80GA, HF683, HF692).

Each college shall annually submit the two-year plan and progress report to the department in a manner prescribed by

these rules, and annually file a copy of the plan and progress report with the grow Iowa values board. Plans and progress reports shall be submitted to IDED by April 30. For the fiscal year beginning July 1, 2004, and each fiscal year thereafter, a community college shall not have moneys deposited in the workforce training and economic development fund of that community college unless the grow Iowa values board has approved the annual progress report of the community college.

261—9.5(80GA, HF683, HF692) Use of funds. Moneys deposited into each community college fund shall be used for the following purposes, provided 70 percent of the moneys shall be used on projects in the areas of advanced manufacturing, information technology and insurance, and life sciences, which include the areas of biotechnology, health care technology, and nursing care technology:

9.5(1) Projects in which an agreement between a community college and an employer located within the community college’s merged area meets all of the requirements of the accelerated career education (ACE) program pursuant to Iowa Code chapter 260G and IDED rules for the ACE program, 261—Chapter 20.

9.5(2) Projects in which an agreement between a community college and a business meets all the requirements of the Iowa jobs training Act under Iowa Code chapter 260F and IDED’s administrative rules located in 261—Chapter 7.

9.5(3) For the development and implementation of career academies designed to provide new career preparation opportunities for high school students that are formally linked with postsecondary career and technical education programs. “Career academy” means a program of study that combines a minimum of two years of secondary education with an associate degree, or the equivalent, career preparatory program in a nonduplicative, sequential course of study that is standards-based, integrates academic and technical instruction, utilizes work-based and worksite learning where appropriate and available, utilizes an individual career planning process with parent involvement, and leads to an associate degree or postsecondary diploma or certificate in a career field that prepares an individual for entry and advancement in a high-skill and reward career field and further education, or as defined in rule by the Iowa department of education.

9.5(4) Programs and courses that provide vocational and technical training and programs for in-service training and retraining under Iowa Code section 260C.1, subsections 2 and 3. As it pertains to Iowa Code section 260C.1, subsection 2, vocational and technical training shall mean new or expanded vocational coursework that has Iowa department of education approval and that results in the conferring of a diploma, degree, or certificate. The enhancement of academic core courses within the vocational program is also eligible. As it pertains to Iowa Code section 260C.1, subsection 3, eligible activities shall be short-term training and retraining projects.

9.5(5) Job retention program projects as authorized by 2003 Iowa Acts, House File 683, section 77, and IDED administrative rules located in 261—Chapter 7.

261—9.6(80GA, HF683, HF692) Approval of projects. Activity within each fund will be reviewed by the department to aid in ensuring that the college’s fund is meeting the requirement that 70 percent of the moneys allocated to the community college fund shall be used for projects in the areas of advanced manufacturing, information technology and insurance, and life sciences, which include the areas of biotechnology, health care technology, and nursing care technology.

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

Any individual project using over \$1 million of moneys from a workforce training and economic development fund shall require prior approval from the grow Iowa values board. The following procedures apply for approval of activities to be assisted by the grow Iowa values fund:

9.6(1) Projects will be reviewed and approved by the department under the applicable scoring criteria as found in 261—Chapter 7, Iowa Jobs Training Program.

9.6(2) Projects will be reviewed and approved by the department under the applicable scoring criteria as found in 261—Chapter 20, Accelerated Career Education Program.

9.6(3) For career academies, projects shall meet the requirements of career academies as described in subrule 9.5(3) and further established in rule by the Iowa department of education.

9.6(4) Vocational and technical training projects shall meet the requirements of new or expanded vocational and technical training.

9.6(5) In-service training and retraining projects shall meet the requirements for short-term training and retraining.

261—9.7(80GA, HF683, HF692) Community college workforce and economic development plan. A community college shall adopt a plan describing how the college proposes to use moneys allocated from the grow Iowa values fund for the forthcoming two years. The plan shall be submitted to the grow Iowa values board prior to the beginning of the first fiscal year that is included in the plan. The plan shall include, at a minimum:

9.7(1) How the allocation will be distributed for the allowable uses of ACE, Iowa jobs training program, career academies and credit technical degree programs;

9.7(2) Proposed amount of funds for use in the areas of advanced manufacturing, information technology and insurance, and life sciences, which include the areas of biotechnology, health care technology, and nursing care technology;

9.7(3) Under each proposed use, to what specific uses the funds would be directed;

9.7(4) Number of businesses proposed to be served or industry's training needs to be met by proposed distribution of funds;

9.7(4) The number of students or individuals proposed to be served;

9.7(5) Private investment, actual or proposed, that a business has incurred or will incur that creates the need for training;

9.7(6) Documentation, as necessary to verify the above-listed factors.

261—9.8(80GA, HF683, HF692) Reporting.

9.8(1) A community college entering into an agreement pursuant to these rules shall submit to the grow Iowa values board by the end of each calendar year an annual written report regarding the accomplishments of the projects funded through the workforce training and economic development fund for the fiscal year, in a manner and form prescribed by the department. The report shall provide information regarding how projects aided by the community college's workforce training and economic development fund are meeting the goals and performance measures of the grow Iowa values fund, as described in 2003 Iowa Acts, House File 692, section 83, and have resulted in an increase in the number of higher education graduates.

9.8(2) The report shall include, but not be limited to, report forms as provided under each of the programs and the following additional reports:

a. For 260F projects, the college shall provide documentation of the state's return on investment for projects funded by grow Iowa values moneys. Such measures may include:

(1) Quantification of, as a result of the training assistance provided, annual monetary cost savings or sales increases, attributed by the business; and

(2) The increase in wage or salary for individuals trained as a result of the projects using Iowa values funds for individual projects.

b. For the job retention program, the college shall provide documentation of the state's return on investment for projects funded by grow Iowa values moneys. Such measures may include:

(1) Quantification of, as a result of the training assistance provided, annual monetary cost savings or sales increases, attributed by the business;

(2) The increase in wage or salary for individuals trained as a result of the projects using Iowa values funds for individual projects;

(3) Documentation of capital investment that creates the need for training activities funded through the grow Iowa values fund;

(4) Payroll for facility affected and documentation of the number of employees and wages paid.

c. For 260G projects:

(1) Increase in number of individuals enrolled in 260G programs;

(2) The number of graduates;

(3) Number of job placements of students who complete programs;

(4) Number of job placements in Iowa;

(5) Number of job placements with participating companies.

d. For projects funded under Iowa Code section 260C.1, subsections 2 and 3:

(1) Increase in number of individuals enrolled in programs;

(2) The number of graduates;

(3) Number of job placements of students who complete programs;

(4) Reduction in student attrition from programs.

e. For career academies projects:

(1) The increase in number of individuals enrolled in programs;

(2) The number of graduates;

(3) Number of job placements of students completing programs, if applicable;

(4) Number of job placements in Iowa;

(5) Reduction in student attrition from programs;

(6) Reduction in the number of students needing remediation at the postsecondary level.

9.8(3) For the fiscal year beginning July 1, 2004, and each fiscal year thereafter, a community college shall not have moneys allocated in its workforce training and economic development fund unless the grow Iowa values board approves the annual progress report of the community college.

9.8(4) By January 15 of each year, the department shall submit a written report to the general assembly and the governor regarding the activities funded by the job retention program during the previous calendar year.

261—9.9(80GA, HF683, HF692) Annual progress report approval.

9.9(1) For the fiscal year beginning July 1, 2004, and each fiscal year thereafter, a community college shall not have moneys deposited in the workforce training and economic development fund of that community college unless the grow

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

Iowa values board approves the annual progress report of the community college.

9.9(2) The board may reject a progress report for the following reasons, including but not limited to:

- a. Information or data is incomplete.
- b. Report does not address how Iowa values goals and performance measures have been met.
- c. Fund is determined not to meet the goals and performance measures established under the grow Iowa values fund.
- d. Use of funds fails to meet the college's two-year plan.
- e. Seventy percent of the fund is not used for projects in the areas of advanced manufacturing, information technology and insurance, and life sciences, which include the areas of biotechnology, health care technology, and nursing care technology.

261—9.10(80GA,HF683,HF692) Options upon default or noncompliance.

9.10(1) Should the board not accept a college's annual progress report, the college shall be subject to the following actions as prescribed by the GIVF board based upon the severity of the noncompliance or default, including but not limited to:

- a. Repayment of funds deemed ineligible or not meeting the purposes of the grow Iowa values fund;
- b. Withholding of a portion of new fiscal year moneys based upon amounts awarded deemed ineligible;
- c. Tighter oversight and control of the college's fund by the department;
- d. Loss of funds for one year;
- e. Other action as deemed appropriated by the board.

9.10(2) Compliance with applicable labor laws. Grantees shall operate all projects in compliance with state and federal health, safety, equal opportunity, and other applicable labor laws.

These rules are intended to implement 2003 Iowa Acts, House File 692, and House File 683.

ARC 2749B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice of Termination

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby terminates further rule-making proceedings under the provisions of Iowa Code section 17A.4(1)"b" for proposed rule making relating to Chapter 25, "Housing Fund," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 9, 2003, as **ARC 2591B**.

The proposed revisions reflected the findings of the Housing Study commissioned by IDED and the Iowa Finance Authority and completed by the University of Iowa in January 2003. The proposed changes included:

1. Targeting eligible uses of funds to housing rehabilitation, rental rehabilitation and new construction of rental units. (Two eligible uses were eliminated: tenant base rental assistance and home ownership assistance.)
2. Setting caps on projects funding: \$300,000 for single family housing rehabilitation project/maximum six units; \$800,000 for rental unit construction or rehabilitation/maximum of 16 assisted units.

3. Setting a \$50,000 per unit assistance cap including all lead based paint remediation activity. (Prior cap per unit was \$24,999.)

4. Establish preferences for project funding that include priority for persons with disabilities and persons/households with income below 50 percent of area family median income.

A public hearing was held on July 29, 2003. The Department received a number of comments from program operators, city and county officials and nonprofit housing developers. The comments were numerous and varied in nature. All voiced opposition to reducing the number of allowable activities. There was great division on the scope and depth of the changes proposed to the housing rehabilitation targeting and emphasis on addressing lead hazard reduction.

The Notice is being terminated because of lack of consensus and lack of support for the package of proposed revisions. Based on the concerns expressed by program administrators, the Department felt it prudent to delay implementation of such significant program changes until it can be determined that revisions will not hinder the usage and accessibility of the program to all potential applicants.

The IDED Board approved this Notice of Termination on August 21, 2003.

ARC 2753B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to adopt Chapter 46, "Endow Iowa Grants Program," Iowa Administrative Code.

The proposed new rules implement the Endow Iowa Grant Program as authorized by 2003 Iowa Acts, House File 692, Division VIII. The rules establish application procedures, evaluation criteria, form of award, and the contractual and compliance components of the program.

Public comments concerning the proposed amendment will be accepted until 4:30 p.m. on October 16, 2003. Interested persons may submit written or oral comments by contacting Michael Johansen, Business Development Division, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone number (515)242-4870.

A public hearing to receive comments about the proposed new chapter will be held on Thursday, October 16, 2003, from 3 to 4 p.m. at the above address in the main conference room. Individuals interested in providing comments at the hearing should contact Michael Johansen by 4 p.m. on October 15, 2003, to be placed on the hearing agenda.

These rules are intended to implement 2003 Iowa Acts, House File 692, sections 88 to 93.

The following **new** chapter is proposed.

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

CHAPTER 46
ENDOW IOWA GRANTS PROGRAM

261—46.1(80GA, HF692) Purpose. The purpose of the endow Iowa grants program is to encourage individuals, businesses, and organizations to invest in community foundations and to enhance the quality of life for citizens of this state through increased philanthropic activity. This purpose will be met by providing capital to new and existing citizen groups of this state organized to establish endowment funds that will address community needs.

261—46.2(80GA, HF692) Definitions.

“Act” means the endow Iowa program Act, 2003 Iowa Acts, House File 692, Division VIII.

“Board” means the governing board of the lead philanthropic entity identified by the department pursuant to 2003 Iowa Acts, House File 692, section 91.

“Business” means an entity operating within the state and includes individuals operating a sole proprietorship or having rental, royalty, or farm income in this state and includes a consortium of businesses.

“Community affiliate organization” means a group of five or more community leaders or advocates organized for the purpose of increasing philanthropic activity in an identified community or geographic area in this state with the intention of establishing a community affiliate endowment fund.

“Department” or “IDED” means the Iowa department of economic development.

“Endowment gift” means an irrevocable contribution to a permanent endowment held by a qualified community foundation.

“Lead philanthropic entity” means the entity identified by the department pursuant to 2003 Iowa Acts, House File 692, section 91.

“Qualified community foundation” means a community foundation organized or operating in this state that meets or exceeds the national standards established by the National Council on Foundations.

261—46.3(80GA, HF692) Program procedures. The department shall identify a lead philanthropic entity for purposes of encouraging the development of qualified community foundations in this state. A lead philanthropic entity may receive a grant from the department. The board shall use the grant moneys to award endow Iowa grants to new and existing qualified community foundations and to community affiliate organizations as follows:

46.3(1) Endow Iowa grants awarded to new and existing qualified community foundations and to community affiliate organizations shall not exceed \$25,000 per foundation or organization unless a foundation or organization demonstrates a multiple county or regional approach.

46.3(2) Endow Iowa grants may be awarded on an annual basis with not more than three grants going to a single county in a fiscal year.

46.3(3) Of any moneys received by a lead philanthropic entity from the state, not more than 5 percent of such moneys shall be used by the lead philanthropic entity for administrative purposes.

46.3(4) Lead philanthropic entity eligibility requirements. A lead philanthropic entity shall meet all of the following qualifications:

a. The entity shall be a nonprofit entity, which is exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

b. The entity shall be a statewide organization with membership consisting of organizations, such as community,

corporate, and private foundations, whose principal function is the making of grants within the state of Iowa.

c. The entity shall have a minimum of 40 members, and that membership shall include qualified community foundations.

261—46.4(80GA, HF692) Eligible applicants. Eligible applicants for endow Iowa grants include new and existing qualified community foundations and community affiliate organizations. Endow Iowa grant funds may be awarded to qualified community foundations and community affiliate organizations that do all of the following:

1. Provide the board with all information required by the board.

2. Demonstrate a dollar-for-dollar funding match in a form approved by the board.

3. Identify a qualified community foundation to hold all funds. A qualified community foundation shall not be required to meet this requirement.

4. Provide a plan to the board demonstrating the method for distributing grant moneys received from the board to organizations within the community or geographic area as defined by the qualified community foundation or the community affiliate organization.

261—46.5(80GA, HF692) Application and review criteria. The lead philanthropic entity shall develop and make available a standardized application pertaining to the distribution of endow Iowa grants. Subject to the availability of funds, applications will be reviewed on an ongoing basis and reviewed at least quarterly by the board. In ranking applications for grants, the board shall consider a variety of factors including, but not limited to, the following:

1. The demonstrated need for financial assistance.

2. The potential for future philanthropic activity in the area represented or being considered for assistance.

3. The proportion of the funding match being provided.

4. For community affiliate organizations, the demonstrated need for the creation of a community affiliate endowment fund in the applicant’s geographic area.

5. The identification of community needs and the manner in which additional funding will address those needs.

6. The geographic diversity of awards.

261—46.6(80GA, HF692) Reporting requirements. By January 31 of each year, the lead philanthropic entity, in cooperation with the department, shall publish an annual report of the activities conducted pursuant to 2003 Iowa Acts, House File 692, Division VIII, during the previous calendar year and shall submit the report to the governor and general assembly. The annual report shall include a detailed listing of endow Iowa grant funds awarded by the lead philanthropic entity and the amount of endow Iowa tax credits authorized by the department.

These rules are intended to implement 2003 Iowa Acts, House File 692, sections 88 to 93.

ARC 2752B**ECONOMIC DEVELOPMENT, IOWA
DEPARTMENT OF[261]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 53, “Community Economic Betterment Program,” Iowa Administrative Code.

The proposed amendments increase the wage threshold requirements that applicants must meet in order to be eligible for assistance. To be eligible, project jobs must have a starting wage equal to or exceeding 100 percent of the average county wage, 100 percent of the average regional wage, or the annual wage cap, whichever is lowest, and over 50 percent of the pledged jobs must be at or above the 100 percent level or the annual wage cap, whichever is lower. These changes are intended to assist the Department in meeting the legislature’s mandate to the Department to raise the average wage of Iowans.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on October 8, 2003. Interested persons may submit written or oral comments by contacting Ken Boyd, Bureau of Business Finance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone number (515)242-4810; E-mail ken.boyd@ided.state.ia.us.

A public hearing to receive comments about the proposed amendments will be held on October 8, 2003, at 2 p.m. at the above address in the northwest conference room on the second floor.

These amendments are intended to implement Iowa Code chapter 15 and 2003 Iowa Acts, House File 692, and House File 683.

The following amendments are proposed.

Amend subrule 53.6(1) as follows:

53.6(1) General policies.

a. An applicant may submit as many different applications as it wishes at any time. However, if the department is reviewing two or more applications from the same applicant at the same time, it may ask the applicant to rank them in the order preferred by the applicant;

b. Only one applicant may apply for any given project;

c. No single project may be awarded more than \$1 million unless at least two-thirds of the members of the board approve the award. However, this restriction will not apply after the first \$10 million has been credited to the CEBA program in any given year. This restriction does not apply to the float loan described in 53.5(2)“4.”

d. No single project may be awarded a forgivable loan of more than \$500,000.

e. No single project may be awarded more than \$500,000 unless all other applicable CEBA requirements and each of the following criteria is met:

(1) The business has not closed or substantially reduced its operation in one area of the state and relocated substantial-

ly the same operation in the community. This requirement does not prohibit a business from expanding its operation in the community if existing operations of a similar nature in the state are not closed or substantially reduced.

(2) The business must provide and pay at least 80 percent of the cost of a standard medical and dental insurance plan or its equivalent for all full-time employees working at the facility in which the new investment occurred.

(3) The business shall agree to pay a median wage for new full-time jobs of at least 130 percent of the average wage in the county in which the community is located. This requirement may be waived by the department in the case of a float loan described in 53.5(2)“4” if the net value of the award is determined by the department to be less than \$500,000.

~~f. No more than \$100,000 may be awarded to a business start-up unless the project jobs have a starting wage equal to or exceeding 90 percent of the average county wage, 90 percent of the average regional wage, or the annual wage cap, whichever is lowest, and over 50 percent of the business’s employees’ wages are at or above the 90 percent level or the annual wage cap, whichever is lower.~~

g. f. To be eligible for assistance the business shall provide for a preference for hiring residents of the state or the economic development area, except for out-of-state employees offered a transfer to Iowa or the economic development area.

h. g. All applicants for financial assistance shall comply with the requirements of 261—Chapter 168.

i. h. To be eligible for assistance, applicants shall meet the following wage threshold requirements:

(1) Project positions shall have a starting wage of at least ~~90~~ 100 percent of the average county wage, ~~90~~ 100 percent of the average regional wage, or the annual wage cap, whichever is lowest.

(2) Fifty percent or more of the jobs to be created or retained shall have a starting wage of at least ~~90~~ 100 percent of the average county wage, ~~90~~ 100 percent of the average regional wage, or the annual wage cap, whichever is lowest.

~~(3) If the applicant is a business start-up, project positions shall have a starting wage of at least 80 percent of the average county wage, 80 percent of the average regional wage, or the annual wage cap, whichever is lowest, and over 50 percent of the business’s employees’ wages shall be at or above the 80 percent level or the annual wage cap, whichever is lower.~~

~~(4)~~ (3) The annual wage cap referenced in this rule shall be adjusted annually by calculating the percent increase or decrease in average Iowa hourly earnings level for all production and nonproduction workers in the private sector from the month of June of the previous year to June of the current year. This report is compiled by the Iowa workforce development department.

~~(5)~~ (4) Where the community can document to the department’s satisfaction that a significant differential exists between the actual local county wage (as determined by a local employer survey) and the average county wage or average regional wage, the department may substitute the community survey results for the average county wage or average regional wage for consideration in a specific project. Qualification of a project would not be anticipated unless the starting project wage was clearly above the survey wage.

~~(6)~~ (5) The department may approve a project where the starting project wage is less than the average county wage or average regional wage under the following conditions:

1. The starting wage is associated with a training period which is of relatively short duration as documented by the business; and

2. The wages will exceed ~~90~~ 100 percent of the average county wage, ~~90~~ 100 percent of the average regional wage,

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

or the annual wage cap at the conclusion of the training period as documented by the business; and

3. CEBA funds will be released only at the conclusion of the training period when the average county or average regional wage is achieved.

j i. A business receiving moneys from the department for the purpose of job creation shall make available 10 percent of the new jobs created for PROMISE JOBS program participants.

ARC 2741B

EDUCATION DEPARTMENT[281]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby gives Notice of Intended Action to amend Chapter 21, "Community Colleges," Iowa Administrative Code.

The proposed amendments update the rule governing court-ordered drinking drivers' school attendance in accordance with 2003 Iowa Acts, House File 549, section 60. The proposed amendments allow the Department to charge an administrative fee for the review and approval of such courses at a slightly higher rate when the courses that are offered outside Iowa are reviewed.

Any interested person may submit oral or written comments on the proposed amendments on or before 4:30 p.m. on Tuesday, October 7, 2003, by addressing them to Karen Poole, Consultant, Iowa Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-3671; E-mail karen.poole@ed.state.ia.us.

A public hearing will be held on Tuesday, October 7, 2003, at 2 p.m. in the State Board Room, Second Floor, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa. Any person who intends to attend the public hearing and has special requirements, such as those relating to hearing or mobility impairments, should contact the Department of Education and advise of specific needs.

These amendments are intended to implement Iowa Code section 321J.22 as amended by 2003 Iowa Acts, House File 549, section 60.

The following amendments are proposed.

ITEM 1. Amend rule 281—21.33(321J) as follows:

281—21.33(321J) Administrative fee established.

21.33(1) Students enrolled in Iowa. Beginning January 1, 2003, each person enrolled *in Iowa* in an instructional course for drinking drivers under this chapter shall be charged an administrative fee of \$10. This fee is in addition to tuition and shall be collected by the provider of the instructional course in conjunction with the tuition fee established under 281—21.32(321J). The administrative fee shall be forwarded to the department of education on a quarterly basis as prescribed by the department. If a student has been declared by the court as indigent, no administrative fee will be charged to that student.

21.33(2) Students enrolled in another state. Beginning January 1, 2004, each person enrolled outside of the state of Iowa in an instructional course for drinking drivers under this chapter shall be charged an administrative fee of \$25. This fee is in addition to tuition and shall be paid directly to the department of education by the student. Upon payment of the fee, the department of education shall review the educational component of the course taken by the student and shall inform the department of transportation whether the educational component is approved by the department of education.

ITEM 2. Amend **281—Chapter 21**, Division III, implementation clause, as follows:

~~These rules~~ *The rules in this division* are intended to implement Iowa Code section 321J.22 and ~~2000 Iowa Acts, House File 2511~~ as amended by 2003 Iowa Acts, House File 549, section 60.

ARC 2740B

EDUCATION DEPARTMENT[281]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby gives Notice of Intended Action to adopt Chapter 68, "Iowa Public Charter Schools," Iowa Administrative Code.

2002 Iowa Acts, chapter 1124, as amended by 2003 Iowa Acts, Senate File 172, permits the State Board of Education to select ten pilot public charter schools. Iowa charter schools must be authorized by the local school district board and the State Board of Education. This proposed chapter establishes the criteria and point weighting system for those criteria for State Board consideration of applications.

A public hearing will be held on October 10, 2003, from 3:30 to 5 p.m. originating in the ICN Room, Second Floor, Grimes State Office Building, Des Moines, Iowa, at which time persons may present their views orally or in writing. Other locations connected by ICN on October 10, 2003, include:

1400 2nd Street NW
Elkader

P.O. Box M
9184 B 265th Street
Clear Lake

St. Edmond High School
501 N. 22nd Street
Fort Dodge

24997 HWY 92
Halverson Ctr.
Council Bluffs

1520 Morningside Avenue
Sioux City

Marshalltown High School
1602 S 2nd Avenue
Marshalltown

Cedar Falls High School
1015 Division Street
Cedar Falls

1382 4th Avenue NE
Sioux Center

EDUCATION DEPARTMENT[281](cont'd)

3401 6th Street SW Cedar Rapids	Scott Community College 500 Belmont Road Bettendorf
DMACC (Carroll Campus) 906 N. Grant Road Carroll	Indian Hills Comm. College 525 Grandview Ave., Bldg 1 Ottumwa
3601 West Avenue Road P.O. Box 1065 Burlington	1405 N. Lincoln Creston
	Sentral Jr.-Sr. High School 308 310th Street, Box 109 Fenton

Written comments will be accepted until October 10, 2003, and may be directed to Laurie Phelan, Administrative Consultant, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146. Comments may also be sent to laurie.phelan@ed.state.ia.us. If the services of an interpreter are required or an interested individual planning to attend the public hearing has special needs, please notify the Department at least one week prior to the public hearing.

Informational meetings originating from the Grimes State Office Building, Second Floor ICN Room, will be held on September 23, 2003, from 3:30 to 5 p.m. at the same locations listed above for the public hearings.

The State Board of Education intends to Emergency Adopt and implement these rules on September 11, 2003, so that the rules can be in effect prior to October 1, 2003. Iowa law states that, in order for charter school applicants to be eligible for approval to establish a charter school next year, applications must be filed by October 1, 2003, with the local school board.

These rules are intended to implement 2002 Iowa Acts, chapter 1124, as amended by 2003 Iowa Acts, Senate File 172.

The following **new** chapter is proposed.

CHAPTER 68
IOWA PUBLIC CHARTER SCHOOLS

281—68.1(79GA,ch1124) Purpose. The purpose of a public charter school is established pursuant to 2002 Iowa Acts, chapter 1124, as amended by 2003 Iowa Acts, Senate File 172. A charter school may be established by creating a new school within an existing public school or by converting an existing public school to charter status. This chapter provides the criteria and weighting for those criteria that the state board shall use to determine if an application shall be selected as one of ten authorized pilot public charter schools.

281—68.2(79GA,ch1124) Definitions.

“Charter school” means a new school designated by the state board and created within an existing attendance center or a new school created by converting an existing attendance center to charter status.

“Charter school authorizers” means the local school board in partnership with the state board of education.

“Department” means the Iowa department of education.

“School board” means a board of directors regularly elected by the registered voters of a school district.

“State board” means the state board of education.

281—68.3(256) Application to a school board. Beginning April 28, 2003, a local school board may begin accepting applications from the principal, teachers, or parents or guard-

ians of students at an existing public school for the planning and operation of a charter school within the boundary lines of an existing public school district. Local school boards may receive applications for both charter school planning and for charter school status, and could be eligible to receive both levels of financial support (pending available federal funding). Both charter school planning and charter school status applications must be approved by the local school board.

Prior to accepting applications, a local school board shall adopt procedures, criteria, and weighting of the criteria that will determine whether an application is approved or denied. The local school board may adopt the procedures, criteria, and weighting of the criteria as established in this chapter for public charter schools. In addition, any application that has been submitted and for which subsequent school board action has been taken shall, at minimum, meet the provisions of 2002 Iowa Acts, chapter 1124, as amended by 2003 Iowa Acts, Senate File 172. An application that is received on or before October 1 of a calendar year shall be considered for approval and the establishment of a charter school at the beginning of the school district’s next school year or at a time agreed to by the applicant and the local school board.

However, a local school board may receive and consider applications after October 1 at its discretion. A local school board, by majority vote, must approve or deny the application within 60 calendar days after the application is received. An application approved by the local school board and state board of education shall constitute, at a minimum, an agreement between the local school board and the charter school for the operation of the charter school for no less than four years.

281—68.4(79GA,ch1124) Review process.

68.4(1) Application to the department. The department will review two types of public charter school applications: (1) charter school planning, and (2) charter status. A planning application is to be of a duration no longer than one year and based on the intent of moving to public charter school status. A charter status application may be made without first applying for planning.

Upon a local school board’s approval of an application for the proposed establishment of a charter school, the local school board must submit an application for such establishment to the department. The department shall appoint, at minimum, seven individuals knowledgeable in student achievement and nontraditional learning environments to review each application for charter status. A reviewer shall not participate in the review of any application in which the individual may have an interest, direct or indirect.

68.4(2) Ranking of applications. Applications shall be ranked on a point system, and applications shall be recommended in rank order beginning with the application with the highest points. In the event that two or more applications tie, the applications will be reviewed until the tie is broken.

The maximum points for an application shall be 100. The maximum points for each criterion provided in 2002 Iowa Acts, chapter 1124, as amended by 2003 Iowa Acts, Senate File 172, shall be as follows:

a. Overview. The mission, purpose, innovation, and specialized focus of the charter school. The maximum number of points that can be awarded is 10.

b. Organization and structure. The maximum number of points that can be awarded is 25. The description of the organization and structure shall include:

- (1) The charter school governance and bylaws.

EDUCATION DEPARTMENT[281](cont'd)

(2) The method for appointing or forming an advisory council for the charter school. The membership of an advisory council appointed or formed in accordance with this chapter shall not include more than one member of the local school board. The advisory council shall, to the greatest extent possible, reflect the demographics of the student population to be served by the public charter school.

(3) The organization of the school in terms of ages of students or grades to be taught along with an estimate of the total enrollment of the school.

(4) The method for admission to the public charter school. The admission policy shall support the purpose and specialized mission of the public charter school. A lottery process must be described in the application for public charter schools in the event that the number of applicants exceeds the capacity of the public charter school. The admission process shall not discriminate against prospective students on the basis of race, creed, color, sex, national origin, religion, ancestry, or disability, except if a charter school limits enrollment pursuant to 2002 Iowa Acts, chapter 1124, section 4, as amended by 2003 Iowa Acts, Senate File 172, section 1.

(5) The number and qualifications of teachers and administrators to be employed. Hiring shall, to the greatest extent possible, reflect the demographics of the student population to be served by the public charter school.

(6) Procedures for teacher and administrator evaluation.

(7) Procedures for identification and implementation of professional development for teachers and administrators as required under 281—12.7(256) and the Iowa teaching standards, including the opportunity to be responsible for the learning program at the school site.

(8) A plan of operation to be implemented if the public charter school revokes or fails to renew its contract.

(9) The specific statutes, administrative rules, and school board policies with which the public charter school does not intend to comply.

c. Facilities/financial support. The maximum number of points that can be awarded is 25. The description of the facilities/financial support shall include:

(1) The provision of school facilities.

(2) The financial plan for the operation of the school including, at minimum, a listing of the support services the school district will provide, and the public charter school's revenues, budgets, and expenditures.

(3) Assurance of the assumption of liability by the public charter school.

(4) The types and amounts of insurance coverage to be obtained by the public charter school.

(5) The means, costs, and plan for providing transportation for students attending the public charter school.

d. Student achievement. The maximum number of points that can be awarded is 40. The description shall include:

(1) Performance goals and objectives in addition to those required under Iowa Code section 256.7(21) and 281—Chapter 12, by which the school's student achievement shall be judged, the measures to be used to assess progress, and the current baseline status with respect to the goals.

(2) The educational program and curriculum utilizing different and innovative instructional methodologies that reflect sensitivity to gender, racial, ethnic and socioeconomic backgrounds. Services to be offered to all prospective students, including students with disabilities pursuant to the requirements of 281—Chapter 41, English Language Learners (ELL), and other students considered "at risk," must also reflect the same sensitivities.

(3) A statement that indicates how the public charter school will meet the purpose of a public charter school as outlined in 2002 Iowa Acts, chapter 1124, section 1, subsection 3, and the minimum state and federal statutory requirements of a public charter school as outlined in 2002 Iowa Acts, chapter 1124, section 4, subsection 2.

68.4(3) State board review. The state board shall review the recommendations provided by the department. The state board shall, by a majority vote, approve or deny an application within 60 calendar days of receipt of the application and shall notify applicants within 14 days of the state board's decision.

These rules are intended to implement 2002 Iowa Acts, chapter 1124, as amended by 2003 Iowa Acts, Senate File 172.

ARC 2775B**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 22, "Controlling Pollution," Iowa Administrative Code.

The purpose of this rule making is to establish a new exemption for emission units that can be classified as small units. It is important to note that the facility retains the obligation to determine whether other air permitting requirements still apply to those sources and, if such obligations exist, to meet those.

This rule making is the result of a cooperative negotiated rule-making process between the Department and representatives of the Iowa Association of Business and Industry (ABI) and the U.S. Environmental Protection Agency. This rule making is part of an ongoing effort to reduce the regulatory burden on industry where the actual emissions of air contaminant sources are likely to have little or no environmental or human health consequences.

This amendment adds a new paragraph 22.1(2)"w" establishing an exemption for emission units that can be classified as small units. "Small units" are defined as emission units and associated control equipment (if applicable) that emit less than 40 pounds per year of lead and lead compounds expressed as lead, 5 tons per year of sulfur dioxide, 5 tons per year of nitrogen oxides, 5 tons per year of volatile organic compounds, 5 tons per year of carbon monoxide, 5 tons per year of particulate matter, 2.5 tons per year of PM10, and 5 tons per year of hazardous air pollutants (as defined in rule 567—22.100(455B)). An emission unit that emits hazardous air pollutants (as defined in rule 567—22.100(455B)) is eligible for this exemption provided that the emission unit is not required to be reviewed for compliance with 567—subrule 23.1(3), emission standards for hazardous air pollutants (40 CFR 61, NESHAP), or 567—subrule 23.1(4), emission standards for hazardous air pollutants for source categories (40 CFR 63, NESHAP). An emission unit that emits air pollu-

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tants that are not regulated air pollutants as defined in rule 567—22.100(455B) shall not be eligible to use this exemption. This exemption applies to both existing and new or modified small units.

An owner or operator that utilizes the small unit exemption must maintain on site an “exemption justification document.” The exemption justification document must document conformance and compliance with the emission rate limits contained in the definition of “small unit” for the particular emission unit or group of similar emission units for which the exemption applies. The controls described in the exemption justification document establish a limit on the potential emissions.

Concerns that the operation of many of these small units may together lead to negative environmental impacts is addressed through additional requirements for a subcategory of small units. This subcategory is referred to as a “substantial small unit,” which is defined as those units that emit 75 percent of the small unit thresholds. The owner or operator of the facility must notify the Department within 90 days of the end of a calendar year for which the aggregate emissions from substantial small units at the facility exceed any of the “cumulative notice thresholds” defined in the exemption. Once a cumulative notice threshold is exceeded, the owner or operator must apply for air construction permits for all substantial small units for which the cumulative notice threshold for the pollutant(s) in question has been exceeded.

The Department will seek an amendment to the Delegation Agreement with the U.S. EPA to include both of these exemptions in the State Implementation Plan.

Any person may make written suggestions or comments on the proposed amendment on or before October 17, 2003. Written comments should be directed to Jim McGraw, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322, fax (515) 242-5094, or by electronic mail to jim.mcgraw@dnr.state.ia.us.

A public hearing will be held at 1 p.m. on October 7, 2003, in the East Conference Room at DNR’s Air Quality Bureau offices located at 7900 Hickman Road, Urbandale, Iowa, at which time comments may be submitted orally or in writing. All comments must be received no later than October 17, 2003.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact Jim McGraw at (515) 242-5167 to advise of any specific needs.

This amendment is intended to implement Iowa Code section 455B.133.

The following amendment is proposed.

Amend subrule **22.1(2)** by adopting the following **new** paragraph “w” as follows:

w. Small unit exemption.

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

1. 40 pounds per year of lead and lead compounds expressed as lead;
2. 5 tons per year of sulfur dioxide;
3. 5 tons per year of nitrogen oxides;
4. 5 tons per year of volatile organic compounds;
5. 5 tons per year of carbon monoxide;
6. 5 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp));
7. 2.5 tons per year of PM10; or
8. 5 tons per year of hazardous air pollutants (as defined in rule 22.100(455B)).

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

An emission unit that emits hazardous air pollutants (as defined in rule 22.100(455B)) is not eligible for this exemption if the emission unit is required to be reviewed for compliance with 567—subrule 23.1(3), emission standards for hazardous air pollutants (40 CFR 61, NESHAP), or 567—subrule 23.1(4), emission standards for hazardous air pollutants for source categories (40 CFR 63, NESHAP).

An emission unit that emits air pollutants that are not regulated air pollutants as defined in rule 22.100(455B) shall not be eligible to use this exemption.

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

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

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

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

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

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

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

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

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

7. Facilities designated as major sources with respect to rules 22.4(455B) and 22.101(455B), or subject to any applicable federal requirements, shall retain all records demonstrating compliance with the exemption justification document for five years. The record retention requirements supersede any retention conditions of an individual exemption.

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

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

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

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

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

(5) Required notice for construction or modification of a “substantial small unit.” The owner or operator shall notify the department in writing at least 10 days prior to commencing construction of any new or modified “substantial small unit” as defined in 22.1(2)“w”(6). The owner or operator shall notify the department within 30 days after determining an existing small unit meets the criteria of the “substantial small unit” as defined in 22.1(2)“w”(6). Notification shall include the name of the business, the location where the unit will be installed, and information describing the unit and quantifying its emissions. The owner or operator shall notify the department within 90 days of the end of the calendar year for which the aggregate emissions from substantial small units at the facility have reached any of the cumulative notice thresholds listed below.

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

1. 30 pounds per year of lead and lead compounds expressed as lead;
2. 3.75 tons per year of sulfur dioxide;
3. 3.75 tons per year of nitrogen oxides;
4. 3.75 tons per year of volatile organic compounds;
5. 3.75 tons per year of carbon monoxide;
6. 3.75 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp));
7. 1.875 tons per year of PM10; or
8. 3.75 tons per year of any hazardous air pollutant or 9.375 tons per year of any combination of hazardous air pollutants.

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

(7) Required notice that a cumulative notice threshold has been reached. Once a “cumulative notice threshold,” as defined in 22.1(2)“w”(8), has been reached for any of the listed pollutants, the owner or operator at the facility must apply for air construction permits for all substantial small units for which the cumulative notice threshold for the pollutant(s) in question has been reached. The owner or operator shall have 90 days from the date it determines that the cumulative notice threshold has been reached in which to apply for construction permit(s). The owner or operator shall submit a letter to the department, within 5 working days of making this determination, establishing the date the owner or operator determined that the cumulative notice threshold had been reached.

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

1. 0.6 tons per year of lead and lead compounds expressed as lead;
2. 40 tons per year of sulfur dioxide;
3. 40 tons per year of nitrogen oxides;
4. 40 tons per year of volatile organic compounds;
5. 100 tons per year of carbon monoxide;
6. 25 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp));
7. 15 tons per year of PM10; or
8. 10 tons per year of any hazardous air pollutant or 25 tons per year of any combination of hazardous air pollutants.

ARC 2779B**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, 455B.173, 455B.294, and 455B.299, the Environmental Protection Commission gives Notice of Intended Action to amend Chapter 40, “Scope of Division—Definitions—Forms—Rules of Practice,” Chapter 41, “Water Supplies,” Chapter 42, “Public Notification, Public Education, Consumer Confidence Reports, Reporting, and Record Maintenance,” Chapter 43, “Water Supplies—Design and Operation,” Chapter 44, “Drinking Water Revolving Fund,” Chapter 81, “Operator Certification: Public Water Supply Systems and Wastewater Treatment Systems,” and Chapter 83, “Laboratory Certification.” Iowa Administrative Code.

Since January 2000, the U.S. Environmental Protection Agency has promulgated seven major (new or significantly revised) federal rules pertaining to drinking water. These major rule packages include the following: lead and copper rule revisions, radionuclides rule, public notification rule, analytical methods rules (two final rules), arsenic rule, filter backwash recycle rule, and the long-term 1 enhanced surface

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water treatment rule. In addition, other changes have been made to several existing federal drinking water rules.

States are expected to incorporate these federal rule provisions into state program rules to maintain primacy in the drinking water program. The proposed amendments, if adopted, will accomplish that. In addition, various other changes to the state's drinking water, operator certification and laboratory certification program rules are being proposed.

Proposed changes are summarized below by chapter.

- Chapter 40. The amendments reference other chapters (39, 49, 50, 51, 52, and 82) that pertain to private and public drinking water supply rules in the scope of the division; add a definition for "treatment technique (TT)"; amend the definitions of "comprehensive performance evaluation (CPE)," "disinfection profile," "influenced groundwater (IGW)," "lead free," "maximum residual disinfectant level goal (MRDLG)," "point-of-entry treatment device," "point-of-use treatment device," and "unregulated contaminant"; rescind the definition of "maximum total trihalomethane potential"; add the construction permit fee schedule form number; and change the term "Environmental Protection Division" to "Environmental Services Division" and the term "registered engineer" to "licensed professional engineer."

- Chapter 41. The amendments update analytical methods; require samples collected in the distribution system to meet the nitrate and nitrite maximum contaminant levels (MCL); adopt the new federal arsenic rule; require new sources of water to meet existing MCLs; include the trailing zero on the nitrite MCL to make it consistent with the nitrate MCL and retain the same level of health protection; amend the lead and copper rules to be consistent with the new federal lead and copper rule revisions; revise the organic compound monitoring requirements to be consistent with the new federal rule changes incorporated in the arsenic rule; rescind the organic compound composite sample allowance; rescind the previous total trihalomethane rule and radionuclide rule; adopt the new federal radionuclide rule; only require chlorite to be monitored during use of chlorine dioxide; correct the total trihalomethane and haloacetic acid monitoring trigger levels; rescind the special monitoring rule that contained the unregulated contaminant and discretionary compound monitoring, and retain the special sodium monitoring requirements; and adopt sampling and analytical methodology for ammonia.

- Chapter 42. The amendments rescind the existing public notification rule and adopt the new federal public notification rule; amend the lead public education language and other public notification requirements as part of the federal lead and copper rule revisions; add definitions of "maximum residual disinfectant level (MRDL)" and "maximum residual disinfectant level goal (MRDLG)" to the consumer confidence rules; amend the consumer confidence report (CCR) rules to include the federal CCR and arsenic rule revisions; include the trailing zero in the nitrate and nitrite rules for clarification of when that language is required in the CCR; amend the reporting requirements for the lead and copper rule in accordance with the new federal lead and copper rule revisions; correct the title of the Standard Methods for the Examination of Water and Wastewater reference; amend the self-monitoring requirements to allow the department flexibility in assigning the frequency of disinfectant residual measurements in very small systems; and correct the self-monitoring flow categories to include all systems producing less than 0.1 MGD.

- Chapter 43. The amendments waive bottled water monitoring requirements if the water is from a community public water supply that meets all SDWA requirements; conduct public notification when contamination is detected from a cross connection; prohibit the return of water from steam condensate, engine cooling jackets, water from heat exchange devices, or treated wastewater into a public drinking water system; list sanitary survey components and required timelines for corrective action; allow the department to require systems currently not operating within design standards to upgrade their systems prior to issuance of a construction permit for another project that does not address the system deficiencies; update the construction standards for public water supplies; change the term "registered engineer" to "licensed professional engineer"; reinstate the construction permit fee; require well construction to be done by a certified well contractor with the appropriate permit; update well-siting requirements; revise separation distances from wells to contamination sources; include the arsenic rule and radionuclide rule requirements for best available treatment technology; adopt the new federal enhanced surface water treatment rule for small and medium surface water and groundwater under the direct influence of surface water systems; update the approved analytical methods; adopt the new federal filter backwash recycle rule; require that systems using chlorine dioxide on an intermittent basis comply with those rules only during periods when chlorine dioxide is in use; correct the MRDL calculation; amend the public notification references and requirements to reflect the new federal public notification rule; allow alkalinity testing for disinfection byproduct precursor removal rules to be performed on site by an approved person rather than only at a certified laboratory; and revise the existing lead and copper rule requirements to reflect the new federal lead and copper rule.

- Chapter 44. The amendments clarify the definition of "DWSRF funds" to allow the use of additional funds to the program should they become available; change the definition of "eligible cost" so that the supply can begin work on the project more quickly; update two references to the EPA DWSRF program rules; and correct the division's name.

- Chapter 81. The amendments include the statutory definition components in the definition of a "plant"; correct the address to which the fees must be submitted; include on-site review of an applicant's capabilities as part of the oral examination process; require an applicant who is granted certification through an oral examination and subsequently allows the applicant's certification to lapse to reapply for certification and meet the existing experience and education eligibility requirements; waive the requirement for an operator previously certified under the oral examination rules to have failed two written examinations when reapplying for certification; require an operator who has allowed the operator's certification to lapse to meet all existing education and experience eligibility requirements upon reapplication for certification; identify the two-year CEU period as each odd-numbered year; require any applicant that has had an operator certificate revoked to meet all existing education and experience eligibility requirements upon reapplication; and require any entity holding courses in Iowa for which CEU credit is offered for water treatment, water distribution, or wastewater to allow one staff member of the Department to audit the training and receive all training materials at no cost to the Department.

- Chapter 83. The amendments include certified laboratory requirements for the solid waste and contaminated sites programs; update the definition of a performance evalu-

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ation sample; restructure the fees that support the laboratory certification program; clarify that a lab certified in Iowa through a reciprocal agreement that loses primary certification also immediately loses certification in Iowa; require laboratories to report their method detection levels and other pertinent information for public water supplies upon request by the Department; remove drinking water unregulated and discretionary contaminant requirements; include arsenic and ammonia as parameters in the drinking water program; clarify lead method detection limit requirements in drinking water; clarify performance evaluation sample criteria in the underground storage tank program; and require a laboratory that has a revoked certificate immediately discontinue analysis and reporting of compliance samples and notify the laboratory's regulated Iowa clientele and other state agencies of the revoked certification status within three business days.

These chapters and their amendments were reviewed by the water supply technical advisory group at two separate meetings. The group is comprised of individuals representing a wide variety of water supply stakeholders, including professional drinking water organizations, certified operators, certified environmental laboratories, environmental interests, public water supplies, consulting engineers, and other state agencies.

Any interested person may make written suggestions or comments on these proposed amendments prior to October 17, 2003. Such written materials should be directed to Diane Moles, Water Supply Section, Department of Natural Resources, Suite M, 401 SW 7th Street, Des Moines, Iowa 50309-4611; telephone (515)725-0281; fax (515)725-0348; E-mail diane.moles@dnr.state.ia.us. Persons who wish to convey their views orally should contact the Water Supply Section at (515)725-0281 or at the Water Supply Section offices at Suite M, 401 SW 7th Street, Des Moines, Iowa.

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

Atlantic Conference Room Atlantic Public Library 507 Poplar Atlantic, Iowa	October 7, 2003
Manchester Delaware County Community Center 200 E. Acres (at the fairgrounds) Manchester, Iowa	October 8, 2003
Washington Helen Wilson Gallery Washington Public Library 120 E. Main Washington, Iowa	October 10, 2003
Mason City Muse-Norris Conference Center North Iowa Area Community College 500 College Drive Mason City, Iowa	October 13, 2003
Des Moines Conference Room IDNR Water Supply/FO 5 Offices 401 SW 7th Street, Suite I Des Moines, Iowa	October 14, 2003

Storm Lake
Arrowhead AEA
824 Flindt Drive
Storm Lake, Iowa

October 15, 2003

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 17A.3(1)“b,” chapter 455B, division III, parts 1 and 5, sections 455B.211 to 455B.224, and chapter 272C.

The following amendments are proposed.

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

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

Chapter 39 contains requirements for the proper closure or abandonment of wells.

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

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

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

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

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

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

~~Chapter 49 contains the nonpublic water supply well requirements provides minimum standards for construction of private water wells, and private well construction permits may be issued by local county authorities pursuant to 567—Chapter 38.~~

Chapters 50 to 52 contain the provisions for water withdrawal and allocation.

Chapter 55 contains the provisions for public water supply aquifer storage and recovery.

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

Chapter 82 contains the provisions for the certification of water well contractors.

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

ITEM 2. Amend rule **567—40.2(455B)** as follows:

Amend the following definitions:

“Comprehensive performance evaluation (CPE)” is a thorough review and analysis of a treatment plant’s performance-based capabilities and associated administrative, operation and maintenance practices. The CPE is conducted to identify factors that may be adversely impacting a plant’s capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. For purposes of compliance with surface water or influenced groundwater treatment plant requirements pursuant to 567—Chapters 41, 42, and 43, the comprehensive performance evaluation must consist of at least the following components: assessment of plant performance; evaluation of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report.

“Disinfection profile” is a summary of daily *Giardia lamblia* inactivation through the treatment plant. The procedure for developing a disinfection profile is contained in 567—paragraph 43.9(2)“b” and 567—subrule 43.10(2).

“Influenced groundwater (IGW)” means any groundwater which is under the direct or indirect influence of surface water, as determined by the presence of (1) significant occurrence of insects or other macroorganisms, algae or large-size diameter pathogens such as *Giardia lamblia* or *Cryptosporidium*; or (2) significant and relatively rapid shifts in water characteristics such as turbidity (particulate content), temperature, conductivity, or pH which correlate to climatological or surface water conditions, or other parameters as specified in 567—43.5(455B).

“Lead free,” when used with respect to solder and flux, refers to solders and flux containing not more than 0.2 percent lead; and, when used with respect to pipes and pipe fittings, refers to pipes and pipe fittings containing not more than 8.0 percent lead; and, when used with respect to plumbing fittings and fixtures intended by the manufacturer to dispense water for human ingestion, refers to fittings and fixtures that are in compliance with standards established in accordance with 42 U.S.C. 300-g-6(e).

“Maximum residual disinfectant level goal (MRDLG)” means the maximum level of a disinfectant added for water treatment at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety. MRDLGs are nonenforceable health goals and do not reflect the benefit of the addition of the chemical for control of waterborne microbial contaminants.

“Point-of-entry treatment device (POE)” is a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.

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

“Unregulated contaminant” means a contaminant for which no MCL has been set, but which does have federal monitoring requirements for certain public water systems set

forth in 567—subrule 41.11(2) CFR Title 40, Part 141.40, and additional reporting requirements in rule 567—42.3(455B).

Adopt the following **new** definition:

“Treatment technique (TT)” means a treatment process required to minimize the level of a contaminant in drinking water. A treatment technique is specified in cases where it is not technically or economically feasible to establish an MCL, and it is an enforceable procedure or level of technological performance which public water systems must follow to ensure control of a contaminant.

Rescind the definition for “maximum total trihalomethane potential (MTP).”

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

567—40.3(17A,455B) Forms. The following forms are used by the public to apply for department approvals and to report on activities related to the public water supply program of the department. All forms may be obtained from the Environmental Protection Services Division, Administrative Support Station, Department of Natural Resources, Henry A. Wallace Building, 502 East Ninth Street, Des Moines, Iowa 50319-0034. Properly completed application forms shall be submitted to the Water Supply Section, Environmental Protection Services Division. Water Supply System Monthly and Other Operation Reporting forms shall be submitted to the appropriate field office (see 567—subrule 42.4(3)). Properly completed laboratory forms (reference 567—Chapter 83) shall be submitted to the University Hygienic Laboratory or as otherwise designated by the department.

ITEM 4. Amend subrule **40.3(1)** by adding **new** Schedule No. “1c” in numerical order as follows:

Schedule No.	Name of Form	Form Number
“1c”	Fee Schedule	542-3179

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

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

ITEM 6. Amend subrule 40.4(3) as follows:

40.4(3) Modifications of an approved water supply construction project. Persons seeking to make modifications to a water supply construction project after receiving a prior construction permit from the department shall submit an addendum to plans and specifications, a change order or revised plans and specifications at least 30 days prior to planned construction, and the appropriate fee. The department shall review the submitted material within 30 days of submission and shall issue a supplemental permit if the proposed modifications meet departmental standards.

ITEM 7. Amend subrule 40.4(4) as follows:

40.4(4) Certification of project design. A permit shall be issued for the construction, installation or modification of a

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public water supply system or part of a system or for a water supply distribution system extension if a qualified, registered licensed professional engineer certifies that the plans and specifications comply with federal and state laws and regulations or that a variance to standards has been granted by the department. Refer to Schedule 1b.

ITEM 8. Amend subparagraph **41.2(1)“b”(2)** as follows:

(2) Acute coliform bacteria MCL. Any fecal coliform-positive repeat sample or E. coli-positive repeat sample, or any total coliform-positive repeat sample following a fecal coliform-positive or E. coli-positive routine sample constitutes a violation of the MCL for total coliforms. For purposes of the public notification requirements in ~~567—paragraph 42.1(1)“b,”~~ *567—42.1(455B)*, this is a violation that may pose an acute risk to health.

ITEM 9. Amend **41.2(1)“c”(1)“2”** as follows:

2. The public water supply system must collect samples at regular time intervals throughout the month, except that a system which uses only groundwater (except groundwater under the direct influence of surface water, as defined in ~~567—paragraph 43.5(1)“b”~~) and serves 4,900 persons or fewer, may collect all required samples on a single day if they are taken from different sites. A system that uses only groundwater and adds a chemical disinfectant or provides water with a disinfectant must measure the residual disinfectant concentration at the same points in the distribution system and at the same time as total coliform bacteria samples are collected. A system that uses surface water or IGW must comply with the requirements specified in ~~567—numbered paragraph 43.5(4)“b”(2)“2.”~~ The system shall report the residual disinfectant concentration to the laboratory with the bacteria sample, ~~in addition to~~ and comply with the applicable reporting requirements of ~~567—subrule 42.4(3)~~.

ITEM 10. Amend **41.2(1)“c”(1)“3,”** introductory paragraph, as follows:

3. Community water systems *and specific noncommunity systems*. The monitoring frequency for total coliforms for community water systems and noncommunity water systems serving schools, to include preschools and ~~day care centers~~ *child care facilities, or serving public water systems owned or managed by state agencies, such as state parks and rest areas*, is based on the population served by the system as listed below, until June 29, 1994. Public water systems which do not collect five or more routine samples each month must undergo an initial sanitary survey by June 29, 1994. After June 29, 1994, the monitoring frequency for systems serving less than 4,101 persons shall be a minimum of five routine samples per month unless the department determines, after completing sanitary surveys (at intervals not to exceed

five years), that the monitoring frequency may continue as listed below. The monitoring frequency for regional water systems shall be as listed in ~~41.2(1)“c”(1)“4”~~ but in no instance less than that required by the population equivalent served.

ITEM 11. Amend **41.2(1)“c”(1)“5”** by adding the following **new** unnumbered paragraph at the end thereof:

A noncommunity water system owned or managed by a state agency, such as a park or rest area, must monitor at the same frequency as a like-sized community water system, as specified in ~~41.2(1)“c”(1)“3.”~~

ITEM 12. Amend **41.2(1)“c”(2)“4”** as follows:

4. Additional repeat sampling. If one or more repeat samples in the set is total coliform-positive, the public water supply system must collect an additional set of repeat samples in the manner specified in ~~41.2(1)“c”(2)“1”~~ to ~~41.2(1)“c”(2)“3.”~~ The system must repeat this process until either total coliforms are not detected in one complete set of repeat samples or the system determines that the MCL for total coliforms in ~~41.2(1)“b”~~ has been exceeded, notifies the department, and provides public notification to its users *in accordance with 567—42.1(455B)*.

ITEM 13. Amend subparagraph **41.2(1)“c”(5)** as follows:

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

1. A public water supply system which has exceeded the MCL for total coliforms in ~~41.2(1)“b”~~ must report the violation to the water supply section of the department by telephone no later than the end of the next business day after it learns of the violation, and notify the public in accordance with ~~567—subrule 42.1(1)~~ *567—42.1(455B)*.

2. A public water supply system which has failed to comply with a coliform monitoring requirement must report the monitoring violation to the department within ten days after the system discovers the violation and notify the public in accordance with ~~567—subrule 42.1(2)~~ *567—42.1(455B)*.

3. If fecal coliforms or E. coli are detected in a routine or repeat sample, the system must notify the department by telephone by the end of the day when the system is notified of the test result, unless the system is notified of the result after the department office is closed, in which case the system must notify the department before the end of the next business day. If the detection of fecal coliform or E. coli in a sample causes a violation of the MCL, the system is required to notify the public in accordance with ~~567—paragraphs 42.1(1)“a” and “b.”~~ *567—42.1(455B)*.

ITEM 14. Amend the table in subparagraph **41.2(1)“e”(3)** as follows:

Organism	Methodology ^{1,2}	Citation ¹
Total Coliforms ²	Total Coliform Fermentation Technique ^{3,4,5}	9221A, B
	Total Coliform Membrane Filter Technique ⁶	9222A, B, C
	Presence-Absence (P-A) Coliform Test ^{5,7}	9221D
	ONPG-MUG Test ⁸	9223
	Colisure Test ⁹	
	ME*Colite Test ¹⁰	
	m-ColiBlue24 Test ¹¹	
	<i>ReadiCult Coliforms 100 Presence/Absence Test¹³</i>	
	<i>Membrane Filter Technique using Chromocult Coliform Agar¹⁴</i>	

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents listed in footnotes 1, 6, 8, 9, 10, and 11, 13, and 14 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at (800)426-4791. Documents may be inspected at EPA’s Drinking Water Dock-

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et, 401 M Street SW, EPA West, 1301 Constitution Avenue NW, Room B102, Washington, DC 20460, telephone (202)260-3027/566-2426; or at the Office of Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC 20408.

¹ Methods 9221A, B; 9222A, B, C; 9221D; and 9223 are contained in Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992, and 19th edition, 1995, or 20th edition, 1998, American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005. ~~Either edition~~ *The cited methods published in any of these three editions may be used.*

^{2 to 5} No change.

⁶ MI agar also may be used. Preparation and use of MI agar is set forth in the article, "New medium for the simultaneous detection of total coliform and Escherichia coli in water," by Brenner, K.P., et al., 1993, Applied Environmental Microbiology 569:3534-3544. Also available from the Office of Water Resource Center (RC-4100), 401 M Street SW, Washington, DC 20460, EPA 600/J-99/225.

^{7 to 12} No change.

¹³ *The ReadyCult Coliforms 100 Presence/Absence Test is described in the document, "ReadyCult Coliforms 100 Presence/Absence Test for Detection and Identification of Coliform Bacteria and Escherichia coli in Finished Waters," November 2000, Version 1.0, available from EM Science, 480 S. Democrat Road, Gibbstown, NJ 08027-1297, telephone: (800)222-0342, E-mail address: adellenbusch@emscience.com.*

¹⁴ *Membrane Filter Technique using Chromocult Coliform Agar is described in the document, "Chromocult Coliform Agar Presence/Absence Membrane Filter Test Method for Detection and Identification of Coliform Bacteria and Escherichia coli in Finished Waters," November 2000, Version 1.0, available from EM Science, 480 S. Democrat Road, Gibbstown, NJ 08027-1297, telephone: (800)222-0342, E-mail address: adellenbusch@emscience.com.*

ITEM 15. Amend subparagraph **41.2(1)"e"(5)** as follows:

(5) Fecal coliform analytical methodology. Public water systems must conduct fecal coliform analysis in accordance with the following procedure. When the MTF Technique or presence-absence (P-A) coliform test is used to test for total coliforms, shake the lactose-positive presumptive tube or P-A bottle vigorously and transfer the growth with a sterile 3-mm loop or sterile applicator stick into brilliant green lactose bile broth and EC medium to determine the presence of total and fecal coliforms, respectively. For EPA-approved analytical methods which use a membrane filter, transfer the total coliform-positive culture by one of the following methods: remove the membrane containing the total coliform colonies from the substrate with sterile forceps and carefully curl and insert the membrane into a tube of EC medium (the laboratory may first remove a small portion of selected colonies for verification); swab the entire membrane filter surface with a sterile cotton swab and transfer the inoculum to EC medium (do not leave the cotton swab in the EC medium); or inoculate individual total coliform-positive colonies into EC medium. Gently shake the inoculated EC tubes to ensure adequate mixing and incubate in a waterbath at 44.5 (+ or -) 0.2 degrees C for 24 (+ or -) 2 hours. Gas production of any amount in the inner fermentation tube of the EC medium indicates a positive fecal coliform test. The preparation of EC medium is described in Method 9221E (paragraph 1a) in Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992, and in the 19th edition, 1995, and 20th edition, 1998; ~~either edition the cited method in any one of these three editions may be used.~~ Public water supply systems need only determine the presence or absence of fecal coliforms; a determination of fecal coliform density is not required.

ITEM 16. Amend subparagraph **41.2(1)"e"(6)** as follows:

Amend numbered paragraphs **"1"** and **"2"** as follows:

1. EC medium supplemented with 50 micrograms per milliliter of 4-methylumbelliferyl-beta-D-glucuronide (MUG) (final concentration). ~~EC medium is described in Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992, and in the 19th edition, 1995, Method 9221E, paragraph 1a; either edition may be used, as described in Method 9222G in Standard Methods for the Examination of Water and Wastewater, 19th edition (1995) and 20th edition (1998). Either edition may be used. MUG may be added to EC medium before autoclaving. EC medium supplemented with 50 micrograms per milliliter of MUG is commercially available. At least 10 mL of EC medium sup-~~

~~plemented with MUG must be used. The inner inverted fermentation tube may be omitted. The procedure for transferring a total coliform-positive culture to EC medium supplemented with MUG shall be as specified in 41.2(1)"e"(5) for transferring a total coliform-positive culture to EC medium. Observe fluorescence with an ultraviolet light (366 nm) in the dark after incubating tube at 44.5 plus or minus 0.2 degrees Celsius for 24 plus or minus 2 hours. Alternatively, the 18th edition (1992) may be used if at least 10 mL of EC medium, as previously described in subparagraph 41.2(1)"e"(5), is supplemented with 50 micrograms/mL of MUG before autoclaving. The inner inverted fermentation tube may be omitted. If the 18th edition is used, apply the procedure in subparagraph 41.2(1)"e"(5) for transferring a total coliform-positive culture to EC medium supplemented with MUG, incubate the tube at 44.5 plus or minus 0.2 degrees Celsius for 24 plus or minus 2 hours, and then observe fluorescence with an ultraviolet light (366 nm) in the dark. If fluorescence is visible, E. coli are present.~~

2. Nutrient agar supplemented with 100 micrograms per mL 4-methylumbelliferyl-beta-D-glucuronide (MUG) (final concentration). Nutrient agar is described in Method 9221B 9222G (paragraph 3) in Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992, and in the 19th edition, 1995; ~~either edition may be used 19th edition (1995) and 20th edition (1998). Either edition may be used for determining if a total coliform-positive sample, as determined by a membrane filter technique, contains E. coli. Alternatively, the 18th edition (1992) may be used if the membrane filter containing a total coliform-positive colony(ies) is transferred to nutrient agar, as described in Method 9221B (paragraph 3) of Standard Methods (18th edition), supplemented with 100 micrograms/mL of MUG. If the 18th edition is used, incubate the agar plate at 35 degrees Celsius for 4 hours and then observe the colony(ies) under ultraviolet light (366 nm) in the dark for fluorescence. If fluorescence is visible, E. coli is present. This test is used to determine if a total coliform-positive sample, as determined by the Membrane Filter Technique or any other method in which a membrane filter is used, contains E. coli. Transfer the membrane filter containing a total coliform colony(ies) to nutrient agar supplemented with 100 micrograms per mL (final concentration) of MUG. After incubating the agar plate at 35 degrees Celsius for 4 hours, observe the colony(ies) under ultraviolet light (366 nm) in the dark for fluorescence. If fluorescence is visible, E. coli are present.~~

Adopt the following **new** numbered paragraphs **"7"** to **"9"**:

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7. Colisure Test, as described in footnote 9 of the Total Coliform Methodology Table in 41.2(1)“e”(3).

8. Readycult Coliforms 100 Presence/Absence Test, as described in footnote 13 of the Total Coliform Methodology Table in 41.2(1)“e”(3).

9. Membrane Filter Technique using Chromocult Coliform Agar, as described in footnote 14 of the Total Coliform Methodology Table in 41.2(1)“e”(3).

ITEM 17. Amend paragraph 41.2(3)“e” as follows:

e. Analytical methodology. Public water systems shall conduct heterotrophic plate count bacteria analysis in accordance with 567—subrule 43.5(2) and the following analytical method. Measurements for heterotrophic plate count bacteria must be conducted by a laboratory certified by the department to do such analysis, when heterotrophic plate count bacteria are being measured in lieu of a detectable residual disinfectant pursuant to 567—paragraph 43.5(2)“d.” In addition, the time from sample collection to initiation of analysis may not exceed eight hours, and the systems must hold the samples below 10 degrees Celsius during transit to the laboratory.

(1) Method. The heterotrophic plate count shall be performed in accordance with *one of the following methods*:

1. Method 9215B Pour Plate Method, Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992, and 19th edition, 1995, or 20th edition, 1998. *The cited method in any of the three editions may be used.* (~~either edition may be used.~~)

ITEM 19. Amend paragraph 41.3(1)“b” as follows:

b. Maximum contaminant levels for inorganic chemicals (IOCs).

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

Contaminant	EPA Contaminant Code	Maximum Contaminant Level, (mg/L)
Antimony	1074	0.006
Arsenic	1005	0.05 (until January 23, 2006) 0.010 (beginning January 23, 2006)
Asbestos	1094	7 million fibers/liter (longer than 10 micrometers in length)
Barium	1010	2
Beryllium	1075	0.004
Cadmium	1015	0.005
Chromium	1020	0.1
Cyanide (as free Cyanide)	1024	0.2
Fluoride*	1025	4.0
Mercury	1035	0.002
Nitrate	1040	10 (as nitrogen)
Nitrite	1041	1.0 (as nitrogen)
Total Nitrate and Nitrite	1038	10 (as nitrogen)
Selenium	1045	0.05
Thallium	1085	0.002

*No change in footnote.

(2) Compliance calculations. Compliance with 41.3(1)“b”(1) shall be determined based on the analytical result(s) obtained at each source/entry point. *When the department requires a system to collect nitrate or nitrite samples in its distribution system, compliance with 41.3(1)“b”(1) shall also be determined based on the analytical result(s) obtained at each discrete sampling point in the distribution system.*

2. *SimPlate Method, “IDEXX SimPlate TM HPC Test Method for Heterotrophs in Water,” November 2000, IDEXX Laboratories, Inc., One IDEXX Drive, Westbrook, ME 04092, telephone (800)321-0207.*

(2) No change.

ITEM 18. Amend paragraph 41.3(1)“a,” introductory paragraph and subparagraph (2), as follows:

a. Applicability. Maximum contaminant levels for inorganic contaminants (IOCs) specified in 41.3(1)“b” apply to community water systems and nontransient noncommunity water systems as specified herein. ~~The maximum contaminant level for arsenic applies only to community water systems and nontransient noncommunity systems which primarily serve children (daycares and schools).~~ The maximum contaminant level specified for fluoride applies only to community water systems and nontransient noncommunity systems which primarily serve children (~~daycares~~ *child care facilities* and schools). The maximum contaminant levels specified for nitrate, nitrite, and total nitrate and nitrite apply to community, nontransient noncommunity, and transient noncommunity water systems. At the discretion of the department, nitrate levels not to exceed 20.0 mg/L may be allowed in a noncommunity water system if the supplier of water demonstrates to the satisfaction of the department that:

(2) *The system is meeting the public notification requirements of rule 567—42.1(455B), including* ~~There will be~~ continuous posting of the fact that nitrate levels exceed 10 mg/L and the potential health effects of exposure; and

Arsenic sampling results must be reported to the nearest 0.001 mg/L.

1. Sampling frequencies greater than annual (e.g., monthly or quarterly). For public water supply systems which are conducting monitoring at a frequency greater than annual, compliance with the maximum contaminant levels for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, ~~nickel~~, sele-

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nium, and thallium is determined by a running annual average at any sampling point. If the average at any sampling point is greater than the MCL, then the system is out of compliance. If any one sample would cause the annual average to be exceeded, then the system is out of compliance immediately. Any sample below the method detection limit shall be calculated at zero for the purpose of determining the annual average. *If a system fails to collect the required number of samples, compliance (average concentration) will be based on the total number of samples collected.*

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

3. No change.

(3) Additional requirements. The department may assign additional requirements as deemed necessary to protect the public health, including public notification requirements and earlier compliance dates than indicated in rule. *When a system is not in compliance with an MCL as determined in subparagraph 41.3(1)“b”(2), the supplier of the water shall notify the department according to 567—subrule 42.4(1) and give notice to the public according to 567—42.1(455B).*

ITEM 20. Amend subparagraph **41.3(1)“c”(1)** as follows:

(1) Routine IOC monitoring (excluding asbestos, nitrate, and nitrite). Community public water supply systems and nontransient noncommunity water systems shall conduct monitoring to determine compliance with the MCLs specified in 41.3(1)“b” in accordance with this subrule. Transient noncommunity water systems shall conduct monitoring to determine compliance with the nitrate and nitrite maximum contaminant levels in 41.3(1)“b” as required by 41.3(1)“c”(5) and (6). *All new systems or systems that use a new source of water must demonstrate compliance with the MCLs specified in 41.3(1)“b” within a period of time specified by the department. The system must also comply with the initial sampling frequencies specified by the department to ensure the system can demonstrate compliance with the MCLs. Routine and increased monitoring frequencies shall be conducted in accordance with the requirements in para-*

graph 41.3(1)“c.” A source of water that is determined by the department to be a new source/entry point is considered to be a new source for the purposes of this rule.

ITEM 21. Amend subparagraph **41.3(1)“c”(4)**, introductory paragraph, as follows:

(4) Monitoring frequency for other IOCs. The frequency of monitoring conducted to determine compliance with the maximum contaminant levels in 41.3(1)“b” for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, ~~nickel~~, selenium, and thallium shall be as follows:

ITEM 22. Amend **41.3(1)“c”(5)“2,”** second bulleted paragraph, as follows:

- Monthly for at least one year following any ~~nitrate MCL exceedance~~ *one sample in which the concentration is greater than or equal to 10.0 mg/L as N.*

ITEM 23. Amend subparagraph **41.3(1)“c”(6)**, numbered paragraph “2” and numbered paragraph “3,” first bulleted paragraph, as follows:

2. Nitrite repeat monitoring. After the initial sample, systems where an analytical result for nitrite is less than 0.50 mg/L as N shall monitor at the frequency specified by the department.

- Quarterly for at least one year following any one sample in which the concentration is greater than or equal to 0.50 mg/L as N. The department may allow a system to reduce the sampling frequency to annually after determining the system is reliably and consistently less than 0.50 mg/L.

ITEM 24. Amend subparagraph **41.3(1)“c”(7)** as follows:

Amend numbered paragraph “2” as follows:

2. Deadline for nitrate and nitrite confirmation samples. Where nitrate or nitrite sampling results indicate an exceedance of the maximum contaminant level and the sampling frequency is quarterly or annual, the system shall take a confirmation sample within 24 hours of the system’s receipt of notification of the analytical results of the first sample. Public water supply systems unable to comply with the 24-hour sampling requirement must immediately notify the consumers served by the area served by the public water system in accordance with 567—42.1(455B) *Tier 1 public notice* and complete an analysis of a confirmation sample within two weeks of notification of the analytical results of the first sample. Where the sampling frequency is monthly, a confirmation sample will not be used to determine compliance with the MCL.

Rescind and reserve numbered paragraph “3.”

ITEM 25. Amend paragraph **41.3(1)“e”** as follows:
Amend subparagraph (1), table, as follows:

INORGANIC CONTAMINANTS ANALYTICAL METHODS

Contaminant	Methodology ¹⁵	EPA	ASTM ³	SM ⁴	Other	Detection Limit, mg/L
Antimony	Atomic absorption; furnace	200.9 ²	D3697-92	3113B ⁴		0.003
	Atomic absorption; platform					0.0008 ¹²
	ICP-Mass spectrometry	200.8 ²				0.0004
	Atomic absorption; hydride					0.001
Arsenic ¹⁶	Inductively-coupled plasma	200.7 ²		3120B		
Arsenic ¹⁶	ICP-Mass spectrometry	200.8 ²				0.0014 ¹⁷
	Atomic absorption; platform	200.9 ²				0.0005 ¹⁵

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Contaminant	Methodology ¹⁵	EPA	ASTM ³	SM-4	Other	Detection Limit, mg/L
	Atomic absorption; furnace		D2972-937C	3113B ⁴		0.001
	Atomic absorption; hydride		D2972-937B	3114B ⁴		0.001
Asbestos	Transmission electron microscopy Transmission electron microscopy	100.1 ⁹ 100.2 ¹⁰				0.01 MFL
Barium	Inductively coupled plasma ICP-Mass spectrometry Atomic absorption; direct Atomic absorption; furnace	200.7 ² 200.8 ²		3120B ¹⁸ 3111D ⁴ 3113B ⁴		0.002 0.1 0.002
Beryllium	Inductively coupled plasma ICP-Mass spectrometry Atomic absorption; platform Atomic absorption; furnace	200.7 ² 200.8 ² 200.9 ²	 D3645-937B	3120B ¹⁸ 3113B ⁴		0.0003 0.0003 0.00002 ¹² 0.0002
Cadmium	Inductively coupled plasma ICP-Mass spectrometry Atomic absorption; platform Atomic absorption; furnace	200.7 ² 200.8 ² 200.9 ²		 3113B ⁴		0.001 0.0001
Chromium	Inductively coupled plasma ICP-Mass spectrometry Atomic absorption; platform Atomic absorption; furnace	200.7 ² 200.8 ² 200.9 ²		3120B ¹⁸ 3113B ⁴		0.007 0.001
Cyanide	Manual distillation (followed by one of the following <i>four</i> analytical methods: Spectrophotometric; amenable ¹⁴ Spectrophotometric; manual ¹³ Spectrophotometric; semi-automated ¹³ Selective electrode ¹³ <i>UV/Distillation/Spectrophotometric</i> <i>Distillation/Spectrophotometric</i>	 335.4 ⁶	D2036-948A D2036-948B D2036-948A	4500-CN-C ¹⁸ 4500-CN-G ¹⁸ 4500-CN-E ¹⁸ 4500-CN-F ¹⁸	 I-3300-85 ⁵ <i>Kelada 01</i> ²⁰ <i>QuikChem 10-204-00-1-X</i> ²¹	 0.02 0.02 0.005 0.05 0.0005 0.0006
Fluoride	Ion chromatography Manual distillation; colorimetric; SPADNS Manual electrode Automated electrode Automated alizarin	300.0 ⁶	D4327-947 D1179-93B	4110B ¹⁸ 4500F-B,D ¹⁸ 4500F-C ¹⁸ 4500F-E ¹⁸	 380-75WE ¹¹ 129-71W ¹¹	
Magnesium	Atomic absorption; direct ICP Complexation Titrimetric Methods	200.7 ¹	D511-93B D511-93A	3111B ⁴ 3120B ¹⁸ 3500-Mg-E ⁴ 3500-Mg-B ¹⁹		
Mercury	Manual, cold vapor Automated, cold vapor ICP-Mass spectrometry	245.1 ² 245.2 ¹ 200.8 ²	D3223-947	3112B ⁴		0.0002 0.0002
Nickel	Inductively coupled plasma	200.7 ²		3120B ¹⁸		0.005

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Contaminant	Methodology ¹⁵	EPA	ASTM ³	SM ⁴	Other	Detection Limit, mg/L
	ICP-Mass spectrometry	200.8 ²				0.0005
	Atomic absorption; platform	200.9 ²				0.0006 ¹²
	Atomic absorption; direct			3111B ⁴		
	Atomic absorption; furnace			3113B ⁴		0.001
Nitrate	Ion chromatography	300.0 ⁶	D4327-947	4110B ¹⁸	B-1011 ⁸	0.01
	Automated cadmium reduction	353.2 ⁶	D3867-90A	4500-NO ₃ -F ¹⁸		0.05
	Ion selective electrode			4500-NO ₃ -D ¹⁸	601 ⁷	1
	Manual cadmium reduction		D3867-90B	4500-NO ₃ -E ¹⁸		0.01
Nitrite	Ion chromatography	300.0 ⁶	D4327-947	4110B ¹⁸	B-1011 ⁸	0.004
	Automated cadmium reduction	353.2 ⁶	D3867-90A	4500-NO ₃ -F ¹⁸		0.05
	Manual cadmium reduction		D3867-90B	4500-NO ₃ -E ¹⁸		0.01
	Spectrophotometric			4500-NO ₂ -B ¹⁸		0.01
Selenium	Atomic absorption; hydride		D3859-938A	3114B ⁴		0.002
	ICP-Mass spectrometry	200.8 ²				
	Atomic absorption; platform	200.9 ²				
	Atomic absorption; furnace		D3859-938B	3113B ⁴		0.002
Sodium	Inductively coupled plasma	200.7 ²				
	Atomic absorption; direct			3111B ⁴		
Thallium	ICP-Mass spectrometry	200.8 ²				
	Atomic absorption; platform	200.9 ²				0.0007 ¹²

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51, effective January 4, 1995. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at (800)426-4791. Documents may be inspected at EPA's Drinking Water Docket, 401 M Street SW, EPA West, 1301 Constitution Avenue NW, Room B102, Washington, DC 20460 (telephone: (202)260-3027 566-2426); or at the Office of Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

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

² "Methods for the Determination of Metals in Environmental Samples—Supplement I," EPA-600/R-94-111, May 1994. Available at NTIS, PB94-184942 PB95-125472.

³ Annual Book of ASTM Standards, 1994, 1996, or 1999, Vols. 11.01 and 11.02, American Society for Testing and Materials (ASTM) International; any year containing the cited version of the method may be used. Copies may be obtained from the American Society for Testing and Materials ASTM International, 401 100 Barr Harbor Drive, West Conshohocken, PA 19428.

⁴ 18th and 19th editions of Standard Methods for the Examination of Water and Wastewater, 1992 and 1995, respectively, American Public Health Association; either edition may be used. Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005.

^{5 and 6} No change.

⁷ The procedure shall be done in accordance with the Technical Bulletin 601, "Standard Method of Test for Nitrate in Drinking Water," July 1994, PN221890-001, Analytical Technology, Inc. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51, effective January 4, 1995. Copies may be obtained from ATI Orion, 529 Main Street, Boston, MA 02129. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street SW, Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

⁸ Method B-1011, "Waters Test Method for Determination of Nitrite/Nitrate in Water Using Single Column Ion Chromatography," August 1987. Copies may be obtained from Waters Corporation, Technical Services Division, 34 Maple Street, Milford, MA 01757.

^{9 to 14} No change.

¹⁵ Because MDLs reported in EPA Methods 200.7 and 200.9 were determined using a 2X preconcentration step during sample digestion, MDLs determined when samples are analyzed by direct analysis (i.e., no sample digestion) will be higher. For direct analysis of cadmium and arsenic by Method 200.7, and arsenic by Method 3120B, sample preconcentration using pneumatic nebulization may be required to achieve lower detection limits. Method 200.9 is capable of obtaining an arsenic MDL of 0.0001 mg/L using multiple depositions. Preconcentration may also be required for direct analysis of antimony and thallium by Method 200.9, and antimony by Method 3113B, unless multiple in-furnace depositions are made.

¹⁶ If ultrasonic nebulization is used in the determination of arsenic by Methods Method 200.7, 200.8, or SM 3120B, the arsenic must be in the pentavalent state to provide uniform signal response. For methods 200.7 and 3120B, both samples and standards must be diluted in the same mixed acid matrix concentration of nitric and hydrochloric acid with the addition of 100 µL of 30 hydrogen peroxide per 100 mL of solution. For direct analysis of arsenic with Method 200.8 using ultrasonic nebulization, samples and standards must contain 1 mg/L of sodium hypochlorite.

¹⁷ Using selective ion monitoring, EPA Method 200.8 (ICP-MS) is capable of obtaining an MDL of 0.0001 mg/L.

¹⁸ The 18th, 19th, and 20th editions of Standard Methods for the Examination of Water and Wastewater, 1992, 1995, and 1998, respectively, American Public Health Association; any edition may be used. Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005.

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¹⁹ The 20th edition of *Standard Methods for the Examination of Water and Wastewater*, 1998, American Public Health Association. Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005.

²⁰ The description for the Kelada O1 Method, "Kelada Automated Test Methods for Total Cyanide, Acid Dissociable Cyanide, and Thiocyanate," Revision 1.2, August 2001, EPA #821-B-01-009 for cyanide is available from NTIS PB 2001-108275.

²¹ The description for the QuikChem Method 10-204-00-1-X, "Digestion and distillation of total cyanide in drinking water and wastewaters using MICRO DIST and determination of cyanide by flow injection analysis," Revision 2.1, November 30, 2000, for cyanide is available from Lachat Instruments, 6645 W. Mill Road, Milwaukee, WI 53218, telephone (414)358-4200.

Amend subparagraph (2), introductory paragraph, as follows:

(2) Sampling methods for IOCs. Sample collection for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate, nitrite, selenium, and thallium under this subparagraph shall be conducted using the sample preservation, container, and maximum holding time procedures specified in the table below:

Amend subparagraph (2), table, by adding the following **new** entry in alphabetical order:

Contaminant	Preservative ¹	Container ²	Time ³
Arsenic	HNO ₃	P or G	6 months

ITEM 26. Rescind and reserve paragraph **41.3(1)“f.”**

ITEM 27. Amend **41.4(1)“c”(1)“5”** as follows:

5. Tier 3 community sampling sites. Any community water system with insufficient Tier 1 and Tier 2 sampling sites shall complete its sampling pool with "Tier 3 sampling sites," consisting of single-family structures that contain copper pipes with lead solder installed before 1983. *A community water system with insufficient Tier 1, Tier 2, and Tier 3 sampling sites shall complete its sampling pool with representative sites throughout the distribution system. A representative site is defined as a site in which the plumbing materials used at that site would be commonly found at other sites served by the water system.*

ITEM 28. Amend **41.4(1)“c”(1)“7”** as follows:

7. Other NTNC sampling sites. A nontransient noncommunity water system with insufficient Tier 1 sites that meet the targeting criteria in 41.4(1)“c”(1)“6” shall complete its sampling pool with sampling sites that contain copper pipes with lead solder installed before 1983. *If additional sites are needed to complete the sampling pool, the NTNC system shall use representative sites throughout the distribution system. A representative site is defined as a site in which the plumbing materials used at that site would be commonly found at other sites served by the water system.*

ITEM 29. Amend **41.4(1)“c”(1)“8”** as follows:

8. Reporting of sample site selection criteria. ~~Any public water supply system whose sampling pool does not consist exclusively of tier 1 sites shall demonstrate in a letter submitted to the department why a review of the information listed in 41.4(1)“c”(1)“2” was inadequate to locate a sufficient number of tier 1 sites. Any community water system which includes tier 3 sampling sites in its sampling pool shall demonstrate in such a letter why it was unable to locate a sufficient number of tier 1 and tier 2 sampling sites. LSL sampling sites. Any public water supply system whose distribution system contains lead service lines shall draw 50 percent of the samples it collects during each monitoring period from sites that contain lead pipes, or copper pipes with lead solder, and 50 percent of those samples from sites served by a lead service line. A water system that cannot identify a sufficient number of sampling sites served by a lead service line shall demonstrate in a letter to the department why the system was unable to locate a sufficient number of such sites. Such a water system shall collect first-draw samples from all of the sites identified as being served by such lines.~~

ITEM 30. Amend subparagraph **41.4(1)“c”(2)** as follows:

(2) Sample collection methods.

1. Tap samples for lead and copper collected in accordance with this subparagraph, with the exception of lead service line samples collected under 567—subrule 43.7(4), and 41.4(1)“c”(2)“5,” shall be first-draw samples.

2. First-draw tap samples for lead and copper shall be one liter in volume and have stood motionless in the plumbing system of each sampling site for at least six hours. First-draw samples from residential housing shall be collected from the cold-water kitchen tap or bathroom sink tap. First-draw samples from a nonresidential building shall be collected at an interior tap from which water is typically drawn for consumption. *Non-first-draw samples collected in lieu of first-draw samples pursuant to 41.4(1)“c”(2)“5” shall be one liter in volume and shall be collected at an interior tap from which water is typically drawn for consumption.* First-draw samples may be collected by the system or the system may allow residents to collect first-draw samples after instructing the residents of the sampling procedures specified in this paragraph. To avoid problems of residents handling nitric acid, acidification of first-draw samples may be done up to 14 days after the sample is collected. ~~If the sample is not acidified immediately after collection, then the sample must stand in the original container for at least 28 hours after acidification.~~ *After acidification to resolubilize the metals, the sample must stand in the original container for the time specified in the approved EPA method before the sample can be analyzed.* If a system allows residents to perform sampling, the system may not challenge, based on alleged errors in sample collection, the accuracy of sampling results.

3. and 4. No change.

5. *An NTNC system, or a CWS system that meets the criteria of 567—paragraphs 42.2(4)“h”(1)“1” and “2,” that does not have enough taps that can supply first-draw samples, as defined in 567—40.2(455B), may apply to the department in writing to substitute non-first-draw samples. Such systems must collect as many first-draw samples from appropriate taps as possible and identify sampling times and locations that would likely result in the longest standing time for the remaining sites. The department may waive the requirement for prior department approval of non-first-draw sample sites selected by the system, through written notification to the system.*

ITEM 31. Amend subparagraph **41.4(1)“c”(3)**, introductory paragraph, as follows:

(3) Number of samples. Water systems shall collect at least one sample during each monitoring period specified in 41.4(1)“c”(4) from the number of sites as listed in the column below titled “standard monitoring.” A system conducting reduced monitoring under 41.4(1)“c”(4) ~~may~~ *shall* collect at least one sample from the number of sites specified in the column titled “reduced monitoring” during each monitoring

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period specified in 41.4(1)“c”(4). *Such reduced monitoring sites shall be representative of the sites required for standard monitoring. The department may specify sampling locations when a system is conducting reduced monitoring.*

ITEM 32. Amend paragraph 41.4(1)“c” as follows:

Amend subparagraph (4), numbered paragraph “4,” as follows:

4. Reduced monitoring.

- A small or medium-size water system that meets the lead and copper action levels during each of two consecutive six-month monitoring periods may reduce the number of lead and copper samples according to 41.4(1)“c”(3) and reduce the frequency of sampling to once per year.

- Any public water supply system that maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the department under 567—paragraph 43.7(2)“f” during each of two consecutive six-month monitoring periods may request that the system be allowed to reduce the monitoring frequency to once per year and to reduce the number of lead and copper samples according to 41.4(1)“c”(3), upon written approval by the department. ~~The department will review the information submitted by the water system and shall set forth the basis for its determination in writing. The department shall review monitoring, treatment, and other relevant information submitted by the water system in accordance with 567—subrule 42.4(2), and shall notify the system in writing when it determines that the system is eligible to commence reduced monitoring.~~ Where appropriate, the department will revise its determination when the system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

- A small or medium-size water system that meets the lead and copper action levels during three consecutive years of monitoring may reduce the frequency of monitoring for lead and copper from annually to once every three years. Any water system that maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the department under 567—paragraph 43.7(2)“f” during three consecutive years of monitoring may request the department to allow the system to reduce the frequency of monitoring from annually to once every three years if it receives written approval by the department. ~~The department shall review the information submitted by the system and shall set forth the basis for its determination in writing. The department shall review monitoring, treatment, and other relevant information submitted by the water system in accordance with 567—subrule 42.4(2), and shall notify the system in writing when it determines that the system is eligible to reduce the monitoring frequency to once every three years.~~ Where appropriate, the department will revise its determination when the system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

- A water system that reduces the number and frequency of sampling shall collect these samples from sites included in the pool of targeted sampling sites identified in 41.4(1)“c”(1). Systems sampling annually or less frequently shall conduct the lead and copper tap sampling during the months of June, July, August or through September, unless the department has approved a different sampling period. If approved by the department, the period shall be no longer than four consecutive months and must represent a time of normal operation where the highest levels of lead are most likely to occur. The department shall designate a period that

represents a time of normal operation for an NTNC system that does not operate during the months of June through September, and for which the period of normal operation where the highest levels of lead are most likely to occur is not known.

Systems monitoring annually that have been collecting samples during the months of June through September and that receive department approval to alter their sample collection period must collect their next round of samples during a time period that ends no later than 21 months after the previous round of sampling.

Systems monitoring triennially that have been collecting samples during the months of June through September and that receive department approval to alter the sampling collection period must collect their next round of samples during a time period that ends no later than 45 months after the previous round of sampling.

Subsequent rounds of sampling must be collected annually or triennially, as required by 41.4(1)“c.”

Small systems that have been granted waivers pursuant to 41.4(1)“c”(7), that have been collecting samples during the months of June through September and that receive department approval to alter their sample collection period as previously stated, must collect their next round of samples before the end of the nine-year period.

- Any water system that demonstrates for two consecutive six-month monitoring periods that the 90th percentile tap water level computed under 41.4(1)“b”(3) is less than or equal to 0.005 mg/L for lead and is less than or equal to 0.65 mg/L for copper may reduce the number of samples in accordance with 41.4(1)“c”(3) and reduce the frequency of sampling to once every three calendar years, if approved by the department.

- A small or medium-size water system subject to reduced monitoring that exceeds the lead or copper action level shall resume sampling according to 41.4(1)“c”(4)“3” and collect the number of samples specified for standard monitoring in 41.4(1)“c”(3). ~~Such systems~~ Any such system shall also conduct water quality parameter monitoring in accordance with 41.4(1)“d”(2), (3), or (4), as appropriate, during the monitoring period in which it exceeded the action level. *Any such system may resume annual monitoring for lead and copper at the tap at the reduced number of sites specified in 41.4(1)“c”(3) after it has completed two subsequent consecutive six-month rounds of monitoring that meet the criteria of 41.4(1)“c”(4)“4,” first bulleted paragraph, and may resume triennial monitoring for lead and copper at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria of either 41.4(1)“c”(4)“4,” third bulleted paragraph or fifth bulleted paragraph, and has received department approval.*

Any water system subject to reduced monitoring frequency that fails to operate within the range of values for the water quality control parameters specified by the department under 567—paragraph 43.7(2)“f” for more than nine days in any six-month period specified in 41.4(1)“d”(4) shall resume tap water sampling according to 41.4(1)“c”(4)“3,” and collect the number of samples specified for standard monitoring in 41.4(1)“c”(3), and resume monitoring for water quality parameters within the distribution system in accordance with 41.4(1)“d”(4). The system may resume reduced monitoring for lead and copper at the tap and for water quality parameters within the distribution system under the following conditions:

The system may resume annual monitoring for lead and copper at the tap at the reduced number of sites specified in

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41.4(1)“c”(3) after it has completed two subsequent six-month rounds of monitoring that meet the criteria of 41.4(1)“c”(4)“4,” second bulleted paragraph, and upon written approval from the department to resume reduced annual monitoring.

The system may resume triennial monitoring for lead and copper at the tap at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria of either 41.4(1)“c”(4)“4,” third bulleted paragraph, or fifth bulleted paragraph, and upon written approval from the department to resume triennial monitoring.

The system may reduce the number of water quality parameter tap water samples required in 41.4(1)“d”(5)“1” and the sampling frequency required in 41.4(1)“d”(5)“2.” Such a system may not resume triennial monitoring for water quality parameters at the tap until it demonstrates that it has requalified for triennial monitoring, pursuant to 41.4(1)“d”(5)“2.”

- Any water system subject to a reduced monitoring frequency under 41.4(1)“c”(4)“4” that either adds a new source of water or changes any water treatment shall inform the department in writing in accordance with 567—subparagraph 42.4(2)“a”(3). The department may require the system to resume sampling pursuant to 41.4(1)“c”(4)“3” and collect the number of samples specified for standard monitoring under 41.4(1)“c”(3), or take other appropriate steps such as increased water quality parameter monitoring or reevaluation of its corrosion control treatment given the potentially different water quality considerations.

— (5) Additional monitoring by systems. The results of any monitoring conducted in addition to the minimum requirements of 41.4(1)“c” shall be considered by the system and the department in making any determinations (i.e., calculating the 90th percentile lead or copper level) under this subrule.

Adopt **new** subparagraphs (6) and (7) as follows:

(6) Invalidation of lead or copper tap water samples. A sample invalidated under this paragraph does not count toward determining the lead or copper 90th percentile levels under 41.4(1)“b”(3) or toward meeting the minimum monitoring requirements of 41.4(1)“c”(3).

1. The department may invalidate a lead or copper tap water sample if at least one of the following conditions is met:

- The laboratory establishes that improper sample analysis caused erroneous results.
- The department determines that the sample was taken from a site that did not meet the site selection criteria in 567—41.4(455B).
- The sample container was damaged in transit to the laboratory.
- There is a substantial reason to believe that the sample was subject to tampering.
- The sample is not representative of water that would be consumed from the tap.
- The department determined that a major disruption of the water flow occurred in the system or building plumbing prior to sample collection, which resulted in lead or copper levels that were not representative of the system.

2. The system must report the results of all samples to the department and all supporting documentation for samples the system believes should be invalidated.

3. To invalidate a sample under 41.4(1)“c”(6)“1,” the decision and the rationale for the decision must be documented in writing. The department may not invalidate a sam-

ple solely on the grounds that a follow-up sample result is higher or lower than that of the original sample.

4. The system must collect replacement samples for any samples invalidated under subparagraph 41.4(1)“c”(6) if, after the invalidation of one or more samples, the system has too few samples to meet the minimum requirements of 41.4(1)“c”(3). Any such replacement samples must be taken as soon as possible, but no later than 20 days after the date the department invalidates the sample, or by the end of the applicable monitoring period, whichever occurs later. Replacement samples taken after the end of the applicable monitoring period shall not also be used to meet the monitoring requirements of a subsequent monitoring period. The replacement samples shall be taken at the same locations as the invalidated samples or, if that is not possible, at locations other than those already used for sampling during the monitoring period.

(7) Monitoring waivers for small systems. Any small system that meets the criteria of this subparagraph may apply to the department to reduce the frequency of monitoring for lead and copper under subrule 41.4(1) to once every nine years if it meets all of the materials criteria specified in 41.4(1)“c”(7)“1” and the monitoring criteria specified in 41.4(1)“c”(7)“2.”

1. Materials criteria. The system must demonstrate that its distribution system and service lines and all drinking water supply plumbing, including plumbing conveying drinking water within all residences and buildings connected to the system, are free of lead-containing materials and copper-containing materials, as defined below:

- Lead. The water system must provide certification and supporting documentation to the department that the system is free of all lead-containing materials. The system does not contain any plastic pipes which contain lead plasticizers, or plastic service lines which contain lead plasticizers. The system must be free of lead service lines, lead pipes, lead soldered pipe joints, and leaded brass or bronze alloy fittings and fixtures, unless such fittings and fixtures meet the specifications of any standard established pursuant to 42 U.S.C. 300-g-6(e).

- Copper. The water system must provide certification and supporting documentation to the department that the system contains no copper pipes or copper service lines.

2. Monitoring criteria. The system must have completed at least one six-month round of standard tap water monitoring for lead and copper at sites approved by the department and from the number of sites required by 41.4(1)“c”(3), and demonstrate that the 90th percentile levels for any and all rounds of monitoring conducted since the system became free of all lead-containing and copper-containing materials meet the following criteria:

- Lead levels. The system must demonstrate that the 90th percentile lead level does not exceed 0.005 mg/L.
- Copper levels. The system must demonstrate that the 90th percentile copper level does not exceed 0.65 mg/L.

3. Department approval of waiver application. The department shall notify the system of its waiver determination in writing, including the basis of its decision and any condition of the waiver. The department may require as a waiver condition that the system conduct specific activities, such as limited monitoring and periodic outreach to customers to remind them to avoid installation of materials that would void the waiver. The system must continue monitoring for lead and copper at the tap as required by 41.4(1)“c”(4)“1” through “4” as appropriate, until the system receives written approval from the waiver from the department.

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4. Monitoring frequency of systems with waivers.

- A system must conduct tap water monitoring for lead and copper in accordance with 41.4(1)“c”(4)“4” at the reduced number of sampling sites identified in subparagraph 41.4(1)“c”(3) at least once every nine years and provide the materials certification specified in 41.4(1)“c”(7)“1” for both lead and copper to the department along with the monitoring results.

- If a system with a waiver adds a new source of water or changes any water treatment, the system must notify the department in writing pursuant to 567—subparagraph 42.4(2)“a”(3). The department has the authority to require the system to add or modify waiver conditions, such as to require recertification that the system is free of lead-containing and copper-containing materials or to require additional monitoring, if the department deems such modifications are necessary to address treatment or source water changes at the system.

- If a system with a waiver becomes aware that it is no longer free of lead-containing or copper-containing materials, such as from new construction or repairs, the system shall notify the department in writing no later than 60 days after becoming aware of such a change.

5. Continued eligibility. If the system continues to satisfy the requirements of 41.4(1)“c”(7)“4,” the waiver will be renewed automatically, unless any of the conditions listed below occur. A system whose waiver has been revoked may reapply for a waiver at such time as it again meets the appropriate materials and monitoring criteria of 41.4(1)“c”(7)“1” and 41.4(1)“c”(7)“2.”

- A system no longer satisfies the materials criteria of 41.4(1)“c”(7)“1,” or has a 90th percentile lead level greater

than 0.005 mg/L or a 90th percentile copper level greater than 0.65 mg/L.

- The department notifies the system in writing that the waiver has been revoked, including the basis of its decision.

6. Requirements following waiver revocation. A system whose waiver has been revoked by the department is subject to the corrosion control treatment and lead and copper tap water monitoring requirements as follows:

- If the system exceeds the lead or copper action level, the system must implement corrosion control treatment in accordance with the deadlines specified in 567—paragraph 43.7(1)“e,” and any other applicable parts of 567—41.4(455B).

- If the system meets both the lead and copper action levels, the system must monitor for lead and copper at the tap no less frequently than once every three years using the reduced number of sample sites specified in subparagraph 41.4(1)“c”(3).

ITEM 33. Amend paragraph 41.4(1)“d” as follows:

Amend subparagraph (1), numbered paragraph “2,” as follows:

2. Number of samples. ~~Systems shall collect two samples for each applicable water quality parameter at each entry point to the distribution system during each six-month monitoring period specified in 41.4(1)“d”(2). During each monitoring period specified in 41.4(1)“d”(3) through (5), systems shall collect one sample for each applicable water quality parameter at each entry point to the distribution system.~~

- Systems shall collect two tap samples for applicable water quality parameters during each six-month monitoring period specified in 41.4(1)“d”(2) through (5) from the following number of sites.

REQUIRED NUMBER OF SAMPLES: WATER QUALITY PARAMETERS

System Size (Number of People Served)	Number of Sites for Water Quality Parameters
Greater than 100,000	25
10,001 to 100,000	10
3,301 to 10,000	3
501 to 3,300	2
101 to 500	1
less than or equal to 100	1

- *Except as provided in 41.4(1)“d”(3)“3,” systems shall collect two samples for each applicable water quality parameter at each entry point to the distribution system during each six-month monitoring period specified in 41.4(1)“d”(2). During each monitoring period specified in 41.4(1)“d”(3) through (5), systems shall collect one sample for each applicable water quality parameter at each entry point to the distribution system.*

Amend subparagraph (3), numbered paragraph “2,” and adopt **new** numbered paragraph “3” as follows:

2. *Except as provided for in 41.4(1)“d”(3)“3,” monitoring* **Monitoring** at each entry point to the distribution system shall include one sample every two weeks (biweekly) for: pH; a reading of the dosage rate of the chemical used to adjust alkalinity, and the alkalinity concentration when alkalinity is adjusted as part of optimal corrosion control; and a reading of the dosage rate of the inhibitor used, and the concentration of orthophosphate or silica (whichever is applicable) when a corrosion inhibitor is used as part of optimal corrosion control.

3. *Any groundwater system can limit entry point sampling described in 41.4(1)“d”(3)“3” to those entry points that are representative of water quality and treatment condi-*

tions throughout the system. If water from untreated groundwater sources mixes with water from treated groundwater sources, the system must monitor for water quality parameters both at representative entry points receiving treatment and representative entry points receiving no treatment. Prior to the start of any monitoring under this paragraph, the system shall provide to the department written information identifying the selected entry points and documentation sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system, including information on seasonal variability.

Amend subparagraphs (4), (5) and (6) as follows:

(4) Monitoring after the department specifies water quality parameter values for optimal corrosion control. After the department specifies the values for applicable water quality control parameters reflecting optimal corrosion control treatment, *all* large systems shall measure the applicable water quality parameters according to 41.4(1)“d”(3) ~~during each monitoring period specified in 41.4(1)“c”(4)“3.”~~ and determine compliance with the requirements of 567—paragraph 43.7(2)“g” every six months, with the first six-month period to begin on the date the department specifies the optimal values under 567—paragraph 43.7(2)“f.” Any small or

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medium-size system shall conduct such monitoring during each monitoring period specified in 41.4(1)“c”(4)“3” in which the system exceeds the lead or copper action level. The system may take a confirmation sample for any water quality parameter value no later than three days after the first sample. If a confirmation sample is taken, the result must be averaged with the first sampling result and the average must be used for any compliance determinations. The department may disregard results of obvious sampling errors from this calculation. For any such small and medium-size system that is subject to a reduced monitoring frequency pursuant to 41.4(1)“c”(4)“4” at the time of the action level exceedance, the end of the applicable six-month period under this paragraph shall coincide with the end of the applicable monitoring period under 41.4(1)“c”(4)“4.” Compliance with department-designated optimal water quality parameter values shall be determined as specified in 567—paragraph 43.7(2)“g.”

(5) Reduced monitoring.

1. No change.

2. ~~Public~~ A public water systems system that maintain maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the department under 567—paragraph 43.7(2)“f” during three consecutive years of annual monitoring under this paragraph may reduce the frequency with which it the system collects the number of tap samples for applicable water quality parameters specified in 41.4(1)“d”(5) from every six months to annually to every three years. Any system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the department under 567—paragraph 43.7(2)“f” during three consecutive years of annual monitoring under this paragraph may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters specified in 41.4(1)“d”(5) from annually to every three years.

ters specified in 41.4(1)“d”(5) from annually to every three years.

A water system may reduce the frequency with which it collects tap samples for applicable water quality parameters specified in 41.4(1)“d”(5)“1” to every three years if it demonstrates during two consecutive monitoring periods that its tap water lead level at the 90th percentile is less than or equal to 0.005 mg/L, that its tap water copper level at the 90th percentile is less than or equal to 0.65 mg/L, and that it also has maintained the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the department under 567—paragraph 43.7(2)“f.”

3. No change.

4. ~~Public~~ Any water systems system subject to the reduced monitoring frequency that fail fails to operate at or above the minimum value or within the range of values for the water quality parameters specified by the department under 567—paragraph 43.7(2)“f” for more than nine days in any six-month period specified in 567—paragraph 43.7(2)“g” shall resume distribution system tap water sampling in accordance with the number and frequency requirements in 41.4(1)“d”(3). Such a system may resume annual monitoring for water quality parameters at the tap at the reduced number of sites specified in 41.4(1)“d”(5)“1” after it has completed two subsequent consecutive six-month rounds of monitoring that meet the criteria of that paragraph or may resume triennial monitoring for water quality parameters at the tap at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria in 41.4(1)“d”(5)“2.”

(6) Additional monitoring by systems. The results of any monitoring conducted in addition to the minimum requirements of this subrule shall be considered in making any determinations (i.e., determining concentrations of water quality parameters) under this subrule or 567—subrule 43.7(2).

SUMMARY OF MONITORING REQUIREMENTS FOR WATER QUALITY PARAMETERS¹

Monitoring Period	Location	Parameters ²	Frequency
Initial Monitoring	Taps and at entry point(s) to distribution systems	pH, alkalinity, orthophosphate or silica ³ , calcium, conductivity, temperature	Every 6 months
After Installation of Corrosion Control	Taps	pH, alkalinity, orthophosphate, or silica ³ , calcium ⁴	Every 6 months
	Entry point(s) to distribution system ⁶	pH, alkalinity, if alkalinity is adjusted as part of corrosion control then include the chemical additive dosage rate and concentration (if alkalinity adjusted as part of corrosion control), inhibitor dosage rate and inhibitor residual ⁵	Biweekly At least every two weeks
After State Department Specifies Parameter Values for Optimal Corrosion Control	Taps	pH, alkalinity, orthophosphate, or silica ³ , calcium ⁴	Every 6 months
	Entry point(s) to distribution system ⁶	pH, alkalinity, if alkalinity is adjusted as part of corrosion control then include the chemical additive dosage rate and concentration (if alkalinity adjusted as part of corrosion control), inhibitor dosage rate and inhibitor residual ⁵	Biweekly At least every two weeks

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Monitoring Period	Location	Parameters ²	Frequency
Reduced Monitoring	Taps	pH, alkalinity, orthophosphate or silica ³ , calcium ⁴	Every 6 months, <i>annually</i> ⁷ , or every 3 years ⁸ , at a reduced number of sites
	Entry point(s) to distribution system ⁶	pH, alkalinity, <i>if alkalinity is adjusted as part of corrosion control then include the chemical additive dosage rate and concentration (if alkalinity adjusted as part of corrosion control), inhibitor dosage rate and inhibitor residual</i> ⁵	<i>Biweekly At least every two weeks</i>

^{1 to 5} No change.

⁶ Groundwater systems may limit monitoring to representative locations throughout the systems.

⁷ Water systems may reduce frequency of monitoring for water quality parameters at the tap from every six months to annually if they have maintained the range of values for water quality parameters reflecting optimal corrosion control during three consecutive years of monitoring.

⁸ Water systems may further reduce the frequency of monitoring for water quality parameters at the tap from annually to once every three years if they have maintained the range of values for water quality parameters reflecting optimal corrosion control during three consecutive years of annual monitoring. Water systems may accelerate to triennial monitoring for water quality parameters at the tap if they have maintained 90th percentile lead levels less than or equal to 0.005 mg/L, 90th percentile copper levels less than or equal to 0.65mg/L, and the range of water quality parameters designated by the department under 567—paragraph 43.7(2)“f” as representing optimal corrosion control during two consecutive six-month monitoring periods.

ITEM 34. Amend 41.4(1)“e”(1)“1” as follows:

1. A water system that fails to meet the lead or copper action level on the basis of tap samples collected in accordance with 41.4(1)“c” shall collect lead and copper source water samples in accordance with the following requirements regarding sample location, number of samples, and collection methods: ~~specified for inorganic chemical sampling. The timing of sampling for lead and copper shall be in accordance with 41.4(1)“e”(2) and (3).~~

- Groundwater systems shall take a minimum of one sample at every entry point to the distribution system (source entry point) which is representative of each well after treatment. The system shall take one sample at the same source entry point unless conditions make another sampling location more representative of each source or treatment plant.

- Surface water systems and any system with a combination of surface water and groundwater shall take a minimum of one sample at every entry point to the distribution system after any application of treatment or in the distribution system at a point which is representative of each source after treatment. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

- If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions, when water is representative of all sources being used.

ITEM 35. Amend subparagraph 41.4(1)“e”(5) as follows:

(5) Reduced monitoring frequency.

1. A water system using only groundwater may reduce the monitoring frequency for lead and copper in source water to once during each nine-year compliance cycle if the system meets one of the following criteria:

- ~~which~~ The system demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead or copper concentrations specified by the department in 567—subparagraph 43.7(3)“b”(4) during at least three consecutive compliance periods under 41.4(1)“e”(4)“1” ~~may reduce the monitoring frequency for lead or copper to once during each nine-year compliance cycle as defined in 567—40.2(455B).~~; or

- The department has determined that source water treatment is not needed and the system demonstrates that, during at least three consecutive compliance periods in which sampling was conducted under 41.4(1)“e”(4)“1,” the concentration of lead in source water was less than or equal to 0.005 mg/L and the concentration of copper in source water was less than or equal to 0.65 mg/L.

2. A water system using surface water (or a combination of surface water and groundwater) may reduce the monitoring frequency in 41.4(1)“e”(4)“1” to once during each nine-year compliance cycle if that system meets one of the following criteria:

- ~~which~~ The system demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and copper concentrations specified by the department in 567—subparagraph 43.7(3)“b”(4) for at least three consecutive years ~~may reduce the monitoring frequency in 41.4(1)“e”(4)“1” to once during each nine-year compliance cycle.~~; or

- The department has determined that source water treatment is not needed and the system demonstrates that, during at least three consecutive years, the concentration of lead in source water was less than or equal to 0.005 mg/L and the concentration of copper in source water was less than or equal to 0.65 mg/L.

3. No change.

ITEM 36. Amend paragraph 41.4(1)“g” as follows:

Amend subparagraph (1), table, as follows:

LEAD, COPPER AND WATER QUALITY PARAMETER ANALYTICAL METHODS

Contaminant	EPA Contaminant Code	Methodology ⁹	Reference (Method Number)			
			EPA	ASTM ³	SM-4	USGS ⁵
Alkalinity	1927	Titrimetric		D1067-92B	2320 B ¹¹	
		Electrometric titration				I-1030-85

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Contaminant	EPA Contaminant Code	Methodology ⁹	Reference (Method Number)			
			EPA	ASTM ³	SM ⁴	USGS ⁵
Calcium	1919	EDTA titrimetric Atomic absorption; direct aspiration Inductively coupled plasma	200.7 ²	D511-93A D511-93B	3500-Ca D ⁴ 3500-Ca B ¹² 3111 B ⁴ 3120 B ¹¹	
Chloride	1017	Ion chromatography Potentiometric titration <i>Argentometric titration</i>	300.0 ⁸	D4327-947 D512-89B	4110 B ¹¹ 4500-Cl ⁻ D ¹¹ 4500-Cl ⁻ B ¹¹	
Conductivity	1064	Conductance		D1125-95A	2510 B ¹¹	
Copper ⁶	1022	Atomic absorption; furnace technique Atomic absorption; direct aspiration Inductively coupled plasma Inductively coupled plasma; mass spectrometry Atomic absorption; platform furnace	200.7 ² 200.8 ² 200.9 ²	D1688-95C D1688-95A	3113 B ⁴ 3111 B ⁴ 3120 B ¹¹	
Lead ⁶	1030	Atomic absorption; furnace technique Inductively coupled plasma; mass spectrometry Atomic absorption; platform furnace technique Differential pulse anodic stripping voltammetry	200.8 ² 200.9 ²	D3559-956D	3113 B ⁴	Method 1001 ¹⁰
pH	1925	Electrometric	150.1 ¹ 150.2 ¹	D1293-95	4500-H+ B ¹¹	
Orthophosphate (Unfiltered, no digestion or hydrolysis)	1044	Colorimetric, automated, ascorbic acid Colorimetric, ascorbic acid, single reagent Colorimetric, phosphomolybdate; Automated-segmented flow Automated discrete Ion chromatography	365.1 ⁸ 300.0 ⁷	D515-88A D4327-947	4500-P F ¹¹ 4500-P E ¹¹ 4110 B ¹¹	I-1602-85 I-2601-90 ⁸ I-2598-85
Silica	1049	Colorimetric, molybdate blue Automated-segmented flow Colorimetric Molybdosilicate Heteropoly blue Automated method for molybdate-reactive silica Inductively coupled plasma ⁶	200.7 ²	D859-95	4500-Si D ⁴ 4500-SiO ₂ C ¹² 4500-Si E 4500-SiO ₂ D ¹² 4500-Si F 4500-SiO ₂ E ¹² 3120 B ¹¹	I-1700-85 I-2700-85
Sulfate	1055	<i>Ion chromatography</i> <i>Automated methylthymol blue</i> <i>Gravimetric</i> <i>Turbidimetric</i>	300.0 ⁷ 375.2 ⁷	D4327-97 D516-90	4110 ¹¹ 4500-SO ₄ F ¹¹ 4500-SO ₄ C ¹¹ 4500-SO ₄ D ¹¹ 4500-SO ₄ E ¹¹	

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Contaminant	EPA Contaminant Code	Methodology ⁹	Reference (Method Number)			
			EPA	ASTM ³	SM-4	USGS ⁵
Temperature	1996	Thermometric			2550 B ¹¹	
Total Filterable Residue (TDS)	1930	Gravimetric			2540 C ¹¹	

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51, effective January 4, 1995. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at (800)426-4791. Documents may be inspected at EPA's Drinking Water Docket, 401 M Street SW, Washington, DC 20460 (telephone: (202)260-3027); or at the Office of Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

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

² No change.

³ Annual Book of ASTM Standards, 1994, and 1996, or 1999, Vols. 11.01 and 11.02, American Society for Testing and Materials, *International*; any year containing the cited version of the method may be used. The previous versions of D1688-95A and D1688-95C (copper), D3559-95D (lead), D1293-95 (pH), D1125-91A (conductivity), and D859-94 (silica) are also approved. These previous versions D1688-90A, C, D3559-90D, D1293-84, D1125-91A and D859-88, respectively, are located in the Annual Book of ASTM Standards, 1994, Volume 11.01. Copies may be obtained from the American Society for Testing and Materials *ASTM International*, 1010 Barr Harbor Drive, West Conshohocken, PA 19428.

⁴ 18th and 19th edition editions of Standard Methods for the Examination of Water and Wastewater, 1992 and 1995, respectively, American Public Health Association. *Either edition may be used.* Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005.

^{5 to 7} No change.

⁸ "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments, Open File Report 93-125." Available at Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Available from Information Services, U.S. Geological Survey, Federal Center, Box 25286, Denver, CO 80225-0425.

⁹ No change.

¹⁰ The description for Method 1001 is available from Palintest, Ltd., 21 Kenton Lands Road, P.O. Box 18395, Erlanger, KY 41018, or from the Hach Company, P.O. Box 389, Loveland, CO 80538.

¹¹ The 18th, 19th, and 20th editions of Standard Methods for the Examination of Water and Wastewater, 1992, 1995, and 1998, respectively, American Public Health Association. *Any edition may be used.* Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005.

¹² The 20th edition of Standard Methods for the Examination of Water and Wastewater, 1998, American Public Health Association. *Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005.*

Amend subparagraph (3) as follows:

(3) All lead and copper levels measured between the practical quantitation limit (PQL) and method detection limit (MDL) must be either reported as measured or they can be reported as one-half the PQL specified for lead and copper in 41.4(1) "g" (2) "2." 567—paragraph 83.6(7) "a" (5) "2." All levels below the lead and copper MDLs must be reported as zero.

ITEM 37. Amend subrule 41.5(1), introductory paragraph, as follows:

41.5(1) MCLs and other requirements for organic chemicals. Maximum contaminant levels for three classes of organic chemical contaminants specified in 41.5(1) "b" apply to community water systems and nontransient noncommunity water systems as specified herein. The three referenced

organic chemical classes are volatile organic chemicals (VOCs), synthetic organic chemicals (SOCs), and trihalomethanes.

The requirements also contain *analytical method requirements and monitoring requirements, best available technology (BAT) identification, and analytical method requirements* referenced in 41.5(1) "b" and "c." "e," "d," and "f," respectively. *Best available technology (BAT) for control of these organic chemical contaminants is referenced in 567—paragraph 43.3(10) "a."*

ITEM 38. Amend paragraph **41.5(1) "b"** as follows:

Amend subparagraph (1), table, as follows:

Amend the following Synthetic Organic Chemicals (SOCs) entries:

Contaminant	EPA Contaminant Code	MCL (mg/L)	Methodology ¹	Detection Limit (mg/L)
Atrazine ³	2050	0.003	505, 507, 508.1, 525.2, 551.1, Syngenta AG-625	0.0001
Carbofuran	2046	0.04	531.1, 531.2, 6610	0.0009
2,4-D ⁶ (as acids, salts, or esters)	2105	0.07	515.1, 515.2, 515.3, 515.4, 555, D5317-93	0.0001
Dalapon	2031	0.2	515.1, 515.3, 515.4, 552.1, 552.2	0.001
Dinoseb ⁶	2041	0.007	515.1, 515.2, 515.3, 515.4, 555	0.0002
Oxamyl	2036	0.2	531.1, 531.2, 6610	0.002

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Contaminant	EPA Contaminant Code	MCL (mg/L)	Methodology ¹	Detection Limit (mg/L)
Pentachlorophenol	2326	0.001	515.1, 515.2, 515.3, 515.4, 525.2, 555, D5317-93	0.00004
Picloram ^{3, 6}	2040	0.5	515.1, 515.2, 515.3, 515.4, 555, D5317-93	0.0001
2,4,5-TP ⁶ (Silvex)	2110	0.05	515.1, 515.2, 515.3, 515.4, 555, D5317-93	0.0002

* No change in this footnote.

Amend the numbered footnotes as follows:

¹ Analyses for the contaminants in this section shall be conducted using the following EPA methods or their equivalent as approved by EPA. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51, effective January 4, 1995. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street SW, EPA West, 1301 Constitution Avenue NW, Room B102, Washington, DC 20460 (telephone: (202)566-2426); or at the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

Methods from the National Technical Information Service. No change.

The following American Public Health Association (APHA) documents are available from APHA, 1015 Fifteenth Street NW, Washington, DC 20005.

Supplement to the 18th edition of Standard Methods for the Examination of Water and Wastewater, 1994, or Standard Methods for the Examination of Water and Wastewater, 19th edition, 1995, or 20th edition, 1998 (either publication any of the three editions may be used), APHA: Method 6610.

Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992, and 19th edition, 1995, or 20th edition, 1998, (either edition any of the three editions may be used), APHA: Method 6651.

The following American Society of Testing Materials (ASTM) method is available from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

Annual Book of ASTM Standards, 1996, Vol. 11.02 (or any edition published after 1993), ASTM: D5317-93.

Methods 515.3 and 549.2 are available from U.S. EPA NERL, 26 W. Martin Luther King Drive, Cincinnati, OH 45268.

Method 515.4, "Determination of Chlorinated Acids in Drinking Water by Liquid-Liquid Microextraction, Derivatization and Fast Gas Chromatography with Electron Capture Detection," Revision 1.0, April 2000, EPA 815/B-00/001, available at www.epa.gov/safewater/methods/sourcalt.html.

Method 531.2 "Measurement of n-Methylcarbamoyloximes and n-Methylcarbamates in Water by Direct Aqueous Injection HPLC with Photocolumn Derivatization," Revision 1.0, September 2001, EPA 815/B-01/002, available at www.epa.gov/safewater/methods/sourcalt.html.

Syngenta AG-625 Method, "Atrazine in Drinking Water by Immunoassay," February 2001, is available from Syngenta Crop Protection, Inc., 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419, telephone (336)632-6000.

Other required analytical test procedures germane to the conduct of these analyses are contained in Technical Notes on Drinking Water Methods, EPA-600/R-94-173, October 1994 (NTIS PB95-104766).

^{2 to 4} No change.

⁵ The TTHM MCL for surface water or influenced groundwater CWS and NTNC systems serving over 10,000 persons will be was changed to 0.080 mg/L on January 1, 2002. All remaining CWS and NTNC will be are required to comply with the 0.080 mg/L MCL on January 1, 2004. See rule 41.6(455B) for additional requirements.

⁶ Accurate determination of the chlorinated esters requires hydrolysis of the sample as described in EPA Methods 515.1, 515.2, 515.3, 515.4, and 555, and ASTM Method D5317-93.

Amend subparagraph (2) as follows:

(2) Organic chemical compliance calculations (other than total trihalomethanes). Compliance with 41.5(1)"b"(1) shall be determined based on the analytical results obtained at each sampling point. *If one sampling point is in violation of an MCL listed in 41.5(1)"b"(1), the system is in violation of the MCL. If a system fails to collect the required number of samples, compliance will be based on the total number of samples collected. If a sample result is less than the detection limit, zero will be used when calculating the running annual average. If the system is in violation of an MCL, the water supplier is required to give notice to the department in accordance with 567—subrule 42.4(1) and to notify the public as required by 567—42.1(455B).*

1. For systems which are conducting monitoring at a frequency greater than annual, compliance is determined by a running annual average of all samples taken at each sampling point. If the annual average of any sampling point is greater than the MCL, then the system is out of compliance. If the initial sample or a subsequent sample causes the annual average to be exceeded, then the system is out of compliance immediately. Any samples below the detection limit shall be calculated as zero for purposes of determining the annual average. *Systems monitoring more than once per year for VOC*

or SOC contaminants. For systems which monitor more than once per year, compliance with the MCL is determined by a running annual average of all samples collected at each sampling point.

2. ~~If monitoring is conducted annually, or less frequently, the system is out of compliance if the level of a contaminant at any sampling point is greater than the MCL. If a confirmation sample is required by the department, the determination of compliance will be based on the average of two samples. Systems monitoring annually or less frequently for VOC contaminants. Systems which monitor annually or less frequently and whose VOC sample result exceeds the MCL must begin quarterly sampling. The system will not be considered in violation of the MCL until it has completed one year of quarterly sampling. However, if any sample result will cause the running annual average to exceed the MCL at any sampling point, the system is immediately out of compliance with the MCL.~~

3. If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, the department may allow the system to give public notice to only that portion of the system which is out of compliance. *Systems monitoring annually or less frequently for SOC contaminants. Systems which monitor annually or*

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less frequently and whose SOC sample result exceeds the regulatory detection limit specified in subparagraph 41.5(1)"b"(1) must begin quarterly sampling. The system will not be considered in violation of the MCL until it has completed one year of quarterly sampling. However, if any sample result causes the running annual average to exceed the MCL at any sampling point, the system is immediately out of compliance with the MCL.

ITEM 39. Amend paragraph **41.5(1)"c,"** introductory paragraph, as follows:

c. Organic chemical monitoring requirements. Each public water system shall monitor at the time designated within each compliance period. All new systems or systems that use a new source of water must demonstrate compliance with the MCLs within the time period specified by the department. The system must also comply with the initial sampling frequencies specified by the department to ensure the system can demonstrate compliance with the MCLs. A source of water that is determined by the department to be a new source/entry point is considered to be a new source for the purposes of paragraph 41.5(1)"c." Routine and increased monitoring frequencies shall be conducted in accordance with the requirements in this paragraph.

ITEM 40. Amend **41.5(1)"c"(2)"9"** as follows:

9. VOC monitoring waiver requirements for surface water systems. Each community and nontransient noncommunity surface water system which does not detect a contaminant listed in 41.5(1)"b"(1) may apply to the department for a waiver from the requirements of 41.5(1)"c"(2)"4" after completing the initial monitoring. ~~Composite samples from a maximum of five sampling points are allowed, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL.~~ Systems meeting this criterion must be determined by the department to be nonvulnerable based on a vulnerability assessment during each compliance period. Each system receiving a waiver shall sample at the frequency specified by the department (if any).

ITEM 41. Rescind subparagraph **41.5(1)"c"(5)**, introductory paragraph, and numbered paragraphs **"1"** to **"5."**

ITEM 42. Amend numbered paragraphs **41.5(1)"c"(5)"6," "7"** and **"8"** as follows:

Renumber **41.5(1)"c"(5)"6"** as subparagraph **41.5(1)"c"(5)**.

Renumber **41.5(1)"c"(5)"7"** as subparagraph **41.5(1)"c"(6)**.

Renumber **41.5(1)"c"(5)"8"** as **41.5(1)"c"(7)** and amend renumbered **41.5(1)"c"(7)**, last bulleted paragraph, as follows:

- A system is deemed to be vulnerable for a period of three years after any positive measurement of one or more contaminants listed in 41.5(1)"b"(3) (1) except for trihalomethanes or other demonstrated disinfection byproducts.

ITEM 43. Adopt new subparagraph **41.5(1)"c"(8)** as follows:

(8) PCB analytical methodology. Analysis for PCBs shall be conducted using the methods in 41.5(1)"b"(1) and as follows:

1. Each system which monitors for PCBs shall analyze each sample using Method 505, 508, 508.1, or 525.2. Users of Method 505 may have more difficulty in achieving the required Aroclor detection limits than users of Method 508, 508.1, or 525.2.

2. If PCBs (as one of seven Aroclors) are detected in any sample analyzed using Method 505 or 508, the system shall reanalyze the sample using Method 508A to quantitate PCBs as decachlorobiphenyl.

PCB AROCLOR DETECTION LIMITS

Aroclor	Detection Limit (mg/L)
1016	0.00008
1221	0.02
1232	0.0005
1242	0.0003
1248	0.0001
1254	0.0001
1260	0.0002

3. Compliance with the PCB MCL shall be determined based upon the quantitative results of analyses using Method 508A.

ITEM 44. Rescind and reserve paragraph **41.5(1)"e."**

ITEM 45. Rescind and reserve paragraph **41.5(1)"f."**

ITEM 46. Rescind and reserve subparagraph **41.6(1)"a"(2)**.

ITEM 47. Amend subparagraph **41.6(1)"a"(3)** as follows:

(3) Compliance dates for this rule are based upon the source water type and the population served. Systems are required to comply with this rule as follows, unless otherwise noted. The department may assign an earlier monitoring period as part of the operation permit, but compliance with the maximum contaminant level is not required until the dates stated below.

1. No change.

2. Groundwater CWS and NTNC.

- Community water systems which use a groundwater source, which serve a population of 10,000 or more individuals, and which add a disinfectant or oxidant to the water in any part of the drinking water treatment process shall monitor for only total trihalomethanes in accordance with 41.6(1)"c"(1) and (4), 41.6(1)"d," 41.6(1)"e"(1) and (4), and 41.6(1)"f," until December 31, 2003. The MCL for these systems is 0.010 mg/L until December 31, 2003.

- Beginning January 1, 2004, all CWS and NTNC systems using only groundwater not under the direct influence of surface water must comply with this rule beginning January 1, 2004.

3. TNC using chlorine dioxide. TNC systems are not required to comply with this rule.

ITEM 48. Amend paragraph **41.6(1)"b"** as follows:

b. Maximum contaminant levels for disinfection byproducts. The maximum contaminant levels (MCLs) for disinfection byproducts are as follows:

Disinfection byproduct	MCL (mg/L)
Bromate	0.010
Chlorite	1.0
Haloacetic acids (HAA5)	0.060
Total trihalomethanes (TTHM)	0.080 0.10 until December 31, 2003*

* The MCL of 0.10 mg/L only applies to a CWS using groundwater sources that serves at least 10,000 people. Beginning January 1, 2004, the TTHM MCL for all CWS and NTNC systems regardless of source type and system size is 0.080 mg/L.

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ITEM 49. Amend subparagraph **41.6(1)“c”(3)** as follows:

(3) Chlorite. Community and nontransient noncommunity water systems using chlorine dioxide, for disinfection or oxidation, must conduct monitoring for chlorite. *If the system does not use chlorine dioxide on a daily basis, the system must conduct the required daily monitoring each day chlorine dioxide is used, and any required monthly monitoring during those months in which chlorine dioxide is used during any portion of the month.*

1. Routine daily monitoring. Systems must take daily samples at the entrance to the distribution system. For any daily sample that exceeds the chlorite MCL, the system must take additional samples in the distribution system the following day at the locations required by 41.6(1)“c”(3)“3,” which are in addition to the sample required at the entrance to the distribution system. *These daily entry point to the distribution system samples may be analyzed by system personnel, in accordance with 41.6(1)“d.”*

2. Routine monthly monitoring. Systems must take a three-sample set each month in the distribution system. The system must take one sample at each of the following locations: near the first customer, at a location representative of average residence time, and at a location reflecting maximum residence time in the distribution system. Any additional routine sampling must be conducted in the same manner (as three-sample sets, at the specified locations). The system may use the results of additional monitoring conducted in accordance with 41.6(1)“c”(3)“3” to meet the requirement for monitoring in this subparagraph. *41.6(1)“c”(3)“2.” These monthly distribution system samples must be analyzed by a certified laboratory using an approved ion chromatography method, in accordance with 41.6(1)“d.”*

3. Additional monitoring. On each day following a routine sample monitoring result that exceeds the chlorite MCL at the entrance to the distribution system, the system is required to take three chlorite distribution system samples at the following locations: as close to the first customer as possible, in a location representative of average residence time, and as close to the end of the distribution system as possible (reflecting maximum residence time in the distribution system). *These additional distribution system samples must be analyzed by a certified laboratory using an approved ion chromatography method, in accordance with 41.6(1)“d.”*

4. No change.

ITEM 50. Amend **41.6(1)“c”(4)“1,”** introductory paragraph, as follows:

1. Routine monitoring. Systems must monitor at the frequency indicated in the following table: *Both the TTHM and HAA5 samples must be collected as paired samples during the same time period in order for each parameter to have the same annual average period for result comparison. A paired sample is one that is collected at the same location and time and is analyzed for both TTHM and HAA5 parameters.*

ITEM 51. Amend **41.6(1)“c”(4)“2,”** second bulleted paragraph, as follows:

- The department may allow systems on increased monitoring to return to routine monitoring if TTHM annual average is less than or equal to 0.040 0.060 mg/L and HAA5 annual average is less than or equal to 0.030 0.045 mg/L.

ITEM 52. Amend subparagraph **41.6(1)“e”(2)** as follows:

(2) Bromate. Compliance must be based on a running annual arithmetic average, computed quarterly, of monthly samples (or, for months in which the system takes more than

one sample, the average of all samples taken during the month) collected by the system as prescribed by 41.6(1)“c”(2). If the average of samples covering any consecutive four-quarter period exceeds the MCL, the system is in violation of the MCL and must notify the public pursuant to ~~567—Chapter 42 567—42.1(455B)~~, in addition to reporting to the department pursuant to 567—paragraph 42.4(3)“d.” If a PWS fails to complete 12 consecutive months’ monitoring, compliance with the MCL for the last four-quarter compliance period must be based on an average of the available data.

ITEM 53. Amend subparagraph **41.6(1)“e”(3)** as follows:

(3) Chlorite. Compliance must be based on an arithmetic average of each three-sample set taken in the distribution system as prescribed by 41.6(1)“c”(3)“1” and 41.6(1)“c”(3)“2.” If the arithmetic average of any three-sample set exceeds the MCL, the system is in violation of the MCL and must notify the public pursuant to ~~567—Chapter 42 567—42.1(455B)~~, in addition to reporting to the department pursuant to 567—paragraph 42.4(3)“d.”

ITEM 54. Amend **41.6(1)“e”(4)“3”** as follows:

3. If the running annual arithmetic average of quarterly averages covering any consecutive four-quarter period exceeds the MCL, the system is in violation of the MCL and must notify the public pursuant to ~~567—Chapter 42 567—42.1(455B)~~, in addition to reporting to the department pursuant to 567—paragraph 42.4(3)“d.”

ITEM 55. Amend paragraph **41.6(1)“f,”** catchwords, as follows:

f. Reporting requirements for disinfection byproduct precursors byproducts.

ITEM 56. Rescind rule 567—41.8(455B) and adopt the following **new** rule in lieu thereof:

567—41.8(455B) Radionuclides.

41.8(1) Radionuclides.

a. Applicability.

(1) This rule applies to all community public water supplies, and specifies the radionuclide maximum contaminant levels, analytical methodology requirements, and monitoring requirements. The radionuclide reporting requirements are listed in 567—subrule 42.4(1), the public notice requirements are listed in rule 567—42.1(455B), and the best available technology is listed in 567—subparagraph 43.3(10)“b”(3). All CWSs must comply with the requirements and maximum contaminant levels for gross alpha particle activity, radium-226, radium-228, uranium, beta particle activity, and photon emitter radioactivity. Only those CWSs designated by the department to be vulnerable to man-made radioactivity contamination are required to monitor for beta particle activity and photon emitter radioactivity. To determine whether a system is vulnerable to man-made nuclear radioactivity, the department will evaluate proximity to a nuclear facility, source water, historical analytical data, ongoing surveillance data from the nuclear facility, and any other factor considered by the department to be relevant to the vulnerability determination.

(2) Compliance dates. Community water systems must comply with the MCLs listed in 41.8(1)“b”(1) beginning December 8, 2003. Compliance shall be determined in accordance with 41.8(1)“c” through 41.8(1)“f.” Compliance with the radionuclides reporting requirements is required by December 8, 2003. All CWSs must conduct initial monitoring

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to determine compliance with 41.8(1)“b”(1) by December 31, 2007.

b. Maximum contaminant levels for radionuclides.

(1) Gross alpha particle activity, radium-226, radium-228, and uranium MCLs. The following table specifies the MCLs for gross alpha particles, radium, and uranium radionuclides:

Contaminant	Maximum Contaminant Level
Gross alpha particle activity, including Radium-226 but excluding radon and uranium	15 pCi/L
Combined Radium-226 and Radium-228	5 pCi/L ¹
Uranium	30 µg/L

¹ The combined radium-226 and radium-228 value is determined by the addition of the results of the analysis for radium-226 and the analysis for radium-228.

(2) Beta particle activity and photon radioactivity MCLs.

1. The average annual concentration of beta particle and photon radioactivity from man-made radionuclides in drinking water must not produce an annual dose equivalent to the total body or any internal organ greater than 4 millirem/year.

2. Except for the radionuclides listed below, the concentration of man-made radionuclides causing 4 millirems total body or organ dose equivalents must be calculated on the basis of 2 liter per day drinking water intake, using the 168-hour data lists in “Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure,” National Bureau of Standards Handbook 69 as amended August 1963, United States Department of Commerce. If two or more radionuclides are present, the sum of their annual dose equivalent to the total body or to any organ shall not exceed 4 millirems/year.

Average Annual Concentrations Assumed to Produce a Total Body or Organ Dose of 4 mrem/year

Radionuclide	Critical Organ	Concentration
Strontium-90	Bone marrow	8 pCi/L
Tritium	Total body	20,000 pCi/L

c. Compliance determinations. Compliance with 41.8(1)“b” will be determined based on the analytical results obtained at each sampling point. If one sampling point is in violation of an MCL, the system is in violation of the MCL. If the system is in violation of an MCL, the supplier of the water is required to give notice to the department in accordance with 567—subrule 42.4(1) and to notify the public as required by 567—42.1(455B).

(1) Detection limits. For the purposes of monitoring gross alpha particle activity, radium-226, radium-228, uranium, and beta particle and photon radioactivity in drinking water, “detection limit” is defined in this subparagraph.

1. For the purpose of monitoring radioactivity concentration in drinking water, the required sensitivity of the radioanalysis is defined in terms of a detection limit. The detection limit shall be that concentration which can be counted with a precision of plus or minus 100 percent at the confidence level (1.960 sigma where sigma is the standard deviation of the net counting rate of the sample).

2. To determine compliance with 41.8(1)“b”(1), the detection limit shall not exceed the following concentrations:

Detection Limits for Gross Alpha Particle Activity, Radium-226, Radium-228, and Uranium

Contaminant	Detection Limit
Gross alpha particle activity	3 pCi/L
Radium-226	1 pCi/L
Radium-228	1 pCi/L
Uranium	Reserve

3. To determine compliance with 41.8(1)“b”(2), the detection limits shall not exceed the following concentrations:

Detection Limits for Man-Made Beta Particle and Photon Emitters

Contaminant	Detection Limit
Gross beta	4 pCi/L
Cesium-134	10 pCi/L
Iodine-131	1 pCi/L
Strontium-89	10 pCi/L
Strontium-90	2 pCi/L
Tritium	1,000 pCi/L
Other radionuclides	1/10 of the applicable limit

(2) Compliance determination.

1. For systems monitoring more than once per year (i.e., quarterly), compliance with the MCL is determined by a running annual average at each sampling point. If the average of any sampling point is greater than the MCL, the system is immediately in violation of the MCL. If any sample result causes the running annual average to exceed the MCL at any sample point, the system is immediately in violation of the MCL.

2. Systems monitoring annually or less frequently (i.e., one-, three-, six-, or nine-year frequency), and whose sample result exceeds the MCL, must revert to quarterly sampling for that contaminant during the next quarter. Systems are required to conduct quarterly monitoring only at the source/entry point at which the sample was collected and for the specific contaminant that triggered the system into the increased monitoring frequency. Systems triggered into increased monitoring will not be considered in violation of the MCL until they have completed one year of quarterly sampling. If any sample result causes the running annual average to exceed the MCL at any sample point, the system is immediately in violation of the MCL.

3. Systems must include all samples taken and analyzed under the provisions of this rule in determining compliance, even if that number is greater than the minimum required by the department.

4. If a system does not collect all required samples when compliance is based on a running annual average of quarterly samples, compliance will be based on the running average of the samples collected.

5. If a sample result is less than the detection limit, a value of zero will be used to calculate the annual average.

6. The department may invalidate results of obvious sampling or analytical errors.

7. Averaging and significant figures. To judge compliance with the maximum contaminant levels listed in 41.8(1)“b,” averages of data shall be used and shall be rounded to the same number of significant figures as the maximum contaminant level for the substance in question.

(3) The department will determine compliance or initiate enforcement action based upon analytical results or other information compiled by department staff or the department’s designee.

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(4) The department may assign additional requirements as it deems necessary to protect the public health, including public notification requirements.

d. Analytical methodology for radionuclides. Analysis for the following contaminants shall be conducted to deter-

mine compliance with 41.8(1)“b” in accordance with the methods in the following table, or equivalent methods determined in accordance with 567—41.12(455B).

(1) Radionuclide Analytical Methodology Table.

RADIONUCLIDE ANALYTICAL METHODOLOGY

Contaminant	Methodology	Reference (method or page number)								
		EPA ¹	EPA ²	EPA ³	EPA ⁴	SM ⁵	ASTM ⁶	USGS ⁷	DOE ⁸	Other
Naturally occurring:										
Gross alpha ¹¹ & beta	Evaporation	900.0	p. 1	00-01	p. 1	302, 7110B		R-1120-76		
Gross alpha ¹¹	Co-precipitation			00-02		7110C				
Radium-226	Radon emanation	903.1	p. 16	Ra-04	p. 19	305, 7500-Ra C	D 3454-97	R-1141-76	Ra-04	NY ⁹
	Radiochemical	903.0	p. 13	Ra-03		304, 7500-Ra B	D 2460-97	R-1140-76		
Radium-228	Radiochemical	904.0	p. 24	Ra-05	p. 19	7500-Ra D		R-1142-76		NY ⁹ NJ ¹⁰
Uranium ¹²	Radiochemical	908.0				7500-U B				
	Fluorometric	908.1				7500-U C	D 2907-97	R-1180-76 R-1181-76	U-04	
	Alpha spectrometry			00-07	p. 33	7500-U C	D 3972-97	R-1182-76	U-02	
	Laser phosphorimetry						D 5174-97			
Man-made:										
Radioactive Cesium	Radiochemical	901.0	p. 4			7500-Cs B	D 2459-72	R-1111-76		
	Gamma ray spectrometry	901.1			p. 92	7120	D 3649-91	R-1110-76	4.5.2.3	
Radioactive Iodine	Radiochemical	902.0	p. 6 p. 9			7500-I B 7500-I C 7500-I D	D 3649-91			
	Gamma ray spectrometry	901.1			p. 92	7120	D 4785-93		4.5.2.3	
Radioactive Strontium 89, 90	Radiochemical	905.0	p. 29	Sr-04	p. 65	303, 7500-Sr B		R-1160-76	Sr-01 Sr-02	
Tritium	Liquid scintillation	906.0	p. 34	H-02	p. 87	306, 7500-3H B	D 4107-91	R-1171-76		
Gamma emitters	Gamma ray spectrometry	901.1			p. 92	7120	D 3649-91	R-1110-76	Ga-01-R	
		902.0				7500-Cs B	D 4785-93			
		901.0				7500-I B				

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of documents 1 through 10 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at (800)426-4791. Documents may be inspected at EPA's Drinking Water Docket, EPA West, 1301 Constitution Avenue NW, Room B135, Washington, DC 20460 (telephone (202)566-2426); or at the Office of Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

¹ “Prescribed Procedures for Measurement of Radioactivity in Drinking Water,” EPA 600/4-80-032, August 1980. Available at the US Department of Commerce, NTIS, 5285 Port Royal Road, Springfield, VA 22161 (telephone (800)553-6847) PB 80-224744.

² “Interim Radiochemical Methodology for Drinking Water,” EPA 600/4-75-008(revised), March 1976. Available at NTIS, *ibid.* PB 253258.

³ “Radiochemistry Procedures Manual,” EPA 520/5-84-006, December 1987. Available at NTIS, *ibid.* PB 84-215581.

⁴ “Radiochemical Analytical Procedures for Analysis of Environmental Samples,” March 1979. Available at NTIS, *ibid.* EMSL LV 053917.

⁵ Standard Methods for the Examination of Water and Wastewater, 13th, 17th, 18th, 19th or 20th editions, 1971, 1989, 1992, 1995, 1998. Available at American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005. Methods 302, 303, 304, 305, and 306 are only in the 13th edition. Methods 7110B, 7500-Ra B, 7500-Ra C, 7500-Ra D, 7500-U B, 7500-Cs B, 7500-I B, 7500-I C, 7500-I D, 7500-Sr B, 7500-3H B are in the 17th, 18th, 19th, and 20th editions. Method 7110C is in the 18th, 19th, and 20th editions. Method 7500-U C Fluorimetric Uranium is only in the 17th edition. Method 7500-U C Alpha spectrometry is only in the 18th, 19th, and 20th editions. Method 7120 is only in the 19th and 20th editions.

⁶ Annual Book of ASTM Standards, Vol. 11.02, 1999. Any year containing the cited version of the method may be used. Available at ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

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⁷ "Methods for Determination of Radioactive Substances in Water and Fluvial Sediments," Chapter A5 in Book 5 of Techniques of Water-Resources Investigations of the United States Geological Survey, 1977. Available at US Geological Survey (USGS) Information Services, Box 25286, Federal Center, Denver, CO 80225-0425.

⁸ "EML Procedures Manual," 28th (1997) or 27th (1990) editions, Volumes 1 and 2; either edition may be used. In the 27th edition, Method Ra-04 is listed as Ra-05, and Method Ga-01-R is listed as Sect. 4.5.2.3. Available at the Environmental Measurements Laboratory, US Department of Energy (DOE), 376 Hudson Street, New York, NY 10014-3621.

⁹ "Determination of Ra-226 and Ra-228 (Ra-02)," January 1980, revised June 1982. Available at Radiological Sciences Institute Center for Laboratories and Research, New York State Department of Health, Empire State Plaza, Albany, NY 12201.

¹⁰ "Determination of Radium-228 in Drinking Water," August 1980. Available at State of New Jersey, Department of Environmental Protection, Division of Environmental Quality, Bureau of Radiation and Inorganic Analytical Services, 9 Ewing Street, Trenton, NJ 08625.

¹¹ Natural uranium and thorium-230 are approved as gross alpha calibration standards for gross alpha with co-precipitation and evaporation methods; americium-241 is approved with co-precipitation methods.

¹² If uranium (U) is determined by mass, a 0.67 pCi/ug of uranium conversion factor must be used. This conservative factor is based on the 1:1 activity ratio of U-234 to U-238 that is characteristic of naturally occurring uranium.

(2) Method references for other radionuclides. When the identification and measurement of radionuclides other than those listed in 41.8(1)"b" are required, the following references are to be used, except in cases where alternative methods have been approved in accordance with 567—41.12(455B).

1. "Procedures for Radiochemical Analysis of Nuclear Reactor Aqueous Solutions," H. L. Krieger and S. Gold, EPA-R4-73-014, Environmental Protection Agency, Cincinnati, Ohio 45268 (May 1973).

2. "HASL Procedure Manual," edited by John H. Harley, HASL 300, ERDA Health and Safety Laboratory, New York, NY (1973).

e. Monitoring requirements for gross alpha, radium-226, radium-228, and uranium.

(1) General requirements.

1. Monitoring frequency and confirmation samples. The department may require more frequent monitoring than specified in this paragraph. The department may require confirmation samples at its discretion. The results of the initial and confirmation samples will be averaged for use in compliance determinations.

2. Monitoring period. Each PWS shall monitor during the time period designated by the department in the operation permit.

(2) Applicability and sampling locations.

1. Existing systems and sources. All existing CWSs must sample at every entry point to the distribution system that is representative of all sources being used under normal operating conditions. The system must take each sample at the same source/entry sampling point, unless conditions make another alternate sampling point more representative of each source, or the department has designated a distribution system location, in accordance with 41.8(1)"e"(3)"4." The department must approve any alternate sampling point for radionuclides.

2. New systems and sources. All new CWSs or CWSs that use a new source of water must begin to conduct initial monitoring for the new system or source within the first calendar quarter after initiating use of the system or source. More frequent monitoring must be conducted by the CWS when required by the department, in the event of possible contamination or when changes in the distribution system or treatment processes occur which may increase the concentration of radioactivity in finished water.

(3) Initial monitoring. Systems must conduct initial monitoring for gross alpha particle activity, radium-226, radium-228, and uranium as follows. If the average of the initial monitoring results for a source/entry point is above the MCL, the system must collect and analyze quarterly samples at that source/entry point until the system has results from four consecutive quarters that are at or below the MCL, unless the system enters into another schedule as part of a formal compliance agreement with the department.

1. Systems without historical monitoring data. Systems without historical monitoring data must collect four consecutive quarterly samples at all source/entry sampling points before December 31, 2007. The department may waive the final two quarters of initial monitoring from a source/entry point if the results of the samples from the previous two quarters are below the detection limit.

2. Systems with historical monitoring data and one source/entry point. Systems with only one source/entry point may use historical monitoring data collected between January 1, 2000, and December 31, 2003, from either the representative point in the distribution system or the source/entry point to satisfy the initial monitoring requirement.

3. Systems with historical source/entry point monitoring data and multiple source/entry points. Systems with multiple source/entry points that also have appropriate historical monitoring data for each source/entry point may use the monitoring data collected between January 1, 2000, and December 31, 2003, to satisfy the initial monitoring requirement.

4. Systems with historical distribution system monitoring data and multiple source/entry points. Systems with appropriate historical data for a representative point in the distribution system and multiple source/entry points may use the monitoring data collected between January 1, 2000, and December 31, 2003, provided that the department determines that the historical data satisfactorily demonstrates that each source/entry point is expected to be in compliance based upon the historical data and reasonable assumptions about the variability of contaminant levels between source/entry points. The department must make a written finding indicating how the data conforms to these requirements, in order for the data to satisfy the initial monitoring requirements.

(4) Reduced monitoring. The department may allow a CWS to reduce the future frequency of monitoring from once every three years to once every six or nine years at each source/entry point, based on the following criteria. The samples collected during the reduced monitoring period must be used to determine the monitoring frequency for subsequent monitoring periods (e.g., if a system's source/entry point is on a nine-year frequency, and the sample result is above half of the MCL, then the next monitoring frequency for that source/entry point is three years). If a system has a monitoring result that exceeds the MCL while on reduced monitoring, the system must collect and analyze quarterly samples at that source/entry point until the system has results from four consecutive quarters that are below the MCL, unless the system enters into another schedule as part of a formal compliance agreement with the department.

1. Nine-year frequency. If the average of the initial monitoring results for each contaminant is below the detection limit specified in 41.8(1)"c"(1)"2," the system must collect and analyze for that contaminant using at least one sample at that source/entry point every nine years.

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2. Six-year frequency. If the average of the initial monitoring results for gross alpha particle activity, uranium, and combined radium-226 and radium-228 is above the detection limit and at or below half the MCL for that contaminant, the system must collect and analyze for that contaminant using at least one sample at that source/entry point every six years. The analytical results for radium-226 and radium-228 must be added together to yield the combined result.

3. Three-year frequency. If the average of the initial monitoring results for gross alpha particle activity, uranium, and combined radium-226 and radium-228 is above half of the MCL and at or below the MCL for that contaminant, the system must collect and analyze for that contaminant using at least one sample at that source/entry point every three years. The analytical results for radium-226 and radium-228 must be added together to yield the combined result.

(5) Composite samples. To fulfill quarterly monitoring requirements for gross alpha particle activity, radium-226, radium-228, or uranium, a system may composite up to four consecutive quarterly samples from a single entry point if analysis is done within one year of the first sample. The analytical results from the composited samples will be considered by the department as the average analytical result to determine compliance with the MCLs and to determine the future monitoring frequency. If the analytical result from the composited sample is greater than half of the MCL, the department may require additional quarterly samples from the system before the system will be allowed to sample under a reduced monitoring schedule.

(6) Data substitution using gross alpha particle activity results.

1. A gross alpha particle activity measurement may be substituted for the required uranium measurement provided that the measured gross alpha particle activity does not exceed 15 pCi/L.

2. The gross alpha particle activity measurement shall have a confidence interval of 95 percent (1.65 sigma, where sigma is the standard deviation of the net counting rate of the sample) for uranium. When a system uses a gross alpha particle activity measurement in lieu of a uranium measurement, the gross alpha particle activity analytical result will be used to determine the future monitoring frequency for uranium. If the gross alpha particle activity result is less than the detection limit, half the detection limit will be used to determine compliance and the future monitoring frequency.

f. Monitoring requirements for beta particle and photon emitters. To determine compliance with the maximum contaminant levels in 41.8(1)"b"(2) for beta particle and photon radioactivity, a system must monitor at a frequency specified in 41.8(1)"f."

(1) General requirements.

1. Monitoring frequency and confirmation samples. The department may require more frequent monitoring than specified in 41.8(1)"f." The department may require confirmation samples at its discretion. The results of the initial and confirmation samples will be averaged for use in compliance determinations.

2. Monitoring period. Each PWS shall monitor during the time period designated by the department in the operation permit.

(2) Systems designated by the department as vulnerable to man-made radioactivity.

1. Initial monitoring. Systems that have been determined by the department to be vulnerable to man-made radioactivity must collect quarterly samples for beta emitters and annual samples for tritium and strontium-90 at each entry

point to the distribution system, beginning within one quarter after being notified by the department of this requirement. Systems already required to conduct beta particle and photon radioactivity monitoring must continue to sample until the department removes the monitoring requirement.

2. Reduced monitoring. The department may reduce the frequency of monitoring at that sampling point to once every three years, if the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity at a source/entry point has a running annual average (computed quarterly) of less than or equal to 50 pCi/L (screening level). Systems must collect all of the samples required in 41.8(1)"f"(2)"1" during the reduced monitoring period.

3. Data substitution. For a system in the vicinity of a nuclear facility, the department may allow the system to utilize environmental surveillance data collected by the nuclear facility in lieu of monitoring at the system's source/entry point(s), where the department determines such data is applicable to a particular water system. In the event that there is a release from a nuclear facility, systems which are using surveillance data must begin monitoring at the system's source/entry point(s) in accordance with 41.8(1)"f"(2).

(3) Systems determined to utilize waters contaminated by effluents from nuclear facilities.

1. Initial monitoring. Systems designated by the department as utilizing water contaminated by effluents from nuclear facilities must sample for beta particle and photon radioactivity. Systems must collect quarterly samples for beta emitters and iodine-131 and annual samples for tritium and strontium-90 at each entry point to the distribution system, beginning within one quarter after being notified by the department. Systems already designated by the department as systems using waters contaminated by effluents from nuclear facilities must continue to sample until the department removes the sampling requirement.

- Gross beta particle activity. Quarterly monitoring for gross beta particle activity shall be based on the analysis of monthly samples or the analysis of a composite of three monthly samples. The former is recommended.

- Iodine-131. A composite of five consecutive daily samples shall be analyzed once each quarter for iodine-131. The department may require more frequent monitoring when iodine-131 is identified in the finished water.

- Strontium-90 and tritium. Annual monitoring for strontium-90 and tritium shall be conducted by means of the analysis of a composite of four consecutive quarterly samples or analysis of four quarterly samples. The latter procedure is recommended.

2. Reduced monitoring. If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity at a sampling point has a running annual average (computed quarterly) less than or equal to 15 pCi/L, the department may reduce the frequency of monitoring at that sampling point to every three years. Systems must collect all samples required in 41.8(1)"f"(3) during the reduced monitoring period.

3. Data substitution. For systems in the vicinity of a nuclear facility, the department may allow the CWS to utilize environmental surveillance data collected by the nuclear facility in lieu of monitoring at the system's entry point(s), where the department determines such data is applicable to a particular water system. In the event that there is a release from a nuclear facility, systems which are using surveillance data must begin monitoring at the CWS source/entry point in accordance with 41.8(1)"f"(2)"1."

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(4) Monitoring frequency waiver. A CWS designated by the department to monitor for beta particle and photon radioactivity cannot apply to the department for a waiver from the monitoring frequencies specified in 41.8(1)"f"(2) or (3).

(5) Community water systems may analyze for naturally occurring potassium-40 beta particle activity from the same or an equivalent sample used for the gross beta particle activity analysis. Systems are allowed to subtract the potassium-40 beta particle activity value from the total gross beta particle activity value to determine if the screening level is exceeded. The potassium-40 beta particle activity must be calculated by multiplying elemental potassium concentrations (in mg/L) by a factor of 0.82.

(6) If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity exceeds the screening level, an analysis of the sample must be performed to identify the major radioactive constituents present in the sample, and the appropriate doses must be calculated and summed to determine compliance with 41.8(1)"b"(2)"1," using the formula in 41.8(1)"b"(2)"2." Doses must also be calculated and combined for measured levels of tritium and strontium to determine compliance.

(7) Monitoring after an MCL violation. Systems must monitor monthly at the sampling point(s) which exceed the maximum contaminant level in 41.8(1)"b"(2) beginning the month after the exceedance occurs. Systems must continue monthly monitoring until the system has established, by a rolling average of three monthly samples, that the MCL is being met. Systems that establish that the MCL is being met must return to quarterly monitoring until they meet the requirements set forth in 41.8(1)"f"(2)"3" or 41.8(1)"f"(3)"1," first bulleted paragraph.

41.8(2) Reserved.

ITEM 57. Rescind and reserve rule **567—41.9(455B)**.

ITEM 58. Rescind rule **567—41.11(455B)** and adopt the following **new** rule in lieu thereof:

567—41.11(455B) Special monitoring.

41.11(1) Special monitoring for sodium. Suppliers of water for community public water systems shall collect and have analyzed one sample per source or plant, for the purpose of determining the sodium concentration in the distribution system. Systems utilizing multiple wells that draw raw water

from a single aquifer may, with departmental approval, be considered as one source for determining the minimum number of samples to be collected. Sampling frequency and approved analytical methods are as follows:

a. Surface water systems. Systems utilizing a surface water source, in whole or in part, shall monitor for sodium at least once annually at the entry point to the distribution system.

b. Groundwater systems. Systems utilizing groundwater sources shall monitor at least once every three years at the entry point to the distribution system.

c. Increased monitoring. Suppliers may be required to monitor more frequently where sodium levels are variable or if certain types of treatment are used, such as cation exchange softening.

d. Analytical methodology. Analyses for sodium shall be performed in accordance with 41.3(1)"e"(1).

e. Reporting. The sodium level shall be reported to the public by at least one of the following methods:

(1) The community public water supply shall notify the appropriate local public health officials of the sodium levels by written notice by direct mail within three months of receipt of the analytical results. A copy of each notice required by this subrule shall be sent to the department within ten days of its issuance.

(2) In lieu of the reporting requirement of 41.11(1)"e"(1), the community public water supply shall include the sodium level in its annual consumer confidence report, pursuant to 567—paragraph 42.3(3)"c"(1)"12."

f. CWSs using cation exchange treatment. Community water systems which utilize cation exchange treatment are required to collect one sodium sample of the finished water per year after all treatment. Analysis and reporting must be done in accordance with 41.11(1)"d" and "e."

41.11(2) Special monitoring for ammonia. Ammonia in the groundwater is a precursor to the development of nitrite and nitrate in a drinking water system. Both nitrite and nitrate are contaminants with acute health effects. This subrule lists the ammonia analytical methodology, sample preservation requirements, and holding times to be used for drinking water samples.

a. Analytical methodology. Analyses for ammonia shall be performed in accordance with the following methodology, with a detection limit of 0.1 mg/L ammonia as N:

Methodology	EPA ¹	Standard Methods (20th edition)	ASTM	USGS ²	Other
Manual distillation at pH 9.5 ⁴ , followed by:	350.2	4500-NH3 B			973.49 ³
Titration	350.2	4500-NH3 C			
Manual electrode	350.3	4500-NH3 D or E	D1426-93(B)		
Automated phenate	350.1	4500-NH3 G		I-4523-85	
Automated electrode					See note ⁵

¹ "Methods for Chemical Analysis of Water and Wastes," Environmental Protection Agency, EPA-600/4-79-020, Revised March 1983 and 1979 where applicable.

² Fishman, M.J., et al., "Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments," U.S. Department of the Interior, Techniques of Water—Resource Investigations of the U.S. Geological Survey, Denver, CO, Revised 1989, unless otherwise stated.

³ "Official Methods of Analysis of the Association of Official Analytical Chemists," 15th edition, 1990.

⁴ Manual distillation is not required if the samples are very low in turbidity; however, manual distillation should be used whenever matrix interferences could be present in the sample, and will be required to resolve any controversies.

⁵ Ammonia, Automated Electrode Method, Industrial Method Number 379-75 WE, dated February 19, 1976, Bran & Luebbe (Technicon) Auto Analyzer II Bran & Luebbe Analyzing Technologies, Inc., Elmsford, NY 10523.

b. Sample preservation and holding time. The system must collect a 500 mL grab sample into a plastic or glass bottle. The sample must be acidified at the time of collection to a pH of less than 2 by the addition of sulfuric acid (H₂SO₄) and refrigerated at 4 degrees Celsius. The sample must be ana-

lyzed within 28 days. If the sample is analyzed within 24 hours of collection, the sample acidification is not required.

ITEM 59. Rescind rule **567—42.1(455B)** and adopt the following **new** rule in lieu thereof:

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567—42.1(455B) Public notification.

42.1(1) Applicability. Each owner or operator of a public water system must give notice for all violations of public drinking water rules and for other situations, as listed in this subrule. The term “violations” includes violations of, or failure to comply with, the maximum contaminant level, maximum residual disinfection level, treatment technique, monitoring requirements, and testing procedures in 567—Chapters 40 through 43. The term “other situations” includes all situations determined by the department to require a public notice, such as a waterborne disease outbreak or other waterborne emergency; exceedance of the nitrate MCL by noncommunity systems where granted permission by the department under 567—paragraph 41.3(1)“a”; exceedance of fluoride level over 2.0 mg/L; availability of unregulated contaminant monitoring data in accordance with CFR Title 40, Part 141.40; failure to meet the terms of a compliance schedule; exceedance of a health advisory as determined by the department; failure to comply with the public notification requirements, public education requirements, or consumer confidence report requirements; failure to meet the terms of an administrative or court order; failure to meet the data and other reporting requirements; failure to retain a certified operator in accordance with 567—subrule 43.1(5); and any other situation where the department determines public notification is needed. Public notification is not required for ammonia monitoring conducted pursuant to 567—subrule 41.11(2).

a. Types of public notice. Public notice requirements are divided into three tiers, to take into account the seriousness of the violation or situation and of any potential adverse health effects that may be involved. The public notice requirements for each violation or situation are determined by the tier to which it is assigned.

(1) Tier 1 public notice is required for all drinking water violations and situations with significant potential to have serious adverse effects on human health as a result of short-term exposure.

(2) Tier 2 public notice is required for all other drinking water violations and situations with potential to have serious adverse effects on human health.

(3) Tier 3 public notice is required for all other drinking water violations and situations not included in Tier 1 or Tier 2.

b. Notification. Each public water system must provide public notice to persons served by the water system, in accordance with this rule. A copy of the notice must also be sent to the department, in accordance with the requirements under paragraph 42.4(1)“c.”

(1) Consecutive systems. Public water systems that sell or otherwise provide drinking water to other public water systems (i.e., to consecutive systems) are required to give public notice to the owner or operator of the consecutive system. The consecutive system is responsible for providing public notice to the persons it serves, and must meet the appropriate tier requirements for the violation.

(2) Systems with multiple physically or hydraulically isolated distribution systems. If a public water system has a violation in a portion of the distribution system that is physically or hydraulically isolated from other parts of the distribution system, the department may allow the system to limit distribution of the public notice only to persons served by that portion of the system which is out of compliance. Permission by the department to limit distribution of the notice must be granted in writing.

42.1(2) Tier 1 public notice requirements.

a. Violations and situations which require Tier 1 notice. The following types of violations or situations require Tier 1 public notice:

(1) Violation of the MCL for total coliforms when fecal coliform or E. coli are present in the water distribution system, as specified in 567—paragraph 41.2(1)“b.”

(2) Failure by the water system to test for fecal coliforms or E. coli when any repeat sample tests positive for coliform, as specified in 567—subparagraph 41.2(1)“c”(4).

(3) Violation of the MCL for nitrate or nitrite, as defined in 567—subparagraph 41.3(1)“b”(1).

(4) Failure by the water system to collect a confirmation sample within 24 hours of the system’s receipt of the first sample result showing an exceedance of the nitrate or nitrite MCL, when directed by the department, as specified in 567—paragraph 41.3(1)“c”(7)“2.”

(5) Exceedance of the nitrate MCL by noncommunity water systems, where permitted to exceed the MCL by the department under 567—paragraph 41.3(1)“a,” as required under 42.1(7)“c.”

(6) Violation of the MRDL for chlorine dioxide when one or more samples, taken in the distribution system on the day following an exceedance of the MRDL in the sample collected at the entrance to the distribution system, exceeds the MRDL, as defined in 567—paragraph 43.6(1)“b.”

(7) Failure by the water system to collect the required chlorine dioxide samples in the distribution system on the day following an exceedance of the MRDL in the sample collected at the entrance to the distribution system.

(8) Violation of the treatment technique requirement by a surface water or influenced groundwater public water system resulting from a single exceedance of the maximum allowable turbidity limit, as specified in rule 567—43.5(455B), 43.9(455B), or 43.10(455B), where the department determines after consultation with the system that a Tier 1 notice is required, or where the consultation with the department does not take place within 24 hours after the system learns of the violation.

(9) Occurrence of a waterborne disease outbreak, as defined in rule 567—40.2(455B), or other waterborne emergency, such as a failure or significant interruption in key water treatment processes, a natural disaster that disrupts the water supply or distribution system, or a chemical spill or unexpected loading of possible pathogens into the source water that significantly increases the potential for drinking water contamination.

(10) Other violations or situations with significant potential to have serious adverse effects on human health as a result of short-term exposure, as determined by the department either in its rules or on a case-by-case basis.

b. Timing of Tier 1 public notice. Public water systems must:

(1) Provide a public notice as soon as practical but no later than 24 hours after the system learns of the violation;

(2) Initiate consultation with the department as soon as practical, but no later than 24 hours after the system learns of the violation or situation, to determine additional public notice requirements. For consultation with department staff after normal business hours, the system should contact the department via the Emergency Response Hotline telephone number (515)281-8694; and

(3) Comply with any additional public notification requirements, including any repeat notices or direction on the duration of the posted notices, that are established as a result of the consultation with the department. Such requirements may include the timing, form, manner, frequency, and con-

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tent of repeat notices (if any) and other actions designed to reach all persons served. All NTNCs must notify the parent or legal guardian of each child under 18 years of age and of any nursing home resident of the Tier 1 violation as soon as possible and within 72 hours, including the information required in the public notice under subrule 42.1(5).

c. Form and manner of Tier 1 public notice. Public water systems must provide the notice within 24 hours in a form and manner reasonably calculated to reach all persons served. The form and manner used by the public water system must fit the specific situation, and must be designed to reach residential, transient, and nontransient users of the water system. In order to reach all persons served, water systems are to use, at a minimum, one or more of the following forms of delivery. The department may require that multiple forms of notification be used in a specific situation.

- (1) Appropriate broadcast media, such as radio or television;
- (2) Posting of the notice in conspicuous locations throughout the area served by the water system;
- (3) Hand delivery of the notice to persons served by the water system; or
- (4) Another delivery method approved in writing by the department.

42.1(3) Tier 2 public notice requirements.

a. Violations and situations which require Tier 2 notice. The following types of violations or situations require Tier 2 public notice:

- (1) All violations of the MCL, MRDL, and treatment technique requirements, except where a Tier 1 notice is required under subrule 42.1(2);
- (2) Violations of the monitoring and testing procedure requirements, where the department determines that a Tier 2 rather than a Tier 3 public notice is required, taking into account potential health impacts and persistence of the violation;
- (3) Failure to comply with the requirements of any compliance schedule prescribed in an operation permit, administrative order, or court order pursuant to 567—subrule 43.2(5); and
- (4) Failure to comply with a health advisory as determined by the department.

b. Timing of Tier 2 public notice. Public water systems must:

- (1) Provide the initial public notice as soon as practical, but no later than 30 days after the system learns of the violation. If the public notice is posted, the notice must remain in place for as long as the violation or situation persists, but in no case for less than 7 days, even if the violation or situation is resolved. The department may allow additional time for the initial notice of up to three months from the date the system learns of the violation; however, such an extension must be on a case-by-case basis and be made in writing by the department.
- (2) The public water system must repeat the notice every three months as long as the violation or situation persists, unless the department determines that appropriate circumstances warrant a different repeat frequency. If the department determines that a repeat notice frequency of longer than every three months is allowed, that decision must be made in writing by the department. In no circumstance may the repeat notice be given less frequently than once per year. Repeat notices for a total coliform bacteria MCL violation or a turbidity treatment technique violation must be every three months or more frequent.

(3) A public water system using surface water or influenced groundwater with a treatment technique violation resulting from a single exceedance of the maximum allowable turbidity limit pursuant to rule 567—43.5(455B) or 567—43.9(455B) must consult with the department as soon as practical, but no later than 24 hours after the public water system learns of the violation, to determine whether a Tier 1 or Tier 2 public notice is required to protect public health. If the consultation does not occur within the 24-hour period, the public water system must distribute a Tier 1 notice of the violation within the next 24 hours, or no later than 48 hours after the system learns of the violation, following the requirements of paragraphs 42.1(2)“b” and 42.1(2)“c.”

c. Form and manner of Tier 2 public notice. Public water systems must provide the initial public notice and any repeat notices in a form and manner that is reasonably calculated to reach persons served in the required time period. The form and manner of the public notice may vary based on the specific situation and type of public water system, but it must at a minimum meet the following requirements:

(1) Community water systems must provide notice by the following methods, unless directed otherwise in writing by the department:

1. Mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system; and
2. Any other method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by mail or direct delivery. Such persons may include those who do not pay water bills or do not have service connection addresses, such as house renters, apartment dwellers, university students, nursing home patients, or prison inmates. Other methods may include:
 - Publication in a local newspaper;
 - Delivery of multiple copies for distribution by customers that provide their drinking water to others, such as apartment building owners or large private employers;
 - Posting in public places served by the system or on the Internet; or
 - Delivery of the notice to community organizations.

(2) Noncommunity water systems (TNC and NTNC) must provide notice by the following methods, unless directed otherwise in writing by the department:

1. Posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection (where known); and
2. Any other method reasonably calculated to reach other persons served by the system who would not normally be reached by posting, mail, or direct delivery. Such persons may include those served who may not see a posted notice because the posted notice is not in a location they routinely visit. Other methods may include:
 - Publication in a local newspaper or newsletter distribution to customers;
 - Use of electronic mail (E-mail) to notify employees or students; or
 - Delivery of multiple copies in central locations, such as community centers.

3. In addition to the requirements in 42.1(3)“c”(2)“1” and “2,” nontransient noncommunity public water systems that serve children under 18 years of age, such as child care facilities, schools, and hospitals, or nursing home residents, including elder care facilities, shall provide the public notice in writing to the parent or legal guardian of each person within the time period specified by the department. The content

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of the public notice must meet the requirements of subrule 42.1(5).

42.1(4) Tier 3 public notice requirements.

a. Violations and situations which require Tier 3 notice. The following types of violations or situations require Tier 3 public notice:

(1) Monitoring violations under 567—Chapters 41, 42, and 43, except where a Tier 1 notice is required under subrule 42.1(2) or where the department determines that a Tier 2 notice is required;

(2) Failure to comply with a testing procedure established in 567—Chapters 41, 42, and 43, except where at Tier 1 notice is required under subrule 42.1(2) or where the department determines that a Tier 2 notice is required;

(3) Availability of unregulated contaminant monitoring results, as required of certain public water supply systems by CFR Title 40, Part 141.40, as required under paragraph 42.1(7)“a”;

(4) Exceedance of the fluoride level of 2.0 mg/L and not exceeding the MCL of 4.0 mg/L, as required under paragraph 42.1(7)“b”;

(5) Failure to report data or analytical results required under 567—Chapters 41, 42, and 43 to the department;

(6) Failure to meet the requirements of this chapter for public notification, public education, or the development and distribution of the Consumer Confidence Report;

(7) Failure to retain a certified operator in accordance with 567—subrule 43.1(5) and the department determines that public notification is required; and

(8) Any other situation where the department determines public notification is needed.

b. Timing of Tier 3 public notice.

(1) Initial notice.

1. For violations or situations listed in subparagraphs 42.1(4)“a”(1), (2), (5), and (6), public water systems must provide the initial public notice within 12 months after the public water system learns of the violation or situation. If the violation pertains to a contaminant that could have acute health effects as determined by the department, such as coliform bacteria, nitrate, nitrite, or turbidity, the initial public notice must be provided within 3 months. If the public notice is posted, the notice must remain in place for as long as the violation or other situation persists, but in no case less than seven days, even if the violation or situation is resolved.

2. For availability of unregulated contaminant monitoring results pursuant to subparagraph 42.1(4)“a”(3), the system must provide the initial public notice within 12 months of receiving the unregulated contaminant monitoring results.

3. For subparagraphs 42.1(4)“a”(4), (7), and (8), the timing of the initial notice is at the discretion of the department, but the notice must be made within 12 months from the violation or situation.

(2) Repeat notice.

1. For violations or situations listed in subparagraphs 42.1(4)“a”(1), (2), (4), (5), and (6), public water systems must repeat the public notice every 12 months in which the violation or situation persists. If the violation pertains to a contaminant that could have acute health effects, such as coliform bacteria, nitrate, nitrite, or turbidity, the system must repeat the public notice every 3 months in which the violation or situation persists. If the public notice is posted, the notice must remain in place for as long as the violation or other situation persists, but in no case less than seven days, even if the violation or situation is resolved.

2. For availability of unregulated contaminant monitoring results pursuant to subparagraph 42.1(4)“a”(3), the sys-

tem is not required to repeat the public notice, once the initial public notice requirement has been met.

3. For subparagraphs 42.1(4)“a”(4), (7), and (8), the requirement for and timing of the repeat notice is at the discretion of the department and, if required, the notice must be made within 12 months from the initial notice.

c. Form and manner of Tier 3 public notice. Public water systems must provide the initial notice and any repeat notices in a form and manner that is reasonably calculated to reach persons served in the required time period. The form and manner of the public notice may vary based on the specific situation and type of water system, but it must at a minimum meet the following requirements:

(1) Community water systems. Unless directed otherwise in writing by the department, community water systems must provide notice by:

1. Mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system; and

2. Any other method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by mail or direct delivery notice. Such persons may include those who do not pay water bills or do not have service connection addresses, such as house renters, apartment dwellers, university students, nursing home patients, or prison inmates. Other methods may include:

- Publication in a local newspaper;
- Delivery of multiple copies for distribution by customers that provide their drinking water to others, such as apartment building owners or large private employers;
- Posting in public places or on the Internet; or
- Delivery of the notice to community organizations.

3. Use of the Consumer Confidence Report for initial and repeat notices. For community water systems, the Consumer Confidence Report (CCR) required under 567—42.3(455B) may be used as a vehicle for the initial Tier 3 public notice and all required repeat notices, as long as:

- The CCR is provided to persons served within the time frames specified in 42.1(4)“b”;
- The Tier 3 notice contained in the CCR follows the content requirements under 42.1(5); and
- The CCR is distributed following the delivery requirements under 42.1(4)“c”(1) and (2).

(2) Noncommunity systems (TNC and NTNC). Unless directed otherwise in writing by the department, noncommunity water systems must provide notice by:

1. Posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection (where known); and

2. Any other method reasonably calculated to reach other persons served by the system, if they would not normally be reached by the posted, mailed, or delivered notice. Such persons may include those who may not see a posted notice because the notice is not in a location they routinely visit. Other methods may include:

- Publication in a local newspaper or newsletter distributed to employees;
- Use of electronic mail (E-mail) to notify employees or students; or
- Delivery of multiple copies in central locations, such as community centers.

42.1(5) Content of the public notice.

a. Required public notice elements. Each public notice must include the following elements:

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(1) A description of the violation or situation, including the contaminant(s) of concern and, as applicable, the contaminant level(s);

(2) When the violation or situation occurred;

(3) Any potential adverse health effects from the violation or situation, including the standard language under subparagraphs 42.1(5)“c”(1) or (2), whichever is applicable;

(4) The population at risk, including subpopulations particularly vulnerable if exposed to the contaminant in their drinking water;

(5) Whether alternative water supplies or bottled water should be used, or require a boil-water order;

(6) What actions consumers should take, including when they should seek medical help, if known;

(7) What the system is doing to correct the violation or situation;

(8) When the water system expects to return to compliance or resolve the situation;

(9) The name, business address, and telephone number of the water system owner, operator, or designee of the public water system as a source of additional information concerning the notice; and

(10) A statement to encourage the notice recipient to distribute the public notice to other persons served, using the standard language under subparagraph 42.1(5)“c”(3), where applicable.

b. Appearance and presentation of the public notice.

(1) Each public notice must:

1. Be displayed in a conspicuous way when printed or posted;

2. Not contain overly technical language or very small print;

3. Not be formatted in a way that defeats the purpose of the notice; and

4. Not contain language that nullifies the purpose of the notice.

(2) Each public notice must comply with multilingual requirements, as follows:

1. For public water systems serving a large proportion of non-English speaking consumers, as determined by the department, the public notice must contain information in the appropriate language(s) about the importance of the notice. Alternately, the public notice must contain a telephone number or address where persons served may contact the water system to obtain a translated copy of the notice or to request assistance in the appropriate language.

2. In cases where the department has not determined what constitutes a large proportion of non-English speaking consumers, the public water system must include in the public notice the same information as in 42.1(5)“b”(2)“1,” where appropriate, to reach a large proportion of non-English speaking persons served by the water system.

c. Standard language requirements. Public water systems are required to include the following standard language in their public notice:

(1) Standard language about health effects for MCL violations, MRDL violations, or treatment technique violations. Public water systems must include in each public notice the language about health effects specified in Appendix A for the specific contaminant, disinfectant residual, or treatment technique that incurred the violation.

(2) Standard language for monitoring and testing procedure violations. Public water systems must include the following language in their notice, including the bracketed language necessary to complete the notice, for all monitoring and testing procedure violations:

We are required to monitor your drinking water for specific contaminants on a regular basis. Results of regular monitoring are an indicator of whether or not your drinking water meets health standards. During [compliance period], we [use either the phrase “did not monitor or test” or “did not complete all monitoring or testing,” whichever is more applicable] for [contaminant(s)], and therefore cannot be sure of the quality of your drinking water during that time.

(3) Standard language to encourage the distribution of the public notice to all persons served. Public water systems must include in their notice the following language, where applicable:

Please share this information with all the other people who drink this water, especially those who may not have received this notice directly, such as people in apartments, nursing homes, schools, and businesses. You can do this by posting this notice in a public place or distributing copies by hand or mail.

42.1(6) Notice to new billing units or new customers.

a. Community water systems. Community water systems must give a copy of the most recent public notice for any continuing violation or other ongoing situations requiring a public notice to all new billing units or new customers prior to or at the time service begins.

b. Noncommunity water systems. Noncommunity water systems must continuously post the public notice in conspicuous locations in order to inform new consumers of any continuing violation or other situation requiring a public notice for as long as the violation or other situation persists.

42.1(7) Special notices.

a. Availability of unregulated contaminant monitoring results.

(1) Applicability. The owner or operator of a community water system or nontransient noncommunity water system required to monitor under the federal unregulated contaminant monitoring rule must notify persons served by the system of the availability of the results of such sampling no later than 12 months after the monitoring results are known.

(2) Form and manner of notice. The form and manner of the public notice must follow the requirements for a Tier 3 public notice prescribed in paragraph 42.1(4)“c.” The notice must also identify a person and provide the telephone number to contact for information on the monitoring results.

b. Fluoride level between 2.0 and 4.0 mg/L at community or nontransient noncommunity water systems.

(1) Applicability. Community and nontransient noncommunity water systems that exceed the fluoride level of 2.0 mg/L as determined by the last single sample taken in accordance with 567—paragraph 41.3(1)“c” but do not exceed the MCL of 4.0 mg/L, must provide the public notice in subparagraph 42.1(7)“b”(5) to persons served. If the nontransient noncommunity public water system is a school or child care facility that serves children under nine years of age, the public water system shall provide the public notice in writing to the legal guardians of each child within the time period specified by the department.

(2) Initial notice. Public notice must be provided as soon as practical but no later than three months from the day the water system learns of the exceedance. A copy of the notice must also be sent to all new billing units and new customers at the time service begins and to the Public Health Dental Director, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

(3) Repeat notice. The public water system must repeat the notice at least every three months for as long as the fluo-

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ride level exceeds 2.0 mg/L. If the public notice is posted, the notice must remain in place for as long as the fluoride level exceeds 2.0 mg/L, but in no case less than seven days (even if the exceedance is eliminated). The department may require the repeat notice to be conducted more frequently.

(4) Form and manner of notice. The form and manner of the public notice, including repeat notices, must follow the requirements for a Tier 3 public notice in paragraph 42.1(4)“c.”

(5) Mandatory language. The notice must contain the following language, including the bracketed language necessary to complete the notice:

This is an alert about your drinking water and a cosmetic dental problem that might affect children under nine years of age. At low levels, fluoride can help prevent cavities, but children drinking water containing more than 2 milligrams per liter (mg/L) of fluoride may develop cosmetic discoloration of their permanent teeth, called dental fluorosis. The drinking water provided by your public water system [PWS name] has a fluoride concentration of [analytical result] mg/L.

Dental fluorosis, in its moderate or severe forms, may result in a brown staining and pitting of the permanent teeth. This problem occurs only in developing teeth, before they erupt from the gums. Children under nine should be provided with alternative sources of drinking water or water that has been treated to remove the fluoride to avoid the possibility of staining and pitting of their permanent teeth. You may also want to contact your dentist about proper use by young children of fluoride-containing products. Older children and adults may safely drink the water.

Drinking water containing more than 4.0 mg/L of fluoride (the U.S. Environmental Protection Agency's drinking water standard) can increase your risk of developing bone disease. Your drinking water does not contain more than 4.0 mg/L of fluoride, but we are required to notify you when we discover that the fluoride levels in your drinking water exceed 2.0 mg/L because of this cosmetic dental problem.

For more information, please call [name of the person designated as the water system contact] of [name of public water system] at [telephone number]. Some home water treatment units are also available to remove fluoride from drinking water. In Iowa, home water treatment units are regulated under 641—Chapter 14, with the water treatment unit registration program administered by the Iowa department of public health's environmental health division. In addition, you may call the National Sanitation Foundation (NSF) International, at 1-877-867-3435.

c. Nitrate level between 10 and 20 mg/L for noncommunity water systems, where allowed by the department.

(1) Applicability. The owner or operator of a noncommunity water system granted permission by the department under 567—paragraph 41.3(1)“a” to exceed the nitrate MCL must provide notice to persons served according to the requirements for a Tier 1 notice under paragraphs 42.1(2)“a” and “b.”

(2) Form and manner of notice. Noncommunity water systems granted permission by the department to exceed the nitrate MCL under 567—paragraph 41.3(1)“a” must provide continuous posting of the fact that nitrate levels exceed 10 mg/L and the potential health effects of exposure, according to the requirements for Tier 1 notice delivery under para-

graph 42.1(2)“c” and the content requirements under subrule 42.1(5).

42.1(8) Notice by department on behalf of the public water system. The department may give the public notice on behalf of the owner or operator of the public water system if the department complies with the public notification requirements of this rule. However, the owner or operator of the public water system remains responsible for ensuring the public notification requirements of this rule are met.

42.1(9) Public notice requirements in the operation permit compliance schedule. When the department determines that a public water supply system cannot promptly comply with one or more maximum contaminant levels pursuant to 567—Chapter 41, and that there is no immediate, unreasonable risk to the health of persons served by the system, an operation permit will be drafted that may include interim contaminant levels or a compliance schedule. The permit applicant may be required by the department to present the reasons the system cannot come into immediate compliance. Prior to issuance of a final permit, notice and opportunity for public participation must be given in accordance with this subrule. The notice shall be circulated in a manner designed to inform interested and potentially interested persons of any proposed interim contaminant level or compliance schedule.

a. Preparation of notice. The public notice shall be prepared by the department and circulated by the applicant within its geographical area through publication in a local newspaper with general circulation or through mail or direct delivery to the system's customers. The public notice shall be mailed by the department to any person upon request.

b. Public comment period. The department shall provide a period of at least 30 days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the operation permit. All written comments submitted during the 30-day comment period shall be retained by the department and considered in the formulation of the department's final determination with respect to the operation permit. The department may extend the comment period.

c. Content of notice. The content of the public notice of a proposed operation permit shall include at least the following:

(1) The name, address, and telephone number of the department.

(2) The name and address of the applicant.

(3) A statement of the department's tentative determination to issue the operation permit.

(4) A brief description of each applicant's water supply operations which necessitate the proposed permit conditions.

(5) A brief description of the procedures for the formulation of final determinations, including the 30-day comment period required by 42.1(9)“b.”

(6) The right to request a public hearing pursuant to 42.1(9)“d” and any other means by which interested persons may influence or comment upon those determinations.

(7) The address and telephone number of places at which interested persons may obtain further information, request a copy of the proposed operation permit prepared pursuant to 42.1(9), and inspect and copy the application forms and related documents.

d. Public hearings on proposed operation permits. The applicant or any interested agency, person or group of persons may request or petition for a public hearing with respect to the proposed action. Any such request shall clearly state issues and topics to be addressed at the hearing. Any such

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request or petition for public hearing must be filed with the department within the 30-day period prescribed in 42.1(9)“b” and shall indicate the interest of the party filing such request and the reasons why a hearing is warranted. The department shall hold an informal and noncontested case hearing if there is a significant public interest (including the filing of requests or petitions for such hearing) in holding such a hearing. Frivolous or insubstantial hearing requests may be denied by the department. Instances of doubt should be resolved in favor of holding the hearing. Any hearing held pursuant to this subrule shall be held in the geographical area of the system, or other appropriate area at the discretion of the department. The department may, as appropriate, consider related groups of permit applications at the hearing.

e. Public notice of public hearings.

(1) Public notice of any hearing held pursuant to 42.1(9) shall be circulated at least as widely as the notice under 42.1(9)“a” at least 30 days in advance of the hearing.

(2) The contents of the public notice of any hearing held pursuant to 42.1(9) shall include at least the following:

1. The name, address, and telephone number of the department;

2. The name and address of each applicant whose application will be considered at the hearing;

3. A brief reference to the public notice previously issued, including identification number and date of issuance;

4. Information regarding the time and location for the hearing;

5. The purpose of the hearing;

6. A concise statement of the issues raised by the person requesting the hearing;

7. The address and telephone number of the premises where interested persons may obtain further information, request a copy of the draft operation permit or modification prepared pursuant to 42.1(9), and inspect and copy the application forms and related documents; and

8. A brief description of the nature of the hearing, including the rules and procedures to be followed.

f. Decision by the department. The department shall issue or deny the operation permit within 30 days after the termination of the public hearing held pursuant to 42.1(9), or, if no public hearing is held, within 30 days after the termination of the period for requesting a hearing.

ITEM 60. Amend rule 567—42.2(455B) as follows:

567—42.2(455B) Public education for lead action level exceedance.

42.2(1) Applicability. A water system that exceeds the lead action level based on tap water samples collected in accordance with 567—paragraph 41.4(1)“c” shall deliver the public education materials contained in ~~42.2(2)~~ 42.2(1) for NTNC systems and in 42.2(2) and 42.2(3) for CWS systems, in accordance with the requirements in 42.2(4).

42.2(1) Content of written public education materials for NTNC systems. A nontransient noncommunity system shall either include the text specified in 42.2(2), or shall include the following text in all of the printed materials it distributes through its lead public education program. Systems may delete information pertaining to lead service lines upon approval by the department if no lead service lines exist anywhere in the water system service area. Any additional information presented by a system shall be consistent with the information below and be written in plain English that can be understood by lay people.

a. Introduction. The United States Environmental Protection Agency (EPA) and (insert name of water supplier)

are concerned about lead in your drinking water. Some drinking water samples taken from this facility have lead levels above the EPA action level of 15 parts per billion (ppb), or 0.015 milligrams of lead per liter of water (mg/L). Under federal law we are required to have a program in place to minimize lead in your drinking water by (insert date when corrosion control will be completed for your system). This program includes corrosion control treatment, source water treatment, and public education. We are also required to replace the portion of each lead service line that we control if the line contributes lead concentrations of more than 15 ppb after we have completed the comprehensive treatment program. If you have any questions about how we are carrying out the requirements of the lead regulation, please give us a call at (insert water system's phone number). This brochure explains the simple steps you can take to protect yourself by reducing your exposure to lead in drinking water.

b. Health effects of lead. Lead is a common metal found throughout the environment in lead-based paint, air, soil, household dust, food, certain types of pottery, porcelain and pewter, and water. Lead can pose a significant risk to your health if too much of it enters your body. Lead builds up in the body over many years and can cause damage to the brain, red blood cells and kidneys. The greatest risk is to young children and pregnant women. Amounts of lead that won't hurt adults can slow down normal mental and physical development of growing bodies. In addition, a child at play often comes into contact with sources of lead contamination—such as dirt and dust—that rarely affect an adult. It is important to wash children's hands and toys often, and to try to make sure they only put food in their mouths.

c. Lead in drinking water.

(1) Lead in drinking water, although rarely the sole cause of lead poisoning, can significantly increase a person's total lead exposure, particularly the exposure of infants who drink baby formulas and concentrated juices that are mixed with water. The EPA estimates that drinking water can make up 20 percent or more of a person's total exposure to lead.

(2) Lead is unusual among drinking water contaminants in that it seldom occurs naturally in water supplies such as rivers and lakes. Lead enters drinking water primarily as a result of the corrosion, or wearing away, of materials containing lead in the water distribution system and household plumbing. These materials include lead-based solder used to join copper pipe, brass and chrome-plated brass faucets, and in some cases, pipes made of lead that connect houses and buildings to water mains (service lines). In 1986, Congress banned the use of lead solder containing greater than 0.2 percent lead and restricted the lead content of faucets, pipes and other plumbing materials to 8.0 percent.

(3) When water stands for several hours or more in lead pipes or plumbing systems containing lead, the lead may dissolve into your drinking water. This means the first water drawn from the tap in the morning, or later in the afternoon if the water has not been used all day, can contain fairly high levels of lead.

d. Steps you can take to reduce exposure to lead in drinking water.

(1) Let the water run from the tap before using it for drinking or cooking anytime the water in a faucet has gone unused for more than six hours. The longer water resides in plumbing, the more lead it may contain. Flushing the tap means running the cold water faucet until the water gets noticeably colder, usually about 15 to 30 seconds. Although toilet flushing or showering flushes water through a portion of the plumbing system, you still need to flush the water in each fau-

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cet before using it for drinking or cooking. Flushing tap water is a simple and inexpensive measure you can take to protect your health. It usually uses less than one gallon of water.

(2) *Do not cook with, or drink water from the hot water tap. Hot water can dissolve more lead more quickly than cold water. If you need hot water, draw water from the cold tap and heat it on the stove.*

(3) *The steps described above will reduce the lead concentrations in your drinking water. However, if you are still concerned, you may wish to use bottled water with a low-lead content for drinking and cooking.*

(4) *You can consult a variety of sources for additional information. Your family doctor or pediatrician can perform a blood test for lead and provide you with information about the health effects of lead. State and local government agencies that can be contacted include: (insert the name or title of the facility official if appropriate) at (insert phone number) can provide you with information about your facility's water supply; and the Iowa department of public health at (insert phone number) or the (insert the name of the city or county health department) at (insert phone number) can provide you with information about the health effects of lead.*

42.2(2) Content of written public education materials for community systems. A community water system shall include the following text in all of the printed materials it distributes through its lead public education program. *Systems may delete information pertaining to lead service lines if no lead service lines exist anywhere in the water system service area, upon approval by the department. Public education language in 42.2(2)“d”(2)“5” and 42.2(2)“d”(4)“2” may be modified regarding building permit record availability and consumer access to these records, if approved by the department. Any additional information presented by a system shall be consistent with the information below and be easily understood by laypersons.*

a. to c. No change.

d. Steps you can take in the home to reduce exposure to lead in drinking water.

(1) No change.

(2) If a water test indicates that the drinking water drawn from a tap in your home contains lead above 15 ppb, then you should take the following precautions:

1. Let the water run from the tap before using it for drinking or cooking anytime the water in a faucet has gone unused for more than six hours. The longer water resides in your home's plumbing the more lead it may contain. Flushing the tap means running the cold water faucet until the water gets noticeably colder, usually about 15 to 30 seconds. If your house has a lead service line to the water main, you may have to flush the water for a longer time, perhaps one minute, before drinking. Although toilet flushing or showering flushes water through a portion of your home's plumbing system, you still need to flush the water in each faucet before using it for drinking or cooking. Flushing tap water is a simple and inexpensive measure you can take to protect your family's health. It usually uses less than one or two gallons of water and costs less than (insert a cost estimate based on flushing two times a day for 30 days) per month. To conserve water, fill a couple of bottles for drinking water after flushing the tap, and whenever possible, use the first flush water to wash the dishes or water the plants. If you live in a high-rise building, letting the water flow before using it may not work to lessen your risk from lead. The plumbing systems have more, and sometimes larger, pipes than smaller buildings. Ask your landlord for help in locating the source of the lead and for advice on reducing the lead level.

2. Try not to cook with, or drink water from, the hot water tap. Hot water can dissolve more lead more quickly than cold water. If you need hot water, draw water from the cold tap and heat it on the stove.

3. Remove loose lead solder and debris from the plumbing materials installed in newly constructed homes, or homes in which the plumbing has recently been replaced, by removing the faucet strainers from all taps and running the water from three to five minutes. Thereafter, periodically remove the strainers and flush out any debris that has accumulated over time.

4. If your copper pipes are joined with lead solder that has been installed illegally since it was banned in 1986, notify the plumber who did the work and request that the plumber replace the lead solder with lead-free solder. Lead solder looks dull gray and, when scratched with a key, looks shiny. In addition, notify the Iowa department of natural resources about the violation.

5. Determine whether or not the service line that connects your home or apartment to the water main is made of lead. The best way to determine if your service line is made of lead is by either hiring a licensed plumber to inspect the line or by contacting the plumbing contractor who installed the line. You can identify the plumbing contractor by checking the city's record of building permits which should be maintained in the files of the (insert name of department that issues building permits). A licensed plumber can at the same time check to see if your home's plumbing contains lead solder, lead pipes, or pipe fittings that contain lead. The public water system that delivers water to your home should also maintain records of the materials located in the distribution system. If the service line that connects your dwelling to the water main contributes more than 15 ppb to drinking water, after our comprehensive treatment program is in place, we are required to replace *the portion of the line we own*. If the line is only partially controlled by the (insert name of the city, county, or water system that controls the line), we are required to provide ~~you~~ *the owner of the privately owned portion of the line* with information on how to replace ~~your~~ *the privately owned* portion of the service line, and offer to replace that portion of the line at ~~your~~ *the owner's expense* and ~~take a follow-up tap water sample within 14 days of the replacement.~~ *If we replace only the portion of the line that we own, we also are required to notify you in advance and provide you with information on the steps you can take to minimize exposure to any temporary increase in lead levels that may result from the partial replacement, to take a follow-up sample at our expense from the line within 72 hours after the partial replacement, and to mail or otherwise provide you with the results of that sample within three business days of receiving the results.* Acceptable replacement alternatives include copper, steel, iron, and plastic pipes.

6. Have an electrician check your wiring. If grounding wires from the electrical system are attached to your pipes, corrosion may be greater. Check with a licensed electrician or your local electrical code to determine if your wiring can be grounded elsewhere. DO NOT attempt to change the wiring yourself because improper grounding can cause electrical shock and fire hazards.

(3) The steps described above will reduce the lead concentrations in your drinking water. However, if a water test indicates that the drinking water coming from your tap contains lead concentrations in excess of 15 ppb after flushing, or after we have completed our actions to minimize lead levels, then you may want to take the following additional measures:

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1. Purchase or lease a home treatment device. Home treatment devices are limited in that each unit treats only the water that flows from the faucet to which it is connected, and all of the devices require periodic maintenance and replacement. Devices such as reverse osmosis systems or distillers can effectively remove lead from your drinking water. Some activated carbon filters may reduce lead levels at the tap. However, all lead reduction claims should be investigated. Be sure to check the actual performance of a specific home treatment device before and after installing the unit.

2. Purchase bottled water for drinking and cooking.

(4) You can consult a variety of sources for additional information. Your family doctor or pediatrician can perform a blood test for lead and provide you with information about the health effects of lead. State and local government agencies that can be contacted include:

1. (Insert the name of city or county department of public utilities) at (insert phone number) can provide you with information about your community's water supply, and a list of local laboratories that have been certified by EPA for testing water quality;

2. (Insert the name of city or county department that issues building permits) at (insert phone number) can provide you with information about building permit records that should contain the names of plumbing contractors that plumbed your home; and

3. (~~insert the~~ The Iowa department of public health) at (insert phone number) or the (insert the name of the city or county health department) at (insert phone number) can provide you with information about the health effects of lead and how you can have your child's blood tested.

(5) No change.

42.2(3) No change.

42.2(4) Delivery of a public education program.

a. In communities *and in NTNC facilities* where a significant proportion of the population speaks a language other than English, public education materials shall be communicated in the appropriate language(s).

b. A community water system that fails to meet the lead action level on the basis of tap water samples collected in accordance with 567—paragraph 41.4(1)"c" *and that is not already repeating public education tasks pursuant to 42.2(4)"c," "g," or "h"* shall, within 60 days:

(1) Insert notices in each customer's water utility bill containing the information in 42.2(2) along with the following alert on the water bill itself in large print: "SOME HOMES IN THIS COMMUNITY HAVE ELEVATED LEAD LEVELS IN THEIR DRINKING WATER. LEAD CAN POSE A SIGNIFICANT RISK TO YOUR HEALTH. PLEASE READ THE ENCLOSED NOTICE FOR FURTHER INFORMATION." *A CWS having a billing cycle that does not include billing within 60 days of exceeding the action level, or that cannot insert information in the water utility bill without making major changes to its billing system, may use a separate mailing to deliver the information in 42.2(2), as long as the information is delivered to each customer within 60 days of exceeding the action level. Such water systems shall also include the water bill "alert" language previously specified.*

(2) Submit the information in 42.2(2) to the editorial departments of the major daily and weekly newspapers circulated throughout the community.

(3) Deliver pamphlets or brochures that contain the public education materials in 42.2(2)"b" and "d" to facilities and organizations, including the following: public schools and local school boards; city or county health departments; Women, Infants, and Children and Head Start program(s)

whenever available; public and private hospitals and clinics; pediatricians; family planning clinics; and local welfare agencies.

(4) Submit the public service announcement in 42.2(3) to at least five of the radio and television stations with the largest audiences that broadcast to the community served by the water system.

c. No change.

d. Within 60 days after it exceeds the lead action level (*unless it already is repeating public education tasks pursuant to 42.2(4)"e"*), a nontransient noncommunity water system shall deliver the public education materials in 42.2(1) or 42.2(2)"a," "b," and "d" as follows:

(1) Post informational posters on lead in drinking water in a public place or common area in each of the buildings served by the system; and

(2) Distribute informational pamphlets or brochures on lead in drinking water to each person served by the nontransient noncommunity water system. *The department may allow the system to utilize electronic transmission in lieu of or combined with printed materials as long as the system achieves at least the same coverage.*

e. and f. No change.

g. *Special allowances for CWS with restricted populations. A CWS may apply in writing to the department to use the text specified in 42.2(1) in lieu of the text in 42.2(2), and to perform the tasks listed in 42.2(4)"d" and 42.2(4)"e" instead of in 42.2(4)"b" and 42.2(4)"c" and if:*

(1) *The system is a facility such as a hospital or prison, where the population served is not capable of or is prevented from making improvements to plumbing or installing point-of-use treatment devices; and*

(2) *The system provides water as part of the cost of services provided and does not separately charge for water consumption.*

h. *Special allowances for a CWS serving 3,300 or fewer persons.*

(1) *A CWS serving 3,300 or fewer persons may omit the task in 42.2(4)"b"(4). As long as it distributes notices containing the information contained in 42.2(2) to every household served by the system, the system may further limit its public education programs as follows:*

1. *A system serving 500 or fewer persons may forego the task in 42.2(4)"b"(2). Such a system may limit the distribution of the public education materials required under 42.2(4)"b"(3) to facilities and organizations served by the system that are most likely to be visited regularly by children and pregnant women, unless the system is notified by the department that it must make a broader distribution.*

2. *If approved in writing by the department, a system serving 501 to 3,300 persons may omit the newspaper notification and limit the distribution of the public education materials required under 42.2(4)"b"(3) to facilities and organizations served by the system that are most likely to be visited regularly by children and pregnant women.*

(2) *A CWS serving 3,300 or fewer persons that delivers public education in accordance with 42.2(4)"h"(1) shall repeat the required public education tasks at least once during each calendar year in which the system exceeds the lead action level.*

42.2(5) No change.

ITEM 61. Amend paragraph **42.3(2)"c,"** introductory paragraph, as follows:

c. A CWS which sells water to another CWS. A community water system that sells water to another community wa-

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ter system must deliver the applicable information required in subrule 42.3(3) to the buyer (or consecutive) system:

ITEM 62. Amend paragraph 42.3(3)“b” as follows:

b. Definitions. Each report must include the following definitions using any of the following terms must include the applicable definitions:

(1) and (2) No change.

(3) “Maximum Residual Disinfectant Level Goal (MRDLG)” means the level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.

(4) “Maximum Residual Disinfectant Level (MRDL)” means the highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.

(4) (5) A report which contains data on a contaminant for which EPA has set a treatment technique or an action level must include one or both of the following definitions, as applicable:

1. and 2. No change.

ITEM 63. Amend paragraph 42.3(3)“c” as follows:

c. Information on detected contaminants. This paragraph specifies the requirements for information to be included in each report for contaminants subject to mandatory monitoring (except *Cryptosporidium*, which is listed in 42.3(3)“c”(2)). It applies to the following as follows: contaminants subject to an MCL, action level, MRDL, or treatment technique (regulated contaminants); contaminants for which monitoring is required by 567—paragraph 41.3(1)“f,” 567—41.11(455B), and CFR Title 40, Part 141.40 (unregulated contaminants), 567—subrule 41.11(1) (sodium monitoring), and 567—41.15(455B) (unregulated and special other contaminants); and disinfection byproducts or microbial contaminants for which monitoring is required by 567—Chapters 40 to 43, except as provided under 42.3(3)“e”(1), and which are detected in the finished water. The ammonia monitoring conducted pursuant to 567—subrule 41.11(2) is not subject to this paragraph. For the purposes of this subrule, “detected” means at or above the levels prescribed by the following: inorganic contaminants in 567—subparagraph 41.3(1)“e”(1); volatile organic contaminants in 567—paragraph 41.5(1)“b”; synthetic organic contaminants in 567—paragraph 41.5(1)“b”; radionuclide contaminants in 567—paragraph 41.9(1)“c”; and other contaminants with health advisory levels, as assigned by the department.

(1) Introductory paragraph, no change.

1. No change.

2. For detected regulated contaminants, which are listed in Appendix D C, the table(s) must contain:

- The MCL for that contaminant, expressed as a number equal to or greater than 1.0 (as provided in Appendix C);
- The MCLG for that contaminant, expressed in the same units as the MCL;

- If there is no MCL for a detected contaminant, the table must indicate that there is a treatment technique, or specify the action level, applicable to that contaminant, and the report must include the definition for treatment technique or action level, as appropriate, as specified in 42.3(3)“b”(4).

3. No change.

4. For turbidity:

- When it is reported pursuant to 567—paragraph 41.7(1)“b”: the highest average monthly value.

- When it is reported pursuant to 567—43.5(455B), 43.9(455B), or 43.10(455B): the highest single measurement and the lowest monthly percentage of samples meeting

the turbidity limits specified in 567—43.5(455B), 43.9(455B), or 43.10(455B) for the filtration technology being used. The report should include an explanation of the reasons for measuring turbidity. After January 1, 2002, systems serving more than 10,000 people must report the highest single turbidity measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in 567—43.9(455B) for the filtration technology being used.

5. and 6. No change.

7. For fecal coliforms, the total number of positive samples.

- The total number of positive samples; and

- 8. The likely source(s) of detected contaminants to the best of the owner’s or operator’s knowledge. Specific information regarding contaminants may be available in sanitary surveys and source water assessments, and should be used when available to the owner or operator. If the owner or operator lacks specific information on the likely contaminant source, the report must include one or more of the typical sources for that contaminant listed in Appendix D C, which are most applicable to the system.

8 9. If a community water system distributes water to its customers from multiple hydraulically independent distribution systems that are fed by different raw water sources, the table should contain a separate column for each service area and the report should identify each separate distribution system. Alternatively, systems may produce separate reports tailored to include data for each service area.

9 10. The table(s) must clearly identify any data indicating MCL, MRDL, or TT violations, and the report must contain a clear and readily understandable explanation of the violation including:

- The length of the violation,
- The potential adverse health effects,
- Actions taken by the system to address the violation, and
- The relevant language from Appendix E C to describe the potential health effects.

10 11. For detected unregulated contaminants for which monitoring is required, except *Cryptosporidium*, the table(s) must contain the average and range at which the contaminant was detected. The report may include a brief explanation of the reasons for monitoring for unregulated contaminants.

11. For public water supply systems which have fluoride levels greater than or equal to 2.0 mg/L and less than or equal to 4.0 mg/L, the report may contain the language listed in Appendix F, which is intended to alert families about dental problems that might affect children under nine years of age, instead of providing a separate public notification.

12. Community public water supply systems may list the most recent results of the special sodium monitoring requirement according to 567—subrule 41.11(3 I) in the annual report, instead of providing a separate public notification.

13. If a contaminant which does not have an MCL, MRDL, TT, or AL is detected in the water, the PWS must contact the department for the specific health effects language, health advisory level, and contamination sources.

(2) No change.

(3) If the system has performed additional monitoring which indicates the presence of other contaminants in the finished water, the system must report any results which may indicate a health concern. To determine if results may indicate a health concern, the community public water supply can determine if there is a current or proposed maximum contaminant level, maximum residual disinfectant level, treatment technique, action level, or health advisory by contacting the department or by calling the national Safe Drinking Water

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Hotline ((800)4264791). The department considers the detection of a contaminant above a proposed MCL or health advisory to indicate possible health concerns. For such contaminants, the report should include:

1. and 2. No change.
- (4) No change.

ITEM 64. Amend **42.3(3)“d”(2)“2”** as follows:

2. Lead and copper control requirements. For systems which fail to take one or more actions prescribed by 567—Chapters 41 to 43 pertaining to lead and copper, the report must include the applicable language of Appendix E C to this chapter for lead or copper, or both.

ITEM 65. Amend **42.3(3)“d”(2)“3”** as follows:

3. Acrylamide and epichlorohydrin control technologies prescribed by 567—subparagraph 41.5(1)“b”(3). For systems which violate the requirements of 567—subparagraph 41.5(1)“b”(3), the report must include the relevant language from Appendix E C to this chapter.

ITEM 66. Amend subparagraph **42.3(3)“g”(2)** as follows:

~~(2) Arsenic levels greater than half the MCL (25 µg/L). A system which detects arsenic at levels above 25 µg/L, but below the MCL:~~

~~1. Must include in its report a short information statement about arsenic, using language such as: EPA is reviewing the drinking water standard for arsenic because of special concerns that it may not be stringent enough. Arsenic is a naturally occurring mineral known to cause cancer in humans at high concentrations.~~

~~2. May write its own educational statement, but only in consultation with the department.~~

~~(2) Arsenic levels greater than 0.005 mg/L.~~

~~1. A system which detects arsenic at levels above 0.005 mg/L and less than or equal to 0.010 mg/L:~~

~~• Must include in its report a short information statement about arsenic, using language such as: While your drinking water meets EPA's standard for arsenic, it does contain low levels of arsenic. EPA's standard balances the current understanding of arsenic's possible health effects against the costs of removing arsenic from drinking water. EPA continues to research the health effects of low levels of arsenic, which is a mineral known to cause cancer in humans at high concentrations and is linked to other health effects such as skin damage and circulatory problems.~~

~~• May write its own educational statement, but only in consultation with the department.~~

~~2. A community water system that detects arsenic above 0.010 mg/L and less than or equal to 0.05 mg/L must include the arsenic health effects language prescribed by Appendix C to this chapter.~~

ITEM 67. Amend subparagraph **42.3(3)“g”(3)**, introductory paragraph, as follows:

(3) Nitrate levels greater than half the MCL (5.0 mg/L). A system which detects nitrate at levels above 5.0 mg/L, but below the MCL:

ITEM 68. Amend subparagraph **42.3(3)“g”(4)**, introductory paragraph, as follows:

(4) Nitrite levels greater than half the MCL (0.50 mg/L). A system which detects nitrite at levels above 0.50 mg/L, but below the MCL:

ITEM 69. Amend subparagraph **42.3(3)“g”(6)** as follows:

(6) Total trihalomethane (TTHM) levels above 0.080 mg/L but less than the MCL. ~~Systems Community water systems that detect TTHMs TTHM above 0.080 mg/L, but below the MCL in 567—subrule 41.5(1), as an annual average, monitored and calculated under the provisions of 567—paragraph 41.5(1)“e,” must include the health effects language for total trihalomethanes listed in Appendix E C.~~

ITEM 70. Amend paragraph **42.4(1)“c”** as follows:

c. The public water supply system, within ten days of completion of each public notification required pursuant to 42.1(455B) *for the initial public notice and any repeat notices*, shall submit to the department a *certification that it has fully complied with the public notification rules. The public water system must include with this certification a representative copy of each type of notice distributed, published, posted, or made available to the persons served by the system or to the media.*

ITEM 71. Amend paragraph **42.4(2)“a”** as follows:

a. Reporting requirements for tap water monitoring for lead and copper and for water quality parameter monitoring.

(1) *Except as provided in 42.4(2)“a”(1)“8,” a A water system shall report the information specified below for all tap water samples specified in 567—paragraph 41.4(1)“c” and for all water quality parameter samples specified in 567—paragraph 41.4(1)“d” within the first ten days following the end of each applicable monitoring period specified in 567—41.4(455B) (i.e., every six months, annually, or every three years).*

1. The results of all tap samples for lead and copper including the location of each site and the criteria under which the site was selected for the system's sampling pool;

2. A certification that each first draw sample collected by the water system is one liter in volume and, to the best of the collector's knowledge, has stood motionless in the service line, or in the interior plumbing of a sampling site, for at least six hours *Documentation for each tap water lead or copper sample for which the water system requests invalidation pursuant to 567—paragraph 41.4(1)“c”(6)“2”;*

3. ~~Where residents collected samples, a certification that each tap sample collected by the residents was taken after the water system informed them of proper sampling procedures specified in 567—paragraph 41.4(1)“c”(2)“2”;~~

4. The 90th percentile lead and copper concentrations measured from among all lead and copper tap water samples collected during each monitoring period (calculated in accordance with 567—subparagraph 41.4(1)“b”(3));

5. With the exception of initial tap sampling conducted pursuant to 567—paragraph 41.4(1)“c”(4)“1,” the system shall designate any site which was not sampled during previous monitoring periods, and include an explanation of why sampling sites have changed;

6. The results of all tap samples for pH and, where applicable, alkalinity, calcium, conductivity, temperature, and orthophosphate or silica collected under 567—subparagraphs 41.4(1)“d”(2) through (5);

7. The results of all samples collected at the entry point(s) to the distribution system for applicable water quality parameters under 567—subparagraphs 41.4(1)“d”(2) and (5); *and*

8. *A water system shall report the results of all water quality parameter samples collected under 567—subparagraphs 41.4(1)“d”(3) through (6) during each six-month monitoring period specified in 567—subparagraph 41.4(1)“d”(4) within the first ten days following the end of*

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the monitoring period, unless the department has specified a more frequent reporting requirement.

(2) ~~By the applicable date in 567 paragraph 41.4(1)“c”(4)“1” for commencement of monitoring, each community water system which does not complete its targeted sampling pool with tier 1 sampling sites meeting the criteria in 567 paragraph 41.4(1)“c”(1)“3” shall send a letter justifying its selection of tier 2 and tier 3 sampling sites under 567 paragraphs 41.4(1)“c”(1)“4” and “5,” whichever is applicable. Certain systems that do not have enough taps that can provide first-draw samples that have met the six-hour stand time criteria, such as an NTNC that has 24-hour operation or a CWS that meets the criteria of 42.2(4)“g”(1) and (2), must either:~~

1. ~~In the case where the department has not approved the non-first-draw sample sites, provide written documentation to the department identifying stand times and locations for enough non-first-draw samples to make up its sampling pool under 567—paragraph 41.4(1)“c”(2)“5” by July 1, 2003; or~~

2. ~~If the department has already approved the non-first-draw sample sites selected by the system, identify each site that did not meet the six-hour minimum stand time and the length of stand time for that particular substitute sample collected pursuant to 567—paragraph 41.4(1)“c”(2)“5.” Certain systems include this information in writing with the lead and copper tap sample results required to be submitted pursuant to 567—paragraph 41.4(1)“d”(1)“1.”~~

(3) ~~By the applicable date in 567 paragraph 41.4(1)“c”(4)“1” for commencement of monitoring, each nontransient noncommunity water system which does not complete its sampling pool with tier 1 sampling sites meeting the criteria in 567—paragraph 41.4(1)“c”(1)“6” shall send a letter to the department justifying its selection of sampling sites under 567—paragraph 41.4(1)“c”(1)“7.” No later than 60 days after the addition of a new source or any change in water treatment, unless the department specifies earlier notification, a water system that has optimized corrosion control under 567—subparagraph 43.7(1)“b”(3), a water system subject to reduced monitoring pursuant to 567—paragraph 41.4(1)“c”(4)“4,” or a water system subject to a monitoring waiver pursuant to 567—subparagraph 41.4(1)“c”(7), shall send written documentation to the department describing the change. In those instances where prior department approval of the treatment change or new source is not required, water systems are encouraged to provide the notification to the department beforehand to minimize the risk that the treatment change or new source will adversely affect optimal corrosion control.~~

(4) ~~By the applicable date in 567 paragraph 41.4(1)“c”(4)“1” for commencement of monitoring, each water system with lead service lines that is not able to locate the number of sites served by such lines required under 567—paragraph 41.4(1)“c”(1)“8” shall send a letter to the department demonstrating why it was unable to locate a sufficient number of such sites based upon the information listed in 567—paragraph 41.4(1)“c”(1)“2.” Any small system applying for a monitoring waiver under 567—subparagraph 41.4(1)“c”(7), or subject to a waiver granted pursuant to 567—paragraph 41.4(1)“c”(7)“3,” shall provide the following information to the department in writing by the specified deadline:~~

1. ~~By the start of the first applicable monitoring period in 567—subparagraph 41.4(1)“c”(4), any small water system applying for a monitoring waiver shall provide the docu-~~

mentation required to demonstrate that it meets the waiver criteria of 567—paragraphs 41.4(1)“c”(7)“1” and “2.”

2. ~~No later than nine years after the monitoring previously conducted pursuant to 567—paragraph 41.4(1)“c”(7)“2” or 567—paragraph 41.4(1)“c”(7)“4,” first bulleted paragraph, each small system desiring to maintain its monitoring waiver shall provide the information required by 567—paragraph 41.4(1)“c”(7)“4,” first and second bulleted paragraphs.~~

3. ~~No later than 60 days after the system becomes aware that it is no longer free of lead-containing or copper-containing materials, as appropriate, each small system with a monitoring waiver shall provide written notification to the department, setting forth the circumstances resulting in the lead-containing or copper-containing materials being introduced into the system and what corrective action, if any, the system plans to remove these materials.~~

(5) ~~Each water system that requests that the department reduce the number and frequency of sampling shall provide the information required under 567—paragraph 41.4(1)“c”(4)“4.” Each groundwater system that limits water quality parameter monitoring to a subset of entry points under 567—paragraph 41.4(1)“d”(3)“3” shall provide, by the commencement of such monitoring, written correspondence to the department that identifies the selected entry points and includes information sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system.~~

ITEM 72. Amend **42.4(2)“e”(2)“1”** and **“2”** as follows:

1. Replaced in the previous 12 months at least 7 percent of the initial lead service lines (or a greater number of lines specified by the department under 567—paragraph 43.7(4)“~~e~~” “e” in its distribution system), or

2. Conducted sampling which demonstrates that the lead concentration in all service line samples from individual line(s), taken pursuant to 567—numbered paragraph 41.4(1)“c”(2)“3,” is less than or equal to 0.015 mg/L. In such cases, the total number of lines replaced and those lines which meet the criteria in 567—paragraph 43.7(4)“c” shall equal at least 7 percent of the initial number of lead lines identified under 567—paragraph 43.7(4)“b” or the percentage specified by the department under 567—paragraph 43.7(4)“~~f~~” “e.” A lead service line meeting the criteria of 567—paragraph 43.7(4)“c” may only be used to comply with the 7 percent criteria for a specific year, and may not be used again to calculate compliance with the 7 percent criteria in future years.

ITEM 73. Amend subparagraph **42.4(2)“e”(4)** as follows:

(4) ~~As soon as practicable, but in no case later than three months after a system exceeds the lead action level in sampling referred to in 567—paragraph 43.7(4)“a,” any system seeking to rebut the presumption that it has control over the entire lead service line pursuant to 567—paragraph 43.7(4)“d” shall submit a letter to the department describing the legal authority (e.g., state statutes, municipal ordinances, public service contracts or other applicable legal authority) which limits the system’s control over the service lines and the extent of the system’s control. Any system which collects lead service line samples following partial lead service line replacement required by 567—subrule 43.7(4) shall report the results to the department within the first ten days of the month following the month in which the system receives the laboratory results, or as specified by the department. Systems shall also report any additional information as specified~~

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by the department, and in a time and manner prescribed by the department, to verify that all partial lead service line replacement activities have taken place.

ITEM 74. Amend paragraph 42.4(2)“f” as follows:

f. Public education program reporting requirements. ~~By December 31 of each year, a~~

(1) Any water system that is subject to the public education requirements in 42.2(455B) shall, *within ten days after the end of each period in which the system is required to perform public education tasks in accordance with 42.2(4), send written documentation to the department that contains:*

1. ~~A demonstration submit a letter to the department demonstrating~~ that the system has delivered the public education materials that meet the content requirements in 42.2(2) and 42.2(3) and the delivery requirements in 42.2(4); ~~and~~

2. ~~This information shall include a~~ A list of all the newspapers, radio stations, television stations, facilities and organizations to which the system delivered public education materials during the ~~previous year period in which the system was required to perform public education tasks. The water system shall submit the letter annually for as long as it exceeds the lead action level.~~

(2) *Unless required by the department, a system that previously has submitted the information required by 42.4(2)“f”(1)“2” need not resubmit the same information, provided there have been no changes in the distribution list and the system certifies that the public education materials were distributed to the same list previously submitted. The certification is due within ten days after the end of each period in which the system is required to perform public education.*

ITEM 75. Amend 42.4(3)“a”(1)“4” as follows:

4. Does not use a treatment technique such as blending to achieve compliance with a maximum contaminant level, treatment technique, action level, or health advisory.

The reports shall be completed as described in 42.4(3)“a”(2) and maintained at the facility for inspection by the department for a period of five years. For CWS and NTNC PWSs, the monthly operation report must be signed by the certified operator in ~~direct responsible charge of the certified operator’s designee.~~ For TNC PWSs, the monthly operation report, if required by the department, must be signed by the owner or the owner’s designee.

All public water supplies *using a surface water or influenced groundwater source* must also comply with the *applicable record-keeping requirements in 567—43.5(455B), 43.9(455B), and 43.10(455B).*

ITEM 76. Amend 42.4(3)“b”(1)“3” as follows:

3. Chlorine residual. A minimum free available chlorine residual of 0.3 mg/L or a minimum total available chlorine residual of 1.5 mg/L must be continuously maintained

throughout the water distribution system, except for those points ~~on~~ in the distribution system that terminate as dead ends or areas that represent very low use when compared to usage throughout the rest of the distribution system as determined by the department.

ITEM 77. Amend 42.4(3)“b”(1)“4” as follows:

4. Test kit. A test kit capable of measuring free and combined chlorine residuals in increments no greater than 0.1 mg/L in the range below 0.5 mg/L, and in increments no greater than 0.2 mg/L in the range from 0.5 mg/L to 1.0 mg/L, and in increments no greater than 0.3 mg/L in the range from 1.0 mg/L to 2.0 mg/L must be provided at all chlorination facilities. The test kit must use a method of analysis that is recognized in Standard Methods for the ~~Analysis Examination of Water and Wastewater.~~

ITEM 78. Amend 42.4(3)“b”(1)“6” as follows:

6. Other disinfectant residuals. If an alternative disinfecting agent is approved by this department, the residual levels and type of test kit used will be assigned by the department in accordance with and based upon analytical methods contained in Standard Methods for the ~~Analysis Examination of Water and Wastewater.~~

ITEM 79. Amend 42.4(3)“c”(1)“3” as follows:

3. The date and value of any turbidity measurements taken during the month which exceed 5 NTU. If at any time the turbidity exceeds 5 NTU, the system must inform the department as soon as possible, but no later than *24 hours after the exceedance is known, in accordance with the public notification requirements in 42.1(2), the end of the next business day.* This requirement is in addition to the monthly reporting requirement, pursuant to 567—43.5(455B).

ITEM 80. Amend 42.4(3)“c”(2)“2” as follows:

2. The date and duration of each period when the residual disinfectant concentration in water entering the distribution system fell below 0.3 mg/L *free residual chlorine* or 1.5 mg/L *total residual chlorine* and when the department was notified of the occurrence.

If at any time the residual falls below 0.3 mg/L *free residual chlorine* or 1.5 mg/L *total residual chlorine* in the water entering the distribution system, the system must notify the department as soon as possible, but no later than by the end of the next business day. The system also must notify the department by the end of the next business day whether or not the residual was restored to at least 0.3 mg/L *free residual chlorine* or 1.5 mg/L *total residual chlorine* within four hours. This requirement is in addition to the monthly reporting requirement, pursuant to 567—43.5(455B).

ITEM 81. Amend subparagraph 42.4(3)“d”(2), table, as follows:

(2) Disinfection byproducts. Systems must report the information specified in the following table:

Disinfection Byproducts Reporting Table

If you are a . . .	You must report . . .
System monitoring for TTHMs and HAA5 under the requirements of 41.6(1)“c”(4) on a quarterly or more frequent basis	<ol style="list-style-type: none"> The number of samples taken during the last quarter. The location, date, and result of each sample taken during the last quarter. The arithmetic average of all samples taken in the last quarter. The annual arithmetic average of the quarterly arithmetic averages of this section for the last four quarters. Whether the MCL was exceeded.
System monitoring for TTHMs and HAA5 under the requirements of 41.6(1)“c”(4) less frequently than quarterly, but at least annually	<ol style="list-style-type: none"> The number of samples taken during the last year. The location, date, and result of each sample taken during the last monitoring period. The arithmetic average of all samples taken over the last year. Whether the MCL was exceeded.

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If you are a . . .	You must report . . .
System monitoring for TTHMs and HAA5 under the requirements of 41.6(1)“c”(4) less frequently than annually	<ol style="list-style-type: none"> 1. The location, date, and result of the last sample taken. 2. Whether the MCL was exceeded.
System monitoring for chlorite under the requirements of 41.6(1)“c”(3)	<ol style="list-style-type: none"> 1. The number of samples taken each month for the last 3 months. 2. The location, date, and result of each sample taken during the last quarter. 3. For each month in the reporting period, the arithmetic average of all samples taken <i>in each three sample set taken in the month.</i> 4. Whether the MCL was exceeded, and in which month it was exceeded.
System monitoring for bromate under the requirements of 41.6(1)“c”(2)	<ol style="list-style-type: none"> 1. The number of samples taken during the last quarter. 2. The location, date, and result of each sample taken during the last quarter. 3. The arithmetic average of the monthly arithmetic averages of all samples taken in the last year. 4. Whether the MCL was exceeded.

ITEM 82. Amend paragraph 42.5(1)“f” as follows:

f. Public notification. Records of public notification, including the Consumer Confidence Report, public notification examples, and *public notice certifications* ~~reports requiring certification of who received the public notification,~~ must be kept for at least five years.

ITEM 83. Amend paragraph 42.5(1)“g” as follows:

g. Self-monitoring requirement records. The monthly records of operation must be completed as described in 42.4(3)“a”(2) and maintained at the facility for inspection by the department for a period of at least five years. *All data*

generated at the facility to comply with the self-monitoring requirements must be retained for a period of at least five years, and must be maintained at the facility for inspection by the department. The data shall be in a form that allows easy retrieval and interpretation. Examples of data that must be retained include, but are not limited to, recorder charts, log-books, bench sheets, SCADA records, and electronic files.

ITEM 84. Rescind 567—Chapter 42, Appendix A, and adopt the following **new** Appendix A in lieu thereof:

APPENDIX A:
STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION

Contaminant	Standard Health Effects Language
Microbiological Contaminants	
Total coliform	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, more potentially harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.
Fecal coliform or E. coli	Fecal coliforms and E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.
Surface Water Treatment Technique Requirements	
Turbidity	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, protozoa, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches, and can lead to death.
Surface water/IGW system treatment technique requirements: CT ratio; residual disinfectant; log removal/inactivation of Giardia, viruses, and Cryptosporidium; or filter backwash recycling	Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, protozoa, and parasites, which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches, and can lead to death.
Inorganic Chemical Contaminants	
Antimony	Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.
Arsenic	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.
Asbestos	Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.
Barium	Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.
Beryllium	Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.
Cadmium	Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.
Chromium, total	Some people who drink water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.

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Contaminant	Standard Health Effects Language
Copper	Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.
Cyanide	Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.
Fluoride	Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water above 2.0 mg/L may cause mottling of children's teeth, usually in children less than nine years of age. Mottling, also known as dental fluorosis, may include brown staining and pitting of the teeth, and occurs only in developing teeth before they erupt from the gums.
Lead	Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.
Mercury, inorganic	Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.
Nitrate	Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
Nitrite	Infants below the age of six months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
Total Nitrate and Nitrite	Infants below the age of six months who drink water containing nitrate and nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
Selenium	Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience loss of hair or fingernails, numbness in fingers or toes, or problems with their circulation.
Thallium	Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.
Synthetic Organic Chemical	Contaminants
2,4-D	Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.
2,4,5-TP (Silvex)	Some people who drink water containing Silvex in excess of the MCL over many years could experience liver problems.
Alachlor	Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.
Atrazine	Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or have reproductive difficulties.
Benzo(a)pyrene (PAHs)	Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.
Carbofuran	Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.
Chlordane	Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.
Dalapon	Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.
Di(2-ethylhexyl)adipate	Some people who drink water containing di(2-ethylhexyl)adipate well in excess of the MCL over many years could experience toxic effects such as weight loss, liver enlargement, or possible reproductive difficulties.
Di(2-ethylhexyl)phthalate	Some people who drink water containing di(2-ethylhexyl)phthalate well in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.
Dibromochloropropane (DBCP)	Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
Dinoseb	Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.
Dioxin (2,3,7,8-TCDD)	Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
Diquat	Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.
Endothall	Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.
Endrin	Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.

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Contaminant	Standard Health Effects Language
Ethylene dibromide	Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.
Glyphosate	Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.
Heptachlor	Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.
Heptachlor epoxide	Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer.
Hexachlorobenzene	Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.
Hexachloro-cyclopentadiene	Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.
Lindane	Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.
Methoxychlor	Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.
Oxamyl (Vydate)	Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.
Pentachlorophenol	Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.
Picloram	Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.
Polychlorinated byphenyls (PCBs)	Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.
Simazine	Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.
Toxaphene	Some people who drink water containing toxaphene in excess of the MCL over many years could experience problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.
Volatile Organic Chemical Contaminants (VOCs)	
Benzene	Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.
Carbon tetrachloride	Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
Chlorobenzene (monochlorobenzene)	Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.
o-Dichlorobenzene	Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory system.
p-Dichlorobenzene	Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.
1,2-Dichloroethane	Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.
1,1-Dichloroethylene	Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
cis-1,2-Dichloroethylene	Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
trans-1,2-Dichloroethylene	Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.
Dichloromethane	Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.
1,2-Dichloropropane	Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.
Ethylbenzene	Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.
Styrene	Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.
Tetrachloroethylene	Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.
Toluene	Some people who drink water containing toluene in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.
1,2,4-Trichlorobenzene	Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.

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Contaminant	Standard Health Effects Language
1,1,1-Trichloroethane	Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.
1,1,2-Trichloroethane	Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune system.
Trichloroethylene	Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
Vinyl chloride	Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.
Xylene (total)	Some people who drink water containing total xylene in excess of the MCL over many years could experience damage to their nervous system.
Radionuclide Contaminants	
Alpha emitters	Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.
Beta/photon emitters	Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.
Combined radium (226 & 228)	Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.
Uranium	Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.
Disinfection Byproducts	
Bromate	Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.
Chlorite	Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.
Haloacetic Acids (HAA)	Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.
Total Trihalomethanes (TTHMs)	Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous system, and may have an increased risk of getting cancer.
Residual Disinfectants	
Chloramines	Some people who use water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.
Chlorine	Some people who use water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.
Chlorine dioxide—non-acute (two consecutive daily samples taken at the source entry point to the distribution system are above the MRDL)	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia. The chlorine dioxide violations reported today are the result of exceedances at the treatment facility only, not within the distribution system which delivers water to consumers. Continued compliance with chlorine dioxide levels within the distribution system minimizes the potential risk of these violations to consumers.
Chlorine dioxide—acute (one or more distribution samples exceed the MRDL)	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia. The chlorine dioxide violations reported today include exceedances of the standard within the distribution system which delivers water to consumers. Violations of the chlorine dioxide standard within the distribution system may harm human health based on short-term exposures. Certain groups, including fetuses, infants, and young children, may be especially susceptible to nervous system effects from excessive chlorine dioxide exposure.
Disinfection Byproduct Precursors	
Total Organic Carbon (TOC)	Total organic carbon has no health effects. However, total organic carbon provides a medium for the formation of disinfection byproducts. These byproducts include trihalomethanes and haloacetic acids. Drinking water containing these byproducts in excess of the MCL may lead to adverse health effects, liver, or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.
Other Treatment Techniques	
Acrylamide	Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.
Epichlorohydrin	Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.

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ITEM 85. Amend **567—Chapter 42**, Appendix B, as follows:

APPENDIX B:
MINIMUM SELF-MONITORING REQUIREMENTS (SMR)

I. Minimum Self-Monitoring Requirements for TNCs (excluding surface water or influenced groundwater PWSs)

Notes:

- The self-monitoring requirements (SMRs) only apply to those supplies meeting the *required operation records applicability* criteria in 42.4(3)“a”(1).
- TNCs are exempt from the self-monitoring requirements for point-of-use treatment devices, unless the device is used to remove a contaminant which has a maximum contaminant level or treatment technique, in which case additional SMRs will be assigned by the department.
- Daily monitoring for TNCs applies only when the facility is in operation.
- Additional or more frequent monitoring requirements may be assigned by the department in the operation permit.
- Additional SMRs are required if treatment is used to remove a regulated contaminant. See Section II for the requirements under the specific treatment type.

General Requirements

All TNCs which meet the *required operation records applicability* criteria in 42.4(3)“a”(1) must measure the following parameters, where applicable. Additional SMRs are required if treatment is used to remove a contaminant which has a maximum contaminant level or treatment technique. See Section II for the requirements under the specific treatment type.

Parameter	PWS Type:	TNC*
	Sample Site	Frequency
Pumpage (Flow)	raw:	1/week
	final:	1/week
Disinfectant Residual***	final:	1/day
	distribution system**:	1/day
Disinfectant, quantity used	day tank/scale	1/day
Static Water and Pumping Water Levels (Drawdown)	each active well:	1/month

*TNCs must measure and record the total water used each week, but daily measurements are recommended, and may be required by the department in specific PWSs.

**Monitoring is to be conducted at representative points in the distribution system which adequately demonstrate compliance with 42.4(3)“b”(1).

***The department may reduce the required sample site locations for a system with a minimal distribution system and only hydropneumatic tank storage.

II. Minimum Self-Monitoring Requirements for CWS, NTNC, and IGW/SW TNC

Notes:

- The self-monitoring requirements (SMR) only apply to those supplies meeting the *required operation records applicability* criteria in 42.4(3)“a”(1).
- NTNCs are exempt from the self-monitoring requirements for point-of-use treatment devices, unless the device is used to remove a contaminant which has a maximum contaminant level, treatment technique, action level, or health advisory, in which case additional SMRs will be assigned by the department.
- Daily monitoring for NTNCs applies only when the facility is in operation.
- These are the minimum self-monitoring requirements. Additional or more frequent monitoring requirements may be assigned by the department in the operation permit.

A. General Requirements

All PWSs which meet the *required operation records applicability* criteria in 42.4(3)“a”(1) must measure the following parameters, where applicable:

Parameter	PWS Type:	NTNC* & IGW/SW TNC	CWS
	Sample Site	Frequency	Frequency
Pumpage (Flow)	raw:	1/week	1/day
	bypass:	1/week	1/day
	final:	1/week	1/day
Static Water and Pumping Water Levels (Drawdown)	each active well:	1/month	1/month

* NTNCs must measure and record the total water used each week, but daily measurements are recommended, and may be required by the department in specific PWSs.

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B. Chemical Addition

All PWSs which apply chemicals in the treatment process must monitor the following parameters, for the applicable processes:

	Pumpage or Flow:	0.025—0.1 MGD <0.1 MGD	0.1-0.5 MGD	>0.5 MGD
Parameter	Sample Site	Frequency	Frequency	Frequency
DISINFECTION				
Disinfectant Residual**	final: distribution system*:	1/day 1/day	1/day 1/day	1/day 1/day
Disinfectant, quantity used	day tank/scale	1/day	1/day	1/day
FLUORIDATION				
Fluoride	raw: final:	1/quarter 1/day	1/month 1/day	1/month 1/day
Fluoride, quantity used	day tank/scale:	1/day	1/day	1/day
pH ADJUSTMENT				
pH	final:	1/week	2/week	1/day
Caustic Soda, quantity used	day tank/scale:	1/week	1/week	1/week
PHOSPHATE ADDITION				
Phosphate, as PO ₄	final:	1/week	2/week	1/day
Phosphate, quantity used	day tank/scale:	1/week	1/week	1/week
OTHER CHEMICALS				
Chemical	final:	1/week	2/week	1/day
Chemical, quantity used	day tank/scale:	1/week	1/week	1/week

* Monitoring is to be conducted at representative points in the distribution system which adequately demonstrates compliance with 42.4(3)“b”(1).

** The department may reduce the required sample site locations for a system with a minimal distribution system, only hydropneumatic tank storage, and, if a CWS, it serves less than 100 persons.

C. Iron or Manganese Removal

Nonmunicipalities except rural water systems, benefited water districts, and publicly owned PWSs are exempt from monitoring of iron/manganese removal equipment unless the treatment is or was installed to remove a contaminant which has a maximum contaminant level, treatment technique, action level, or health advisory. Any chemicals which are applied during the treatment process must be measured under section “B. Chemical Addition” of this table.

	Pumpage or Flow:	0.025—0.1 MGD <0.1 MGD	0.1-0.5 MGD	>0.5 MGD
Parameter	Sample Site	Frequency	Frequency	Frequency
Iron	raw: final:	1/quarter 1/week	1/month 2/week	1/month 1/day
Manganese	raw: final:	1/quarter 1/week	1/month 2/week	1/month 1/day

D. pH Adjustment for Iron and Manganese Removal, by precipitation and coagulation processes utilizing lime, soda ash, or other chemical additions. Testing is only required if a specific chemical is added.

	Pumpage or Flow:	0.025—0.1 MGD <0.1 MGD	0.1-0.5 MGD	>0.5 MGD
Parameter	Sample Site	Frequency	Frequency	Frequency
Alkalinity	raw: final:	1/quarter 1/week	1/month 2/week	1/month 1/day
Iron	raw: final:	1/quarter 1/week	1/month 2/week	1/month 1/day
Manganese	raw: final:	1/quarter 1/week	1/month 2/week	1/month 1/day
pH	raw: final:	1/week 1/week	1/week 2/week	1/week 1/day

E. Cation Exchange (Zeolite) Softening

Nonmunicipalities except for rural water systems and benefited water districts are exempt from the monitoring of water quality parameters associated with ion-exchange softening unless the treatment is or was installed to remove a contaminant which has a maximum contaminant level, treatment technique, action level, or health advisory. An annual sodium sample of the final water is required of all community systems that use cation exchange softening, and will also meet the special sodium monitoring requirement of 567—paragraph 41.11(1)“f.”

	Pumpage or Flow:	0.025—0.1 MGD <0.1 MGD	0.1-0.5 MGD	>0.5 MGD
Parameter	Sample Site	Frequency	Frequency	Frequency
Hardness as CaCO ₃	raw: final:	1/quarter 1/week	1/month 2/week	1/month 1/day

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pH	final:	1/week	2/week	1/day
Sodium*	final:	1/year	1/year	1/year

* The annual sodium sample required in 567—paragraph 41.11(1)“f” will satisfy this requirement.

F. Direct Filtration of Surface Waters or Influenced Groundwaters

Parameter	Pumpage or Flow:	All		
	Sample Site	Frequency		
CT Ratio	final:	1/day		
Disinfectant Residual*	source/entry point: distribution system*:	see 567—subrules 43.5(2) and 43.5(4) for the specific requirements <i>continuous daily</i>		
Disinfectant, quantity used	day tank/scale:	1/day		
pH	final:	1/day		
Temperature	raw:	1/day		
Turbidity	raw: final:	see 567—subrules 43.5(3) and 43.5(4) for the specific requirements		

* Monitoring is to be conducted at representative points in the distribution system which adequately to demonstrate compliance with paragraph 42.4(3)“b,” 567—subrule 43.5(2), 567—subrule 43.5(4), and 567—43.6(455B).

G. Clarification or Lime Softening of Surface Waters or Influenced Groundwaters

Parameter	Pumpage or Flow:	All		
	Sample Site	Frequency		
Alkalinity	raw: final:	1/day 1/day		
Caustic Soda, quantity used	day tank/scale:	1/week		
CT Ratio	final:	1/day		
Disinfectant Residual*	source/entry point: distribution system*:	see 567—subrules 43.5(2) and 43.5(4) for the specific requirements <i>continuous daily</i>		
Disinfectant, quantity used	day tank/scale:	1/day		
Hardness as CaCO ₃	raw: final:	1/day 1/day		
Odor	raw: final:	1/week 1/day		
pH	raw: final:	1/day 1/day		
Temperature	raw:	1/day		
Turbidity	raw: final:	see 567—subrules 43.5(3) and 43.5(4) for the specific requirements		

*Monitoring is to be conducted at representative points in the distribution system which adequately to demonstrate compliance with paragraph 42.4(3)“b,” 567—subrule 43.5(2), 567—subrule 43.5(4), and 567—43.6(455B).

H. Lime Softening of Groundwaters (excluding IGW)

Parameter	Pumpage or Flow:	0.025—0.1 MGD <0.1 MGD	>0.1 MGD
	Sample Site	Frequency	
Alkalinity	raw: final:	1/quarter 1/day	1/month 1/day
Hardness as CaCO ₃	raw: final:	1/quarter 1/day	1/month 1/day
pH	raw: final:	1/week 1/day	1/week 1/day
Temperature	raw:	1/week	

I. Reverse Osmosis or Electrodialysis

Parameter	Pumpage or Flow:	0.025—0.1 MGD <0.1 MGD	>0.1 MGD
	Sample Site	Frequency	
Alkalinity	raw: final:	1/quarter 1/day	1/month 1/day

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Hardness as CaCO ₃	raw:	1/quarter	1/month
	final:	1/day	1/day
Iron	raw:	1/day	1/day
Manganese	raw:	1/day	1/day
pH	raw:	1/week	1/week
	final:	1/day	1/day
Total Dissolved Solids	raw:	1/month	1/month

J. Anion Exchange (i.e., Nitrate Reduction)

Parameter	Sample Site	Pumpage or Flow:	0.025—0.1 MGD <0.1 MGD	>0.1 MGD
		Frequency	Frequency	Frequency
Nitrate		raw:	1/day	1/day
		final:	1/day	1/day
Sulfate		raw:	1/week	1/week
		final:	1/week	1/week

K. Activated Carbon for TTHM, VOC, or SOC Removal (GAC or PAC)

Parameter	Sample Site	Pumpage or Flow:	0.025—0.1 MGD <0.1 MGD	>0.1 MGD
		Frequency	Frequency	Frequency
Total Organic Carbon (TOC)		final:	1/quarter	1/month

L. Air-Stripping for TTHM, VOC, or SOC Removal

Parameter	Sample Site	Pumpage or Flow:	0.025—0.1 MGD <0.1 MGD	>0.1 MGD
		Frequency	Frequency	Frequency
Total Organic Carbon (TOC)		final:	1/quarter	1/month

M. and N. No change.

ITEM 86. Rescind **567—Chapter 42**, Appendix C, and adopt **new** Appendix C in lieu thereof:

APPENDIX C:
REGULATED CONTAMINANTS TABLE FOR CONSUMER CONFIDENCE REPORT

Key

- AL Action Level
- MCL Maximum Contaminant Level
- MCLG Maximum Contaminant Level Goal
- MFL million fibers per liter
- MRDL Maximum Residual Disinfectant Level
- MRDLG Maximum Residual Disinfectant Level Goal
- mrem/year millirems per year (a measure of radiation absorbed by the body)
- n/a not applicable
- NTU nephelometric turbidity units (a measure of water clarity)
- pCi/L picocuries per liter (a measure of radioactivity)
- ppb parts per billion, or micrograms per liter (µg/L)
- ppm parts per million, or milligrams per liter (mg/L)
- ppq parts per quadrillion, or picograms per liter (pg/L)
- ppt parts per trillion, or nanograms per liter (ng/L)
- TT Treatment Technique

Contaminant (CCR units)	MCL, in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG in CCR units	Major sources in drinking water	Health effects language
Bacteria						
Total coliform bacteria	(footnote 1)		(foot-note 1)	0	Naturally present in the environment	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.

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Contaminant (CCR units)	MCL, in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG in CCR units	Major sources in drinking water	Health effects language
Fecal coliform and E. coli	0		0	0	Human and animal fecal waste	Fecal coliforms and E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.
Disinfection Byproduct Precursor Removal Requirements for Surface & Influenced Groundwater Systems						
Total organic carbon (ppm)	TT		TT	n/a	Naturally present in the environment	Total organic carbon (TOC) has no health effects. However, total organic carbon provides a medium for the formation of disinfection byproducts. These byproducts include trihalomethanes (THMs) and haloacetic acids (HAAs). Drinking water containing these byproducts in excess of the MCL may lead to adverse health effects, liver, or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.
Surface Water & Influenced Groundwater System Treatment Requirements						
Turbidity (NTU)	TT		TT	n/a	Soil runoff	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, protozoa, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches, and can lead to death.
Surface water/IGW system treatment technique requirements: CT ratio; residual disinfectant; log removal/inactivation of Giardia, viruses, and Cryptosporidium; or filter backwash recycling	T		TT	n/a	Soil runoff	Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, protozoa, and parasites, which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches, and can lead to death.
Radionuclide Contaminants						
Gross alpha emitters (pCi/L)	15 pCi/L		15	0	Erosion of natural deposits	Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.

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Contaminant (CCR units)	MCL, in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG in CCR units	Major sources in drinking water	Health effects language
Beta/photon emitters (mrem/yr)	4 mrem/yr		4	0	Decay of natural and man-made deposits	Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.
Radium, combined 226 and 228 (pCi/L)	5 pCi/L		5	0	Erosion of natural deposits	Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.
Uranium (µg/L)	30 µg/L (footnote 2)		30	0	Erosion of natural deposits	Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.
Inorganic Contaminants						
Antimony (ppb)	0.006	1000	6	6	Discharge from petroleum refineries; fire retardants; ceramics; electronics; solder	Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.
Arsenic (ppb) ³	0.010 ³	1000	10 ³	0 ³	Erosion of natural deposits; runoff from orchards; runoff from glass and electronics production wastes	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.
Asbestos (MFL)	7 MFL		7	7	Decay of asbestos cement water mains; erosion of natural deposits	Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.
Barium (ppm)	2		2	2	Discharge of drilling wastes; discharge from metal refineries; erosion of natural deposits	Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.

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Contaminant (CCR units)	MCL, in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG in CCR units	Major sources in drinking water	Health effects language
Beryllium (ppb)	0.004	1000	4	4	Discharge from metal refineries and coal-burning factories; discharge from electrical, aerospace, and defense industries	Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.
Bromate (ppb)	0.010	1000	10	0	Byproduct of drinking water disinfection	Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.
Cadmium (ppb)	0.005	1000	5	5	Corrosion of galvanized pipes; erosion of natural deposits; discharge from metal refineries; runoff from waste batteries and paints	Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.
Chloramines (ppm)	MRDL = 4.0		MRDL = 4.0	MRDLG = 4.0	Water additive used to control microbes	Some people who use water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.
Chlorine (ppm)	MRDL = 4.0		MRDL = 4.0	MRDLG = 4.0	Water additive used to control microbes	Some people who use water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.
Chlorine dioxide (ppb)	MRDL = 0.8	1000	MRDL = 800	MRDLG = 800	Water additive used to control microbes	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia.

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Contaminant (CCR units)	MCL, in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG in CCR units	Major sources in drinking water	Health effects language
Chlorite (ppm)	1.0		1.0	0.8	Byproduct of drinking water disinfection	Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.
Chromium (ppb)	0.1	1000	100	100	Discharge from steel and pulp mills; erosion of natural deposits	Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.
Copper (ppm)	AL = 1.3		AL = 1.3	1.3	Corrosion of household plumbing systems; erosion of natural deposits	Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.
Cyanide (ppb)	0.2	1000	200	200	Discharge from steel, metal, plastic, and fertilizer factories	Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.
Fluoride (ppm)	4.0		4.0	4.0	Erosion of natural deposits; water additive which promotes strong teeth; discharge from fertilizer and aluminum factories	Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water at half the MCL (2.0 ppm) or more may cause mottling of children's teeth, usually in children less than nine years of age. Mottling, also known as dental fluorosis, may include brown staining or pitting of the teeth, and occurs only in the developing teeth before they erupt from the gums.
Lead (ppb)	AL = 0.015	1000	AL = 15	0	Corrosion of household plumbing systems; erosion of natural deposits	Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.

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Contaminant (CCR units)	MCL, in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG in CCR units	Major sources in drinking water	Health effects language
Mercury, inorganic (ppb)	0.002	1000	2	2	Erosion of natural deposits; discharge from refineries and factories; runoff from landfills; runoff from cropland	Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.
Nitrate, as N (ppm)	10		10	10	Runoff from fertilizer use; leaching from septic tanks or sewage; erosion of natural deposits	Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill, and if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
Nitrite, as N (ppm)	1.0		1.0	1.0	Conversion of ammonia; runoff from fertilizer use; leaching from septic tanks or sewage; erosion of natural deposits	Infants below the age of six months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
Selenium (ppb)	0.05	1000	50	50	Discharge from petroleum and metal refineries; erosion of natural deposits; discharge from mines	Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.
Thallium (ppb)	0.002	1000	2	0.5	Leaching from ore-processing sites; discharge from electronics, glass, and drug factories	Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, change in their blood, or problems with their kidneys, intestines, or liver.
Synthetic Organic Contaminants						
2,4-D (ppb)	0.07	1000	70	70	Runoff from herbicide used on row crops	Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.
2,4,5-TP Silvex (ppb)	0.05	1000	50	50	Residue of banned herbicide	Some people who drink water containing Silvex in excess of the MCL over many years could experience liver problems.

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Contaminant (CCR units)	MCL, in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG in CCR units	Major sources in drinking water	Health effects language
Acrylamide	TT		TT	0	Added to water during sewage/wastewater treatment	Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.
Alachlor (ppb)	0.002	1000	2	0	Runoff from herbicide used on row crops	Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.
Atrazine (ppb)	0.003	1000	3	3	Runoff from herbicide used on row crops	Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.
Benzo(a)pyrene, PAH (ppt)	0.0002	1000000	200	0	Leaching from linings of water storage tanks and distribution lines	Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.
Carbofuran (ppb)	0.04	1000	40	40	Leaching of soil fumigant used on rice and alfalfa	Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.
Chlordane (ppb)	0.002	1000	2	0	Residue of banned termiticide	Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.
Dalapon (ppb)	0.2	1000	200	200	Runoff from herbicide used on rights of way	Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.
Di(2-ethylhexyl)-adipate (ppb)	0.4	1000	400	400	Discharge from chemical factories	Some people who drink water containing di(2-ethylhexyl)adipate well in excess of the MCL over many years could experience toxic effects such as weight loss, liver enlargement, or possible reproductive difficulties.
Di(2-ethylhexyl)-phthalate (ppb)	0.006	1000	6	0	Discharge from rubber and chemical factories	Some people who drink water containing di(2-ethylhexyl)-phthalate well in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Contaminant (CCR units)	MCL, in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG in CCR units	Major sources in drinking water	Health effects language
Dibromochloropropane [DBCP] (ppt)	0.0002	1000000	200	0	Runoff/ leaching from soil fumigant used on soybeans, cotton, pineapples, and orchards	Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive problems and may have an increased risk of getting cancer.
Dinoseb (ppb)	0.007	1000	7	7	Runoff from herbicide used on soybeans and vegetables	Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.
Diquat (ppb)	0.02	1000	20	20	Runoff from herbicide use	Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.
Dioxin [2,3,7,8-TCDD] (ppq)	0.00000003	1000000000	30	0	Emissions from waste incineration and other combustion; discharge from chemical factories	Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
Endothall (ppb)	0.1	1000	100	100	Runoff from herbicide use	Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.
Endrin (ppb)	0.002	1000	2	2	Residue of banned insecticide	Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.
Epichlorohydrin	TT		TT	0	Discharge from industrial chemical factories; an impurity of some water treatment chemicals	Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.
Ethylene dibromide (ppt)	0.0005	1000000	50	0	Discharge from petroleum refineries	Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system or kidneys, and may have an increased risk of getting cancer.
Glyphosate (ppb)	0.7	1000	700	700	Runoff from herbicide use	Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.

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Contaminant (CCR units)	MCL, in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG in CCR units	Major sources in drinking water	Health effects language
Haloacetic Acids (HAA) (ppb)	0.060	1000	60	n/a	Byproduct of drinking water disinfection	Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.
Heptachlor (ppt)	0.0004	1000000	400	0	Residue of banned pesticide	Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.
Heptachlor epoxide (ppt)	0.0002	1000000	200	0	Breakdown of heptachlor	Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer.
Hexachlorobenzene (ppb)	0.001	1000	1	0	Discharge from metal refineries and agricultural chemical factories	Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.
Hexachlorocyclopentadiene (ppb)	0.05	1000	50	50	Discharge from chemical factories	Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.
Lindane (ppt)	0.0002	1000000	200	200	Runoff/leaching from insecticide used on cattle, lumber, gardens	Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.
Methoxychlor (ppb)	0.04	1000	40	40	Runoff/leaching from insecticide used on fruits, vegetables, alfalfa, livestock	Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.
Oxamyl [Vydate] (ppb)	0.2	1000	200	200	Runoff/leaching from insecticide used on apples, potatoes, and tomatoes	Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.

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Contaminant (CCR units)	MCL, in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG in CCR units	Major sources in drinking water	Health effects language
PCBs [polychlorinated byphenyls] (ppt)	0.0005	1000000	500	0	Runoff from landfills; discharge of waste chemicals	Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.
Pentachlorophenol (ppb)	0.001	1000	1	0	Discharge from wood preserving factories	Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.
Picloram (ppb)	0.5	1000	500	500	Herbicide runoff	Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.
Simazine (ppb)	0.004	1000	4	4	Herbicide runoff	Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.
Toxaphene (ppb)	0.003	1000	3	0	Runoff/ leaching from insecticide used on cotton and cattle	Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.
Volatile Organic Contaminants						
Benzene (ppb)	0.005	1000	5	0	Discharge from factories; leaching from gasoline storage tanks and landfills	Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.
Carbon tetrachloride (ppb)	0.005	1000	5	0	Discharge from chemical plants and other industrial activities	Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
Chlorobenzene (ppb)	0.1	1000	100	100	Discharge from chemical and agricultural chemical factories	Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.
o-Dichlorobenzene (ppb)	0.6	1000	600	600	Discharge from industrial chemical factories	Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory system.

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Contaminant (CCR units)	MCL, in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG in CCR units	Major sources in drinking water	Health effects language
p-Dichlorobenzene (ppb)	0.075	1000	75	75	Discharge from industrial chemical factories	Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.
1,2-Dichloroethane (ppb)	0.005	1000	5	0	Discharge from industrial chemical factories	Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.
1,1-Dichloroethylene (ppb)	0.007	1000	7	7	Discharge from industrial chemical factories	Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
cis-1,2-Dichloroethylene (ppb)	0.07	1000	70	70	Discharge from industrial chemical factories	Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
trans-1,2-Dichloroethylene (ppb)	0.1	1000	100	100	Discharge from industrial chemical factories	Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.
Dichloromethane (ppb)	0.005	1000	5	0	Discharge from industrial chemical factories	Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.
1,2-Dichloropropane (ppb)	0.005	1000	5	0	Discharge from industrial chemical factories	Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.
Ethyl benzene (ppb)	0.7	1000	700	700	Discharge from petroleum refineries; leaching from gasoline storage tanks and landfills	Some people who drink water containing ethyl benzene well in excess of the MCL over many years could experience problems with their liver or kidneys.
Styrene (ppb)	0.1	1000	100	100	Discharge from rubber and plastic factories; leaching from landfills	Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.
Tetrachloroethylene (ppb)	0.005	1000	5	0	Discharge from factories and dry cleaners	Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.

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Contaminant (CCR units)	MCL, in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG in CCR units	Major sources in drinking water	Health effects language
1,2,4-Trichlorobenzene (ppb)	0.07	1000	70	70	Discharge from textile-finishing factories	Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.
1,1,1-Trichloroethane (ppb)	0.2	1000	200	200	Discharge from metal degreasing sites and other factories	Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.
1,1,2-Trichloroethane (ppb)	0.005	1000	5	3	Discharge from industrial chemical factories	Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune system.
Trichloroethylene (ppb)	0.005	1000	5	0	Discharge from metal degreasing sites and other factories	Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
TTHMs [total trihalomethanes] (ppb)	0.10 or 0.080 (footnote 4)	1000	100 or 80	n/a	Byproduct of drinking water disinfection	Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous system, and may have an increased risk of getting cancer.
Toluene (ppm)	1		1	1	Discharge from petroleum factories; leaching from gasoline storage tanks and landfills	Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.
Vinyl chloride (ppb)	0.002	1000	2	0	Leaching from PVC piping; discharge from plastics factories	Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.
Xylenes (ppm)	10		10	10	Discharge from petroleum factories; discharge from chemical factories; leaching from gasoline storage tanks and landfills	Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.

¹ MCL (for systems that collect >40 samples per month): 5% of monthly samples are positive. MCL (for systems that collect <40 samples per month): 1 positive monthly sample.

² Uranium MCL is effective on December 8, 2003. Until then, there is no MCL.

³ Beginning on January 23, 2006, the arsenic MCL is 0.010 mg/L and the MCLG is 0. Until then, the MCL is 0.05 mg/L, and there is no MCLG.

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⁴ Beginning on January 1, 2002, for surface water and influenced groundwater systems serving at least 10,000 persons, the TTHM MCL is 0.080 mg/L. For all other systems, the TTHM MCL is 0.10 mg/L until January 1, 2004, at which time the TTHM MCL is 0.080 mg/L for all systems required to monitor under 567—41.6(455B).

ITEM 87. Rescind **567—Chapter 42**, Appendix D, Appendix E, and Appendix F.

ITEM 88. Amend subparagraph **43.1(3)“d”(1)** as follows:

(1) Monitoring program. Submit for approval to the department a monitoring program for bottled water. The monitoring program must provide reasonable assurances that the bottled water complies with all maximum contaminant levels, action levels, or treatment technique requirements in 567—Chapters 41 and 43. The public water system must monitor a representative sample of bottled water for all contaminants regulated under 567—Chapters 41 and 43 the first quarter that it supplies the bottled water to the public, and annually thereafter. Results of the monitoring program shall be provided to the department annually. *If the bottled water is from a community public water system that currently meets all of the federal Safe Drinking Water Act requirements, the monitoring requirements of this subparagraph shall be waived by the department. The specific supplier of the bottled water must be identified in order for the department to waive the monitoring requirements.*

ITEM 89. Amend subparagraph **43.1(3)“d”(2)**, catchwords, as follows:

(2) Certification ~~and monitoring~~ requirements.

ITEM 90. Amend subparagraph **43.1(4)“b”(2)** as follows:

(2) Backflow preventer criteria. An approved backflow preventer for this application shall be a reduced pressure backflow preventer or an antisiphon device which complies with the standards of the American Water Works Association and has been approved by the Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California.

When, in the opinion of the department, evidence clearly indicates the source of contamination within the system is the result of a cross-connection, the department may require a public water supply to *conduct public notification*, identify and eliminate the connection, and implement a systemwide cross-connection program.

ITEM 91. Adopt **new** subrule 43.1(6) as follows:

43.1(6) Prohibition of return water in public water supply systems. Steam condensate, cooling water from engine jackets, water used in conjunction with heat exchange devices, or treated wastewater shall not be returned to the public water supply system.

ITEM 92. Adopt **new** subrule 43.1(7) as follows:

43.1(7) Sanitary surveys. Each public water supply system must have a periodic sanitary survey, conducted by the department or its designee, which is a records review and on-site inspection of the system. The inspection evaluates the system's ability to produce and distribute safe drinking water and identifies improvements necessary to maintain or improve drinking water quality. The sanitary survey includes review and inspection of the following areas: water source; facilities (treatment, storage, distribution system); equipment; operation and management; maintenance; self-monitoring requirements; properly certified operators; and records. A report of the sanitary survey is issued by the department, and may include both enforceable required actions for remedying significant deficiencies and nonenforceable recommended actions. The frequency of the sanitary survey

inspection must be at least once every five years for noncommunity systems, once every five years for community systems using groundwater, and once every three years for community systems using surface water or influenced groundwater sources. Systems must respond in writing to significant deficiencies outlined in the sanitary survey report within the time period specified in the report, indicating how and on what schedule the system will address significant deficiencies noted in the survey. At a maximum, the written response must be received within 45 days of receiving the survey report. All systems must take the steps necessary to address significant deficiencies identified in the sanitary survey report that are within the control of the system and its governing body.

ITEM 93. Amend subrule 43.3(1) as follows:

43.3(1) Standards for public water supplies. Any public water supply that does not meet the drinking water standards contained in 567—Chapters 41 and 43 shall make the alterations in accordance with the standards for construction contained in 43.3(2) necessary to comply with the drinking water standards unless the public water supply has been granted a variance from a maximum contaminant level or treatment technique as a provision of its operation permit pursuant to 43.2(455B), provided that the public water supply meets the schedule established pursuant to 43.2(455B). Any public water supply that, in the opinion of the director, contains a potential hazard shall make the alterations in accordance with the standards for construction contained in this rule necessary to eliminate or minimize that hazard. *A system that is not operating within the design standards may be required by the department via a compliance schedule to upgrade the deficient areas of the system before a construction permit will be issued for any work in the system that does not address the current deficiencies.*

ITEM 94. Amend paragraph **43.3(2)“a”** as follows:

a. The standards for a project are the Ten States Standards and the American Water Works Association (AWWA) Standards as adopted through 1998 2001 and 43.3(7) to 43.3(9). ~~Polyvinyl chloride (PVC) pipe manufactured in accordance with ASTM D2241 or ASTM F1483 may also be used in Iowa.~~ To the extent of any conflict between the Ten States Standards and the American Water Works Association Standards and 43.3(7) to 43.3(9), the Ten States Standards, 43.3(2), and 43.3(7) to 43.3(9) shall prevail. ~~The maximum allowable pressure for PVC or polyethylene (PE) pipe shall be determined based on a safety factor of 2.5 and a surge allowance of no less than two feet per second (2 fps).~~ *Additional standards include the following:*

(1) *Polyvinyl chloride (PVC) pipe manufactured in accordance with ASTM D2241, AWWA C900, AWWA C905, ASTM F1483, or AWWA C909 may be used for water main construction. The maximum allowable pressure for PVC or polyethylene (PE) pipe shall be determined based on a safety factor of 2.5 and a surge allowance of no less than two feet per second (2 fps).*

(2) *For CWS groundwater systems, a minimum of two wells shall be provided, unless the system demonstrates to the department's satisfaction that a single well will provide a reliable and adequate source. For NTNC and TNC groundwater systems, a single well is acceptable.*

(3) *Separation of water mains from sanitary sewers and storm sewers shall be in accordance with the Iowa Wastewa-*

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ter Facilities Design Standards, chapter 12, section 5.8, "Protection of Water Supplies." Where the water main either crosses under or is less than 18 inches above the sewer, one full length of water main shall be located so that both joints are as far as possible from the sewer. The sewer and water pipes must be adequately supported. A low permeability soil shall be used for backfilling material within ten feet of the point of crossing. No water pipe shall pass through or come in contact with any part of a sewer manhole.

ITEM 95. Amend paragraph **43.3(3)"a"** as follows:

a. Construction permit issuance conditions. A permit to construct shall be issued by the director if the director concludes from the application and specifications submitted pursuant to 43.3(4)"b" and 567—40.4(455B) that the project will comply with the rules of the department.

ITEM 96. Amend subparagraph **43.3(3)"b"(4)** as follows:

(4) ~~A~~ A professional engineer, registered licensed in the state of Iowa, supervises the construction; and

ITEM 97. Adopt **new** paragraph **43.3(3)"c"** as follows:

c. Construction permit fees. A nonrefundable fee for a construction permit issued in accordance with subrules 43.3(3) and 43.3(4) and 567—subrules 40.3(1) and 40.4(1) shall be submitted with the application for a construction permit prior to the authorization to commence construction. The construction permit fee shall be based upon the following rate structure:

(1) Routine construction permits. The fee shall be determined based upon the total length of water main plus the non-water-main-related construction costs, calculated as follows:

1. Water mains (minimum fee of \$100; maximum fee of \$5,000):

Length of permitted water main	Rate
First 1,000 ft.	\$100
Next 19,000 ft.	\$0.10/ft.
Next 300,000 ft.	\$0.01/ft.
Over 320,000 ft.	No additional charge

2. Non-water-main-related construction costs, including source, treatment, pumping, storage and waste handling (minimum fee of \$100; maximum fee of \$16,000):

Estimated construction cost	Rate
First \$50,000	\$100
Next \$950,000	0.2% of estimated construction cost
Next \$14,000,000	0.1% of estimated construction cost
Over \$15,000,000	No additional charge

(2) "As-built" construction. "As-built" construction is defined as construction that occurred before a construction permit is issued. The fee shall be calculated according to 43.3(3)"c"(1), plus an additional fee of \$200, and is effective for construction that occurred after December 1, 2003.

(3) Change orders, addenda, permit supplements, and request for time extensions. A fee for change orders, addenda, permit supplements, or request for time extension will only be charged if the aggregate of the changes approved for the project to date cause the total project construction cost to exceed the original project construction cost by at least 5 percent. For water main extensions, the fee will be charged if the total length of water main exceeds the original approved length by 5 percent.

Categories	Rate
Change orders, addenda, and permit supplements	\$0.10/ft. of additional water main, plus 0.2% of additional non-water-main-related construction costs; minimum fee: \$50

ITEM 98. Adopt **new** paragraph **43.3(3)"d"** as follows:

d. Water well construction. All water well construction must be performed by a certified well contractor in accordance with 567—Chapter 82. It is the responsibility of the public water supply and certified well contractor to ensure that a public well construction permit has been issued by the department prior to initiation of well construction and to ensure that all well construction is performed in accordance with the provisions of this chapter.

ITEM 99. Amend subrule 43.3(4), introductory paragraph, as follows:

43.3(4) Waiver from engineering requirements. The requirement for plans and specifications prepared by a registered licensed professional engineer may be waived for the following types of projects, provided the improvement complies with the standards for construction. This waiver does not relieve the supplier of water from meeting the application and permit requirements pursuant to 43.3(3), except that the applicant need not obtain a written permit prior to installing the equipment.

ITEM 100. Amend subparagraph **43.3(4)"b"(1)** as follows:

(1) ~~The installation is proposed for the purpose of eliminating a maximum contaminant level violation and equipment~~ is of a type which can be purchased "off the shelf," is self-contained requiring only a piping hookup for installation and operates throughout a range of 35 to 80 pounds per square inch;

ITEM 101. Rescind subrule 43.3(7) and adopt in lieu thereof the following **new** subrule:

43.3(7) Site, separation distance, and monitoring requirements for new raw water source(s) and underground finished water storage facilities.

a. Approval required. The site for each proposed raw water supply source or finished water below-ground level storage facility must be approved by the department prior to the submission of plans and specifications.

b. Criteria for approval. A site may be approved by the director if the director concludes that the criteria in this paragraph are met.

(1) Groundwater source. Wells shall be planned and constructed to adapt to the geologic and groundwater conditions of the proposed well site to ensure production of water from the wells that is both microbially safe and free of substances that could cause harmful human health effects. Groundwater wells must meet the following requirements:

1. Drainage must be directed away from the well in all directions for a minimum radius of 15 feet.

2. A well site must be separated from contamination sources by the distances specified in Table A at a minimum.

3. After the well site has received preliminary approval from the department, the owner of the proposed well must submit proof of legal control of the land for a 200-foot radius around the well, through purchase, lease, easement, ordinance, or other similar means. Proof of legal control must be submitted as part of the construction permit application, prior to construction. The legal control must be maintained by the public water system for the life of the well, and the system

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must ensure that the siting criteria indicated in Table A are met.

However, if the proposed well is for an existing noncommunity water system and is replacing an existing well that either does not meet the current standards or is in poor condition, the requirement of 200-foot legal control may be waived by the department provided that:

- The proposed well is located on the best available site;
- The existing facility does not have adequate land to provide the 200-foot control zone;
- The owner has attempted to obtain legal control without success; and
- There is no other public water supply available to which the supply could connect.

4. When the proposed well is located in an existing well field and will withdraw water from the same aquifer as the existing well(s), individual separation distances may be waived if substantial historical data are available indicating that no contamination has resulted.

5. No well shall be constructed within the projected plume of any known anthropogenic groundwater contamination without the department's written approval. The department may allow a well to be constructed within a contamination plume if the applicant can provide adequate treatment to ensure that all drinking water standards are met and that the pumpage of the proposed well will not cause migration of the plume such that it impacts the water quality of other nearby wells. The applicant must demonstrate, using a hydrogeologic model acceptable to the department, that the time of transport is greater than two years for a viral, bacterial, or other microorganism contaminant and greater than ten years for all chemical contaminants. At a minimum, modeling of the projected plume must take into account the proposed pumpage rate of the well. The department may require additional construction standards for these situations to ensure protection of the groundwater from contamination.

6. The department may require that an identification tag be applied to each well and may supply the numbered tag. The responsibility for ensuring that the tag is properly attached to the well is with the certified water well contractor for new wells and with the department for existing wells.

(2) Surface water source. The applicant must submit proof that a proposed surface water source can, through readily available treatment methodology, comply with 567—Chapters 41 and 43, and that the raw water source is adequately protected against potential health hazards including, but not limited to, point source discharges, hazardous chemical spills, and the potential sources of contamination listed in Table A.

After a surface water impoundment has received preliminary approval from the department for use as a raw water source, the owner of the water supply system shall submit proof of legal control through ownership, lease, easement, or other similar means, of contiguous land for a distance of 400 feet from the shoreline at the maximum water level. Legal control shall be for the life of the impoundment and shall control location of sources of contamination within the 400-foot distance. Proof of legal control should be submitted as part of the construction permit application and shall be submitted prior to issuance of a permit to construct.

(3) Below-ground storage facilities. The minimum separation between a below-ground level finished water storage facility and any source of contamination listed in Table A as being 50 feet or more shall be 50 feet. The specific separation distances listed in Table A that are less than 50 feet shall apply to a below-ground level finished water storage facility as indicated in the table.

(4) Separation distances. Greater separation distances may be required where necessary to ensure that no adverse effects to water supplies or the existing environment will result. Lesser separation distances may be considered if detailed justification is provided by the applicant's engineer showing that no adverse effects will result from a lesser separation distance, and the regional staff recommends approval of the lesser distance. Such exceptions must be based on special construction techniques or localized geologic or hydrologic conditions.

c. New source water monitoring requirements. Water quality monitoring shall be conducted on all new water sources and results submitted to the department prior to placing the new water source into service.

(1) All sources. Water samples shall be collected from each new water source and analyzed for all appropriate contaminants as specified in 567—Chapter 41 consistent with the particular water system classification. If multiple new sources are being added, compositing of the samples (within a single system) shall be allowed in accordance with the composite sampling requirements outlined in 567—Chapter 41. A single sample may be allowed to meet this requirement, if approved by the department.

Subsequent water testing shall be conducted consistent with the water system's water supply operation permit monitoring schedule.

(2) Groundwater sources. Water samples collected from groundwater sources in accordance with 43.3(7)“c”(1) shall be conducted at the conclusion of the drawdown/yield test pumping procedure, with the exception of bacteriological monitoring. Bacteriological monitoring must be conducted after disinfection of each new well and subsequent pumping of the chlorinated water to waste. Water samples should also be analyzed for alkalinity, ammonia, pH, calcium, chloride, copper, hardness, iron, magnesium, manganese, potassium, silica, specific conductance, sodium, sulfate, filterable and nonfilterable solids, and zinc.

(3) Surface water sources. Water samples collected from surface water sources in accordance with 43.3(7)“c”(1) should be collected prior to the design of the surface water treatment facility and shall be conducted and analyzed prior to utilization of the source. The samples shall be collected during June, July, and August. In addition, quarterly monitoring shall be conducted in March, June, September, and December at a location representative of the raw water at its point of withdrawal. Monitoring shall be for turbidity, alkalinity, pH, calcium, chloride, color, copper, hardness, iron, magnesium, manganese, potassium, silica, specific conductance, sodium, sulfate, filterable and nonfilterable solids, carbonate, bicarbonate, algae (qualitative and quantitative), total organic carbon, five-day biochemical oxygen demand, dissolved oxygen, surfactants, nitrogen series (organic, ammonia, nitrite, and nitrate), and phosphate.

TABLE A: SEPARATION DISTANCES

SOURCE OF CONTAMINATION	REQUIRED MINIMUM DISTANCE FROM WELL, IN FEET	
	Deep Well ¹	Shallow Well ¹
WASTEWATER STRUCTURES:		
Point of Discharge to Ground Surface		
Sanitary & industrial discharges	400	400

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SOURCE OF CONTAMINATION	REQUIRED MINIMUM DISTANCE FROM WELL, IN FEET	
	Deep Well ¹	Shallow Well ¹
Water treatment plant wastes	50	50
Well house floor drains	5	5
Sewers & Drains ²		
Sanitary & storm sewers, drains	0 – 25 feet: prohibited 25 – 75 feet if water main pipe 75 – 200 feet if sanitary sewer pipe	0 – 25 feet: prohibited 25 – 75 feet if water main pipe 75 – 200 feet if sanitary sewer main pipe
Sewer force mains	0 – 75 feet: prohibited 75 – 400 feet if water main pipe 400 – 1000 feet if water main or sanitary sewer pipe	0 – 75 feet: prohibited 75 – 400 feet if water main pipe 400 – 1000 feet if water main or sanitary sewer main pipe
Water plant treatment process wastes that are treated onsite	0 – 5 feet: prohibited 5 – 50 feet if sanitary sewer pipe	0 – 5 feet: prohibited 5 – 50 feet if sanitary sewer main pipe
Water plant wastes to sanitary sewer	0 – 25 feet: prohibited 25 – 75 feet if water main pipe 75 – 200 feet if sanitary sewer pipe	0 – 25 feet: prohibited 25 – 75 feet if water main pipe 75 – 200 feet if sanitary sewer main pipe
Well house floor drains to sewers	0 – 25 feet: prohibited 25 – 75 feet if water main pipe 75 – 200 feet if sanitary sewer pipe	0 – 25 feet: prohibited 25 – 75 feet if water main pipe 75 – 200 feet if sanitary sewer main pipe
Well house floor drains to surface	0 – 5 feet: prohibited 5 – 50 feet if sanitary sewer pipe	0 – 5 feet: prohibited 5 – 50 feet if sanitary sewer main pipe
Land Disposal of Treated Wastes		
Irrigation of wastewater	200	400
Land application of solid wastes ³	200	400
Other		
Cesspools & earth pit privies	200	400
Concrete vaults & septic tanks	100	200
Lagoons	400	1000
Mechanical wastewater treatment plants	200	400
Soil absorption fields	200	400
CHEMICALS:		
Chemical application to ground surface	100	200
Chemical & mineral storage above ground	100	200
Chemical & mineral storage on or under ground	200	400
Transmission pipelines (such as fertilizer, liquid petroleum, or anhydrous ammonia)	200	400
ANIMALS:		
Animal pasturage	50	50
Animal enclosure	200	400
Earthen silage storage trench or pit	100	200
Animal Wastes		
Land application of liquid or slurry	200	400
Land application of solids	200	400
Solids stockpile	200	400
Storage basin or lagoon	400	1000
Storage tank	200	400
MISCELLANEOUS:		
Basements, pits, sumps	10	10
Cemeteries	200	200
Cisterns	50	100
Flowing streams or other surface water bodies	50	50
Railroads	100	200
Private wells	200	400
Solid waste landfills and disposal sites ⁴	1000	1000

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¹ Deep and shallow wells, as defined in 567— 40.2(455B): A deep well is a well located and constructed in such a manner that there is a continuous layer of low permeability soil or rock at least 5 feet thick located at least 25 feet below the normal ground surface and above the aquifer from which water is to be drawn. A shallow well is a well located and constructed in such a manner that there is not a continuous layer of low permeability soil or rock (or equivalent retarding mechanism acceptable to the department) at least 5 feet thick, the top of which is located at least 25 feet below the normal ground surface and above the aquifer from which water is to be drawn.

² The separation distances are dependent upon two factors: the type of piping that is in the existing sewer or drain, as noted in the table, and that the piping was properly installed in accordance with the standards.

³ Solid wastes are those derived from the treatment of water or wastewater. Certain types of solid wastes from water treatment processes may be land-applied within the separation distance on an individual, case-by-case basis.

⁴ Solid waste means garbage, refuse, rubbish, and other similar discarded solid or semisolid materials, including but not limited to such materials resulting from industrial, commercial, agricultural, and domestic activities.

ITEM 102. Rescind paragraph 43.3(10)“b” and adopt in lieu thereof the following **new** paragraph:

b. BATs for inorganic compounds and radionuclides.

(1) Inorganic compounds. The department identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for the inorganic contaminants listed in 567—paragraph 41.3(1)“b,” except arsenic and fluoride.

INORGANIC CHEMICAL	BAT(s)
Antimony	2,7
Arsenic ^d	1,2,5,6,7,9,11 ^e
Asbestos	2,3,8
Barium	5,6,7,9
Beryllium	1,2,5,6,7
Cadmium	2,5,6,7
Chromium	2,5,6 ^b ,7
Cyanide	5,7,10
Mercury	2 ^a ,4,6 ^a ,7 ^a
Nickel	5,6,7
Nitrate	5,7,9
Nitrite	5,7
Selenium	1,2 ^c ,6,7,9
Thallium	1,5

Key to BATs

- 1 = Activated Alumina
- 2 = Coagulation/Filtration*
- 3 = Direct and Diatomite Filtration
- 4 = Granular Activated Carbon
- 5 = Ion Exchange
- 6 = Lime Softening*
- 7 = Reverse Osmosis
- 8 = Corrosion Control
- 9 = Electrodialysis
- 10 = Chlorine
- 11 = Oxidation/Filtration

*not BAT for systems with less than 500 service connections

^aBAT only if influent Hg concentrations are less than or equal to 10 micrograms/liter.

^bBAT for Chromium III only.

^cBAT for Selenium IV only.

^dBAT for Arsenic V. Preoxidation may be required to convert Arsenic III to Arsenic V.

^eTo obtain high removals, iron to arsenic ratio must be at least 20:1.

(2) Small system compliance technologies for arsenic. The department identifies in the following table the affordable technology, treatment techniques, or other means available to systems serving 10,000 or fewer persons for achieving compliance with the arsenic maximum contaminant level.

SMALL SYSTEM COMPLIANCE TECHNOLOGIES FOR ARSENIC¹

Technology	Affordable for listed small system categories ²
Activated alumina	All size categories
Coagulation/filtration ³	501 – 3,300 and 3,301 – 10,000
Coagulation-assisted microfiltration	501 – 3,300 and 3,301 – 10,000
Electrodialysis reversal ⁴	501 – 3,300 and 3,301 – 10,000
Enhanced coagulation/filtration	All size categories
Enhanced lime softening (pH > 10.5)	All size categories
Ion exchange	All size categories
Lime softening ³	501 – 3,300 and 3,301 – 10,000
Oxidation/filtration ⁵	All size categories
Reverse osmosis ⁴	501 – 3,300 and 3,301 – 10,000

¹ Technologies are for Arsenic V. Preoxidation may be required to convert Arsenic III to Arsenic V.

² There are three categories of small systems: those serving 25 to 500 people, those serving 501 to 3,300 people, and those serving 3,301 to 10,000 people.

³ Unlikely to be installed solely for arsenic removal. May require pH adjustment to optimal range if high removals are needed.

⁴ Technologies reject a large volume of water. May not be appropriate for areas where water quantity may be an issue.

⁵ To obtain high removals, iron to arsenic ratio must be at least 20:1.

(3) Radionuclides.

1. The department identifies in the following table the best available technology for achieving compliance with the radionuclide maximum contaminant levels as indicated.

RADIONUCLIDE BAT

Contaminant	Best Available Technology
Gross alpha particle activity (excluding radon and uranium)	Reverse osmosis
Beta particle and photon radioactivity	Ion exchange, reverse osmosis
Combined radium-226 and radium-228	Ion exchange, reverse osmosis, lime softening
Uranium	Ion exchange, reverse osmosis, lime softening, coagulation/filtration

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2. Small system compliance technologies. The following technologies are identified as radionuclide BAT for systems serving 10,000 or fewer people.

RADIONUCLIDES SMALL SYSTEM COMPLIANCE TECHNOLOGIES

Contaminant	Compliance Technology ^a
Gross alpha particle activity	2
Beta particle and photon radioactivity	1, 2
Combined radium-226 and radium-228	1, 2, 3, 4, 5, 6, 7
Uranium	1, 2 ^b , 3 ^b , 8, 9

^a Compliance technologies are listed with their corresponding number and potential limitations for use, as follows:

- 1: Ion exchange. The regeneration solution contains high concentrations of the contaminant ions. Disposal options should be carefully considered before choosing this technology.
- 2: Reverse osmosis. Reject water disposal options should be carefully considered before choosing this technology.
- 3: Lime softening. The complexity of the water chemistry may make this technology too complex for small systems.
- 4: Green sand filtration. Removal efficiencies can vary depending on water quality.
- 5: Coprecipitation with barium sulfate. This technology has limited applications to small systems, and is most applicable to systems with sufficiently high sulfate levels that already have a suitable filtration treatment train in place.
- 6: Electrodialysis/electrodialysis reversal.
- 7: Preformed hydrous manganese oxide filtration. This technology is most applicable to small systems that have existing filtration technology.
- 8: Activated alumina. The regeneration solution contains high concentrations of the contaminant ions. Disposal options should be carefully considered before choosing this technology. Handling of chemicals required during regeneration and pH adjustment requires an adequately trained operator.

9: Enhanced coagulation/filtration. This technology assumes that it is a modification to an existing coagulation/filtration process.

^b Not recommended for systems serving 25 to 500 persons.

ITEM 103. Amend paragraph **43.3(10)“d”** as follows:

d. Requirement to install BAT. The department shall require community water systems and nontransient noncommunity water systems to install and use any treatment method identified in 43.3(10) as a condition for granting an interim contaminant level except as provided in paragraph “e.” If, after the system’s installation of the treatment method, the system cannot meet the maximum contaminant level, the system shall be eligible for a compliance schedule with an interim contaminant level granted under the provisions of 567—42.2(455B) *subrule* 42.1(9) and *rule* 43.2(455B).

ITEM 104. Amend paragraph **43.3(10)“f”** as follows:

f. Compliance schedule. If the department determines that a treatment method identified in 43.3(10)“a,” “b,” and “c” is technically feasible, the department may require the system to install or use that treatment method in connection with a compliance schedule issued under the provisions of 567—42.2(455B) *subrule* 42.1(9) and *rule* 43.2(455B). The determination shall be based upon studies by the system and other relevant information.

ITEM 105. Amend rule 567—43.4(455B) as follows:

567—43.4(455B) Certification of completion. Within 30 days after completion of construction, installation or modification of any project, the permit holder shall submit a certification by a ~~registered~~ *licensed* professional engineer that the project was completed in accordance with the approved plans and specifications except if the project received a waiver pursuant to 43.3(4).

ITEM 106. Amend paragraph **43.5(1)“a,”** introductory paragraph, as follows:

a. These rules apply to all public water supply systems using surface water or groundwater under the direct influence of surface water, in whole or in part, and establish criteria under which filtration is required as a treatment technique. In addition, these rules establish treatment technique requirements in lieu of maximum contaminant levels for *Giardia lamblia*, heterotrophic plate count bacteria, *Legionella*, viruses and turbidity. Each public water system with a surface water source or a groundwater source under the direct influence of surface water must provide treatment of that

source water which complies with these treatment technique requirements. Systems which serve at least 10,000 persons must also comply with the requirements of 43.9(455B). ~~The department may require systems serving less than 10,000 persons to comply with 43.9(455B).~~ *Systems which serve fewer than 10,000 persons must also comply with the requirements of 43.10(455B).* The treatment technique requirements consist of installing and properly operating water treatment processes which reliably achieve:

ITEM 107. Amend subparagraph **43.5(1)“b”(1)**, catchwords, as follows:

- (1) Preliminary ~~review~~ *evaluation*.

ITEM 108. Amend subparagraph **43.5(1)“b”(3)**, introductory paragraph, as follows:

(3) Formal evaluation. The evaluation shall be conducted by the department or ~~registered~~ *a licensed professional engineer* at the direction of the public water supply. The evaluation shall include:

ITEM 109. Amend paragraph **43.5(3)“a”** as follows:

a. Applicability. A public water system that uses a surface water source or a groundwater source under the direct influence of surface water must provide treatment consisting of both disinfection, as specified in 43.5(2), and filtration treatment which complies with the turbidity requirements of subrules 43.5(3), 43.5(4), and 43.5(5). A system providing or required to provide filtration on or before December 30, 1991, must meet the requirements of this subrule by June 29, 1993. A system providing or required to provide filtration after December 30, 1991, must meet the requirement of this subrule when filtration is installed. Beginning January 1, 2002, systems serving at least 10,000 people must meet the turbidity requirements in 43.9(455B). *Beginning January 1, 2005, systems serving fewer than 10,000 people must meet the turbidity requirements in 43.10(455B).* A system shall install filtration within 18 months after the department determines, in writing, that filtration is required. The department may require and the system shall comply with any interim turbidity requirements the department deems necessary. Failure to meet any requirements of the referenced subrules after the dates specified is a treatment technique violation.

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ITEM 110. Amend paragraph **43.5(3)“e”** as follows:

e. Other filtration technologies. A public water system may use either a filtration technology not listed in 43.5(3)“b” to 43.5(3)“d” or a filtration technology listed in 43.5(3)“b” or 43.5(3)“c” at a higher turbidity level if it demonstrates to the department through a preliminary report submitted by a registered licensed professional engineer, using pilot plant studies or other means, that the alternative filtration technology in combination with disinfection treatment that meets the requirements of 43.5(2) consistently achieves 99.9 percent removal or inactivation of *Giardia lamblia* and 99.99 percent removal or inactivation of viruses. For a system that uses alternative filtration technology and makes this demonstration,

the turbidity treatment technique requirements are as follows:

(1) No change.

(2) The turbidity level of representative samples of a system’s filtered water must at no time exceed 5 NTU when measured as specified in 43.5(4)“a”(1) and 43.5(4)“b”(1).

Beginning January 1, 2002, systems serving at least 10,000 people must meet the requirements for other filtration technologies in 43.9(3)“b.”

Beginning January 1, 2005, systems serving fewer than 10,000 people must meet the requirements for other filtration technologies in 43.10(455B).

ITEM 111. Amend subparagraph **43.5(4)“a”(1)** as follows:

(1) Turbidity analytical methodology. Turbidity analysis shall be conducted using the following methodology:

Methodology	Analytical Method			
	EPA	SM	GLI	HACH
Nephelometric	180.1 ¹	2130B ²	Method 2 ³	<i>FilterTrak 10133</i> ⁴

¹“Methods for the Determination of Inorganic Substances in Environmental Samples,” EPA-600/R-93-100, August 1993. Available at NTIS, PB94-121811.

²Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992, and 19th edition, 1995, or 20th edition, 1998 (either edition any of the three editions may be used), American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005.

³GLI Method 2, “Turbidity,” November 2, 1992, Great Lakes Instruments, Inc., 8855 North 55th Street, Milwaukee, WI 53223.

⁴Hach FilterTrak Method 10133, “Determination of Turbidity by Laser Nephelometry,” January 2000, Revision 2.0, Hach Co., P.O. Box 389, Loveland, CO 80539-0389, telephone (800)227-4224.

ITEM 112. Amend subparagraph **43.5(4)“a”(5)**, table, as follows:

DISINFECTANT ANALYTICAL METHODOLOGY

Residual	Methodology	Methods ^{1, 2}
Free chlorine	Amperometric Titration	4500-CI D
	DPD Ferrous Titrimetric	4500-CI F
	DPD Colorimetric	4500-CI G
	Syringaldazine (FACTS)	4500-CI H
Total chlorine	Amperometric Titration	4500-CI D
	Amperometric Titration (low level measurement)	4500-CI E
	DPD Ferrous Titrimetric	4500-CI F
	DPD Colorimetric	4500-CI G
	Iodometric Electrode	4500-CI I
Chlorine dioxide	Amperometric Titration	4500-CIO ₂ C
	DPD Method	4500-CIO ₂ D
	Amperometric Titration	4500-CIO ₂ E
Ozone	Indigo method	4500-O ₃ B ³

¹Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992, and 19th edition, 1995, or 20th edition, 1998 (either edition any of the three editions may be used), American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005.

²Other analytical test procedures are contained within Technical Notes on Drinking Water Methods, EPA-600/R-94-173, October 1994, which is available as NTIS PB95-104766.

³Standard Methods for the Examination of Water and Wastewater, 18th edition (1992) and 19th edition (1995); (either edition may be used), American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005.

ITEM 113. Amend **43.5(4)“b”(2)“2”** as follows:

2. Residual disinfectant in the system. The residual disinfectant concentration must be measured at least *daily in the distribution system. Residual disinfectant measurements that are required as part of the total coliform bacteria sample collection under 567—paragraph 41.2(1)“c” shall be used to satisfy this requirement on the day(s) when a bacteria sample(s) is collected. at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in 567—paragraph 41.2(1)“c,” except that the* The department may allow a public water system which that uses both a groundwater source and a surface water source or a groundwater source under direct influence of surface water, and a groundwater source to take residual disinfectant samples at points other than the total coliform sampling points, if

these points are included as a part of the coliform sample site plan meeting the requirements of 567—numbered paragraph 41.2(1)“c”(1)“1” and if the department determines that such points are representative of treated (disinfected) water quality within the distribution system. Heterotrophic plate count bacteria (HPC) may be measured in lieu of residual disinfectant concentration, using Method 9215B, Pour Plate Method, Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992. The time from sample collection to initiation of analysis shall not exceed eight hours. Samples must be kept below 10 degrees C during transit to the laboratory. All samples must be analyzed by a department-certified laboratory meeting the requirements of 567—Chapter 83.

ITEM 114. Amend paragraph **43.5(5)“b”** as follows:

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b. Turbidity exceeds 5 NTU. If at any time the turbidity exceeds 5 NTU, the system must inform the department as soon as possible, but no later than 24 hours after the *exceedance is known, in accordance with the public notification requirements under 567—subparagraph 42.1(3)“b”(3) by the end of the next business day.*

ITEM 115. Amend paragraph **43.5(5)“c”** as follows:

c. Residual disinfectant entering distribution system below 0.3 mg/L *free residual chlorine* or 1.5 mg/L *total residual chlorine*. If at any time the residual falls below 0.3 mg/L *free residual chlorine* or 1.5 mg/L *total residual chlorine* in the water entering the distribution system, the system must notify the department as soon as possible, but no later than by the end of the next business day. The system also must notify the department by the end of the next business day whether or not the residual was restored to at least 0.3 mg/L *free residual chlorine* or 1.5 mg/L *total residual chlorine* within four hours.

ITEM 116. Adopt **new** subrule 43.5(6) as follows:

43.5(6) Filter backwash recycle provisions. All surface water or influenced groundwater systems that employ conventional filtration or direct filtration treatment and that recycle spent filter backwash water, thickener supernatant, or liquids from dewatering processes must meet the requirements of this subrule.

a. Reporting. A system must notify the department in writing by December 8, 2003, if the system recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes. This notification must include the following information at a minimum.

(1) A plan schematic showing the origin of all flows which are recycled (including, but not limited to, spent filter backwash water, thickener supernatant, and liquids from dewatering processes), the hydraulic conveyance used to transport them, and the location where they are reintroduced back into the treatment plant.

(2) Typical recycle flow in gallons per minute (gpm), the highest observed plant flow experience in the previous year (in gpm), design flow for the treatment plant (in gpm), the minimum plant rate (in gpm) during which the filter backwash will be recycled, and department-approved operating capacity for the plant where the department has made such determinations.

b. Treatment technique requirement. Any system that recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes must return these flows through the processes of a system's existing conventional or direct filtration system as defined in 567—40.2(455B) or at an alternate location approved by the department by June 8, 2004. However, if capital improvements are required to modify the recycle location to meet this requirement, all capital improvements must be completed no later than June 8, 2006.

c. Record keeping. The system must collect and retain on file the recycle flow information specified below for review and evaluation by the department beginning June 8, 2004.

(1) A copy of the recycle notification and information submitted to the department under paragraph “a” of this subrule.

(2) A list of all recycle flows and the frequency with which they are returned.

(3) The average and maximum backwash flow rate through the filters and the average and maximum duration of the filter backwash process in minutes.

(4) The typical filter run length and a written summary of how filter run length is determined.

(5) The type of treatment provided for the recycle flow.

(6) Data on the physical dimensions of the equalization and treatment units, typical and maximum hydraulic loading rates, type of treatment chemicals used including average dose and frequency of use, and frequency at which solids are removed, if applicable.

ITEM 117. Amend **43.6(1)“c”(1)“1”** as follows:

1. Systems must take all samples during normal operating conditions. *If the system does not use the disinfectant or oxidant on a daily basis, the system must conduct the required daily monitoring each day the disinfectant or oxidant is used, and any required monthly monitoring during those months in which the disinfectant or oxidant is used during any portion of the month.*

ITEM 118. Amend **43.6(1)“c”(2)“1”** as follows:

1. Routine monitoring. Community and nontransient noncommunity water systems that use chlorine or chloramines must measure the residual disinfectant level at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in 43.5(4)“b”(2)“2.” 567—subrule 41.2(1). Surface water and groundwater under the direct influence of surface water systems may use the results of residual disinfectant concentration sampling conducted under 43.5(4)“b”(2)“1 2,” in lieu of taking separate samples.

ITEM 119. Amend **43.6(1)“c”(2)“1”** as follows:

1. Compliance must be based on a running annual arithmetic average, computed quarterly, of monthly averages of all samples collected by the system under 43.6(1)“c”(2). ~~If the average of quarterly averages covering any consecutive four-quarter period exceeds the MRDL, the system is in violation of the MRDL and must notify the public pursuant to 567—42.1(455B), in addition to reporting to the department pursuant to 567—paragraph 42.4(3)“d.”~~

ITEM 120. Amend subparagraph **43.6(1)“e”(3)** as follows:

(3) Chlorine dioxide.

1. Acute violations. Compliance must be based on consecutive daily samples collected by the system under 43.6(1)“c”(3). If any daily sample taken at the entrance to the distribution system exceeds the MRDL, and on the following day one or more of the three samples taken in the distribution system exceed the MRDL, the system is in violation of the MRDL and shall take immediate corrective action to lower the level of chlorine dioxide below the MRDL and shall notify the public pursuant to ~~the procedures for acute health risks in 567—subparagraph 42.1(1)“b”(5) to the Tier 1 requirements in 567—subrule 42.1(2) in addition to reporting to the department pursuant to 567—paragraph 42.4(3)“d.”~~ Failure to take samples in the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system will also be considered an MRDL violation and the system must notify the public of the violation in accordance with the provisions for ~~acute Tier 1 violations under 567—subparagraph 42.1(1)“b”(5) in 567—subrule 42.1(2), in addition to reporting to the department pursuant to 567—paragraph 42.4(3)“d.”~~

2. Nonacute violations. Compliance must be based on consecutive daily samples collected by the system under 43.6(1)“c”(3). If any two consecutive daily samples taken at the entrance to the distribution system exceed the MRDL and all distribution system samples taken are below the MRDL, the system is in violation of the MRDL and must take correct-

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tive action to lower the level of chlorine dioxide below the MRDL at the point of sampling and will notify the public pursuant to the procedures for nonacute health violations in 567—subrule 42.1(1), to the Tier 2 requirements in 567—subrule 42.1(3), in addition to reporting to the department pursuant to 567—paragraph 42.4(3)“d.” Failure to monitor at the entrance to the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system is also an MRDL violation and the system must notify the public of the violation in accordance with the provisions for nonacute Tier 2 violations under

567—subrule 42.1(1), in 567—subrule 42.1(3), in addition to reporting to the department pursuant to 567—paragraph 42.4(3)“d.”

ITEM 121. Amend subparagraph 43.6(2)“b”(4) as follows:

(4) The department may assign disinfection byproduct precursor monitoring prior to the compliance dates in 43.6(2)“a”(2-3) as part of an operation permit.

ITEM 122. Amend subparagraph 43.6(2)“c”(1), table, as follows:

Approved Methods for Disinfection Byproduct Precursor Monitoring¹

Analyte	Methodology	EPA	Standard Methods	ASTM	Other
Alkalinity ⁶	Titrimetric		2320B	D 1067-92B	
	Electrometric titration				I-1030-85
Bromide	Ion chromatography	300.0			
		300.1			
Dissolved Organic Carbon ²	High temperature combustion		5310B		
	Persulfate-UV or heated-persulfate oxidation		5310C		
	Wet oxidation		5310D		
pH ³	Electrometric	150.1	4500-H ⁺ -B	D1293-84	
		150.2			
Total Organic Carbon ⁴	High temperature combustion		5310B		
	Persulfate-UV or heated-persulfate oxidation		5310C		
	Wet oxidation		5310D		
Ultraviolet Absorption at 254 nm ⁵	UV absorption		5910B		

¹ to ⁵ No change.

⁶ Alkalinity must be measured by a laboratory certified by the department to perform analysis under 567—Chapter 83; a Grade II, III or IV operator meeting the requirements of 567—Chapter 81; or any person under the supervision of a Grade II, III or IV operator meeting the requirements of 567—Chapter 81. Only the listed titrimetric methods are acceptable.

ITEM 123. Amend subrule 43.7(1) as follows:

43.7(1) Corrosion control treatment for lead and copper control.

a. Applicability of corrosion control treatment steps to small, medium-size and large water systems. (Corrosion control treatment compliance dates.) Systems shall complete the applicable corrosion control treatment requirements by the following deadlines specified in the following rules:

(1) Population >50,000. Large systems serving more than 50,000 persons. Large systems A large system (serving greater than 50,000 persons) shall complete the corrosion control treatment steps specified in 43.7(1)“d,” unless it is deemed to have optimized corrosion control under 43.7(1)“b”(2) or (3).

(2) Population ≤50,000. Small and medium-size systems serving 50,000 or fewer persons. Small systems A small system (serving less than or equal to 3,300 persons) and or a medium-size systems system (serving greater than 3,300 and less than or equal to 50,000 persons) shall complete the corrosion control treatment steps specified in 43.7(1)“e,” unless it has optimized corrosion control under 43.7(1)“b”(1), (2), or (3).

b. Determination that a system has optimized corrosion control Optimum corrosion control. A public water supply system has optimized corrosion control and is not required to complete the applicable corrosion control treatment steps identified in this subrule if the system satisfies one of the following criteria: specified in subparagraphs 43.7(1)“b”(1) through (3). Any such system deemed to have optimized corrosion control under this paragraph and which has treatment

in place shall continue to operate and maintain optimal corrosion control treatment and meet any requirements that the department determines appropriate to ensure optimal corrosion control treatment is maintained.

(1) No change.

(2) Any public water supply system may be deemed to have optimized corrosion control treatment if the system demonstrates to the satisfaction of the department that it has conducted activities equivalent to the corrosion control steps applicable to such system under this subrule. If the department makes this determination, it shall provide the water supply system with written notice explaining the basis for its decision and shall specify the water quality control parameters representing optimal corrosion control in accordance with 43.7(2)“f.” Systems deemed to have optimized corrosion control under this paragraph shall operate in compliance with the department-designated optimal water quality control parameters in accordance with paragraph 43.7(1)“g” and continue to conduct lead and copper tap and water quality parameter sampling in accordance with 567—paragraph 41.4(1)“c”(4)“3” and 567—subparagraph 41.4(1)“d”(4), respectively. A system shall provide the department with the following information in order to support a determination under this paragraph:

1. to 4. No change.

(3) Any water system has optimized corrosion control if it submits results of tap water monitoring conducted in accordance with 567—paragraph 41.4(1)“c” and source water monitoring conducted in accordance with 567—paragraph 41.4(1)“e” that demonstrate for two consecutive six-month

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monitoring periods that the difference between the 90th percentile tap water lead level computed under 567—subparagraph 41.4(1)“b”(3) and the highest source water lead concentration is less than the practical quantitation level for lead specified in 567—paragraph 41.4(1)“g.”

1. *Those systems whose highest source water lead level is below the method detection limit may also be deemed to have optimized corrosion control under this paragraph if the 90th percentile tap water lead level is less than or equal to the practical quantitation level for lead for two consecutive six-month monitoring periods.*

2. *Any water system deemed to have optimized corrosion control in accordance with this paragraph shall continue monitoring for lead and copper at the tap no less frequently than once every three calendar years using the reduced number of sites specified in 567—subparagraph 41.4(1)“c”(3) and collecting the samples at times and locations specified in 567—paragraph 41.4(1)“c”(4)“4,” fourth bulleted paragraph.*

3. *Any water system deemed to have optimized corrosion control pursuant to this paragraph shall notify the department in writing pursuant to 567—subparagraph 42.4(2)“a”(3) of any change in treatment or the addition of a new source. The department may require any such system to conduct additional monitoring or to take other action the department deems appropriate to ensure that the system maintains minimal levels of corrosion in the distribution system.*

4. *Unless a system meets the copper action level, it is not deemed to have optimized corrosion control under this paragraph and shall implement corrosion control treatment pursuant to 43.7(1)“b”(3)“5.”*

5. *Any system triggered into corrosion control because it is no longer deemed to have optimized corrosion control under this paragraph shall implement corrosion control treatment in accordance with the deadlines in paragraph 43.7(1)“e.” Any such large system shall adhere to the schedule specified in that paragraph for medium-size systems, with the time periods for completing each step being triggered by the date the system is no longer deemed to have optimized corrosion control under this paragraph.*

c. **Recommence** *Requirements to recommence corrosion control steps.* Any small or medium-size water system that is required to complete the corrosion control steps due to its exceedance of the lead or copper action level may cease completing the treatment steps whenever the system meets both action levels during each of two consecutive monitoring periods conducted pursuant to 567—paragraph 41.4(1)“c” and submits the results to the department. If any such water system thereafter exceeds the lead or copper action level during any monitoring period, the system shall recommence completion of the applicable treatment steps, beginning with the first treatment step which was not previously completed in its entirety. The department may require a system to repeat treatment steps previously completed by the system when it is determined by the department that this is necessary to implement properly the treatment requirements of this rule. The department will notify the system in writing of such a determination and explain the basis for its decision. The requirement for any small or medium-size system to implement corrosion control treatment steps in accordance with 43.7(1)“e” (including systems deemed to have optimized corrosion control under 43.7(1)“b”(1)) is triggered whenever any small or medium-size system exceeds the lead or copper action level.

d. and e. No change.

ITEM 124. Rescind paragraph **43.7(2)“g”** and adopt in lieu thereof the following **new** paragraph:

g. Continued operation with optimized corrosion control and water quality parameter monitoring compliance determination. All systems optimizing corrosion control shall continue to operate and maintain optimal corrosion control treatment, including maintaining water quality parameters at or above minimum values or within ranges designated by the department under paragraph 43.7(2)“f,” in accordance with this paragraph for all samples collected under 567—subparagraphs 41.4(1)“d”(4) through (6). Compliance with the requirements of this paragraph shall be determined every six months, as specified under 567—subparagraph 41.4(1)“d”(4). A water system is out of compliance with the requirements of this paragraph for a six-month period if it has excursions for any department-specified parameter on more than nine days during the period. An excursion occurs whenever the daily value for one or more of the water quality parameters measured at a sampling location is below the minimum value or outside the range designated by the department. Daily values are calculated as follows. The department has the discretion to invalidate results of obvious sampling errors from this calculation.

(1) On days when more than one measurement for the water quality parameter is collected at the sampling location, the daily value shall be the average of all results collected during the day regardless of whether they are collected through continuous monitoring, grab sampling, or a combination of both.

(2) On days when only one measurement for the water quality parameter is collected at the sampling location, the daily value shall be the result of that measurement.

(3) On days when no measurement is collected for the water quality parameter at the sampling location, the daily value shall be the daily value calculated on the most recent day on which the water quality parameter was measured at the sample site.

ITEM 125. Amend subparagraph **43.7(3)“b”(6)**, catchwords, as follows:

(6) Modification of *source water* treatment decisions.

ITEM 126. Amend paragraph **43.7(4)“b”** as follows:

b. Lead service line replacement schedule. A public water supply system shall replace annually at least 7 percent of the initial number of lead service lines in its distribution system. The initial number of lead service lines is the number of lead lines in place at the time the replacement program begins. The system shall identify the initial number of lead service lines in its distribution system, *including an identification of the portion(s) owned by the system*, based upon a materials evaluation, including the evaluation required under 567—paragraph 41.4(1)“c”(1), *and relevant legal authorities regarding the portion owned by the system such as contracts and local ordinances.* The first year of lead service line replacement shall begin on the date the action level was exceeded in tap sampling referenced in 43.7(4)“a.”

ITEM 127. Amend paragraph **43.7(4)“c,”** catchwords, as follows:

c. *Exemption to lead service line replacement requirement.*

ITEM 128. Rescind paragraph **43.7(4)“d”** and adopt in lieu thereof the following **new** paragraph:

d. Lead service line replacement requirements. A water system shall replace that portion of the lead service line that it owns. In cases where the system does not own the entire lead service line, the system shall notify the owner of the line, or

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the owner's authorized agent, that the system will replace the portion of the service line that it owns and shall offer to replace the owner's portion of the line. A system is not required to bear the cost of replacing the privately-owned portion of the line, nor is it required to replace the privately owned portion of the line where the owner chooses not to pay the cost of replacing the privately owned portion of the line, or where replacing the privately owned portion would be precluded by state, local, or common law. A water system that does not replace the entire length of the service line shall complete the following tasks.

(1) Notification of residents. At least 45 days prior to commencing with the partial replacement of a lead service line, the water system shall provide to the resident(s) of all buildings served by the line notice explaining that the resident(s) may experience a temporary increase of lead levels in their drinking water, along with guidance on measures consumers may take to minimize their exposure to lead. The department may allow the water system to provide this notice less than 45 days prior to commencing partial lead service line replacement where such replacement is in conjunction with emergency repairs. In addition, the water system shall inform the resident(s) served by the line that the system will, at the system's expense, collect from each partially replaced lead service line a sample that is representative of the water in the service line for analysis of lead content, as prescribed under 567—subparagraph 41.4(1)“b”(3), within 72 hours after the completion of the partial replacement of the service line. The system shall collect the sample and report the results of the analysis to the owner and the resident(s) served by the line within three business days of receiving the results. Mailed notices postmarked within three business days of receiving the results shall be considered “on time.”

(2) Notification methods. The water system shall provide the information required by subparagraph 43.7(4)“d”(1) to the residents of individual dwellings by mail or by other methods approved by the department. In instances where multifamily dwellings are served by the line, the water system shall have the option to post the information at a conspicuous location.

ITEM 129. Rescind and reserve paragraph 43.7(4)“e.”

ITEM 130. Amend paragraph 43.7(4)“h,” catchwords, as follows:

h. Reporting *Lead service line replacement reporting requirements.*

ITEM 131. Adopt **new** paragraph 43.9(1)“d” as follows:

d. Systems with populations that increased after January 1, 2002, to more than 10,000 people served. Systems using surface water or influenced groundwater sources that did not conduct optional monitoring under 43.9(2) because they served fewer than 10,000 persons when such monitoring was required, but serve more than 10,000 persons prior to January 1, 2005, must comply with 43.9(1), 43.9(3), 43.9(4), and 43.9(5). These systems must also consult with the department to establish a disinfection benchmark. A system that decides to make a significant change to its disinfection practice as described in 43.9(2)“c”(1)“1” through “4” must consult with the department prior to making such a change.

ITEM 132. Amend paragraph 43.9(5)“c” as follows:

c. Additional reporting requirement for turbidity combined filter effluent.

(1) If at any time the turbidity exceeds 1 NTU in representative samples of filtered water in a system using conventional filtration or direct filtration, the system must ~~inform the department as soon as possible, but no later than the~~

~~end of the next business day consult with the department as soon as practical, but no later than 24 hours after the exceedance is known, in accordance with the public notification requirements under 567—subparagraph 42.1(3)“b”(3).~~

(2) If at any time the turbidity in representative samples of filtered water exceeds the maximum level set by the department under 43.9(3)“b” for filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration, the system must ~~inform the department as soon as possible, but no later than the end of the next business day consult with the department as soon as practical, but no later than 24 hours after the exceedance is known, in accordance with the public notification requirements under 567—subparagraph 42.1(3)“b”(3).~~

ITEM 133. Adopt **new** rule 567—43.10(455B) as follows:

567—43.10(455B) Enhanced filtration and disinfection requirements for surface water and IGW systems serving fewer than 10,000 people.

43.10(1) General requirements.

a. Applicability. The requirements of this rule constitute national primary drinking water regulations. This rule establishes requirements for filtration and disinfection that are in addition to criteria under which filtration and disinfection are required in 43.5(455B). The requirements of this rule are applicable beginning January 1, 2005, unless otherwise noted, to all public water systems using surface water or groundwater under the direct influence of surface water, in whole or in part, and which serve less than 10,000 people. This rule establishes or extends treatment technique requirements in lieu of maximum contaminant levels for the following contaminants: *Giardia lamblia*, viruses, heterotrophic plate count bacteria, *Legionella*, *Cryptosporidium*, and turbidity. The treatment technique requirements consist of installing and properly operating water treatment processes which reliably achieve:

(1) At least 99 percent (2 log) removal of *Cryptosporidium* between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer for filtered systems; and

(2) Compliance with the profiling and benchmark requirements in subrules 43.10(2) and 43.10(3).

b. Prohibition of uncovered intermediate or finished water reservoirs. Systems that are required to comply with this rule may construct only covered intermediate or finished water storage facilities.

43.10(2) Disinfection profile.

a. Applicability. A disinfection profile is a graphical representation of a system's level of *Giardia lamblia* or virus inactivation measured during the course of a year. All systems required to comply with this rule must develop a disinfection profile unless the department determines that such a profile is unnecessary. Records must be maintained according to subrule 43.10(7).

(1) The department may approve the use of a more representative data set for disinfection profiling than the data set required in paragraph 43.10(2)“b.”

(2) The department may determine that a system's profile is unnecessary only if a system's TTHM and HAA5 levels are below 0.064 mg/L and 0.048 mg/L, respectively. To determine these levels, TTHM and HAA5 samples must be collected after January 1, 1998, during the month with the warmest water temperature, and at the point of maximum residence time in the distribution system. The department may approve the use of a more representative annual data set for purpose of determining applicability of the requirements

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of this subrule. The annual data set must be calculated on an annual average, of the arithmetic average of the quarterly averages of four consecutive quarters of monitoring. At least 25 percent of the samples collected in each quarter must be collected at the maximum residence time location in the distribution system.

1. For systems that provide water to other public water supplies, if the producing system meets the byproduct level requirements of less than 0.064 mg/L for TTHM and less than 0.048 mg/L for HAA5, it will not be required to develop a disinfection profile and benchmark unless:

- The consecutive system cannot meet in its distribution system the byproduct level requirements of less than 0.064 mg/L for TTHM and less than 0.048 mg/L for HAA5, and
- The producing system wants to make a significant change to its disinfection practices.

2. The department will then assign the requirement to the producing system to conduct the disinfection profiling study and determine a disinfection benchmark.

b. Required elements of a disinfection profile.

(1) Collection of the following data for 12 consecutive months, beginning by July 1, 2003, for systems serving 500 to 9,999 people, and by January 1, 2004, for systems serving fewer than 500 people. A system must monitor the following parameters to determine the total log inactivation by using the analytical methods in paragraph 43.5(4)“a,” once per week on the same calendar day, over 12 consecutive months.

1. Temperature of the disinfected water at each residual disinfectant concentration sampling point during peak hourly flow, measured in degrees Celsius;

2. For systems using chlorine, the pH of the disinfected water at each residual disinfectant concentration sampling point during peak hourly flow, measured in standard pH units;

3. The disinfectant contact time (“T”) during peak hourly flow, measured in minutes; and

4. The residual disinfectant concentration(s) (“C”) of the water following each point of disinfection at a point(s) prior to each subsequent point of disinfection and at the entry point to the distribution system or at a location just prior to the first customer during peak hourly flows, measured in mg/L.

(2) The data collected in 43.10(2)“b”(1) must be used to calculate the weekly log inactivation, along with the CT_{99.9} tables listed in Appendix A. The system must calculate the total inactivation ratio as follows and multiply the value by 3.0 to determine log inactivation of *Giardia lamblia*:

1. If the system uses only one point of disinfectant application, it must determine:

- One inactivation ratio (CT calc/CT_{99.9}) before or at the first customer during peak hourly flow, or
- Successive (CT calc/CT_{99.9}) values, representing sequential inactivation ratios, between the point of disinfection application and a point before or at the first customer during peak hourly flow. Under this alternative, the system must calculate the total inactivation ratio by determining (CT calc/CT_{99.9}) for each sequence and then adding the (CT calc/CT_{99.9}) values together to determine (3CT calc/CT_{99.9}).

2. If a system uses more than one point of disinfectant application before the first customer, the system must determine the (CT calc/CT_{99.9}) value of each disinfection segment immediately prior to the next point of disinfectant application, or for the final segment, before or at the first customer, during peak hourly flow using the procedure specified in 43.10(2)“b”(2) “1,” second bulleted paragraph.

3. If a system uses chloramines, ozone, or chlorine dioxide for primary disinfection, the system must also calculate

the inactivation logs for viruses and develop an additional disinfection profile for viruses using methods approved by the department.

(3) The weekly log inactivations are used to develop a disinfection profile, as follows:

1. The disinfection profile is developed by graphing each log inactivation data point versus time. Each log inactivation serves as a data point in the disinfection profile. The system will have obtained 52 measurements at a minimum, one for each week of the year.

2. The disinfection profile depicts the variation of microbial inactivation over the course of the year.

3. The system must retain the disinfection profile data both in a graphic form and in a spreadsheet, which must be available for review by the department.

4. This profile is used to calculate a disinfection benchmark if the system is considering changes to its disinfection practices.

43.10(3) Disinfection benchmark.

a. Applicability. Any system required to develop a disinfection profile under 43.10(2) must develop a disinfection benchmark prior to making any significant change in disinfection practice. The system must receive department approval before any significant change in disinfection practice is implemented. Records must be maintained according to subrule 43.10(7).

b. Significant changes to disinfection practice. Significant changes to disinfection practice include:

- (1) Changes to the point of disinfection;
- (2) Changes to the disinfectant(s) used in the treatment plant;
- (3) Changes to the disinfection process; or
- (4) Any other modification identified by the department.

c. Calculation of the disinfection benchmark. The system must calculate the disinfection benchmark in the following manner:

(1) Step 1. Using the data collected to develop the disinfection profile, the system must determine the average *Giardia lamblia* inactivation for each calendar month by dividing the sum of all *Giardia lamblia* inactivations for that month by the number of values calculated for that month.

(2) Step 2. The system must determine the lowest monthly average value out of the 12 values. This value becomes the disinfection benchmark.

d. Information required for department approval of a change in disinfection practice. Any significant change in disinfection practice must have been approved by the department before the system institutes the change. The following information must be submitted by the system to the department as part of the consultation and approval process.

- (1) A description of the proposed change;
- (2) The disinfection profile for *Giardia lamblia* and, if necessary, viruses;
- (3) The disinfection benchmark;
- (4) An analysis of how the proposed change will affect the current levels of disinfection; and
- (5) Any additional information requested by the department.

e. Additional benchmark requirements if chloramines, ozone, or chlorine dioxide is used for primary disinfection. If a system uses chloramines, ozone, or chlorine dioxide for primary disinfection, the system must calculate the disinfection benchmark from the data collected for viruses to develop the disinfection profile in addition to the *Giardia lamblia* disinfection benchmark calculated in paragraph 43.10(3)“c.” This viral benchmark must be calculated in the same manner

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used to calculate the *Giardia lamblia* disinfection benchmark in paragraph 43.10(3)“c.”

43.10(4) Combined filter effluent turbidity requirements. All systems using surface water or groundwater under the direct influence of surface water which serve less than 10,000 people must use filtration, and the turbidity limits that must be met depend upon the type of filtration used. Systems using lime softening may acidify representative combined filter effluent turbidity samples prior to analysis, using a protocol approved by the department.

a. Conventional filtration treatment or direct filtration.

(1) Turbidity must be measured in the combined filter effluent as described in paragraphs 43.5(4)“a” and “b.”

(2) The turbidity in the combined filter effluent must be less than or equal to 0.3 NTU in 95 percent of the turbidity measurements taken each month.

(3) The turbidity in the combined filter effluent must never exceed 1 NTU at any time during the month.

(4) The monthly reporting requirements are listed in subrule 43.10(6).

b. Slow sand filtration or diatomaceous earth filtration.

(1) Turbidity must be measured in the combined filter effluent as described in paragraphs 43.5(4)“a” and “b.”

(2) The combined filter effluent turbidity limits of subrule 43.5(3) must be met.

(3) The monthly reporting requirements are listed in subrule 43.10(6).

c. Other alternative filtration technologies. By using pilot studies or other means, a system using alternative filtration must demonstrate to the satisfaction of the department that the system’s filtration, in combination with disinfection treatment, consistently achieves 99 percent removal of *Cryptosporidium* oocysts, 99.9 percent removal, inactivation, or a combination of both of *Giardia lamblia* cysts; and 99.99 percent removal, inactivation, or a combination of both of viruses. The department will then use the pilot study data to determine system-specific turbidity limits.

(1) Turbidity must be measured in the combined filter effluent as described in paragraphs 43.5(4)“a” and “b.”

(2) The turbidity must be less than or equal to a value set by the department in 95 percent of the combined filter effluent turbidity measurements taken each month, based on the pilot study. The value may not exceed 1 NTU.

(3) The combined filter effluent turbidity must never exceed a value set by the department, based on the pilot study. The value may not exceed 5 NTU.

(4) The monthly reporting requirements are listed in subrule 43.10(6).

43.10(5) Individual filter turbidity requirements. All systems utilizing conventional filtration or direct filtration must conduct continuous monitoring of turbidity for each individual filter. Records must be maintained according to subrule 43.10(7).

a. Continuous turbidity monitoring requirements. Following are the continuous turbidity monitoring requirements.

(1) Monitoring must be conducted using an approved method listed in paragraph 43.5(4)“a”;

(2) Calibration of turbidimeters must be conducted using procedures specified by the manufacturer;

(3) Results of turbidity monitoring must be recorded at least every 15 minutes;

(4) Monthly reporting must be completed according to subrule 43.10(6); and

(5) Records must be maintained according to 43.10(7).

b. Failure of continuous turbidity monitoring equipment. If there is a failure in the continuous turbidity monitoring equipment, the system must conduct grab sampling every four hours in lieu of continuous monitoring until the turbidimeter is back on-line. A system has a maximum of 14 days after failure to repair the equipment, or else the system is in violation. The system must notify the department within 24 hours of both when the turbidimeter was taken off-line and when it was returned on-line.

c. Special provision for one-filter or two-filter systems. If a system has only one or two filters, it may conduct continuous monitoring of the combined filter effluent turbidity instead of individual effluent turbidity monitoring. The continuous monitoring of the combined filter effluent turbidity must meet the requirements listed in 43.10(5)“a” and “b.”

d. Alternative turbidity levels for systems using lime softening. Systems using lime softening may apply to the department for alternative turbidity exceedance levels for the levels specified in 43.10(5)“e.” The system must be able to demonstrate to the satisfaction of the department that higher turbidity levels are due to lime carryover only, and not due to degraded filter performance.

e. Requirements triggered by the individual filter turbidity monitoring data. Systems are required to conduct additional activities based upon their individual filter turbidity monitoring data, as listed in this paragraph.

(1) If the turbidity of an individual filter (or the turbidity of the combined filter effluent for a system with one or two filters, pursuant to 43.10(5)“c”) exceeds 1.0 NTU in two consecutive recordings taken 15 minutes apart, the system must report the following information in the monthly operation report to the department by the tenth day of the following month:

1. The filter number(s);
2. Corresponding date(s);
3. Turbidity value(s) which exceeded 1.0 NTU; and
4. The cause of the exceedance(s), if known.

(2) If the turbidity of an individual filter (or the turbidity of the combined filter effluent for a system with one or two filters, pursuant to 43.10(5)“c”) exceeds 1.0 NTU in two consecutive recordings 15 minutes apart in three consecutive months, the system must meet the following requirements:

1. The system must conduct a self-assessment of the filter(s) within 14 days of the day the filter exceeded 1.0 NTU in two consecutive measurements for the third straight month, unless a comprehensive performance evaluation as specified in the following paragraph is required. Two-filter systems that monitor the combined filter effluent turbidity instead of the individual filters must conduct a self-assessment of both filters.

2. The self-assessment must consist of at least the following components:

- Assessment of filter performance;
- Development of a filter profile;
- Identification and prioritization of factors limiting filter performance;
- Assessment of the applicability of corrections;
- Preparation of a filter self-assessment report;
- Date the self-assessment requirement was triggered; and
- Date the self-assessment was completed.

(3) If the turbidity of an individual filter (or the turbidity of the combined filter effluent for a system with one or two filters, pursuant to 43.10(5)“c”) exceeds 2.0 NTU in two consecutive recordings 15 minutes apart in two consecutive months, the system must meet the following requirements:

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1. The system must arrange to have a comprehensive performance evaluation (CPE) conducted by the department or a third party approved by the department no later than 60 days following the day the filter exceeded 2.0 NTU in two consecutive measurements for the second straight month. The CPE report must be completed and submitted to the department within 120 days following the day the filter exceeded 2.0 NTU in two consecutive measurements for the second straight month.

2. A new CPE is not required if a CPE has been completed by the department or a third party approved by the department within the prior 12 months or if the system and department are jointly participating in an ongoing comprehensive technical assistance project at the system.

(4) The department may conduct a CPE at a system regardless of individual filter turbidity levels.

43.10(6) Reporting requirements. The system must meet the following reporting requirements:

a. Combined filter effluent turbidity monitoring.

(1) The following information must be reported in the monthly operation report to the department by the tenth day of the following month.

1. Total number of filtered water turbidity measurements taken during the month.

2. The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to the system's required 95th percentile limit.

3. The date and analytical result of any turbidity measurements taken during the month which exceeded the maximum turbidity limit for the system, in addition to the requirements of 43.10(6)"a"(2).

(2) For an exceedance of the combined filter effluent maximum turbidity limit, the following requirements must be met.

1. If at any time the turbidity exceeds 1 NTU in representative samples of filtered water in a system using conventional filtration treatment or direct filtration, the system must consult with the department as soon as practical, but no later than 24 hours after the exceedance is known, in accordance with the public notification requirements under 567—subparagraph 42.1(3)"b"(3).

2. If at any time the turbidity in representative samples of filtered water exceeds the maximum level under subrule 43.5(3) for slow sand filtration or diatomaceous earth filtration, the system must consult with the department as soon as practical, but no later than 24 hours after the exceedance is known, in accordance with the public notification requirements under 567—subparagraph 42.1(3)"b"(3).

3. If at any time the turbidity in representative samples of filtered water exceeds the maximum level set by the department under paragraph 43.10(4)"c" for filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration, the system must consult with the department as soon as practical, but no later than 24 hours after the exceedance is known, in accordance with the public notification requirements under 567—subparagraph 42.1(3)"b"(3).

b. Individual filter effluent turbidity monitoring. The following information must be reported in the monthly operation report to the department by the tenth day of the following month, unless otherwise noted.

(1) That the system conducted individual filter turbidity monitoring during the month.

(2) For any filter that had two consecutive measurements taken 15 minutes apart that exceeded 1.0 NTU, the following information must be reported:

1. The filter number(s);

2. The corresponding dates; and

3. The turbidity values that exceeded 1.0 NTU.

(3) If a self-assessment was required, the date it was triggered and the date the assessment was completed must be reported. If the self-assessment requirement was triggered in the last four days of the month, the information must be reported to the department by the 14th day of the following month.

(4) If a comprehensive performance evaluation was required, the date it was triggered must be reported. A copy of the CPE report must be submitted to the department within 120 days of when the CPE requirement was triggered.

c. Disinfection profiling. The following information must be reported to the department by January 1, 2004, for systems serving fewer than 500 people.

(1) Results of disinfection byproduct monitoring that indicate TTHM levels less than 0.064 mg/L and HAA5 levels less than 0.048 mg/L; or

(2) That the system has begun to collect the profiling data.

d. Disinfection benchmarking. Before a system that was required to develop a disinfection profile makes a significant change to its disinfection practice, it must report the following information to the department, and the system must receive department approval before any significant change in disinfection practice is implemented.

(1) Description of the proposed change in disinfection practice;

(2) The system's disinfection profile for *Giardia lamblia* and, if applicable, for viruses;

(3) The system's disinfection benchmark; and

(4) An analysis of how the proposed change will affect the current levels of disinfection.

43.10(7) Record-keeping requirements. The system must meet the following record-keeping requirements, in addition to the record-keeping requirements in 567—paragraph 42.4(3)"c" and 567—42.5(455B).

a. Individual filter effluent turbidity requirements. The results of the individual filter effluent turbidity monitoring must be kept for at least three years.

b. Disinfection profiling requirements. The results of the disinfection profile, including raw data and analysis, must be kept indefinitely.

c. Disinfection benchmarking requirements. The results of the disinfection benchmark, including raw data and analysis, must be kept indefinitely.

ITEM 134. Rescind **567—Chapter 43, Table A.**

ITEM 135. Amend rule **567—44.4(455B)**, definitions of "DWSRF funds" and "eligible cost," as follows:

"DWSRF funds" means the combination of a particular fiscal year's federal capitalization grant appropriation plus the 20 percent state of Iowa match and any additional funds made available through the program.

"Eligible cost" means the cost of all labor, material, machinery, equipment, loan initiation and loan service fees, design and construction engineering services, legal fees and expenses directly related to the project, capitalized interest during construction of the project, and all other expansion, construction, and rehabilitation of all or part of a project incurred after the date of approval of an intended use plan (IUP) which contains the project on a list of projects which are approved for DWSRF loan assistance the project is placed on the draft intended use plan as a fundable project, subject to approval by the commission.

ITEM 136. Amend paragraph **44.6(2)"d"** as follows:

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d. Projects and activities deemed ineligible for participation in the DWSRF program by the U.S. Environmental Protection Agency's February 28, 1997, guidelines, August 7, 2000, *Drinking Water State Revolving Funds Interim Final Rule (40 CFR Part 35, Subpart L)*, or by the department.

ITEM 137. Amend subrule **44.7(4)**, first unnumbered paragraph, as follows:

Application shall be made on a DWSRF application package form provided by the department; the applicant may include additional information in the application. Applicants must reapply each year to be placed on the project priority list. Forms can be obtained from the Environmental Protection Services Division, Iowa Department of Natural Resources, Drinking Water Section, 401 SW 7th Street, Suite M, Des Moines, Iowa 50309.

ITEM 138. Amend paragraph **44.9(3)“b”** as follows:

b. If there is an alteration (change order) to a project after the director approves the project, the eligible applicant must request in writing from the department an amended approval. The director shall review the request and proposed project alteration (change order) and, upon a determination that the project meets the applicable requirements of the Act, federal regulations or “*Drinking Water State Revolving Fund Program Guidelines*,” dated February 1997, the August 7, 2000, *Drinking Water State Revolving Funds Interim Final Rule (40 CFR Part 35, Subpart L)*, Iowa statutes, and relevant portions of this chapter, the director shall approve the project as amended.

ITEM 139. Amend rule **567—81.1(455B)**, definition of “plant,” as follows:

“Plant” means those facilities which are identified as either a water treatment plant, *defined as that portion of the water supply system which in some way alters the physical, chemical, or bacteriological quality of the water*, or a wastewater treatment plant, *defined as the facility or group of units used for the treatment of wastewater from public sewer systems and for the reduction and handling of solids removed from such wastes as defined in Iowa Code section 455B.211*.

ITEM 140. Rescind and reserve subrule **81.2(7)**.

ITEM 141. Rescind and reserve subrule **81.5(3)**.

ITEM 142. Amend subrule 81.9(1) as follows:

81.9(1) Examination application. All persons wishing to take the examination required to become a certified operator of a wastewater or water treatment plant or a water distribution system shall complete the Operator Certification Examination Application, Form CFN-542-3118/CPG-63997. A listing of dates and locations of examinations is available from the department upon request. The application form requires the applicant to indicate educational background, training and past experience in water or wastewater operation. The completed application and examination fee shall be sent to Iowa Department of Natural Resources, ~~Operator Certification~~ *Water Supply Section*, 502 East Ninth Street, Des Moines, Iowa 50319. The completed application and examination fee must be received by the department at least 30 days prior to the date of examination.

ITEM 143. Rescind and reserve subrule **81.9(8)**.

ITEM 144. Amend subrule 81.9(9) as follows:

81.9(9) Oral examination. Upon written request by an applicant for Grade A, I, IL, II or IIL certification, the director will consider the presentation of an oral examination on an individual basis when the plant or distribution system which

employs the applicant is not in compliance with Iowa Code section 455B.113 223; the applicant has failed the written examination at least twice; the applicant has shown difficulty in reading or understanding written questions but may be able to respond to oral questioning; the applicant is capable of communicating in writing with regard to departmental requirements and inquiries; the applicant meets and the director has received a written recommendation for an oral examination from a department staff member attesting to the operational and performance capabilities of the applicant. The director shall designate department personnel to administer the examination. The examination shall contain practical questions pertaining to the operation of the plant or distribution system in which the applicant is employed. *In addition, the examination shall include specific on-site review by department personnel of the operator's capabilities in the operation of the specific plant or distribution system.* Certificates issued to operators through oral examinations shall be restricted to the plant or distribution system where the operator is employed at the time of certification.

Applicants who obtain certification under this subrule and subsequently let their certification lapse will be required to reapply for certification, meet the experience and education requirements pursuant to 81.7(455B), and be reexamined. The requirement that an applicant shall have failed two written examinations before being allowed to take an oral examination will be waived for an operator that has previously been certified under this subrule.

ITEM 145. Adopt **new** subrule 81.11(4) as follows:

81.11(4) Certification obtained through reciprocity. An applicant who obtains certification in Iowa through reciprocity and subsequently allows the certification to lapse will be required to reapply for certification in accordance with 81.10(455B).

ITEM 146. Amend subrule 81.13(4) as follows:

81.13(4) Failure to renew. If a certificate holder fails to renew within 60 days following expiration of the certificate, the right to renew the certificate is automatically terminated. Certification may be allowed at any time following such termination, provided that the applicant *meets all education and experience eligibility requirements pursuant to 81.7(455B) and successfully completes an examination.* The applicant must then apply for certification in accordance with 81.10(455B).

ITEM 147. Amend subrule 81.14(2) as follows:

81.14(2) Certificate renewal. Only those operators fulfilling the continuing education requirements before the end of each two-year period (March 31) will be allowed to renew their certificate(s). The certificate(s) of operators not fulfilling the continuing education requirements shall expire on June 30 of the applicable biennium *each odd-numbered year.*

ITEM 148. Amend subrule 81.14(3) as follows:

81.14(3) CEU approval. All activities for which continuing education credit will be granted must be approved by an accredited college, university, technical institute, or issuing agency, or by the department, and must be directly related to the subject matter of the particular certificate to which the credit is being applied. *Any entity holding courses in Iowa for which continuing education credit is offered for water treatment, water distribution, or wastewater operator certification must provide at no cost to the department the opportunity for one staff member to audit the training and receive all training materials.*

ITEM 149. Amend paragraph **81.17(3)“f”** as follows:

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f. Reinstatement of revoked certificates. Upon revocation of a certificate in accordance with the authority provided in Iowa Code section 455B.219 and chapter 272C, application for certification may be allowed after two years from the date of revocation unless otherwise specified in accordance with 81.17(2). Any such applicant must *meet all education and experience eligibility requirements pursuant to 81.7(455B) and successfully complete an examination and be certified in the same manner as a new applicant.*

ITEM 150. Adopt **new** paragraph **83.1(3)“d”** as follows:

d. Solid waste and contaminated sites. The requirements of this chapter also apply to all laboratories conducting analyses of solid waste parameters pursuant to 567—Chapters 100 through 130, contaminated site parameters pursuant to 567—Chapters 133 and 137, and regulated substances other than petroleum parameters regulated under 567—Chapter 135. Any parameter that must be analyzed immediately upon sample collection is excluded from the requirements of this chapter. Any samples collected or testing conducted that is not part of the specific monitoring required by the department for regulatory purposes is also excluded from the requirements of this chapter.

ITEM 151. Amend rule **567—83.2(455B)**, definitions of “environmental program area,” “Manual for Certification of Laboratories Analyzing Environmental Samples for the Iowa Department of Natural Resources,” and “performance evaluation sample (PE),” as follows:

“Environmental Program Area” means the water supply (drinking water) program, underground storage tank program, wastewater program, or solid waste and contaminated site program pursuant to 83.1(3).

“Manual for the Certification of Laboratories Analyzing Environmental Samples for the Iowa Department of Natural Resources” (1999 2003) (Iowa Manual) is incorporated by reference in this chapter.

1. Chapter 1 of the Iowa Manual pertains to certification of laboratories analyzing samples of drinking water and in-

corporates by reference the Manual for the Certification of Laboratories Analyzing Drinking Water, 4th edition, March 1997, EPA document 815-B-97-001.

2. Chapter 2 of the Iowa Manual, 2nd edition, March 1999 2003, pertains to laboratories analyzing samples for the underground storage tank program.

3. Chapter 3 of the Iowa Manual, 1st edition, March 1996 2003, pertains to laboratories analyzing samples for wastewater and sewage sludge disposal programs.

Chapter 4 of the Iowa Manual, 2003, pertains to laboratories analyzing samples for the solid waste and contaminated site programs.

“Performance evaluation (PE) sample (PE)” means a reference sample provided to a laboratory for the purpose of demonstrating that a laboratory can successfully analyze the sample within limits of performance specified by the department. The true value of the concentration of the reference material is unknown to the laboratory at the time of analysis. A PE sample may also be referred to as a proficiency testing sample or PT sample.

ITEM 152. Amend subparagraph **83.3(2)“a”(4)** as follows:

(4) ~~Any laboratory requiring additional on-site visits is responsible for paying the expenses of the additional on-site visits. The department or its agent will bill the laboratory directly for these expenses. The laboratory certification fees shall be increased by \$300 per visit in those cases where multiple on-site visits are necessary. Additional fees. Additional fees will be assessed for the following, and the department or its agent will bill the laboratory directly.~~

1. ~~The laboratory is responsible for paying for any additional on-site visits, at a fee of \$300 per visit. An example of this is when an additional on-site visit is required when a laboratory seeks certification for an entirely new set of parameters for which it had previously not been certified.~~

2. ~~When an on-site visit is required to inspect for deficiencies that the laboratory has been required to correct, the fee is \$500 per visit.~~

ITEM 153. Rescind paragraph **83.3(2)“c”** and adopt in lieu thereof the following **new** paragraph:

c. The applicable fees shall be based on the type of analytical service provided as follows:

ANALYTICAL GROUP	REGULATORY PROGRAM & PARAMETERS ¹	FEE
Asbestos	SDWA	\$400
Basic Drinking Water	SDWA (includes total and fecal coliform bacteria, E. coli, heterotrophic plate count, nitrate, nitrite, and fluoride)	\$800
Basic Wastewater	CWA (includes BOD5, cBOD5, total suspended solids, and ammonia)	\$400
Bacteria	CWA (includes total coliform, fecal coliform, enterococci bacteria)	\$800
	SDWA (includes total coliform, fecal coliform, E. coli, and heterotrophic plate count)	\$800
	SDWA & CWA combined	\$1,300
Dioxin	SDWA	\$800
Effluent Toxicity Testing	CWA	\$800
Inorganics, including metals	CWA metals, inorganic compounds, and physical characteristics (\$400 per analyte up to a maximum of \$1,600)	\$400 to 1,600
	SDWA (includes metals, nitrate, nitrite, ammonia, cyanide, fluoride, bromate, bromide, chlorite, total organic carbon)	\$1,600
	SW/CS	\$1,600
	SDWA & CWA combined	\$2,400
Radionuclides	CWA	\$400
	SDWA (includes gross alpha, gross beta, photon emitters, radium, strontium, tritium, uranium)	\$400
	SDWA & CWA combined	\$650
Synthetic Organic Chemicals (SOC)	CWA	\$1,600
	SDWA	\$1,600

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ANALYTICAL GROUP	REGULATORY PROGRAM & PARAMETERS ¹	FEE
	SW/CS	\$1,600
	SDWA & CWA combined	\$2,600
Volatile Organic Chemicals (VOC)	CWA	\$1,600
	SDWA	\$1,600
	SW/CS	\$1,600
	SDWA & CWA combined	\$2,600
Underground Storage Tanks Program Methods (UST)	CWA - OA1 8260 UST	\$800
	CWA - OA2 / PAH / Air UST	\$800
	SW/CS - OA1	\$800
	SW/CS - OA2	\$800
	UST - OA1 8260 UST	\$800
	UST - OA2/PAH/Air UST	\$800
	UST & CWA combined	\$2,600
Other analyte ²	SDWA, CWA, UST, or SW/CS	\$350 per analyte

¹ CWA: Analysis of wastewater samples for the federal Clean Water Act.

SDWA: Analysis of drinking water samples for the federal Safe Drinking Water Act.

SW/CS: Analysis of water, soil, or solid samples for the solid waste or contaminated site programs.

UST: Analysis of water and soil samples for the underground storage tanks program.

² The fee for an additional analyte may be charged at the discretion of the appraisal authority.

ITEM 154. Amend subrule 83.3(3) as follows:

83.3(3) Reciprocity. Reciprocal certification of out-of-state laboratories by Iowa, and of Iowa laboratories by other states or accreditation providers, is encouraged. A laboratory must meet all Iowa certification criteria and pay all applicable fees, pursuant to 567—Chapter 83 as listed in this chapter. Any laboratory which is granted reciprocal certification in Iowa using primary certification from another state or provider is required to report any change in certification status from the accrediting state or provider to the department within 14 days of notification. *A laboratory that loses primary certification, either in its resident-state program or third-party accreditation program, will also immediately lose certification for the same program area and parameters in Iowa, pursuant to 83.7(5)“a”(9).*

a. and b. No change.

ITEM 155. Adopt new rule 567—83.4(455B) as follows:

567—83.4(455B) Procedure for initial certification for laboratories analyzing solid waste and contaminated site program parameters.

83.4(1) Implementation process. All laboratories seeking certification to perform solid waste or contaminated site analyses shall provide a letter of intent requesting certification from the department. The letter shall include a statement that the laboratory is capable of performing the analyses for which certification is requested and that the laboratory intends to participate in blind PE testing using the approved methods.

a. Letter of intent. Laboratories submitting a letter of intent by April 1, 2004, will be issued a letter granting temporary certification. The temporary certification will be effective until the laboratory is certified through the on-site visit. Laboratories submitting applications after April 1, 2004, will not be issued temporary certification and must apply for certification as provided for in 83.5(455B). Temporary certification will be denied if a laboratory fails to submit a completed application with the appropriate fee for full certification within the time frame established by the department.

b. Application. The department or its designee will schedule an on-site visit for each laboratory with temporary certification unless the on-site visit is waived by the department as provided by the reciprocity agreements pursuant to

83.4(1)“d.” The department will request a completed application from the laboratory at least 60 days prior to the on-site visit. The completed application and the correct fee must be received by the department no later than 30 days before the on-site visit. Temporary certification will be denied and the on-site visit will not take place if the application is not complete and the fee is not timely received.

c. Performance evaluation (PE) testing. Participation in PE testing using the approved method(s) for which certification is requested must be initiated within 30 days after the laboratory submits the letter of intent. PEs consist of analyzing product-spiked samples in a particular matrix provided by the testing organization to determine if a laboratory’s analytical results are within the acceptance range. Acceptable results on the PE are required in order for the laboratory to receive final certification. Temporary certification will be denied if the laboratory fails to initiate the PE. An independent performance testing organization meeting the requirements of Chapter 4 in the “Manual for the Certification of Laboratories Analyzing Environmental Samples for the Iowa Department of Natural Resources” (2003) must be used.

d. On-site visits. Upon application to the department by a laboratory with temporary certification, the director or designee will contact the laboratory and a date will be established for an on-site visit. The criteria given in the “Manual for the Certification of Laboratories Analyzing Environmental Samples for the Iowa Department of Natural Resources” (2003), specifically Chapter 4 regarding solid waste, will be used during the on-site visit to evaluate qualifications of laboratory equipment, procedures, records, and personnel. The on-site visit requirement may be waived for out-of-state laboratories desiring certification where EPA or the resident state has a certification program equivalent to Iowa’s, an on-site visit has been conducted within the past two years, and a copy of the on-site visit report is provided to the department.

83.4(2) Letter of certification. If the physical facilities and equipment of the laboratory meet the criteria set forth in the “Manual for the Certification of Laboratories Analyzing Environmental Samples for the Iowa Department of Natural Resources” (2003), and the laboratory personnel have properly demonstrated proficiency with the procedures specified in the manual, the laboratory will be issued a letter granting

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certification. The letter of certification will state the essential personnel, the specific parameters and analytical methods for which the laboratory is certified and may contain conditions deemed necessary by the department to ensure that the laboratory meets all requirements of this chapter.

ITEM 156. Amend subrule 83.6(3) as follows:

83.6(3) Laboratories must notify the department, in writing, within ~~30~~ 15 days of major changes in essential personnel, equipment, laboratory location, or other major change which might alter or impair analytical capability. ~~Examples~~ *An example* of a major change in essential personnel ~~are~~ *includes* the loss or replacement of the laboratory supervisor, or a trained and experienced analyst is no longer available to analyze a particular parameter for which certification has been granted.

ITEM 157. Amend paragraph **83.6(4)“a”** as follows:

a. Certification of the University of Iowa Hygienic Laboratory. The department has designated the University Hygienic Laboratory (UHL) as its appraisal authority for laboratory certification. ~~As such, the certification is the responsibility of the EPA. The U.S. Environmental Protection Agency is responsible for the certification of UHL for the SDWA program water supply program, and the UHL quality assurance officer is responsible for the certification of UHL for those programs with no available EPA certification program, including for the wastewater, and underground storage tank programs, solid waste, and contaminated site programs. For those areas with no available EPA certification program.~~ The UHL quality assurance officer reports directly to the office of the UHL director and operates independently of all areas of the laboratory generating data to ensure complete objectivity in the evaluation of laboratory operations. The quality assurance officer will schedule a biennial on-site inspection of the UHL and review results for acceptable performance. Inadequacies or unacceptable performance shall be reported by the quality assurance officer to the UHL and the department for correction. The department shall be notified if corrective action is not taken.

ITEM 158. Amend subparagraph **83.6(6)“a”(1)** as follows:

(1) Certified laboratories must report to the department, or its designee such as ~~the University of Iowa Hygienic Laboratory UHL~~, all analytical test results for all public water supplies, using forms provided or approved by the department or by electronic means acceptable to the department. If a public water supply is required by the department to collect and analyze a sample for an analyte not normally required by 567—Chapters 41 and 43, the laboratory testing for that analyte must also be certified and report the results of that analyte to the department. It is the responsibility of the laboratory to correctly assign and track the sample identification number as well as facility ID and source/entry point data for all reported samples.

1. The following are examples of sample types for which data results must be reported:

- Routine: a regular sample which includes samples collected for compliance purposes from such locations as the source/entry point and in the distribution system, at various sampling frequencies;
- Repeat: a sample which must be collected after a positive result from a routine or previous repeat total coliform sample, per 567—41.2(455B). *Repeat samples must be analyzed at the same laboratory from which the associated original routine sample was analyzed;*

- Confirmation: a sample which verifies a routine sample, normally used in determination of compliance with a health-based standard, such as nitrate;

- Special: a nonroutine sample, such as raw, plant, and troubleshooting samples, *which cannot be used to comply with monitoring requirements assigned by the department;*

- Maximum residence time: a sample which is collected at the maximum residence time location in the distribution system, usually for ~~total trihalomethane~~ *disinfection byproduct* measurement; and

- Replacement: a sample which replaces a missed sample from a prior monitoring period resulting in a monitoring violation.

2. to 4. No change.

ITEM 159. Amend **83.6(6)“a”(4)“1”** as follows:

1. Results of positive *routine* coliform bacteria samples, and ~~their associated~~ *all* repeat and follow-up samples, *reported within 24 hours of the completion of each sample's analysis.*

ITEM 160. Adopt the following **new** subparagraph **83.6(6)“a”(5)**:

(5) If requested by the department, certified laboratories shall report their method detection levels, levels of quantitation, and any other pertinent information when reporting results for public water supplies.

ITEM 161. Amend paragraph **83.6(6)“b”** as follows:

b. Underground storage tank program. Certified laboratories must report to the ~~person~~ *client* requesting the analysis and include the information required in 567—subrule 135.10(2) in their laboratory report.

ITEM 162. Amend paragraph **83.6(6)“c”** as follows:

c. Wastewater program. Certified laboratories must report to the ~~person~~ *client* requesting the analysis and include the information required in 567—paragraphs 63.2(2)“b” to “e” in their laboratory report.

ITEM 163. Adopt **new** paragraph **83.6(6)“d”** as follows:

d. Solid waste and contaminated site programs. Certified laboratories must report to the client requesting the analysis and include the information required in 567—paragraph 83.6(7)“d” and 567—subrule 103.2(8).

ITEM 164. Amend paragraph **83.6(7)“a”** as follows:

a. Water supply program. ~~In addition to the analytes specifically listed in 83.6(7)“a,”~~ PE samples are required for certification of the ~~unregulated and discretionary compounds listed in 567—Chapter 41, using statistical acceptance limits determined by the PE sample provider.~~ *Laboratories must be able to achieve at least the method detection limit for each specific analyte as listed in 567—Chapter 41, in addition to any method detection limit requirement listed in this paragraph.*

(1) Volatile organic chemical (VOC) PE laboratory certification. Analysis for VOCs shall only be conducted by laboratories certified by EPA or the department or its authorized designee according to the following conditions. To receive approval to conduct analyses for the VOC contaminants in 567—subparagraph 41.5(1)“b”(1), except for vinyl chloride, the laboratory must:

1. to 5. No change.

(2) *Vinyl chloride.* To receive approval for vinyl chloride, the laboratory must:

1. to 3. No change.

(3) Synthetic organic chemicals *chemical* (SOC) PEs—laboratory certification. Analysis under this paragraph for

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SOCs shall ~~only~~ be conducted *only* by laboratories certified by EPA or the department or its authorized designee. To receive approval to conduct analyses for the SOC contaminants in 567—subparagraph 41.5(1)“b”(2), the laboratory must:

1. and 2. No change.

(4) Inorganic chemical (IOC) ~~PE—laboratory certification~~. Analysis ~~under this paragraph for IOCs~~ shall be conducted only by laboratories certified by EPA or the department ~~or a third-party provider acceptable to the department or its authorized designee~~. To receive approval to conduct analyses for *ammonia*, antimony, *arsenic*, asbestos, barium,

beryllium, cadmium, chromium, cyanide, fluoride, mercury, ~~nickel~~, nitrate, nitrite, selenium and thallium, the laboratory must:

1. Analyze PE samples provided by EPA, the department, or a third-party provider acceptable to the department, at least once a year.

2. For each contaminant that has been included in the PE sample and for each method for which the laboratory desires certification, achieve quantitative results on the analyses that are within the following acceptance limits:

ACCEPTANCE LIMITS

<u>Contaminant</u>	<u>Acceptance Limit</u>
<i>Ammonia</i>	(+ or -) 20% at greater than or equal to 0.3 mg/L
Antimony	(+ or -) 30% at greater than or equal to 0.006 mg/L
<i>Arsenic</i>	(+ or -) 30% at greater than or equal to 0.003 mg/L
Asbestos	2 standard deviations based on study statistics
Barium	(+ or -) 15% at greater than or equal to 0.15 mg/L
Beryllium	(+ or -) 15% at greater than or equal to 0.001 mg/L
Cadmium	(+ or -) 20% at greater than or equal to 0.002 mg/L
Chromium	(+ or -) 15% at greater than or equal to 0.01 mg/L
Cyanide	(+ or -) 25% at greater than or equal to 0.1 mg/L
Fluoride	(+ or -) 10% at greater than or equal to 1 to 10 mg/L
Mercury	(+ or -) 30% at greater than or equal to 0.0005 mg/L
Nickel	(+ or -) 15% at greater than or equal to 0.01 mg/L
Nitrate	(+ or -) 10% at greater than or equal to 0.4 mg/L
Nitrite	(+ or -) 15% at greater than or equal to 0.4 mg/L
Selenium	(+ or -) 20% at greater than or equal to 0.01 mg/L
Thallium	(+ or -) 30% at greater than or equal to 0.002 mg/L

(5) Lead and copper ~~PE—laboratory certification~~. To obtain certification to conduct analyses for lead and copper, laboratories must:

1. Analyze PE samples ~~which that~~ include lead and copper provided by EPA, the department, or a third-party provider acceptable to the department, at least once a year *by each method for which the laboratory desires certification*; and

2. Achieve quantitative ~~acceptance limits as follows results on the analyses that are within the following acceptance limits~~:

- Lead: plus or minus 30 percent of the actual amount in the PE sample when the actual amount is greater than or equal to 0.005 mg/L. The practical quantitation level or PQL for lead is 0.005 mg/L; and

- Copper: plus or minus 10 percent of the actual amount in the PE sample when the actual amount is greater than or equal to 0.050 mg/L. The practical quantitation level or PQL for copper is 0.050 mg/L; and

3. ~~Achieve method detection limits as follows~~:

- ~~Lead: 0.001 mg/L (only if source water compositing is done); and~~

- ~~Copper: 0.001 mg/L or 0.020 mg/L when atomic absorption direct aspiration is used (only if source water compositing is done);~~

4-3. Be currently certified by EPA or the department to perform analyses to the specifications described in 567—paragraph 41.4(1)“g.”

(6) Disinfection byproducts ~~PE—laboratory certification~~. To obtain certification to conduct analyses for disinfection byproducts listed in 567—paragraph 41.6(1)“b,” laboratories must:

1. Analyze ~~performance evaluation (PE)~~ samples approved by EPA, the department, *or a third-party provider acceptable to the department, or its designee*, at least once a year *by each method for which the laboratory desires certification*; and

2. Achieve quantitative results within the acceptance limit on a minimum of 80 percent of the analytes included in the PE sample. The acceptance limit is defined as the 95 percent confidence interval calculated around the mean of the PE study data. However, the acceptance limit range shall not exceed *+/- plus or minus 50 percent or be less than +/- plus or minus 15 percent of the study mean*; and

3. No change.

ITEM 165. Amend paragraph **83.6(7)“b”** as follows:

b. Underground storage tank program. A laboratory must achieve ~~quantitative acceptable~~ results on PE samples every 12 months within plus or minus 20 percent of the true value for individual compounds (i.e., benzene, ethylbenzene, toluene, xylene by OA-1) and plus or minus 40 percent of the true value for multicomponent materials (i.e., gasoline, diesel fuel, motor oil by either OA-1 or OA-2). *The PE samples must be provided by EPA, the department, or a third-party provider acceptable to the department.*

ITEM 166. Amend paragraph **83.6(7)“c”** as follows:

c. Wastewater program. Achieve acceptable quantitative results *every 12 months* on PE samples ~~every 12 months~~ equivalent to those used in the Water Pollution (WP) proficiency program, or the Discharge Monitoring Report Quality Assurance (DMRQA) program, both of which are administered by EPA or its designee.

ITEM 167. Adopt new paragraph **83.6(7)“d”** as follows:

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d. Solid waste and contaminated site programs. Achieve acceptable quantitative results every 12 months on PE samples provided by EPA, the department, or a third-party provider acceptable to the department.

ITEM 168. Amend subparagraph **83.7(1)“a”(2)** as follows:

(2) Failure to notify the department within 30 15 days of changes in essential personnel, equipment, laboratory facilities or other major change which might impair analytical capability;

ITEM 169. Amend paragraph **83.7(2)“e”** as follows:

e. Reinstatement. Certification will be reinstated when the laboratory can demonstrate that all conditions for laboratory certification have been met to the satisfaction of the department and that the deficiencies which resulted in provisional certification status have been corrected. This may include an on-site visit, successful analysis of ~~unknown~~ PE samples, or any other measure that the department deems appropriate.

ITEM 170. Amend paragraph **83.7(3)“c,”** catchwords, as follows:

c. ~~Emergency suspension.~~ *Emergency certification suspension.*

ITEM 171. Amend paragraph **83.7(5)“a”** as follows:

a. ~~A laboratory may have its certification revoked for cause including, but not limited to, any of the following reasons. The department may revoke certification for cause. The reasons for which a laboratory's certification may be revoked include, but are not limited to, the following:~~

(1) to (5) No change.

(6) Failure to satisfy the department that the laboratory is maintaining the required standard of quality based on the on-site visit. ;

(7) Persistent failure to report compliance data to the regulated client or the department in a timely manner, thereby preventing compliance with state regulations and endangering public health. ;

(8) Subverting compliance with state regulations by actions such as changing the sample type for a noncompliance sample to a compliance sample after its submission to the laboratory, allowing compliance samples to be changed to other noncompliance sample types, or selective reporting of split sample results. ; or

(9) *For laboratories certified through a reciprocal agreement with another state or third-party accreditation program, loss of certification in either the resident state or third-party accreditation program is cause for immediate revocation of certification in Iowa for the same parameters or program areas for which certification was lost.*

ITEM 172. Amend paragraph **83.7(6)“b”** as follows:

b. Reporting. ~~A laboratory must notify the laboratory's IDNR-regulated clientele and other state certifying agencies, to which the notice of revocation is pertinent, of the department's intent to revoke certification, within 30 days of receipt of the notice. Once revocation is effective, a laboratory must immediately discontinue analysis and reporting of compliance samples, shall not analyze or report samples for compliance with departmental standards, and must notify the laboratory's Iowa-regulated clientele and other state certifying agencies of the change of the laboratory certification status within three business days of receipt of the final notice. Any results generated after revocation may not be used for compliance purposes by the department.~~

ITEM 173. Amend paragraph **83.7(6)“c,”** introductory paragraph, as follows:

c. Right to appeal. There is no appeal process for revocation of an analyte or a related analytical series unless the analyte(s) represents an entire environmental program area, such as underground storage tank parameters, or the entire laboratory. When the laboratory requests revocation pursuant to 83.7(5)“d,” the revocation will be ~~promptly~~ issued *promptly* and will be ~~immediately~~ effective *immediately* with no appeal process.

ARC 2776B**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 gives Notice of Intended Action to amend Chapter 61, “Water Quality Standards,” and Chapter 62, “Effluent and Pretreatment Standards: Other Effluent Limitations or Prohibitions,” Iowa Administrative Code.

The proposed amendments will:

1. Establish numerical water quality criteria for chloride for the protection of aquatic life and for general uses.

2. Replace the current total dissolved solids (TDS) numerical criterion of 750 mg/l with a site-specific approach for establishing discharge limits for dissolved solids.

3. Add approximately 300 publicly owned lakes as Class B(LW) Lakes and wetlands designated waters in the rule-referenced document “Surface Water Classification.”

4. Add the Class A2, Secondary contact recreational use, designation to all water bodies currently designated as Class B(CW), Cold water, or Class HQ, High quality water, and those Class B(WW), Significant resource warm water, segments not currently designated as Class A1, Primary contact recreational use, to the rule-referenced document “Surface Water Classification.”

5. Add 14 stream segments as Class B(LR), Limited resource warm water, redesignate 2 Class B(WW) stream segments as Class B(LR) streams, and correct several referenced stream locations in the rule-referenced document “Surface Water Classification.”

6. Amend the rule-referenced document “Protected Flows for Selected Stream Segments” to add several streams and correct the locations and protected flows of several other streams, for consistency with the document “Surface Water Classification.”

7. Amend 567—subrule 61.2(5), paragraph “a,” to reference the correct subrule.

Currently, the Water Quality Standards do not list any numerical water quality criteria for chloride for the protection of aquatic life and for general uses. However, in 1988, the U.S. Environmental Protection Agency (EPA) adopted national guideline values using available aquatic toxicity data. The proposed acute aquatic life criterion for chloride of 860 mg/l is based on EPA's national criterion, and the proposed

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chronic aquatic life criterion for chloride of 372 mg/l has been recalculated from EPA's national criterion to reflect new toxicity test data from the state of Wisconsin. Significant technical input was also obtained from the Water Quality Technical Advisory Committee.

A chloride level of 1500 mg/l is being proposed to protect the uses of all waters, including General Use streams. This proposed criterion was selected following review of literature data on the effects of chloride on various users and uses made of waters. Data clearly demonstrate that there is not a single threshold value to protect all uses, but rather an extensive range of concentrations that uses can tolerate. Public input is being solicited on the reasonable and prudent level to be established to protect general uses such as livestock and wildlife watering.

The current total dissolved solids (TDS) numerical criterion of 750 mg/l, applicable to all waters, is proposed to be replaced with a site-specific approach for establishing discharge limits for dissolved solids. The proposed site-specific approach would first consider a guideline value of 1000 mg/l (TDS) as a threshold in-stream level at which negative impacts to the uses made of the receiving stream may begin to occur. Sources that discharge levels of TDS that may potentially elevate a receiving stream above 1000 mg/l (TDS) would be required, upon application for a discharge permit or permit renewal, to clearly demonstrate that their discharge will not result in toxicity to the receiving stream. This documentation may require whole effluent toxicity (WET) tests and a chemical analysis of the effluent for selected cations and anions, including calcium, magnesium, potassium, sodium, chloride, sulfate, and iron as well as the measured TDS concentration. The rule-referenced document entitled "Supporting Document for Iowa Water Quality Management Plans, Chapter IV," July 1976, as revised in March 2003, will be modified to reflect the new TDS approach and associated implementation details for establishing discharge limits for total dissolved solids.

Several lakes will be added to the rule-referenced document "Surface Water Classification." Staff review of numerous publications and reference sources uncovered many smaller publicly owned lakes in Iowa that are not currently designated in the Water Quality Standards. These lakes are proposed to be designated as Class B(LW). In response to stakeholder comments, these amendments also propose to note on-stream impoundments in the listing of lakes in addition to their listing in the river basin sections of "Surface Water Classification."

All the waterbodies currently designated as Class B(CW) and/or Class HQ in the rule-referenced document "Surface Water Classification" will be designated as Class A2. Also, those waters designated as Class B(WW) that are not also designated as Class A1 will be designated as Class A2. Class A2 uses include fishing activities and such other uses for which water contact is likely but whole body contact or immersion is unlikely. The Commission recently adopted the Class A2 use designation and the bacterial standards to protect the Class A2 uses.

Fourteen stream segments will be designated as Class B(LR); two Class B(WW) stream segments will be redesignated as Class B(LR) streams; and seven stream locations will be corrected in the rule-referenced document "Surface Water Classification." The proposed stream segment additions are:

Allen Cr. in Harrison Co.
Bluff Cr. in Mahaska Co.
Buck Cr. in Mahaska and Poweshiek Cos.

Elk Cr. in Mahaska and Jasper Cos.
Horton Cr. (a.k.a. Twomile Cr.) in Bremer Co.
Keigley Br. in Story Co.
L. Wapsipinicon R. in Chickasaw and Howard Cos.
Lindsey Cr. in Delaware Co.
Littlebridge Cr. in Cerro Gordo Co.
Poyner Cr. in Black Hawk Co.
Reeds Cr. in Van Buren Co.
Spring Cr. in Polk Co.
Unnamed Cr. (trib. of Kitty Cr.) in Jones Co.
West Kitty Cr. in Jones Co.

The stream segments that are proposed to be redesignated from Class B(WW) to Class B(LR) are Big Creek in Polk County and Honey Creek in Boone County. These changes are based on new and old warm water field assessments of the streams.

The rule-referenced document "Protected Flows for Selected Stream Segments" will be amended to add several streams and correct the locations and protected flows of several other streams for consistency with the document "Surface Water Classification."

567—subrule 61.2(5), paragraph "a," which discusses the allowable temperature increase criterion for warm water interior streams, contains a reference to a subrule that has been removed from Chapter 61. The paragraph is proposed to be changed to reference the correct subrule. This correction will not change the meaning or use of the rules.

Additional information on Iowa's Water Quality Standards may be found on the Department's Web site at <http://www.state.ia.us/dnr/organiza/epd/wtresrce/wquality/index.htm>.

Any person may submit written suggestions or comments on the proposed amendments through October 31, 2003. Such written material should be submitted to Ralph Turkle, Department of Natural Resources, Wallace State Office Building, 900 East Grand, Des Moines, Iowa 50319-0034, fax (515)281-8895 or by E-mail to ralph.turkle@dnr.state.ia.us. Persons who have questions may contact Ralph Turkle at (515)281-7025.

Persons are invited to present oral or written comments at public hearings which will be held:

October 7, 2003 2 p.m.	Municipal Utilities Conference Room 15 W. Third St. Atlantic, Iowa
October 9, 2003 7 p.m.	Decorah City Hall Meeting Room 400 Claiborne Dr. Decorah, Iowa
October 10, 2003 1 p.m.	Clear Lake Community Meeting Room 15 N. Sixth St. Clear Lake, Iowa
October 13, 2003 11 a.m.	Cherokee Community Center 530 W. Bluff St. Cherokee, Iowa
October 15, 2003 11 a.m.	Iowa City Public Library Meeting Room A 123 S. Linn St. (use temporary entrance in Pedestrian Mall) Iowa City, Iowa
October 17, 2003 1 p.m.	Wallace State Office Building Fifth Floor Conference Rooms 900 East Grand Ave. Des Moines, Iowa

Any person who intends to attend a public hearing and has special requirements, such as those related to hearing or mo-

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bility, should contact Corey McCoid at (515)281-6061 to advise of any specific needs.

These amendments may have an impact upon small businesses.

Copies of Environmental Protection Commission rules may be obtained from Cecilia Nelson, Records Center, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand, Des Moines, Iowa 50319-0034.

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1.

The following amendments are proposed.

ITEM 1. Amend subrules **61.2(4)**, **61.2(5)**, **61.3(5)**, and **62.8(2)** by striking "July 16, 2003" and inserting the effective date of this amendment.

ITEM 2. Amend subrule **61.2(5)**, paragraph "a," as follows:

a. The allowable 3°C temperature increase criterion for warm water interior streams, ~~61.3(3)"f"(1), 61.3(3)"b"(5)"1,"~~ is based in part on the need to protect fish from cold shock due to rapid cessation of heat source and re-

sultant return of the receiving stream temperature to natural background temperature. On low flow streams, in winter, during certain conditions of relatively cold background stream temperature and relatively warm ambient air and groundwater temperature, certain wastewater treatment plants with relatively constant flow and constant temperature discharges will cause temperature increases in the receiving stream greater than allowed in ~~61.3(3)"f"(1), 61.3(3)"b"(5)"1."~~

ITEM 3. Amend subrule **61.3(2)**, paragraph "g," as follows:

g. ~~Total dissolved solids Chloride shall not exceed 750 1500 mg/l in any lake, or impoundment, or in any stream with a flow rate equal to or greater than three times the flow rate of upstream point source discharges. Acceptable levels of total dissolved solids and constituent cations and anions will be established on a site-specific basis. The implementation approach for establishing the site-specific levels may be found in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on [the effective date of this amendment].~~

ITEM 4. Amend subrule **61.3(3)**, Table 1, Criteria for Chemical Constituents, entry for "Chloride," as follows:

Parameter		Use Designations				
		B(CW)	B(WW)	B(LR)	B(LW)	C
Chloride	<i>Chronic</i>	860*	860*	860*	860*	—
	<i>Acute</i>	372*	372*	372*	372*	—
	MCL	—	—	—	—	250*

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GROW IOWA VALUES BOARD[264]

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 2003 Iowa Acts, House File 692, section 79(5), the Grow Iowa Values Board hereby gives Notice of Intended Action to amend Chapter 1, "Rules Applicable to All Chapters," adopt Chapter 2, "Organization and Structure," amend Chapter 3, "Grow Iowa Values Fund Financial Assistance," and adopt Chapter 4, "University and College Financial Assistance Program," Chapter 51, "Public Records and Fair Information Practices," Chapter 52, "Board Procedure for Rule Making," Chapter 53, "Petition for Rule Making," Chapter 54, "Petition for Declaratory Order," and Chapter 55, "Uniform Waiver and Variance Rules," Iowa Administrative Code.

These proposed amendments establish application requirements, evaluation criteria and procedures by which the Board will process requests for financial assistance from the Iowa Values Fund, including the University and College Financial Assistance. This Notice also proposes procedures for petitions for rule making and declaratory orders, a process by which a rule waiver or variance can be requested, policies and procedures concerning public records and fair information practices and procedures by which the Board adopts rules.

The Board is seeking public input about the proposed amendments, particularly on the issue of the wage levels and

how best to implement the statutory goals of increasing the wealth of Iowans, expanding and stimulating the economy, and increasing the population of Iowa as described in 2003 Iowa Acts, House File 692, section 83. For example, should the Board establish a threshold wage rate for eligibility for Values Fund projects? If yes, how should this wage level be set? Should there be different wage levels for urban and rural projects?

A public hearing to receive comments about the proposed amendments will be held on Wednesday, October 8, 2003, from 3 to 5 p.m. in the main conference room on the second floor at the Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309. Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on October 8, 2003. Interested persons may submit written or oral comments by contacting: Melanie Johnson, Legal Counsel, Iowa Values Board, c/o Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4862; E-mail melanie.johnson@ided.state.ia.us. The Board's anticipated rule-making schedule is:

- August 27 Approve filing of proposed amendments.
- August 27 to October 8 Public comment period.
- October 8 Public hearing on proposed amendments.
- October 22 Regularly scheduled Iowa Values Board meeting. Adopt and implement final amendments on an emergency basis.

In addition to the public hearing on October 8, 2003, the Board intends to hold several public hearings around the state during September to solicit public comments. A listing of the dates, times and locations of these meetings will be posted on the following Web site: www.iowasmartidea.com.

These amendments are intended to implement 2003 Iowa Acts, House File 692, and House File 683.

The following amendments are proposed.

GROW IOWA VALUES BOARD[264](cont'd)

ITEM 1. Amend 264—Chapter 1 as follows:

CHAPTER 1

RULES APPLICABLE TO ALL CHAPTERS

264—1.1(80GA, HF692, HF683) Definitions. Unless otherwise stated, the following definitions shall apply:

“Advisory board” means the ~~7-member~~ loan and credit guarantee advisory board established in 2003 Iowa Acts, House File 692, section 106, *and composed of seven members.*

“Applicant” means a business that submits an application for Iowa values fund financial assistance.

“Board” or “Iowa values board” means the grow Iowa values board established in 2003 Iowa Acts, House File 692, section 78, *and composed of 11 voting members and 4 ex officio nonvoting members.*

“Business” includes, but is not limited to, a sole proprietorship, partnership or corporation organized for profit or not-for-profit under the laws of the state of Iowa or another state, ~~under federal statutes, the United States or under the laws of another country and which is likely to contribute to achieving the goals and performance measures as described in 2003 Iowa Acts, House File 692, section 83.~~

“Committee” or “due diligence committee” means the ~~5-member~~ due diligence committee established in 2003 Iowa Acts, House File 692, section 80, *and composed of five members.*

“Department” means the Iowa department of economic development created in Iowa Code chapter 15.

“Director” means ~~the director of the department of economic development.~~

“Fund” or “values fund” means the grow Iowa values fund created in 2003 Iowa Acts, House File 692, section 84.

“Marketing board” means the ~~7-member~~ economic development marketing board created in 2003 Iowa Acts, House File 692, section 85, *and composed of seven members.*

“Project” means the activity or ~~set of~~ activities proposed by the *an* applicant which will require state assistance to accomplish and will ~~result in~~ *contribute to* the achievement of the goals established in 2003 Iowa Acts, House File 692, section 81.

“Recipient” means a business that receives financial assistance from the fund.

“Review commission” means the ~~3-member~~ Iowa values review commission established in 2003 Iowa Acts, House File 692, section 81, *and composed of three members.*

264—1.2(80GA, HF692, HF683) Values fund.

1.2(1) Purpose.

a. The statutory purpose of the grow Iowa values fund is to expand and stimulate the state economy, increase the wealth of Iowans, and increase the population of the state. *The approval of an application should contribute to achieving one or more of such goals.*

b. The fund is structured to provide financial assistance for business start-ups, business expansions, business modernization, business attraction, ~~and~~ business retention, *and marketing.* The fund may also be used for ~~marketing and to procure technical assistance from either the public or private sector, for information technology purposes, and for rail, air, or river port transportation-related purposes.~~ *The use of moneys appropriated for rail, air, or river port transportation-related purposes must be when such use is directly related to an economic development project and the moneys must be used to leverage other financial assistance moneys funds involved are also used to leverage other money. In addition, one half of one percent of the funds appropriated by 2003*

Iowa Acts, House File 683, section 66, is allocated to the department for administrative purposes.

1.2(2) Values fund and board authority. The values fund includes ~~moneys money~~ appropriated to the fund by the general assembly, interest earned, repayments and recaptures of loans and grants. The fund is under the control of the board. The board shall approve or deny applications for financial assistance from ~~moneys money~~ appropriated to the fund pursuant to 2003 Iowa Acts, House File 683, section 66.

1.2(3) Allocation of ~~moneys money~~ in the fund.

a. ~~Moneys are~~ *Money* appropriated to the fund is to be used for the purposes stated in subrule 1.2(1), including funding for programs administered by the department. *These appropriations are subject to actual receipt of moneys by the fund. If money received by the fund is less than the amount appropriated, such amount will be prorated proportionately.* The board shall allocate a percentage of the moneys for business start-ups, business expansion, business modernization, business attraction, business retention, and marketing. *The board will allocate funds semiannually. The board may adjust the allocation if it determines it is necessary to do so to ensure the availability of funds in those categories in which the greatest need is demonstrated to exist or to respond to investment opportunities. The board may allocate an amount to the VAAPFAP program (rules for the VAAPFAP program are located at 261—Chapter 57) and the CEBA program (rules for the CEBA program are located at 261—Chapter 53). The board may allocate a portion of certain funds to the department to obtain technical assistance from either the public or private sector and for information technology purposes. The board may also allocate a portion of certain funds for air, rail, or river port transportation-related purposes in connection with an economic development project.*

b. Applications submitted by businesses seeking financial assistance ~~through department~~ from programs that are administered by the department, but funded with values fund ~~moneys money~~ shall ~~follow~~ *comply with* the department’s application procedures for those programs. Notwithstanding the foregoing, the board shall have final decision-making authority to approve or deny such ~~on these~~ applications where *such authority is granted to the board by law.*

264—1.3(80GA, HF692, HF683) Planning Certain principles. In reviewing applications for values fund assistance, the board, the committee and the department will encourage applicants to ~~take~~ *give consideration to* the following ~~planning principles into consideration:~~

1.3(1) Efficient and effective use of land resources and existing infrastructure by encouraging development in areas ~~with~~ *having* existing infrastructure or *the* capacity to avoid costly duplication of services and costly use of land.

1.3(2) Provision for a variety of transportation choices, including pedestrian traffic.

1.3(3) Maintenance of ~~unique sense of place by respecting and enhancing~~ local cultural, historical and natural environmental features.

1.3(4) Conservation of open space and farmland and preservation of critical environmental areas.

1.3(5) Promotion of the safety, livability, and revitalization of existing urban and rural communities.

264—1.4(80GA, HF692, HF683) Federal funds and the “Section 106” process. *If it is determined that Section 106 of the National Historic Preservation Act (“Section 106”) applies to a project All recipients receiving awards an award of federal moneys money from the fund, the recipient shall comply with applicable requirements and cooperate with the*

GROW IOWA VALUES BOARD[264](cont'd)

board, the department and the department of cultural affairs in ensuring compliance with the requirements of Section 106 of the National Historic Preservation Act (Section 106). The Section 106 process requires recipients of federal funds to take into account the effects effect of their undertakings on historic properties and afford the state historic preservation office (SHPO) a reasonable opportunity to comment on the such undertakings. ~~Compliance~~ *If it is determined that Section 106 applies to a project, compliance* with the Section 106 process shall be a condition of disbursement of funds.

264—1.5(80GA, HF692, HF683) Contract administration.

1.5(1) Notice of award. Successful applicants will be notified in writing of the board's award of assistance, including any conditions ~~or~~ and terms of the award approval.

1.5(2) Contract required. ~~The department shall~~ *board shall direct the department to* prepare an agreement, which includes, but is not limited to, a description of the project to be completed by the business, ~~the high wage, high skill wage, job and education standards of the jobs to be created or retained that contribute to attaining the statutory goals of the fund,~~ length of the project period, conditions to disbursement as approved by the board, and ~~the repayment reimbursement requirements of the business or other penalties imposed on the business in the event the business does not fulfill its obligations described in the contract.~~ Successful applicants will be required to execute an agreement within 60 days of the award approval. Failure to do so may result in ~~the board's rescinding action by the board to rescind~~ the award. The 60-day time limit may be extended by the board for good cause shown.

1.5(3) Amendments. Any substantive change to a funded project will require a contract amendment approved by the board. Substantive changes include, but are not limited to, contract time extensions, budget revisions, and significant alterations of existing activities or beneficiaries. No amendment will be valid until approved by the board.

264—1.6(80GA, HF692, HF683) Rules expiration date. ~~This chapter shall expire on October 28, 2003.~~

These rules are intended to implement 2003 Iowa Acts, House Files 692 and 683.

ITEM 2. Adopt the following **new** chapter:

CHAPTER 2
ORGANIZATION AND STRUCTURE

264—2.1(80GA, HF692, HF683) Location and administration.

1. The board, committee, advisory committee, and marketing board are located within the Iowa department of economic development for administrative purposes.

2. The department shall provide office space, staff assistance and budget money to pay the expenses of the board, committee, advisory committee and marketing board.

3. Requests for information about the board, committee, advisory committee or marketing board may be made by contacting the Board of Directors, Iowa Values Fund, 200 East Grand Avenue, Des Moines, Iowa 50309. Information about the board, committee, advisory committee and marketing board is also available at www.iowasmartidea.com.

264—2.2(80GA, HF692, HF683) Organizational structure. The values fund legislation, 2003 Iowa Acts, House File 692, establishes the board, the committee, the advisory committee, the marketing committee, and the review committee.

2.2(1) Board.

a. The values fund board is comprised of 11 voting members appointed by the governor and 4 nonvoting, ex officio members appointed by the legislature.

b. A majority of the voting members of the board constitutes a quorum.

c. Once a quorum, 6 members, is convened, an affirmative vote of the majority of voting board members present is required for a motion to pass.

d. The board annually elects a chairperson and vice-chairperson. The voting members of the board are appointed for three-year staggered terms. There is no statutory limitation to the number of terms a voting member may serve.

e. The duties of the board are listed in 2003 Iowa Acts, House File 692, section 79. By statute, the board receives recommendations from the marketing committee and the due diligence committee. In performing its functions, the board may also seek the expertise of other boards, committees, agencies, and other individuals and organizations as deemed appropriate by the board. The board may direct a portion of certain funds to obtain technical assistance and for information technology purposes.

2.2(2) Committee.

a. The due diligence committee consists of five voting members of the board elected annually by the voting members of the board. Committee members must have expertise in banking and entrepreneurship. The chairperson and vice-chairperson of the committee are elected by and from the committee members.

b. A majority of the committee constitutes a quorum.

c. The duties of the committee are to conduct a thorough review of proposed projects and make recommendations to the board as to whether such projects are practical and whether requests for funding are likely to contribute to achievement of the goals set forth in 2003 Iowa Acts, House File 692, section 83, except projects to be funded under the economic development loan and credit guarantee program created in 2003 Iowa Acts, House File 692, section 104. Committee recommendations may include imposing conditions on or rejecting a proposed expenditure.

d. In discharging its fiduciary obligations, the committee may take all reasonable steps to collect the information it needs to make an informed decision about a proposed project. The committee may use all available resources it deems appropriate to thoroughly evaluate a proposed project and develop a recommendation for the board.

2.2(3) Marketing board. The marketing board is an advisory board composed of seven members, two of whom must be members of the values fund board. A duty of the marketing board is to accept proposals for development of a marketing strategy for the state of Iowa for recommendation to the board and implementation and administration by the department. Any such marketing strategy must be designed to promote the state of Iowa as a lifestyle, increase the population of the state, increase the wealth of Iowans and expand and stimulate the Iowa economy as directed by 2003 Iowa Acts, House File 692, section 83.

2.2(4) Loan and credit guarantee advisory board. The loan and credit guarantee board is an advisory board composed of seven members and to advise the department with respect to the loan and credit guarantee program created in 2003 Iowa Acts, House File 692, section 104, and make recommendations to the department as to disposition of all applications for assistance under the program.

264—2.3(80GA, HF692, HF683) Board procedures.

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2.3(1) Meetings and agendas. Meetings of the board, committee, advisory committee and marketing board are generally held monthly at the offices of the department which are located at 200 East Grand Avenue, Des Moines, Iowa. By notice of the regularly published meeting agenda, the board, committee, advisory committee and marketing board may hold regular or special meetings at other locations within the state. Meeting agendas are available on the department's Web site at www.iowasmartidea.com.

2.3(2) Meeting procedures.

a. Any interested party may attend and observe board, committee, advisory committee and marketing board meetings except for such portion as may be closed pursuant to Iowa Code section 21.5.

b. Observers may use cameras or recording devices during the course of a meeting so long as the use of such devices does not materially hinder the proceedings. The chairperson may order that the use of these devices be discontinued if they cause interference and may exclude any person who fails to comply with that order.

c. Open session and closed session proceedings are electronically recorded. Minutes of open meetings are available for viewing at the department's offices or through the Web site at www.iowasmartidea.com.

2.3(3) Board committees. The board chairperson may appoint committees deemed necessary to accomplish the work of the board. The following committees have been appointed to assist the board: strategic plan committee, administrative rules committee, applications and other forms committee. These committees may be dissolved as deemed appropriate by the chairperson, and other committees may from time to time be appointed for specific purposes.

264—2.4(80GA,HF692,HF683) Board conflict of interest procedures.

2.4(1) Board members shall disclose any known actual or potential conflicts of interest they, or their immediate family, may have in connection with financial assistance applications submitted to the board. For purposes of this rule, "immediate family" means a board member's spouse, children, grandchildren and parents. Disclosures may be made in writing and submitted to the board chairperson or may be made verbally at a meeting of the board and be reflected in the minutes.

2.4(2) Nonvoting and nonparticipation in decision making. If a board member has identified and disclosed a potential or actual conflict of interest, that person shall not vote on the matter or participate in any discussions relating to the matter.

2.4(3) Projects from board member's county. A member of the board shall abstain from voting on applications for financial assistance to any project which is located in the county in which the member resides.

These rules are intended to implement 2003 Iowa Acts, House Files 692 and 683.

ITEM 3. Amend 264—Chapter 3 as follows:

CHAPTER 3
GROW IOWA VALUES FUND
FINANCIAL ASSISTANCE

264—3.1(80GA,HF692,HF683) Eligible applicants. Only businesses are eligible to apply to the department for financial assistance under the grow Iowa values fund.

264—3.2(80GA,HF692,HF683) Eligibility requirements.

3.2(1) Applications from businesses in one of the three following industry clusters shall be given priority consideration regarding their request for assistance: *The committee and the board will consider all applications that would contribute to attaining the statutory goals of the fund. The board and committee should look for opportunities to support expansion in the following areas:*

- a. Life sciences.
- b. Advanced manufacturing.
- c. Information solutions.

3.2(2) All applications must meet ~~the high wage, high skill job, and education requirements in the grow Iowa values fund~~ *wage, job and education standards that contribute to attaining the statutory goals of the fund.*

3.2(3) Retail businesses shall not be eligible to apply for funding.

264—3.3(80GA,HF692,HF683) Forms of assistance. ~~Forms of financial~~ *Financial assistance by the grow Iowa values fund may consist of, include, but are not be limited to, loans, forgivable loans, grants and such other forms of assistance the board deems appropriate and consistent with the needs of a given project.*

264—3.4(80GA,HF692,HF683) Application.

3.4(1) To apply for moneys from the grow Iowa values fund, a business shall submit an application to the department *for consideration by the committee and the board of directors of the grow Iowa values fund in a* ~~on a~~ form provided by the department *on behalf of the board.*

3.4(2) A business *or group of businesses* may submit an application ~~individually or as part of a group of businesses~~ *for assistance from the fund.*

3.4(3) Requests for an application should be directed to the Iowa Department of Economic Development, Division of Business Development Board of Directors, *Grow Iowa Values Fund*, 200 East Grand Avenue, Des Moines, Iowa 50309.

3.4(4) ~~An applicant shall be required to include in the application a statement regarding the intended return on investment. A recipient of values fund moneys shall annually submit a statement to the department regarding the progress achieved on meeting the intended return on investment stated in the application.~~

264—3.5(80GA,HF692,HF683) Application contents. An application to request assistance from the grow Iowa values fund shall include, but not be limited to, the following:

1. A business plan that describes the business's current operations and future plans.
2. A description of the proposed project *including an identification of the community or location for the project.*
3. Documentation that the business meets the eligibility requirements.
4. A description of the ~~quality of jobs to be created or retained~~ *including information on concerning wage rates and progression, continued education requirements, turnover rate, type of job (e.g., full-time, part-time, career-type), health benefits, and any other factors impacting relating to the quality of the jobs to be created or retained.*
5. An identification of ~~the business's competitors in Iowa and elsewhere~~ *competitors of the applicant business.*
6. ~~An analysis of the impact to the state of the proposed project in terms of return on investment. An applicant shall be required to include information regarding benefits to the state of Iowa from the proposed project in terms of return on investment by the state in the project. A recipient of values fund money shall annually submit a statement to the board of~~

GROW IOWA VALUES BOARD[264](cont'd)

directors of the grow Iowa values fund regarding the progress achieved in meeting the intended return on investment to the state of Iowa.

7. A description of any violations of law in the preceding three years including, but not limited to, environmental and worker safety statutes, rules and regulations. The description must include violations of a federal or state environmental protection statute, regulation or rule within the previous five years. If the violations seriously affected the public health or safety, or the environment, the business shall provide an explanation of any mitigating circumstances. If requested by the department, the business shall provide copies of materials documenting the type of violation(s), any fees or penalties assessed, court filings, final disposition of any findings and any other information which would assist the department, the committee and the board in assessing *understanding* the nature of any violation(s).

8. A certification by the business that the information provided in the application is true and accurate to the best of its knowledge.

9. A release of information to permit the department, the committee, and the board, and their respective attorneys and agents, to reasonably evaluate the business's application.

10. ~~Detailed financial~~ *Financial information that includes to the extent requested by the board, including* information about the applicant's owners, investors, and business structure.

11. A certification by the applicant that it plans to stay in Iowa and evidence to support this commitment.

12. *A description of how the applicant's project will promote one or more of the goals identified in 264—subrule 1.2(1).*

264—3.6(80GA, HF692, HF683) Selection criteria. In reviewing applications for *financial assistance funding* the board, the department and the committee shall consider, in addition to the ~~overall~~ requirements ~~detailed described~~ in 264—Chapter 1, the following criteria:

1. ~~The proportion of local match to be provided as compared to local resources~~ *extent of financial and other assistance to be provided by local resources.*

2. ~~The proportion extent of private contribution contributions~~ to be provided by *private parties*, including the involvement of financial institutions.

3. The need of the business for financial assistance from governmental sources. Primary consideration ~~shall will~~ be given to projects ~~in for~~ which the department determines that governmental assistance is most necessary ~~to for~~ the success of the project.

4. The amount of other governmental financial assistance the applicant will apply for to complete the proposed project.

5. The level of need of the business, and the community and region in which it is located as compared to the state as a whole.

6. The impact of the proposed project on the economy of the local and regional ~~area~~ *areas*, and the state of Iowa.

7. The capacity of the business and the methodology to be used to document the return on investment by the state.

~~264—3.7(80GA, HF692, HF683) Rules expiration date.~~ This chapter shall expire on October 28, 2003.

These rules are intended to implement 2003 Iowa Acts, House Files 692 and 683.

ITEM 4. Adopt the following **new** chapters:

CHAPTER 4 UNIVERSITY AND COLLEGE FINANCIAL ASSISTANCE PROGRAM

264—4.1(80GA, HF683) Purpose. The purpose of this program is to provide financial assistance to institutions of higher learning under the control of the state board of regents. Financial assistance is available for:

1. Multiuse, goods manufacturing processes approved by the Food and Drug Administration of the United States Department of Health and Human Services, protein purification facilities for plant, animal, and chemical manufactured proteins;

2. Accelerating new business creation;

3. Innovation accelerators and business parks;

4. Incubator facilities;

5. Upgrading Food and Drug Administration drug approval laboratories located in Iowa City to a larger multi-client, goods manufacturing processes facility;

6. Crop and animal livestock facilities for the growing of transgenic crops and livestock, protein extraction facilities, containment facilities, and bioanalytical, biochemical, chemical, and microbiological support facilities;

7. A national center for food safety and security; and

8. Advanced laboratory space.

264—4.2(80GA, HF683) Definitions. In addition to the definitions in 264—Chapter 1, the following definitions shall apply to this program:

“Foundation” means an organization or entity designated by a university and closely affiliated with a regents institution or an organization or entity designated by a private college president and closely affiliated with the private college.

“Private colleges” means accredited private institutions as defined in Iowa Code section 261.9.

“Project or facility” means the activities for which financial assistance is available as described in rule 264—4.1(80GA, HF683).

“Regents institutions” means institutions of higher learning under the control of the state board of regents.

264—4.3(80GA, HF683) Eligible applicants. Regent institutions and private colleges are eligible to apply for assistance.

4.3(1) Regents institutions may apply to use financial assistance moneys under this program for purposes of a public and private joint venture to acquire infrastructure assets or research facilities or to leverage moneys in a manner consistent with meeting the goals provided in 2003 Iowa Acts, House File 692, section 83.

4.3(2) Private colleges shall utilize funds awarded to leverage other moneys.

264—4.4(80GA, HF683) Forms of assistance. Forms of financial assistance award include, but are not limited to, loans, forgivable loans, grants, and other forms of assistance the board deems appropriate.

264—4.5(80GA, HF683) Application.

4.5(1) To apply for program moneys, regents institutions and private colleges shall submit an application to the department on a form provided by the department.

4.5(2) Requests for an application should be directed to the Board of Directors, Grow Iowa Values Fund, 200 East Grand Avenue, Des Moines, Iowa 50309.

264—4.6(80GA, HF683) Application contents. An application to request assistance shall include, but not be limited to, the following:

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1. Project description.
2. Evidence of private industry demand and support for the project.
3. Demonstration of statewide or regional impact as a result of the project.
4. Project budget, including proposed sources and uses of funds.

264—4.7(80GA, HF683) Reserved amounts. Of the funds appropriated for this program the following amounts shall be reserved for each of the regents institutions: \$10,000,000 for Iowa State University; \$10,000,000 for the University of Iowa; and \$5,000,000 for the University of Northern Iowa. Disbursement of such funds is subject to application to and approval of the grow Iowa values board and subject to actual receipt of moneys by the fund. If money received by the fund is less than the amount appropriated, such amount will be prorated proportionately.

264—4.8(80GA, HF683) Multiyear awards. The board may approve disbursement of funds over a period of several fiscal years to effectively utilize the funds appropriated for the purposes prescribed by statute.

264—4.9(80GA, HF683) Review process. The due diligence committee shall review and recommend funding for eligible projects to the board.

264—4.10(80GA, HF683) Evaluation criteria. Application review criteria include, but are not limited to, the following:

- 4.10(1) Amount of other financing for the project.
- 4.10(2) Amount of private funds invested in or lent to the project.
- 4.10(3) Cost efficiency of providing new project infrastructure compared with use of suitable existing infrastructure where possible and feasible.
- 4.10(4) Time period required to meet performance measures.
- 4.10(5) Meeting the performance goals cited in 2003 Iowa Acts, House File 692, section 83.
- 4.10(6) Private industry demand for the project.
- 4.10(7) Statewide or regional impact of the project.
- 4.10(8) The degree to which the project furthers the development of life sciences, advanced manufacturing, and information solutions.
- 4.10(9) The degree to which the project furthers the development of regional activity.

These rules are intended to implement 2003 Iowa Acts, House File 683, section 67.

CHAPTERS 5 to 50

Reserved

CHAPTER 51

PUBLIC RECORDS AND FAIR
INFORMATION PRACTICES

264—51.1(17A,22) Statement of policy, purpose and scope of chapter.

51.1(1) The purpose of this chapter is to facilitate public access to open records. It also seeks to facilitate board determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. The board is committed to the policies set forth in Iowa Code chapter 22; department staff shall cooperate with members of the public in implementing the provisions of that chapter.

51.1(2) This chapter does not:

a. Require the board to index or retrieve records which contain information about individuals by that person's name or other personal identifier.

b. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

c. Govern the maintenance or disclosure of, notification of or access to records in the possession of the board which are governed by the rules of another agency.

d. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs.

e. Make available records compiled by the board in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the board.

f. Require the board to create, compare or procure a record solely for the purpose of making it available.

264—51.2(17A,22) Definitions. As used in this chapter:

"Board" means the grow Iowa values board.

"Confidential record" in these rules means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the board is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

"Custodian" in these rules means the director of the Iowa department of economic development or the director's designee.

"Department" means the Iowa department of economic development, the agency providing administrative support to the board.

"Open record" in these rules means a record other than a confidential record.

"Personally identifiable information" in these rules means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

"Record" in these rules means the whole or a part of a "public record," as defined in Iowa Code section 22.1, that is owned by or in the physical possession of the board.

"Record system" in these rules means any group of records under the control of the board from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

264—51.3(17A,22) Requests for access to records.

51.3(1) Location of record. A request for access to a record should be directed to the Grow Iowa Values Board, c/o Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309. If a request for access to a record is misdirected, department personnel will promptly forward the request to the appropriate person within the department.

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51.3(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays and legal holidays.

51.3(3) Request for access to open records.

a. Requests for access to open records may be made in writing, in person, electronically, or by telephone.

b. Mail or telephone requests shall include the name, address, telephone number, and the E-mail address (if available) of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

c. For all requested records, the person making the request shall set forth all available information that would assist in locating the records.

d. The request shall set out the maximum search fee the requester is prepared to pay. If the maximum search fee is reached before all the requested records have been located and copied, the requester shall be notified and asked for further directions before the search proceeds.

51.3(4) Response to requests.

a. Timing. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. Advance requests to have records available on a certain date may be made by telephone or correspondence. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Records will be produced for inspection at the earliest date possible following the request. Records should be inspected within ten business days after notice is given that the records have been located and are available for inspection. After ten business days, the records will be returned to storage and additional costs may be imposed for having to produce them again.

b. Reasonable delay. Access to an open record may be delayed for one of the purposes authorized by:

(1) Iowa Code section 22.8(4), which includes good faith delay to seek an injunction or determine if the board is entitled to seek an injunction; to determine if the public records are confidential; or to determine if the confidential record should be made available (A reasonable delay for this purpose shall not exceed 20 calendar days and ordinarily should not exceed 10 business days); or

(2) Iowa Code section 22.10(4), which relates to civil enforcement.

c. Notice to requester. The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

d. Denial of access to records. The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 51.4(17A,22) and other applicable provisions of law.

51.3(5) Security of record. No person may, without permission from the custodian, search or remove any record from board files. Examination and copying of board records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization. Individuals will not be given access to the area

where the records are kept and will not be permitted to search the files.

51.3(6) Copying. A reasonable number of copies of an open record may be made in the board's office. If photocopy equipment is not available in the board office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

51.3(7) Access to records for examination and copying.

a. Location. As specified in Iowa Code section 22.3, the board will provide a suitable place for examination of public records. If it is impracticable to do the work at the board's office at 200 East Grand Avenue, Des Moines, Iowa, the person desiring to examine or copy shall pay all necessary expenses of providing a place for the work. All expenses of the work shall be paid by the person desiring to examine or copy the records.

b. Paper files. Hard copies of public records will be made available for examination and copying.

c. Electronic files. The board will take reasonable steps to provide on-site access to electronically stored public records. To the extent the department's technology permits, electronic records, including E-mails, will be made available through a secure, on-site computer terminal. If a requester prefers, copies of electronic records located during a records search will be provided and copying fees will apply.

d. Data processing software. Reserved.

e. Tapes. Public records maintained in the form of cassette, videotape or similar form are available for public examination. Upon request, copies of tapes will be made available and the individual requesting the tape will bear all actual costs of copying.

f. Mixed records. If a record contains both public and confidential information, the department will remove the confidential material before making it available for examination or copying. For paper files, a copy of the original will be made and the confidential material will be marked out. Copying fees will apply. For electronic files, if the department is technologically able to block access to fields containing confidential materials, records will be made available as described in paragraph 51.3(7)"c" above.

51.3(8) Fees.

a. When charged. The board may charge fees in connection with the examination, search, retrieval, restoration or copying of records. To the extent permitted by applicable provisions of law, the payment of fees may be waived in the case of small requests of ten or fewer copies when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying, faxing and postage costs. Price schedules for published materials and for photocopies of records supplied by the board shall be prominently posted in board offices. Copies of records may be made by or for members of the public on department photocopy machines or from electronic storage systems at cost as determined and posted in board offices by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester. Actual costs to fax a document may also be charged to the requester.

c. Search and supervisory fee. An hourly fee may be charged for actual department and board expenses in searching for, and supervising the examination and copying of, requested records when the time required is in excess of one hour. The fee shall be based upon the pay scale of the employee involved and other actual costs incurred. The board shall post in board offices the hourly fees to be charged in

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routine cases for search and supervision of records. The department shall give advance notice to the requester if it will be necessary to use an employee with a higher hourly wage in order to find or supervise the examination and copying of particular records in question, and shall indicate the amount of that higher hourly wage to the requester.

d. Computer-stored information. All costs (including staff time) for retrieval, restoration and copying of information stored in electronic storage systems will be charged to the requester.

e. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

264—51.4(17A,22) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 51.3(17A,22).

51.4(1) Proof of identity. A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

51.4(2) Requests. The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

51.4(3) Notice to subject of record and opportunity to obtain injunction. After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

51.4(4) Request denied. When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

a. The name and title or position of the custodian responsible for the denial; and

b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to the requester.

51.4(5) Request granted. When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any

lawful restrictions imposed by the custodian on that person's examination and copying of the record.

264—51.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order to refuse to disclose that record to members of the public.

51.5(1) Persons who may request. Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

51.5(2) Request. A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request.

A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question from which those portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the board by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

51.5(3) Failure to request. Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the board does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) (trade secrets), 22.7(6) (advantage to competitors), or 22.7(18) (communications not required by law, rule procedure or contract), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

51.5(4) Timing of decision. A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

51.5(5) Request granted or deferred. If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a

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request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

51.5(6) Request denied and opportunity to seek injunction. If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify the requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

264—51.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any board proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the custodian. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by the requester, and shall include the current address and telephone number of the requester or the requester's representative.

264—51.7(17A,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed (and, where applicable, the time period during which the record may be disclosed). The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. Appearance of counsel before the board on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the board to disclose records about that person to the person's attorney.

264—51.8(17A,22) Notice to suppliers of information. When the board requests a person to supply information about that person, the board shall notify the person of the use that will be made of the information, which persons outside the board might routinely be provided the information, which parts of the requested information are required and which are

optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

264—51.9(17A,22) Disclosures without the consent of the subject.

51.9(1) Open records are routinely disclosed without the consent of the subject.

51.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

- a. For a routine use as defined in rule 51.10(17A,22) or in the notice for a particular record system.
- b. To a recipient who has provided the board with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.
- c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law and if an authorized representative of such government agency or instrumentality has submitted a written request to the board specifying the record desired and the law enforcement activity for which the record is sought.
- d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.
- e. To the legislative services agency.
- f. In the course of employee disciplinary proceedings.
- g. In response to a court order or subpoena.

264—51.10(17A,22) Routine use.

51.10(1) "Routine use" means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

51.10(2) To the extent allowed by law, the following uses are considered routine uses of all board records:

- a. Disclosure to those officers, employees, and agents of the board who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.
- b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.
- c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the board.
- d. Transfers of information within the department, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.
- e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the board is operating a program lawfully.

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f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

264—51.11(17A,22) Consensual disclosure of confidential records.

51.11(1) Consent to disclosure by a subject individual. The subject may consent in writing to board disclosure of confidential records as provided in rule 51.7(17A,22).

51.11(2) Complaints to public officials. A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the board may be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

264—51.12(17A,22) Release to subject.

51.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 51.7(17A,22). However, the board need not release the following records to the subject:

a. The identity of a person providing information to the board need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18).

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code section 22.7(5).)

d. As otherwise authorized by law.

51.12(2) When a record has multiple subjects with interest in the confidentiality of the record, the board may take reasonable steps to protect confidential information relating to another subject.

264—51.13(17A,22) Availability of records.

51.13(1) Open records. Board records are open for public inspection and copying unless otherwise provided by rule or law.

51.13(2) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 73.2)

b. Tax records made available to the board. (Iowa Code sections 422.20 and 422.72)

c. Records which are exempt from disclosure under Iowa Code section 22.7, including, but not limited to:

(1) Industrial prospect files of the department which are considered confidential under Iowa Code section 22.7(8).

(2) Trade secrets which are treated as confidential under Iowa Code section 22.7(3).

(3) Reports which, if released, would give advantage to competitors and serve no public purpose. These records are considered confidential under Iowa Code section 22.7(6).

(4) Communications not required by rule, law, procedure or contract to the extent that the board reasonably believes that such communications would not be made if the supplier knew the information would be made available for general public examination. These records are confidential under Iowa Code section 22.7(18).

d. Client database. The department maintains a database of business prospects which may be made available to the board for review. This list identifies companies that may be seeking to expand or locate their businesses in Iowa. This list

is considered confidential under Iowa Code sections 22.7(3), 22.7(6), 22.7(8) and 22.7(18).

e. Minutes of closed meetings of a governmental body as permitted under Iowa Code section 21.5(4).

f. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)"d."

g. Those portions of board staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by department staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics on allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of those statements would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the board. (Iowa Code sections 17A.2 and 17A.3)

h. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 1.503(3), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

i. Data processing software, as defined in Iowa Code section 22.3A, which is developed by a governmental body.

j. Log-on identification passwords, Internet protocol addresses, private keys, or other records containing information which might lead to disclosure of private keys used in a digital signature or other similar technologies as provided in Iowa Code chapter 554D.

k. Records which if disclosed might jeopardize the security of an electronic transaction pursuant to Iowa Code chapter 554D.

l. Any other records considered confidential by law.

51.13(3) Authority to release confidential records. The board may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other provision of law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 51.5(17A,22). If the board initially determines that it will release such records, the board may, when appropriate, notify interested parties and withhold the records from inspection as provided in subrule 51.4(3).

264—51.14(17A,22) Personally identifiable information.

This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the board by personal identifier in record systems as defined in rule 51.12(17A,22). This rule describes the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. Unless otherwise stated, the authority for the board to maintain the record is provided by Iowa Code chapter 15. The record systems maintained by the department on behalf of the board are:

51.14(1) Travel records. The department maintains travel records of board member travel. Personally identifiable in-

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formation collected includes the name, address, and social security number of the individual. This information is collected pursuant to Iowa Code section 421.39. Data processing systems do not match, collate or compare the personally identifiable information collected with similar information collected by other state agencies.

51.14(2) Claim vouchers. Requests for reimbursement from board members, contractors, and grantees are maintained by the department on behalf of the board. These records contain the name, address and social security number of the individual requesting reimbursement for expenses. This information is collected pursuant to Iowa Code section 421.40. The information is not maintained in a data processing system which matches, collates or compares the information with other systems containing personally identifiable information.

51.14(3) Contracts and grant records. Contractual agreements and grant agreements are maintained by the department on behalf of the board. These records contain personally identifiable information when the agreement is with a specific individual. In those instances, the records include the name, address and social security number of the contractor/grantee. Other information in these records may include the proposal or work statement of the contractor or grant recipient, budget figures, modifications, correspondence and business information. Personally identifiable information is not contained in a data processing system which collates, matches or compares this information with other systems containing personally identifiable information.

51.14(4) Grant and loan application records. The board administers a variety of state and federal grant and loan programs. Records of persons or organizations applying for grants, awards or funds are available through the board. These records may contain information about individuals collected pursuant to specific federal or state statutes or regulations. Personally identifiable information such as name, address, social security number and telephone number may be included in these records when the applicant is an individual. Many program applicants are political subdivisions or corporations, not individuals.

51.14(5) Litigation files. These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney's notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copies.

264—51.15(17A,22) Other groups of records. This rule describes groups of records maintained by the department on behalf of the board other than record systems as defined in rule 51.12(17A,22). These records are routinely available to the public. However, the board's files of these records may contain confidential information as discussed in rule 51.13(17A,22). The records listed may contain information about individuals. Unless otherwise stated, the authority for the board to maintain the record is provided by Iowa Code chapter 15.

51.15(1) Rule making. Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. Public documents generated during the promulgation of board rules, including notices and public comments, are available for public inspection. This information is not stored in an automated data processing system.

51.15(2) Board records. Agendas, minutes, and materials presented to the Iowa values board are available from the department except for confidential records. Those records concerning closed sessions are exempt from disclosure under Iowa Code section 21.5(4). Board records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by individual identifier and is not stored on an automated data processing system.

51.15(3) Statistical reports. Periodic reports of various board programs are available from the Iowa department of economic development. Statistical reports do not contain personally identifiable information.

51.15(4) Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public except for information that is confidential according to rule 51.13(17A,22).

51.15(5) Publications. Publications include news releases, annual reports, project reports, board newsletters, etc., which describe various agency programs and activities. Board news releases, project reports, and newsletters may contain information about individuals including agency staff or members of board councils or committees.

51.15(6) Address lists. The names and mailing addresses of members of boards and councils, work groups, program grantees and members of the public indicating interest in particular programs and activities of the board are maintained to generate mailing labels for mass distribution of board mailings.

51.15(7) Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public except for information that may be confidential according to rule 51.13(17A,22).

51.15(8) Published materials. The board uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

These rules are intended to implement Iowa Code chapters 17A and 22.

CHAPTER 52

BOARD PROCEDURE FOR RULE MAKING

264—52.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the board are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

264—52.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the board may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)"a," solicit comments from the public on a subject matter of possible rule making by the board by causing notice of the subject matter to be published in the Iowa Administrative Bulletin and indicating where, when, and how persons may comment.

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264—52.3(17A) Public rule-making docket.

52.3(1) Docket maintained. The board shall maintain a current public rule-making docket.

52.3(2) Anticipated rule making. The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed “anticipated” from the time a draft of proposed rules is distributed for internal discussion within the board. For each anticipated rule-making proceeding, the docket shall contain a listing of the precise subject matter which may be submitted for consideration to the economic development board for subsequent proposal under the provisions of Iowa Code section 17A.4(1)“a,” the name and address of board personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the board of that possible rule. The board may also include in the docket other subjects upon which public comment is desired.

52.3(3) Pending rule-making proceedings. The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1)“a,” to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule’s becoming effective. For each rule-making proceeding, the docket shall indicate:

- a. The subject matter of the proposed rule.
- b. A citation to all published notices relating to the proceeding.
- c. Where written submissions on the proposed rule may be inspected.
- d. The time during which written submissions may be made.
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made.
- f. Whether a written request for the issuance of a regulatory analysis or a concise statement of reasons has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis, or statement may be inspected.
- g. The current status of the proposed rule and any board determinations with respect thereto.
- h. Any known timetable for board decisions or other action in the proceeding.
- i. The date of the rule’s adoption.
- j. The date of the rule’s filing, indexing, and publication.
- k. The date on which the rule will become effective.
- l. Where the rule-making record may be inspected.

264—52.4(17A) Notice of proposed rule making.

52.4(1) Contents. At least 35 days before the adoption of a rule, the board shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rule.
- b. The specific legal authority for the proposed rule.
- c. Except to the extent impracticable, the text of the proposed rule.
- d. Where, when, and how persons may present their views on the proposed rule.
- e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the board shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the board for the resolution of each of those issues.

52.4(2) Copies of notices. Persons desiring to receive copies of future Notices of Intended Action must file with the board a written request indicating the name and address (including an E-mail address if electronic transmittal is requested) to which the notices shall be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the board shall mail a copy of that notice to subscribers who have filed a written request for mailing with the board for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price, if any, which covers the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of one year. If persons have requested that the board electronically transmit a copy of the notice by E-mail, there shall be no charge for this service.

264—52.5(17A) Public participation.

52.5(1) Written comments. For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing or via electronic transmission, on the proposed rule. These submissions should identify the proposed rule to which they relate and should be submitted to the individual identified in the Notice of Intended Action.

52.5(2) Oral proceedings. The board may, at any time, schedule an oral proceeding on a proposed rule. The board shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the board by the administrative rules review committee, a governmental subdivision, a state agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

1. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.
2. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.
3. A request by a state agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

The board may waive technical compliance with these procedures.

52.5(3) Conduct of oral proceedings.

a. Applicability. This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)“b.”

b. Scheduling and notice. An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That

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notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

c. Presiding officer. An employee of the board, or another person designated by the board who will be familiar with the substance of the proposed rules, shall preside at the oral proceeding on the proposed rules. If an employee of the board does not preside, the presiding officer shall prepare a memorandum for consideration by the board summarizing the contents of the presentations made at the oral proceeding unless the board determines that such a memorandum is not necessary because the board will personally listen to or read the entire transcript of the oral proceeding.

d. Conduct of proceeding. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at the proceeding are encouraged to notify the board at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the board decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. These submissions become the property of the board.

(6) The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

52.5(4) Additional information. In addition to receiving written comments and oral presentations on a proposed rule

according to the provisions of this rule, the board may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

The board may send notices of proposed rule making and a request for comments to any agency, organization, or association known to it to have a direct interest or expertise pertaining to the substance of the proposed rule.

52.5(5) Accessibility. The board shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the person identified in the Notice of Intended Action in advance to arrange access or other needed services.

264—52.6(17A) Regulatory analysis.

52.6(1) Definition of small business. A “small business” is defined in Iowa Code section 17A.4A(7).

52.6(2) Distribution list. Small businesses or organizations of small businesses may be registered on the board’s small business impact list by making a written application addressed to the Director’s Office, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. The application for registration shall state:

a. The name of the small business or organization of small businesses.

b. Its address.

c. The name of a person authorized to transact business for the applicant.

d. A description of the applicant’s business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact.

e. Whether the registrant desires copies of Notices of Intended Action at cost or via electronic transmission, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The board may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The board may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses shall be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

52.6(3) Time of distribution. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the board shall mail or electronically transmit to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the board shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

52.6(4) Qualified requesters for regulatory analysis—economic impact. The board shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2a) after a proper request from:

a. The administrative rules coordinator.

b. The administrative rules review committee.

52.6(5) Qualified requesters for regulatory analysis—business impact. The board shall issue a regulatory analysis

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of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2b) after a proper request from:

- a. The administrative rules review committee.
- b. The administrative rules coordinator.
- c. At least 25 or more persons who sign the request provided that each represents a different small business.
- d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

52.6(6) Time period for analysis. Upon receipt of a timely request for a regulatory analysis, the board shall adhere to the time lines described in Iowa Code section 17A.4A(4).

52.6(7) Contents of request. A request for a regulatory analysis is made when it is mailed or delivered to the board. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A(1).

52.6(8) Contents of concise summary. The contents of the concise summary shall conform to the requirements of Iowa Code section 17A.4A(4,5).

52.6(9) Publication of a concise summary. The board shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A(5).

52.6(10) Regulatory analysis contents—rules review committee or rules coordinator. When a regulatory analysis is issued in response to a written request from the administrative rules review committee or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2a) unless a written request expressly waives one or more of the items listed therein.

52.6(11) Regulatory analysis contents—substantial impact on small business. When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2b).

264—52.7(17A,25B) Fiscal impact statement. A rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

If the board determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the board shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

264—52.8(17A) Time and manner of rule adoption.

52.8(1) Time of adoption. The board shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the board shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

52.8(2) Consideration of public comment. Before the adoption of a rule, the board shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any written summary of the oral

submissions and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

52.8(3) Reliance on board expertise. Except as otherwise provided by law, the board may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

264—52.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

52.9(1) Allowable variances. The board shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

- a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and
- b. The differences are a logical outgrowth of the contents of that Notice of Intended Action or the comments submitted in response thereto; and
- c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

52.9(2) Fair warning. In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the board shall consider the following factors:

- a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;
- b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and
- c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

52.9(3) Petition for rule making. The board shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the board finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

52.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the board to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

264—52.10(17A) Exemptions from public rule-making procedures.

52.10(1) Omission of notice and comment. To the extent the board for good cause finds that notice and public participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the board may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The board shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

52.10(2) Categories exempt. The following narrowly tailored category of rules is exempted from the usual public notice and participation requirements because those require-

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ments are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class: rules mandated by federal law, including federal statutes or regulations establishing conditions for federal funding of federal programs where the board is not exercising any options under federal law.

52.10(3) Public proceedings on rules adopted without them. The board may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 52.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, a state agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the board shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 52.10(1). This petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of the petition. After a standard rule-making proceeding commenced pursuant to this subrule, the board may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 52.10(1) or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

264—52.11(17A) Concise statement of reasons.

52.11(1) General. When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the board shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Director's Office, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests shall be considered made on the date received.

52.11(2) Contents. The concise statement of reasons shall contain:

- a. The reasons for adopting the rule.
- b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any change.
- c. The principal reasons urged in the rule-making proceeding for and against the rule, and the board's reasons for overruling the arguments made against the rule.

52.11(3) Time of issuance. After a proper request, the board shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

264—52.12(17A) Contents, style, and form of rule.

52.12(1) Contents. Each rule adopted by the board shall contain the text of the rule and, in addition:

- a. The date the board adopted the rule.
- b. A brief explanation of the principal reasons for the rule-making action if the reasons are required by Iowa Code section 17A.4(1b), or the board in its discretion decides to include the reasons.
- c. A reference to all rules repealed, amended, or suspended by the rule.
- d. A reference to the specific statutory or other authority authorizing adoption of the rule.

e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule.

f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if the reasons are required by Iowa Code section 17A.4(1b) or the board in its discretion decides to include the reasons.

g. The effective date of the rule.

52.12(2) Documents incorporated by reference. The board may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the board finds that the incorporation of its text in the board proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the board proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The board may incorporate such matter by reference in a proposed or adopted rule only if the board makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this board, and how and where copies may be obtained from the board of the United States, this state, another state, or the organization, association, or persons originally issuing that matter. The board shall retain permanently a copy of any materials incorporated by reference in a rule of the board.

52.12(3) References to materials not published in full. When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the board shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the board. The board shall provide a copy of that full text at actual cost upon request and shall make copies of the full text available for review either electronically or at the state law library.

At the request of the administrative code editor, the board shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

52.12(4) Style and form. In preparing its rules, the board shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

264—52.13(17A) Board rule-making record.

52.13(1) Requirement. The board shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference shall be available for public inspection.

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52.13(2) Contents. The board rule-making record shall contain:

a. Copies of or citations to all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of board submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based.

b. Copies of any portions of the board's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based.

c. All written petitions, requests, and submissions received by the board, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the board in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the board is authorized by law to keep them confidential; provided, however, that when any materials are deleted because they are authorized by law to be kept confidential, the board shall identify in the record the particular materials deleted and state the reasons for that deletion.

d. Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations.

e. A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based.

f. A copy of the rule and any concise statement of reasons prepared for that rule.

g. All petitions for amendment or repeal or suspension of the rule.

h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general.

i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code subsection 17A.4(4), and any board response to that objection.

j. A copy of any executive order concerning the rule.

52.13(3) Effect of record. Except as otherwise required by a provision of law, the board rule-making record required by this rule need not constitute the exclusive basis for board action on that rule.

52.13(4) Maintenance of record. The board shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective or the date of the Notice of Intended Action.

264—52.14(17A) Filing of rules. The board shall file each rule it adopts in the office of the administrative rules coordinator. The filing shall be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule shall have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the fiscal impact statement or concise statement is issued. In filing a rule, the board shall

use the standard form prescribed by the administrative rules coordinator.

264—52.15(17A) Effectiveness of rules prior to publication.

52.15(1) Grounds. The board may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The board shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

52.15(2) Special notice. When the board makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b”(3), the board shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term “all reasonable efforts” requires the board to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the board of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice, or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b”(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of this subrule.

264—52.16(17A) Review by board of rules.

52.16(1) Request for review. Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator for the board to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the board shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The board may refuse to conduct a review if it has conducted a review of the specified rule within five years prior to the filing of the written request.

52.16(2) Conduct of review. In conducting the formal review, the board shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report shall include a concise statement of the board's findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any requests for exceptions to the rule received by the board or granted by the board. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the board's report shall be sent to the administrative rules review committee and the administrative

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rules coordinator. The report shall also be available for public inspection.

264—52.17(17A) Written criticisms of board rules. Any interested person may submit written criticism of a rule adopted by the board.

52.17(1) Where submitted, form. Rule criticisms shall be in writing and submitted to the Grow Iowa Values Board, c/o Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. The criticism must be typewritten, or legibly handwritten in ink, and must substantially conform to the following form:

GROW IOWA VALUES BOARD	
Criticism of Rule: (specify rule)	
Reason(s) for Criticism:	
Submitted By:	Name: Address: Telephone Number: Signature: Date:

52.17(2) Maintenance. Written criticisms of board rules will be maintained in a separate record for a period of five years from the date of receipt by the board. This record will be open for public inspection.

These rules are intended to implement Iowa Code chapter 17A.

CHAPTER 53
PETITION FOR RULE MAKING

264—53.1(17A) Petition for rule making. Any person or state agency may file a petition for rule making with the board at Grow Iowa Values Board, c/o Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. A petition is deemed filed when it is received by that office. The board must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink, and must substantially conform to the following form:

BEFORE THE GROW IOWA VALUES BOARD

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	}	PETITION FOR RULE MAKING
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The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the board's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.

5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.

6. Any request by petitioner for a meeting provided for by subrule 53.4(1).

53.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

53.1(2) The board may deny a petition because it does not substantially conform to the required form.

264—53.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or from any other person concerning the substance of the petition.

264—53.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Grow Iowa Values Board, c/o Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel.

264—53.4(17A) Board consideration.

53.4(1) Forwarding of petition and meeting. Within five working days after the filing of a petition, the board shall submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by the petitioner in the petition, the board shall schedule a brief and informal meeting between the petitioner and a member of the board or the board's designee to discuss the petition. The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the board by any person.

53.4(2) Action on petition. Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board shall, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the board mails or delivers the required notification to petitioner.

53.4(3) Denial of petition for nonconformance with form. Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the board's rejection of the petition.

These rules are intended to implement Iowa Code section 17A.7.

CHAPTER 54
PETITION FOR DECLARATORY ORDER

264—54.1(17A) Petition for declaratory order. Any person may file a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board at the Grow Iowa Values Board, c/o Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. A petition is deemed filed when it is received by that office. The board shall provide

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vide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and should substantially conform to the following form:

BEFORE THE GROW IOWA VALUES BOARD

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved). } PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

- 1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by the petitioner for a meeting provided for by rule 264-54.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

264-54.2(17A) Notice of petition. Within five working days of receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to rule 264-54.6(17A) to whom notice is required by any provision of law. The board may give notice to any other persons.

264-54.3(17A) Intervention.

54.3(1) Nondiscretionary intervention. Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 15 working days of the filing of a petition for declaratory order and before the 30-day time for board action under rule 264-54.8(17A) shall be allowed to intervene in a proceeding for a declaratory order.

54.3(2) Discretionary intervention. Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the board.

54.3(3) Filing and form of petition for intervention. A petition for intervention shall be filed at the Grow Iowa Values Board, c/o Iowa Department of Economic Development,

200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and should substantially conform to the following form:

BEFORE THE GROW IOWA VALUES BOARD

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition). } PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

- 1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented by the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and the intervenor's representative, and a statement indicating the person to whom communications should be directed.

264-54.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

264-54.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Grow Iowa Values Board, c/o Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel.

264-54.6(17A) Service and filing of petitions and other papers.

54.6(1) Service. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served by mailing or personal delivery upon each of the parties of record to the proceeding, and on all other persons identified as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons. All docu-

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ments filed shall indicate all parties or other persons served and the date and method of service.

54.6(2) Filing. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Grow Iowa Values Board, c/o Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. All documents are considered filed upon receipt.

264—54.7(17A) Consideration. Upon request by the petitioner, the board shall schedule a brief and informal meeting between the original petitioner, all intervenors, and a member of the staff of the board to discuss the questions raised. The board may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the board by any person.

264—54.8(17A) Action on petition.

54.8(1) Time frame for action. Within 30 days after receipt of a petition for a declaratory order, the board or the board's designee shall take action on the petition.

54.8(2) Date of issuance of order. The date of issuance of an order or of a refusal to issue an order is the date of mailing of the order or refusal or date of delivery if service is by other means unless another date is specified in the order.

264—54.9(17A) Refusal to issue order.

54.9(1) Reasons for refusal to issue order. The board shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.
3. The board does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other board or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a board decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
10. The petitioner requests the board to determine whether a statute is unconstitutional on its face.

54.9(2) Action on refusal. A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final board action on the petition.

54.9(3) Filing of new petition. Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the board's refusal to issue an order.

264—54.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

264—54.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

264—54.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the board, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board. The issuance of a declaratory order constitutes final agency action on the petition.

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

CHAPTER 55

UNIFORM WAIVER AND VARIANCE RULES

264—55.1(17A,ExecOrd11) Applicability. This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the board. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the board.

55.1(1) Definitions.

“Board” or “grow Iowa values board” means the grow Iowa values board established by 2003 Iowa Acts, House File 692.

“Person” means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any legal entity.

“Waiver or variance” means a board action which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

55.1(2) Authority.

a. A waiver or variance from rules adopted by the board may be granted in accordance with this chapter if (1) the board has authority to promulgate the rule from which waiver or variance is requested or has final decision-making authority over a contested case in which a waiver or variance is requested; and (2) no statute or rule otherwise controls the grant of a waiver or variance from the rule from which waiver or variance is requested.

b. No waiver or variance may be granted from a requirement which is imposed by statute. Any waiver or variance must be consistent with statute.

264—55.2(17A,ExecOrd11) Board discretion. The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the board upon consideration of all relevant factors.

55.2(1) Criteria for waiver or variance. The board may, in response to a completed petition or on its own motion, grant a

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waiver or variance from a rule, in whole or in part, as applied to the circumstances of a specified situation if the board finds each of the following:

- a. Application of the rule to the person at issue would result in hardship or injustice to that person; and
- b. Waiver or variance on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and
- c. Waiver or variance in the specific case would not prejudice the substantial legal rights of any person; and
- d. Where applicable, substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

In determining whether waiver or variance should be granted, the board shall consider whether the underlying public interest policies and legislative intent of the rules are substantially equivalent to full compliance with the rule. When the rule from which a waiver or variance is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all licensees, grantees and constituents.

55.2(2) Special waiver or variance rules not precluded. These uniform waiver and variance rules shall not preclude the board from granting waivers or variances in other contexts or on the basis of other standards if a statute or other board rule authorizes the board to do so, and the board deems it appropriate to do so.

264—55.3(17A,ExecOrd11) Requester's responsibilities in filing a waiver or variance petition.

55.3(1) Application. All petitions for waiver or variance must be submitted in writing to the Grow Iowa Values Board, 200 East Grand Avenue, Des Moines, Iowa 50309-1819. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

55.3(2) Content of petition. A petition for waiver or variance shall include the following information where applicable and known to the requester (for an example of a petition for waiver or variance, see Exhibit A at the end of this chapter):

- a. A description and citation of the specific rule from which a waiver or variance is requested.
- b. The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend.
- c. The relevant facts that the petitioner believes would justify a waiver or variance.
- d. A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver or variance.
- e. A history of any prior contacts between the board and the petitioner relating to the regulated activity, license, grant, loan or other financial assistance affected by the proposed waiver or variance, including a description of each affected license, grant, loan or other financial assistance held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, grant or loan within the past five years.
- f. Any information known to the requester regarding the board's treatment of similar cases.
- g. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver or variance.

h. The name, address, and telephone number of any person or entity that would be adversely affected by the grant of a petition.

i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver or variance.

j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver or variance.

55.3(3) Burden of persuasion. When a petition is filed for a waiver or variance from a board rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant the petitioner a waiver or variance.

264—55.4(17A,ExecOrd11) Notice. The board shall acknowledge a petition upon receipt. The board shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the board attesting that notice has been provided.

264—55.5(17A,ExecOrd11) Board responsibilities regarding petition for waiver or variance.

55.5(1) Additional information. Prior to issuing an order granting or denying a waiver or variance, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board's designee, a committee of the board, or a quorum of the board.

55.5(2) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (a) to any petition for a waiver or variance of a rule filed within a contested case; (b) when the board so provides by rule or order; or (c) when a statute so requires.

55.5(3) Ruling. An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

55.5(4) Conditions. The board may condition the grant of the waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

55.5(5) Time for ruling. The board shall grant or deny a petition for a waiver or variance as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

55.5(6) When deemed denied. Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board.

55.5(7) Service of order. Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order per-

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tains, and to any other person entitled to such notice by any provision of law.

264—55.6(17A,ExecOrd11) Public availability. Subject to the provisions of Iowa Code section 17A.3(1)“e,” the board shall maintain a record of all orders granting or denying waivers and variances under this chapter. All final rulings in response to requests for waivers or variances shall be indexed and available to members of the public at the Grow Iowa Values Board, 200 East Grand Avenue, Des Moines, Iowa 50309-1819.

264—55.7(17A,ExecOrd11) Voiding or cancellation. A waiver or variance is void if the material facts upon which the request is based are not true or if material facts have been withheld. The board may at any time cancel a waiver or variance upon appropriate notice if the board finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

264—55.8(17A,ExecOrd11) Violations. Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

264—55.9(17A,ExecOrd11) Defense. After the board issues an order granting a waiver or variance, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

264—55.10(17A,ExecOrd11) Appeals. Granting or denying a request for waiver or variance is final board action under Iowa Code chapter 17A. An appeal to district court shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

Exhibit A
Sample Petition (Request) for Waiver/Variance

BEFORE THE GROW IOWA VALUES BOARD

Petition by (insert name of petitioner) for the waiver of (insert rule citation) relating to (insert the subject matter). } PETITION FOR WAIVER

Requests for waiver or variance from a board rule shall include the following information in the petition for waiver or variance where applicable and known:

- a. Petitioner’s (person asking for a waiver or variance) name, address, and telephone number.
- b. Citation of the specific rule from which a waiver or variance is requested.
- c. Description of the specific waiver or variance requested; include the exact scope and time period that the waiver or variance will extend.
- d. Important facts that the petitioner believes justify a waiver or variance. Include in your answer why (1) applying the rule will result in hardship or injustice to the petitioner; and (2) granting a waiver or variance to the petitioner is consistent with the public interest; and (3) granting the waiver or variance will not prejudice the substantial legal rights of any person; and (4) where applicable, how substantially equal

protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

e. History of prior contacts between the board and petitioner relating to the regulated activity, license, grant, loan or other financial assistance that would be affected by the waiver or variance; include a description of each affected license, grant, loan or other financial assistance held by the petitioner, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, grant or loan within the past five years.

f. Information known to the petitioner regarding the board’s treatment of similar cases.

g. Name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver or variance.

h. Name, address, and telephone number of any person or entity that would be adversely affected or disadvantaged by the grant of the waiver or variance.

i. Name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver or variance.

j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver or variance.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner’s Signature

Date

Petitioner should note the following when requesting or petitioning for a waiver or variance:

1. The petitioner has the burden of proving to the board, by clear and convincing evidence, the following: (a) application of the rule to the petitioner would result in hardship or injustice to the petitioner; and (b) waiver or variance on the basis of the particular circumstances relative to the petitioner would be consistent with the public interest; and (c) waiver or variance in the specific case would not prejudice the substantial legal rights of any person; and (d) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

2. The board may request additional information from or request an informal meeting with the petitioner prior to issuing a ruling granting or denying a request for waiver or variance.

3. All petitions for waiver or variance must be submitted in writing to the Grow Iowa Values Board, 200 East Grand Avenue, Des Moines, Iowa 50309-1819. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

These rules are intended to implement Executive Order Number 11 and Iowa Code chapter 17A.

ARC 2789B**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,” Iowa Administrative Code.

These amendments would change Medicaid coverage limitations for drugs by expanding prior authorization requirements and implementing a preferred drug list. The preferred drug list will be developed and recommended to the Department by the Governor-appointed Pharmaceutical and Therapeutics Committee. The Department will publish the approved list to all Medicaid providers.

The preferred drug list will be a comprehensive list of all Iowa Medicaid-payable drugs, considering clinical efficacy, safety, and cost-effectiveness. Within therapeutic categories of medications where there is little therapeutic variation within the class, the list will designate the most cost-effective drug as the “preferred” drug for Iowa Medicaid. Nonpreferred drugs will require prior authorization for Medicaid payment. The list will specify the conditions for prior authorization of all nonpreferred drugs and any conditions for coverage of preferred drugs. Existing criteria for drug prior authorization will remain in effect until that category of drugs is phased into the preferred drug list.

Pursuant to 2003 Iowa Acts, House File 619, section 3, subsection 4, the following drug categories are exempt from prior authorization:

- Drugs prescribed for treatment of human immunodeficiency virus or acquired immune deficiency syndrome, transplantation, or cancer; and
- Drugs prescribed for mental illness, with the exception of drugs and drug compounds that do not have a significant variation in therapeutic profile or side effect profile within a therapeutic class.

Further exceptions may be pursued under the Department’s general rule on exceptions at 441—1.8(17A,217).

The Department may negotiate supplemental rebates from drug manufacturers and labelers for the Medicaid program over and above those required under federal regulations, which would affect the determination of cost-effectiveness. Coverage of nonprescription drugs may also be expanded if nonprescription drugs are found to be preferred.

Any interested person may make written comments on the proposed amendments on or before October 8, 2003. Comments should be directed to the Office of Policy Analysis, 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.20 as amended by 2003 Iowa Acts, House File 619, section 3.

The following amendments are proposed.

ITEM 1. Amend subrule **78.1(2)** as follows:

Amend paragraph “**a**,” subparagraph (3), introductory paragraph, as follows:

(3) *Prior authorization is required as specified in the preferred drug list published by the department pursuant to 2003 Iowa Acts, House File 619, section 3. Until the implementation date designated in the preferred drug list, Payment payment will be made for certain the drugs listed below only when prior approval is obtained from the fiscal agent and when prescribed for treatment of specified conditions as follows.*

Amend paragraph “**f**” as follows:

f. *Nonprescription drugs.*

(1) *The following nonprescription drugs are payable, subject to the prior authorization requirements stated below and as specified in the preferred drug list published by the department pursuant to 2003 Iowa Acts, House File 619, section 3:*

- Acetaminophen tablets 325 mg, 500 mg
- Acetaminophen elixir 120 mg/5 ml
- Acetaminophen elixir 160 mg/5 ml
- Acetaminophen solution 100 mg/ml
- Acetaminophen suppositories 120 mg
- Aspirin tablets 325 mg, 650 mg, 81 mg (chewable)
- Aspirin tablets, enteric coated 325 mg, 650 mg, 81 mg
- Aspirin tablets, buffered 325 mg
- Bacitracin ointment 500 units/gm
- Benzoyl peroxide 5%, cleanser, lotion, cream, gel
- Benzoyl peroxide 10%, cleanser, lotion, cream, gel
- Chlorpheniramine maleate tablets 4 mg
- Diphenhydramine hydrochloride capsules 25 mg
- Diphenhydramine hydrochloride liquid 6.25 mg/5 ml, 12.5 mg/5 ml
- Ferrous sulfate tablets 300 mg, 325 mg
- Ferrous sulfate elixir 220 mg/5 ml
- Ferrous sulfate drops 75 mg/0.6 ml
- Ferrous gluconate tablets 300 mg, 325 mg
- Ferrous gluconate elixir 300 mg/5 ml
- Ferrous fumarate tablets 300 mg, 325 mg
- Guaifenesin 100 mg/5 ml with dextromethorphan 10 mg/5 ml liquid
- Insulin*
- Meclizine hydrochloride tablets 12.5 mg, 25 mg
- Miconazole nitrate cream 2% topical and vaginal
- Miconazole nitrate vaginal suppositories, 100 mg
- Multiple vitamin and mineral products specifically formulated and recommended for use as a dietary supplement during pregnancy and lactation*
- Multiple vitamin and mineral products with prior authorization under the conditions specified in subparagraph 78.1(2)“a”(3)*
- Niacin (nicotinic acid) tablets 25 mg, 50 mg, 100 mg, 250 mg, 500 mg
- Pediatric oral electrolyte solutions
- Permethrin liquid 1%
- Pseudoephedrine hydrochloride tablets 30 mg, 60 mg
- Pseudoephedrine hydrochloride liquid 30 mg/5 ml
- Salicylic acid liquid 17%
- Senokot granules, 326 mg/tsp for children aged 20 and under
- Senokot tablets, 187 mg for children aged 20 and under
- Sodium chloride solution 0.9% for inhalation with metered dispensing valve 90 ml, 240 ml
- Tolnaftate 1% cream, solution, powder

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~Nonprescription multiple vitamin and mineral products specifically formulated and recommended for use as a dietary supplement during pregnancy and lactation.~~

~~With prior authorization, nonprescription multiple vitamins and minerals under the conditions specified in subparagraph 78.1(2)“a”-(3).~~

~~Insulin.~~

~~Other nonprescription drugs listed as preferred in the preferred drug list published by the department pursuant to 2003 Iowa Acts, House File 619, section 3.~~

(2) Oral solid forms of the ~~above~~-covered items shall be prescribed and dispensed in a minimum quantity of 100 units per prescription or the currently available consumer package size except when dispensed via a unit dose system. When used for maintenance therapy, all of the ~~above~~-listed ~~covered~~ items may be prescribed and dispensed in 90-day quantities.

ITEM 2. Amend subrule 78.28(1), introductory paragraph, as follows:

78.28(1) Services, procedures, and medications prescribed by a physician (M.D. or D.O.) which are subject to prior approval or preprocedure review are as follows *or as specified in the preferred drug list published by the department pursuant to 2003 Iowa Acts, House File 619, section 3:*

INSURANCE DIVISION

Notice of Proposed Workers' Compensation Rate Filing

Pursuant to Iowa Code section 515A.6(7), notice is hereby given that the National Council on Compensation Insurance has made a rate filing which affects the premium rates for workers' compensation insurance.

The rate filing proposes an overall increase in rates of +6.3% and an increase in the expense constant from \$220 to \$240 for a combined premium level increase of +6.4%. The filing has a proposed effective date of January 1, 2004.

A workers' compensation policyholder or an established organization with one or more workers' compensation policyholders among its members may request a hearing before the Commissioner of Insurance regarding this rate filing. Such a request must be filed within 15 days of the date of this publication, that is, by October 2, 2003, and shall be made to the Commissioner of Insurance at the Insurance Division of the State of Iowa, 330 Maple, Des Moines, Iowa 50319. Absent such a request, the Commissioner will issue an order concerning the rates within another 10 days, that is, by October 13, 2003.

ARC 2770B

LOTTERY AUTHORITY, IOWA[531]

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 2003 Iowa Acts, Senate File 453, section 9, subsection 3, the Iowa Lottery Authority proposes to rescind 705—Chapters 1 to 8, 11, 13 and 14 and to

adopt Chapter 1, “General Operation of the Lottery,” Chapter 2, “Purchasing,” Chapter 3, “Procedure for Rule Making,” Chapter 4, “Waiver and Variance Rules,” Chapter 5, “Contested Cases,” Chapter 6, “Declaratory Orders,” Chapter 11, “Prizes,” Chapter 12, “Licensing,” Chapter 13, “Licensed Retailers,” Chapter 14, “Monitor Vending Machine Licensing,” Chapter 18, “Scratch Ticket General Rules,” Chapter 19, “Pull-tab General Rules,” and Chapter 20, “Computerized Games—General Rules,” Iowa Administrative Code.

These rules are necessary as a result of major statutory changes to the way the Iowa Lottery operates. Prior to July 1, 2003, the Iowa Lottery was a division of the Department of Revenue and Finance. On July 1, 2003, the Lottery Division of the Department of Revenue and Finance became the Iowa Lottery Authority, an autonomous instrumentality of the state of Iowa, no longer connected to an executive branch department. Because of the organizational change, the Lottery's former administrative rules are being rescinded and new rules adopted.

Any interested party may submit written comments concerning these proposed rules or may submit a written request to make an oral presentation. The comments or request must include all of the following: the name, address, and telephone number of the party making the comments or request; a reference to the specific proposed rules that are the subjects of the comments or request; and the general content of a requested oral presentation.

All comments or requests should be addressed to the Iowa Lottery Rules Administrator and should either be mailed to 2015 Grand Avenue, Des Moines, Iowa 50312, faxed to (515)281-7882, or E-mailed to brandi.king@ilot.state.ia.us. All comments or requests for oral presentations must be received by the Lottery Rules Administrator no later than October 8, 2003.

A meeting to hear requested oral presentations is scheduled for October 10, 2003, at 9 a.m. The meeting will be canceled without further notice if no oral presentations are requested.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 2771B**. The content of that submission is incorporated by reference.

These rules are intended to implement Iowa Code section 17A.3(1)“a” and 2003 Iowa Acts, Senate File 453, Division XVIII.

ARC 2745B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy Examiners hereby gives Notice of Intended Action to renumber Chapter 200, “Administrative and Regulatory Authority for the Board of Physical and Occupational Therapy Examiners—Physical Therapy Examiners,” as Chapter 199,

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

and Chapter 201, "Licensure of Physical Therapists and Physical Therapist Assistants," as Chapter 200, and to amend renumbered Chapters 199 and 200; adopt new Chapter 201, "Practice of Physical Therapists and Physical Therapist Assistants"; rescind Chapter 202, "Discipline," and adopt new Chapter 202, "Discipline for Physical Therapists and Physical Therapist Assistants"; and amend Chapter 204, "Fees," Iowa Administrative Code.

These proposed amendments adopt new subrules for the conduct of persons who attend public meetings, requirements for notifying the Board of name and address changes, and criteria for obtaining a duplicate or reissued license. The educational requirements will be amended to be consistent with other states' requirements for physical therapist applicants. Licensees who regularly examine, attend, counsel or treat adults or children will be required to document at the time of renewal that they have completed the mandatory training on abuse identification and reporting. These proposed amendments also adopt new practice and discipline chapters.

The Division sent a draft of the proposed amendments to selected associations. The Board received no comments on the proposed amendments.

Any interested person may make written comments on the proposed amendments no later than October 9, 2003, addressed to Ella Mae Baird, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, E-mail ebaird@idph.state.ia.us.

A public hearing will be held on October 9, 2003, from 9 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 148A and 272C.

The following amendments are proposed.

ITEM 1. Renumber **645—Chapter 200** as **645—Chapter 199**.

ITEM 2. Amend renumbered subrules 199.4(2) and 199.4(3) as follows:

199.4(2) Notice of change of address. Each licensee shall notify the board ~~in writing~~ of a change of the licensee's current mailing address within 30 days after the change of address occurs.

199.4(3) Notice of change of name. Each licensee shall notify the board *in writing* of ~~any a~~ change of name within 30 days after changing the name. ~~Notification requires a notarized copy of a marriage license or a notarized copy of court documents.~~

ITEM 3. Amend renumbered rule 645—199.6(17A), parenthetical implementation, as follows:
645—199.6(17A 21)

ITEM 4. Adopt **new** subrules 199.6(3) and 199.6(4) as follows:

199.6(3) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

199.6(4) Cameras and recording devices may be used at open meetings, provided the cameras and recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device,

the person presiding at the meeting may request the user to discontinue use of the camera or device.

ITEM 5. Amend the implementation clause for renumbered **645—Chapter 199** as follows:

These rules are intended to implement Iowa Code chapters 17A, 21, 147, 148A and 272C.

ITEM 6. Renumber **645—Chapter 201** as **645—Chapter 200**.

ITEM 7. Amend renumbered rule **645—200.1(147)** by adopting the following **new** definition in alphabetical order:

"Mandatory training" means training on identifying and reporting child abuse or dependent adult abuse required of physical therapists or physical therapist assistants who are mandatory reporters. The full requirements on mandatory reporting of child abuse and the training requirements are found in Iowa Code section 232.69. The full requirements on mandatory reporting of dependent adult abuse and the training requirements are found in Iowa Code section 235B.16.

ITEM 8. Amend renumbered subrule **200.3(1)**, paragraphs "**c**" and "**d**," as follows:

c. Shall practice only under the *on-site* supervision of a licensed physical therapist(s) for a period not to exceed six months ~~in the case of~~ *for* licensure by examination *or three months for licensure by endorsement. The supervising physical therapist shall bear full responsibility for care provided by the applicant;*

d. ~~May, during this time, evaluate, plan treatment programs, and provide periodic reevaluation only under on-site supervision of a licensed physical therapist who shall bear full responsibility for care provided by the applicant;~~

ITEM 9. Rescind renumbered subrule **200.4(4)** and renumber subrule **200.4(5)** as **200.4(4)**.

ITEM 10. Amend renumbered subrule **200.5(1)**, paragraph "**a**," as follows:

a. Educational requirements—physical therapists. Physical therapists shall graduate from a physical therapy program accredited by a national accreditation agency approved by the board.

(1) *If the degree is granted on or before January 31, 2004, the degree must be equivalent to at least a baccalaureate degree. The baccalaureate program shall consist of a minimum of 60 hours of general education and 60 hours of professional education.*

(2) *If the degree is granted on or after February 1, 2004, the degree must be equivalent to a postbaccalaureate degree.*

ITEM 11. Amend renumbered subrule **200.7(2)**, paragraph "**a**," as follows:

a. Have completed ~~80~~ 40 hours of board-approved continuing education during the immediately preceding two-year period; or

ITEM 12. Rescind the unlettered paragraph in renumbered subrule **200.7(2)** and rescind renumbered subrule **200.7(6)**.

ITEM 13. Rescind renumbered rule 645—200.9(147) and adopt the following **new** rule in lieu thereof:

645—200.9(147) License renewal.

200.9(1) The biennial license renewal period for a license to practice as a physical therapist or physical therapist assistant shall begin on the sixteenth day of the birth month and end on the fifteenth day of the birth month two years later.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

The board shall notify the licensee at the address on record at least 60 days prior to expiration of the license.

200.9(2) An individual who was issued an initial license within six months of the license renewal date will not be required to renew the license until the subsequent renewal two years later.

200.9(3) A licensee shall:

a. Meet the continuing education requirements of rule 645—203.2(148A) and the mandatory reporting requirements of subrule 200.9(4); and

b. Submit the completed renewal application, continuing education report form and renewal fee before the license expiration date.

200.9(4) Mandatory reporting requirements.

a. A licensee who regularly examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

b. A licensee who regularly examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

c. A licensee who regularly examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting for dependent adults and children in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

Training may be completed through separate courses as identified in paragraphs "a" and "b" or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. The course shall be a curriculum approved by the Iowa department of public health abuse education review panel.

d. The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs "a" to "c," including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 203.

f. The board may select licensees for audit of compliance with the requirements in paragraphs "a" to "e."

200.9(5) When all requirements for license renewal are met, the licensee shall be sent a wallet card by regular mail.

200.9(6) Persons licensed to practice as physical therapists or physical therapist assistants shall keep their renewal licenses displayed in a conspicuous public place at the primary site of practice.

200.9(7) Late renewal. The license shall become a late license when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 204.1(4).

a. To renew a late license, the licensee shall complete the renewal requirements and submit the late fee before the fifteenth day of the month following the expiration date on the wallet card.

b. To place the late license on inactive status, the licensee shall submit a written request for inactive status. No continuing education shall be required.

ITEM 14. Renumber renumbered rule **645—200.12(17A,147,272C)** as **645—200.14(17A,147,272C)** and adopt the following **new** rules:

645—200.12(147) Duplicate certificate or wallet card.

200.12(1) A duplicate wallet card or duplicate certificate shall be required if the current wallet card or certificate is lost, stolen or destroyed. A duplicate wallet card or a duplicate certificate shall be issued only under such circumstances.

200.12(2) A duplicate wallet card or duplicate certificate shall be issued upon receipt of a completed application for a duplicate license and payment of the fee as specified in rule 645—204.1(147,148A).

200.12(3) If the board receives the completed application for a duplicate license stating that the wallet card or certificate was not received within 60 days after being mailed by the board, no fee shall be required for issuing the duplicate wallet card or duplicate certificate.

645—200.13(147) Reissued certificate or wallet card. The board shall reissue a certificate or current wallet card upon receipt of a written request from the licensee, return of the original document and payment of the fee as specified in rule 645—204.1(147,148A).

ITEM 15. Adopt **new** 645—Chapter 201 as follows:

CHAPTER 201

PRACTICE OF PHYSICAL THERAPISTS AND
PHYSICAL THERAPIST ASSISTANTS

645—201.1(148A,272C) Code of ethics for physical therapists and physical therapist assistants.

201.1(1) Physical therapy. The practice of physical therapy shall minimally consist of:

- a. Interpreting all referrals;
- b. Evaluating each patient;
- c. Identifying and documenting individual patient's problems and goals;
- d. Establishing and documenting a plan of care;
- e. Providing appropriate treatment;
- f. Determining the appropriate portions of the treatment program to be delegated to assistive personnel;
- g. Appropriately supervising individuals as described in rule 645—200.6(272C);
- h. Providing timely patient reevaluation;
- i. Maintaining timely and adequate patient records of all physical therapy activity and patient responses consistent with the standards found in rule 645—201.2(147).

201.1(2) A physical therapist shall:

- a. Not practice outside the scope of the license;
- b. Inform the referring practitioner when any requested treatment procedure is inadvisable or contraindicated and shall refuse to carry out such orders;
- c. Not continue treatment beyond the point of possible benefit to the patient or treat a patient more frequently than necessary to obtain maximum therapeutic effect;

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

d. Not directly or indirectly request, receive, or participate in the dividing, transferring, assigning, rebating, or refunding of an unearned fee;

e. Not profit by means of credit or other valuable consideration as an unearned commission, discount, or gratuity in connection with the furnishing of physical therapy services;

f. Not obtain third-party payment through fraudulent means. Third-party payers include, but are not limited to, insurance companies and government reimbursement programs. Obtaining payment through fraudulent means includes, but is not limited to:

(1) Reporting incorrect treatment dates for the purpose of obtaining payment;

(2) Reporting charges for services not rendered;

(3) Incorrectly reporting services rendered for the purpose of obtaining payment which is greater than that to which the licensee is entitled; or

(4) Aiding a patient in fraudulently obtaining payment from a third-party payer;

g. Not exercise undue influence on patients to purchase equipment, products, or supplies from a company in which the physical therapist owns stock or has any other direct or indirect financial interest;

h. Not permit another person to use the therapist's license for any purpose;

i. Not verbally or physically abuse a patient or client;

j. Not engage in sexual misconduct. Sexual misconduct includes the following:

(1) Engaging in or soliciting a sexual relationship, whether consensual or nonconsensual, with a patient or client;

(2) Making sexual advances, requesting sexual favors, or engaging in other verbal conduct or physical contact of a sexual nature with a patient or client;

k. Adequately supervise personnel in accordance with the standards for supervision found in rule 645—200.6(272C);

l. Assist in identifying a professionally qualified licensed practitioner to perform the service, in the event the physical therapist does not possess the skill to evaluate a patient, plan the treatment program, or carry out the treatment.

201.1(3) Physical therapist assistants. A physical therapist assistant shall:

a. Not practice outside the scope of the license;

b. Not obtain third-party payment through fraudulent means. Third-party payers include, but are not limited to, insurance companies and government reimbursement programs. Obtaining payment through fraudulent means includes, but is not limited to:

(1) Reporting incorrect treatment dates for the purpose of obtaining payment;

(2) Reporting charges for services not rendered;

(3) Incorrectly reporting services rendered for the purpose of obtaining payment which is greater than that to which the licensee is entitled; or

(4) Aiding a patient in fraudulently obtaining payment from a third-party payer;

c. Not exercise undue influence on patients to purchase equipment, products, or supplies from a company in which the physical therapist assistant owns stock or has any other direct or indirect financial interest;

d. Not permit another person to use the physical therapist's or physical therapist assistant's license for any purpose;

e. Not verbally or physically abuse a patient;

f. Not engage in sexual misconduct. Sexual misconduct includes the following:

(1) Engaging in or soliciting a sexual relationship, whether consensual or nonconsensual, with a patient; and

(2) Making sexual advances, requesting sexual favors, or engaging in other verbal conduct or physical contact of a sexual nature with a patient;

g. Work only when supervised by a physical therapist and in accordance with rule 645—200.6(272C). If the available supervision does not meet the standards in rule 645—200.6(272C), the physical therapist assistant shall refuse to administer treatment;

h. Inform the delegating physical therapist when the physical therapist assistant does not possess the skills or knowledge to perform the delegated tasks, and refuse to perform the delegated tasks;

i. Sign the physical therapy treatment record to indicate that the physical therapy services were provided in accordance with the rules and regulations for practicing as a physical therapist or physical therapist assistant.

645—201.2(147) Record keeping.

201.2(1) A licensee shall maintain sufficient, timely, and accurate documentation in patient records. A licensee's records shall reflect the services provided, facilitate the delivery of services, and ensure continuity of services in the future.

201.2(2) A licensee who provides clinical services shall store records in accordance with state and federal statutes and regulations governing record retention and with the guidelines of the licensee's employer or agency, if applicable. If no other legal provisions govern record retention, a licensee shall store all patient records for a minimum of five years after the date of the patient's discharge, or, in the case of a minor, three years after the patient reaches the age of majority under state law or five years after the date of discharge, whichever is longer.

201.2(3) Electronic record keeping. The requirements of this rule apply to electronic records as well as to records kept by any other means. When electronic records are kept, the licensee shall ensure that a duplicate hard-copy record or a backup, unalterable electronic record is maintained.

201.2(4) Correction of records.

a. Hard-copy records. Notations shall be legible, written in ink, and contain no erasures or whiteouts. If incorrect information is placed in the record, it must be crossed out with a single nondeleting line and be initialed by the licensee.

b. Electronic records. If a record is stored in an electronic format, the record may be amended with a signed addendum attached to the record.

201.2(5) Confidentiality and transfer of records. Physical therapists and physical therapist assistants shall preserve the confidentiality of patient records in a manner consistent with the protection of the welfare of the patient. Upon request of the patient or the patient's new physical therapy provider, the licensee shall furnish such physical therapy records, or copies of the records, as will be beneficial for the future treatment of that patient. A fee may be charged for duplication of records, but a licensee may not refuse to transfer records for nonpayment of any fees. A written request may be required before transferring the record(s).

201.2(6) Retirement or discontinuance of practice. If a licensee is the owner of a practice, the licensee shall notify in writing all active patients and shall make reasonable arrangements with those patients to transfer patient records, or copies of those records, to the succeeding licensee upon knowledge and agreement of the patient.

201.2(7) Nothing stated in these rules shall prohibit a licensee from conveying or transferring the licensee's patient records to another licensed individual who is assuming a

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

practice, provided that written notice is furnished to all patients.

These rules are intended to implement Iowa Code chapters 147, 148A and 272C.

ITEM 16. Rescind 645—Chapter 202 and adopt the following new chapter in lieu thereof:

CHAPTER 202

DISCIPLINE FOR PHYSICAL THERAPISTS AND
PHYSICAL THERAPIST ASSISTANTS**645—202.1(148A) Definitions.**

“Board” means the board of physical and occupational therapy examiners.

“Discipline” means any sanction the board may impose upon licensees.

“Licensee” means a person licensed to practice as a physical therapist or a physical therapist assistant in Iowa.

645—202.2(272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—202.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

202.2(1) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice in this state, which includes the following:

a. False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state; or

b. Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

202.2(2) Professional incompetency. Professional incompetency includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other physical therapists or physical therapist assistants in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average physical therapist or physical therapist assistant acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of the licensed physical therapist or licensed physical therapist assistant in this state.

e. Mental or physical inability reasonably related to and adversely affecting the licensee’s ability to practice in a safe and competent manner.

f. Being adjudged mentally incompetent by a court of competent jurisdiction.

202.2(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of physical therapy or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

202.2(4) Practice outside the scope of the profession.

202.2(5) Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

202.2(6) Habitual intoxication or addiction to the use of drugs.

a. The inability of a licensee to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

b. The excessive use of drugs which may impair a licensee’s ability to practice with reasonable skill or safety.

202.2(7) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

202.2(8) Falsification of patient records.

202.2(9) Acceptance of any fee by fraud or misrepresentation.

202.2(10) Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession includes a failure to exercise due care, including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

202.2(11) Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee’s ability to practice physical therapy. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

202.2(12) Violation of a regulation, rule or law of this state, another state, or the United States which relates to the practice of physical therapy, including, but not limited to, the code of ethics found in rule 645—201.1(148A,272C).

202.2(13) Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure of the licensee to report in writing such action within 30 days of the final action by the licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board.

202.2(14) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the individual’s practice of physical therapy in another state, district, territory or country.

202.2(15) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

202.2(16) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

202.2(17) Engaging in any conduct that subverts or attempts to subvert a board investigation.

202.2(18) Failure to comply with a subpoena issued by the board, or failure to cooperate with an investigation of the board.

202.2(19) Failure to respond within 30 days of receipt of communication from the board which was sent by registered or certified mail.

202.2(20) Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

202.2(21) Failure to pay costs assessed in any disciplinary action.

202.2(22) Submission of a false report of continuing education or failure to submit the required report of continuing education.

202.2(23) Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

202.2(24) Knowingly aiding, assisting or advising a person to unlawfully practice physical therapy.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

202.2(25) Failure to report a change of name or address within 30 days after it occurs.

202.2(26) Representing oneself as a licensed physical therapist or physical therapist assistant when one's license has been suspended or revoked, or when the license is lapsed or has been placed on inactive status.

202.2(27) Permitting another person to use the licensee's license for any purpose.

202.2(28) Permitting an unlicensed employee or person under the licensee's control to perform activities that require a license.

202.2(29) Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but need not be limited to, the following:

a. Verbally or physically abusing a patient, client or co-worker.

b. Improper sexual contact with, or making suggestive, lewd, lascivious or improper remarks or advances to a patient, client or coworker.

c. Betrayal of a professional confidence.

d. Engaging in a professional conflict of interest.

202.2(30) Repeated failure to comply with standard precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

645—202.3(147,272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.

2. Suspension of license until further order of the board or for a specific period.

3. Prohibit permanently, until further order of the board, or for a specific period the licensee's engaging in specified procedures, methods, or acts.

4. Probation.

5. Require additional education or training.

6. Require a reexamination.

7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.

8. Impose civil penalties not to exceed \$1000.

9. Issue a citation and warning.

10. Such other sanctions allowed by law as may be appropriate.

645—202.4(272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care for the citizens of this state;

2. The facts of the particular violation;

3. Any extenuating facts or other countervailing considerations;

4. The number of prior violations or complaints;

5. The seriousness of prior violations or complaints;

6. Whether remedial action has been taken; and

7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

These rules are intended to implement Iowa Code chapters 147, 148A and 272C.

ITEM 17. Amend subrule 204.1(6) as follows:

204.1(6) Duplicate or reissued license certificate fee is \$10.

ITEM 18. Renumber subrules **204.1(7)** to **204.1(9)** as **204.1(8)** to **204.1(10)** and adopt the following **new** subrule:
204.1(7) Duplicate or reissued wallet card fee is \$10.

ARC 2746B**PROFESSIONAL LICENSURE
DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy Examiners hereby gives Notice of Intended Action to amend Chapter 205, “Administrative and Regulatory Authority for the Board of Physical and Occupational Therapy Examiners—Occupational Therapy Examiners”; amend Chapter 206, “Licensure of Occupational Therapists and Occupational Therapy Assistants”; rescind Chapter 208, “Discipline for Occupational Therapists and Occupational Therapy Assistants” and adopt new Chapter 208, “Practice of Occupational Therapists and Occupational Therapy Assistants”; renumber Chapter 209, “Fees,” as Chapter 210, adopt new Chapter 209, “Discipline for Occupational Therapists and Occupational Therapy Assistants,” and amend renumbered Chapter 210, “Fees,” Iowa Administrative Code.

These proposed amendments adopt new subrules for the conduct of persons who attend public meetings, requirements for notifying the board of name and address changes, and criteria for obtaining a duplicate or reissued license. Licensees who regularly examine, attend, counsel or treat adults or children will be required to document at the time of renewal that they have completed the mandatory training on abuse identification and reporting. These proposed amendments also amend supervisory requirements, adopt a definition for “occupational therapy screening,” and adopt new practice and discipline chapters.

The Division sent a draft of the proposed amendments to selected associations. Two comments were received on the proposed amendments.

Any interested person may make written comments on the proposed amendments no later than October 9, 2003, addressed to Ella Mae Baird, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, E-mail ebaird@idph.state.ia.us.

A public hearing will be held on October 9, 2003, from 9 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 148B and 272C.

The following amendments are proposed.

ITEM 1. Amend subrules 205.4(2) and 205.4(3) as follows:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

205.4(2) Notice of change of address. Each licensee shall notify the board ~~in writing~~ of a change of the licensee's current mailing address within 30 days after the change of address occurs.

205.4(3) Notice of change of name. Each licensee shall notify the board *in writing* of ~~any a~~ change of name within 30 days after changing the name. ~~Notification requires a notarized copy of a marriage license or a notarized copy of court documents.~~

ITEM 2. Amend rule 645—205.6(17A), parenthetical implementation, as follows:

645—205.6(17A 21)

ITEM 3. Adopt **new** subrules 205.6(3) and 205.6(4) as follows:

205.6(3) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

205.6(4) Cameras and recording devices may be used at open meetings, provided the cameras and recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

ITEM 4. Amend the implementation clause for **645—Chapter 205** as follows:

These rules are intended to implement Iowa Code chapters 17A, 21, 147, 148B and 272C.

ITEM 5. Amend rule **645—206.1(147)** by adopting the following **new** definitions in alphabetical order:

“Mandatory training” means training on identifying and reporting child abuse or dependent adult abuse required of occupational therapists or occupational therapy assistants who are mandatory reporters. The full requirements on mandatory reporting of child abuse and the training requirements are found in Iowa Code section 232.69. The full requirements on mandatory reporting of dependent adult abuse and the training requirements are found in Iowa Code section 235B.16.

“Occupational therapy screening” means a brief process carried out by an occupational therapist which includes:

1. Assessment of the medical and social history of an individual;
2. Observations related by that individual's caregivers;

or

3. Observations or nonstandardized tests, or both, administered to an individual by the occupational therapist to render a decision as to whether that individual warrants further, in-depth evaluation by an occupational therapist.

ITEM 6. Renumber subrules **206.8(2)** to **206.8(4)** as subrules **206.8(3)** to **206.8(5)** and adopt the following **new** subrule:

206.8(2) Occupational therapy screening shall be conducted by an occupational therapist and shall not be delegated to an occupational therapy assistant or an unlicensed person.

ITEM 7. Rescind rule 645—206.12(147) and adopt the following **new** rule in lieu thereof:

645—206.12(147) License renewal.

206.12(1) The biennial license renewal period for a license to practice as an occupational therapist or occupational therapy assistant shall begin on the sixteenth day of the birth month and end on the fifteenth day of the birth month two

years later. The board shall notify the licensee at the address on record at least 60 days prior to expiration of the license.

206.12(2) An individual who was issued an initial license within six months of the license renewal date will not be required to renew the license until the subsequent renewal two years later.

206.12(3) A licensee shall:

- a. Meet the continuing education requirements of rule 645—207.2(272C) and the mandatory reporting requirements of subrule 206.12(4); and

- b. Submit the completed renewal application, continuing education report form and renewal fee before the license expiration date.

206.12(4) Mandatory reporting requirements.

- a. A licensee who regularly examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph “e.”

- b. A licensee who regularly examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph “e.”

- c. A licensee who regularly examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting for dependent adults and children in the previous five years or condition(s) for waiver of this requirement as identified in paragraph “e.”

Training may be completed through separate courses as identified in paragraphs “a” and “b” or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. The course shall be a curriculum approved by the Iowa department of public health abuse education review panel.

- d. The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs “a” to “c,” including program date(s), content, duration, and proof of participation.

- e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

- (1) Is engaged in active duty in the military service of this state or the United States.

- (2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 207.

- f. The board may select licensees for audit of compliance with the requirements in paragraphs “a” to “e.”

206.12(5) When all requirements for license renewal are met, the licensee shall be sent a wallet card by regular mail.

206.12(6) Persons licensed to practice as occupational therapists or occupational therapy assistants shall keep their renewal licenses displayed in a conspicuous public place at the primary site of practice.

206.12(7) Late renewal. The license shall become a late license when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 210.1(3).

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

a. To renew a late license, the licensee shall complete the renewal requirements and submit the late fee before the fifteenth day of the month following the expiration date on the wallet card.

b. To place the late license on inactive status, the licensee shall submit a written request for inactive status. No continuing education shall be required.

ITEM 8. Renumber rule **645—206.15(17A,147,272C)** as **645—206.17(17A,147,272C)** and adopt the following **new** rules:

645—206.15(147) Duplicate certificate or wallet card.

206.15(1) A duplicate wallet card or duplicate certificate shall be required if the current wallet card or certificate is lost, stolen or destroyed. A duplicate wallet card or a duplicate certificate shall be issued only under such circumstances.

206.15(2) A duplicate wallet card or duplicate certificate shall be issued upon receipt of the completed application for duplicate license and payment of the fee as specified in rule 645—210.1(147,148B).

206.15(3) If the board receives a completed application for duplicate license stating that the wallet card or certificate was not received within 60 days after being mailed by the board, no fee shall be required for issuing the duplicate wallet card or duplicate certificate.

645—206.16(147) Reissued certificate or wallet card. The board shall reissue a certificate or current wallet card upon receipt of a written request from the licensee, return of the original document and payment of the fee as specified in rule 645—210.1(147,148B).

ITEM 9. Rescind 645—Chapter 208 and adopt the following **new** chapter in lieu thereof:

CHAPTER 208

PRACTICE OF OCCUPATIONAL THERAPISTS
AND OCCUPATIONAL THERAPY ASSISTANTS**645—208.1(148B,272C) Code of ethics for occupational therapists and occupational therapy assistants.**

208.1(1) Occupational therapy. The practice of occupational therapy shall minimally consist of:

- a. Interpreting all referrals;
- b. Evaluating each patient;
- c. Identifying and documenting individual patient's problems and goals;
- d. Establishing and documenting a plan of care;
- e. Providing appropriate treatment;
- f. Determining the appropriate portions of the treatment program to be delegated to assistive personnel;
- g. Appropriately supervising individuals as described in rule 645—206.8(272C);
- h. Providing timely patient reevaluation;
- i. Maintaining timely and adequate patient records of all occupational therapy activity and patient responses consistent with the standards found in rule 645—208.2(147).

208.1(2) An occupational therapist shall:

- a. Not practice outside the scope of the license;
- b. Inform the referring practitioner when any requested treatment procedure is inadvisable or contraindicated and shall refuse to carry out such orders;
- c. Not continue treatment beyond the point of possible benefit to the patient or treat a patient more frequently than necessary to obtain maximum therapeutic effect;

d. Not directly or indirectly request, receive, or participate in the dividing, transferring, assigning, rebating, or re-funding of an unearned fee;

e. Not profit by means of credit or other valuable consideration as an unearned commission, discount, or gratuity in connection with the furnishing of occupational therapy services;

f. Not obtain third-party payment through fraudulent means. Third-party payers include, but are not limited to, insurance companies and government reimbursement programs. Obtaining payment through fraudulent means includes, but is not limited to:

(1) Reporting incorrect treatment dates for the purpose of obtaining payment;

(2) Reporting charges for services not rendered;

(3) Incorrectly reporting services rendered for the purpose of obtaining payment which is greater than that to which the licensee is entitled; or

(4) Aiding a patient in fraudulently obtaining payment from a third-party payer;

g. Not exercise undue influence on patients to purchase equipment, products, or supplies from a company in which the occupational therapist owns stock or has any other direct or indirect financial interest;

h. Not permit another person to use the therapist's license for any purpose;

i. Not verbally or physically abuse a patient or client;

j. Not engage in sexual misconduct; Sexual misconduct includes the following:

(1) Engaging in or soliciting a sexual relationship, whether consensual or nonconsensual, with a patient or client;

(2) Making sexual advances, requesting sexual favors, or engaging in other verbal conduct or physical contact of a sexual nature with a patient or client;

k. Adequately supervise personnel in accordance with the standards for supervision found in rule 645—206.8(272C);

l. Assist in identifying a professionally qualified licensed practitioner to perform the service when the occupational therapist does not possess the skill to evaluate a patient, plan the treatment program, or carry out the treatment.

208.1(3) Occupational therapy assistants. An occupational therapy assistant shall:

a. Not practice outside the scope of the license;

b. Not exercise undue influence on patients to purchase equipment, products or supplies from a company in which the occupational therapy assistant owns stock or has any other direct or indirect financial interest;

c. Not directly or indirectly request, receive, or participate in the dividing, transferring, assigning, rebating, or re-funding of an unearned fee;

d. Not obtain third-party payment through fraudulent means. Third-party payers include, but are not limited to, insurance companies and government reimbursement programs. Obtaining payment through fraudulent means includes, but is not limited to:

(1) Reporting incorrect treatment dates for the purpose of obtaining payment;

(2) Reporting charges for services not rendered;

(3) Incorrectly reporting services rendered for the purpose of obtaining payment which is greater than that to which the licensee is entitled; or

(4) Aiding a patient in fraudulently obtaining payment from a third-party payer;

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

e. Not permit another person to use the occupational therapist's or occupational therapy assistant's license for any purpose;

f. Not verbally or physically abuse a patient;

g. Not engage in sexual misconduct. Sexual misconduct includes the following:

(1) Engaging in or soliciting a sexual relationship, whether consensual or nonconsensual, with a patient; and

(2) Making sexual advances, requesting sexual favors, or engaging in other verbal conduct or physical contact of a sexual nature with a patient;

h. Work only when supervised by an occupational therapist and in accordance with rule 645—206.8(272C). If the available supervision does not meet the standards in rule 645—206.8(272C), the occupational therapy assistant shall refuse to administer treatment.

i. Inform the delegating occupational therapist when the occupational therapy assistant does not possess the skills or knowledge to perform the delegated tasks, and refuse to perform the delegated tasks.

j. Sign the occupational therapy treatment record to indicate that occupational therapy services were provided in accordance with the rules and regulations for practicing as an occupational therapist or occupational therapy assistant.

645—208.2(147) Record keeping.

208.2(1) A licensee shall maintain sufficient, timely, and accurate documentation in patient records. A licensee's records shall reflect the services provided, facilitate the delivery of services, and ensure continuity of services in the future.

208.2(2) A licensee who provides clinical services shall store records in accordance with state and federal statutes and regulations governing record retention and with the guidelines of the licensee's employer or agency, if applicable. If no other legal provisions govern record retention, a licensee shall store all patient records for a minimum of five years after the date of the patient's discharge, or in the case of a minor, three years after the patient reaches the age of majority under state law or five years after the date of discharge, whichever is longer.

208.2(3) Electronic record keeping. The requirements of this rule apply to electronic records as well as to records kept by any other means. When electronic records are kept, the licensee shall ensure that a duplicate hard-copy record or a backup, unalterable electronic record is maintained.

208.2(4) Correction of records.

a. Hard-copy records. Notations shall be legible, written in ink, and contain no erasures or whiteouts. If incorrect information is placed in the record, it must be crossed out with a single nondeleting line and be initialed by the licensee.

b. Electronic records. If a record is stored in an electronic format, the record may be amended with a signed addendum attached to the record.

208.2(5) Confidentiality and transfer of records. Occupational therapists and occupational therapy assistants shall preserve the confidentiality of patient records in a manner consistent with the protection of the welfare of the patient. Upon request of the patient or the patient's new occupational therapy provider, the licensee shall furnish such occupational therapy records, or copies of the records, as will be beneficial for the future treatment of that patient. A fee may be charged for duplication of records, but a licensee may not refuse to transfer records for nonpayment of any fees. A written request may be required before transferring the record(s).

208.2(6) Retirement or discontinuance of practice. If a licensee is the owner of a practice, the licensee shall notify in writing all active patients and shall make reasonable arrange-

ments with those patients to transfer patient records, or copies of those records, to the succeeding licensee upon knowledge and agreement of the patient.

208.2(7) Nothing stated in these rules shall prohibit a licensee from conveying or transferring the licensee's patient records to another licensed individual who is assuming a practice, provided that written notice is furnished to all patients.

These rules are intended to implement Iowa Code chapters 147, 148B and 272C.

ITEM 10. Renumber **645—Chapter 209** as **645—Chapter 210** and adopt the following new chapter:

CHAPTER 209

DISCIPLINE FOR OCCUPATIONAL THERAPISTS
AND OCCUPATIONAL THERAPY ASSISTANTS**645—209.1(148B) Definitions.**

"Board" means the board of physical and occupational therapy examiners.

"Discipline" means any sanction the board may impose upon licensees.

"Licensee" means a person licensed to practice as an occupational therapist or an occupational therapy assistant in Iowa.

645—209.2(272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—209.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

209.2(1) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice in this state, which includes the following:

a. False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state; or

b. Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

209.2(2) Professional incompetency. Professional incompetency includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other occupational therapists or occupational therapy assistants in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average occupational therapist or occupational therapy assistant acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of the licensed occupational therapist or licensed occupational therapy assistant in this state.

e. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

f. Being adjudged mentally incompetent by a court of competent jurisdiction.

209.2(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of occupational therapy or engaging in unethical conduct or practice

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

harmful or detrimental to the public. Proof of actual injury need not be established.

209.2(4) Practice outside the scope of the profession.

209.2(5) Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

209.2(6) Habitual intoxication or addiction to the use of drugs.

a. The inability of a licensee to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

b. The excessive use of drugs which may impair a licensee's ability to practice with reasonable skill or safety.

209.2(7) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

209.2(8) Falsification of patient records.

209.2(9) Acceptance of any fee by fraud or misrepresentation.

209.2(10) Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession includes a failure to exercise due care, including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

209.2(11) Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice occupational therapy. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

209.2(12) Violation of a regulation, rule or law of this state, another state, or the United States which relates to the practice of occupational therapy, including, but not limited to, the code of ethics found in rule 645—208.1(148B,272C).

209.2(13) Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure of the licensee to report in writing such action within 30 days of the final action by the licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board.

209.2(14) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the individual's practice of occupational therapy in another state, district, territory or country.

209.2(15) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

209.2(16) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

209.2(17) Engaging in any conduct that subverts or attempts to subvert a board investigation.

209.2(18) Failure to comply with a subpoena issued by the board, or failure to cooperate with an investigation of the board.

209.3(19) Failure to respond within 30 days of receipt of communication from the board which was sent by registered or certified mail.

209.2(20) Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

209.2(21) Failure to pay costs assessed in any disciplinary action.

209.2(22) Submission of a false report of continuing education or failure to submit the required report of continuing education.

209.2(23) Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

209.2(24) Knowingly aiding, assisting or advising a person to unlawfully practice occupational therapy.

209.2(25) Failure to report a change of name or address within 30 days after it occurs.

209.2(26) Representing oneself as a licensed occupational therapist or occupational therapy assistant when one's license has been suspended or revoked, or when the license is lapsed or has been placed on inactive status.

209.2(27) Permitting another person to use the licensee's license for any purpose.

209.2(28) Permitting an unlicensed employee or person under the licensee's control to perform activities that require a license.

209.2(29) Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but need not be limited to, the following:

a. Verbally or physically abusing a patient, client or co-worker.

b. Improper sexual contact with, or making suggestive, lewd, lascivious or improper remarks or advances to a patient, client or coworker.

c. Betrayal of a professional confidence.

d. Engaging in a professional conflict of interest.

209.2(30) Repeated failure to comply with standard precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

645—209.3(147,272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.

2. Suspension of license until further order of the board or for a specific period.

3. Prohibit permanently, until further order of the board, or for a specific period the licensee's engaging in specified procedures, methods, or acts.

4. Probation.

5. Require additional education or training.

6. Require a reexamination.

7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.

8. Impose civil penalties not to exceed \$1000.

9. Issue a citation and warning.

10. Such other sanctions allowed by law as may be appropriate.

645—209.4(272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care for the citizens of this state;

2. The facts of the particular violation;

3. Any extenuating facts or other countervailing considerations;

4. The number of prior violations or complaints;

5. The seriousness of prior violations or complaints;

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

6. Whether remedial action has been taken; and

7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

These rules are intended to implement Iowa Code chapters 147, 148B and 272C.

ITEM 11. Amend renumbered subrule 210.1(5) as follows:

210.1(5) Duplicate *or reissued* license *certificate* fee is \$10.

ITEM 12. Renumber renumbered subrules **210.1(6)** to **210.1(8)** as **210.1(7)** to **210.1(9)** and adopt the following **new** subrule:

210.1(6) Duplicate or reissued wallet card fee is \$10.

ARC 2767B**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 421.17(19) and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 5, “Public Records and Fair Information Practices,” Chapter 43, “Assessments and Refunds,” Chapter 49, “Estimated Income Tax for Individuals,” Chapter 67, “Administration,” and Chapter 150, “Offset of Debts Owed State Agencies,” Iowa Administrative Code.

The proposed amendments are necessitated by recent legislation which removes the words “and finance” from the Department’s name and transfers a number of the Department’s financing duties to the newly created Department of Administrative Services.

Item 1 amends subrule 5.14(4) by changing a number of the subrule’s statutory references from Iowa Code section 421.17 to 2003 Iowa Acts, House File 534, section 86 [new Iowa Code section 8A.504(2)].

Item 2 amends subrule 43.3(3) to reflect the fact that the Department’s previous duties to offset debts assigned to the Department of Human Services for collection, to offset debts resulting from defaults on guaranteed student or parental loans, and to offset debts owed to Iowa district courts have been transferred from the Department to the newly created Department of Administrative Services.

Item 3 amends rule 701—49.7(422), which deals with the offsetting of individual income tax carryforwards. The rule is amended to change references from the Department to the Department of Administrative Services when duties regarding offsets have been transferred to that agency. The rule is also amended to specifically mention one duty of setoff which remains with the Department of Revenue.

Item 4 amends rule 701—67.22(452A) to remove a chapter reference which is no longer accurate and a reference to a session law which is no longer relevant.

Item 5 extensively amends Chapter 150. Rules 701—150.1(421) through 701—150.16(421) are rescinded because the duties of offsetting debts which those rules describe

have been transferred to the Department of Administrative Services. The duties to offset, which existing rule 701—150.17(421,PL105-206) describes, remain with the Department. That rule is renumbered to become the whole of Chapter 150. The title of Chapter 150 is also amended.

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 October 20, 2003, to the Policy Section, Compliance 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 October 17, 2003. Such written comments should be directed to the Policy Section, Compliance 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, Compliance 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 October 10, 2003.

These amendments are intended to implement 2003 Iowa Acts, House File 534, sections 86, 254, and 291.

The following amendments are proposed.

ITEM 1. Amend 701—subrule 5.14(4) as follows:

5.14(4) Comparison with data from outside the agency. Personally identifiable information in systems of records maintained by the agency may be compared with information from outside the agency when specified by law. This comparison is allowed in situations including:

a. Determination of any offset of a debtor’s income tax refund or rebate for child support recovery or foster care recovery (~~Iowa Code subsection 421.17(21)~~ 2003 Iowa Acts, House File 534, section 86);

b. Collection of taxes by collection agencies (Iowa Code subsection 421.17(22));

c. Calculation of any offset against an income tax refund or rebate for default on a guaranteed student loan (~~Iowa Code subsection 421.17(23)~~ 2003 Iowa Acts, House File 534, section 86);

d. Offset from any tax refund or rebate for any liability owed a state agency (~~Iowa Code subsection 421.17(29)~~ 2003 Iowa Acts, House File 534, section 86);

e. Offset for any debt which is in the form of a liquidated sum due, owing, and payable to the clerk of district court as a criminal fine, civil penalty surcharge, or court costs (~~Iowa Code subsection 421.17(25)~~ 2003 Iowa Acts, House File 534, section 86).

REVENUE DEPARTMENT[701](cont'd)

ITEM 2. Amend rule 701—43.3(422) as follows:

Rescind subrule 43.3(3) and adopt the following **new** subrule in lieu thereof:

43.3(3) Setoffs of qualifying debts administered by the department of administrative services. Before any refund or rebate from a taxpayer's individual income tax return is considered for purposes of setoff, the refund or rebate must be applied first to any outstanding tax liability of that taxpayer, with the department of revenue. After all outstanding tax liabilities are satisfied, any remaining balance of refund or rebate will be set off against any qualifying debt of the taxpayer, setoff of which is overseen by the department of administrative services pursuant to 2003 Iowa Acts, House File 534, section 86.

Rescind and reserve subrules **43.3(4)** and **43.3(5)**.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code sections 421.17, 422.2, 422.16, and 422.73 as amended by 1998 2003 Iowa Acts, *Senate File 2357 House File 534*.

ITEM 3. Amend rule 701—49.7(422) as follows:

Amend the introductory paragraph of subrule 49.7(3) as follows:

49.7(3) Estimated tax carryforward and how amount of carryover credit is affected by state tax liability or other state liability of the taxpayer. A taxpayer who files an Iowa return with an overpayment shown on the return and elects to have the overpayment credited to the taxpayer's estimated tax for the next tax year will not have the overpayment credited to estimated tax, if the taxpayer has tax liabilities or other liabilities with the state that are subject to setoff. Other liabilities with the state that are subject to setoff are those liabilities described in Iowa Code section 421.17, ~~subsections subsection 24, 21A, 23, 25 and 29 and 2003 Iowa Acts, House File 534, section 86.~~ These liabilities are for ~~delinquent child support, or for~~ debts owed the state for public assistance overpayments, defaults on guaranteed student or parental college loans, district court debts, *delinquent child support*, and any other debts of the taxpayer with a board, commission, department, or other administrative office or unit of the state of Iowa.

Amend Example 2 in subrule **49.7(3)** as follows:

EXAMPLE 2. Mike Moore filed his 1994 Iowa return in May 1995 with an overpayment of \$500, a credit to 1995 estimated tax of \$300 and a refund of \$200. *Mr. Moore is a "self-employed individual" as that phrase is to be understood for the purposes of Iowa Code section 252B.5, subsection 8, as amended by 2003 Iowa Acts, House File 534, section 220.* During processing it was determined that Mr. Moore had a liability for unpaid child support of \$1,000. After Mr. Moore was notified by the child support recovery unit of the department of human services that the overpayment from the 1994 return was going to be applied to the child support liability, the entire overpayment of \$500 was set off against Mr. Moore's liability for unpaid child support. Thus, since the \$300 credit to estimated tax was set off against the delinquent child support, there was no credit to estimated tax for 1995. *Responsibility for offsetting this type of obligation remains, as of July 1, 2003, with the department of revenue and has not been transferred to the department of administrative services.*

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code sections section 421.17, subsections 21A and 21B, and section 422.16.

ITEM 4. Amend rule 701—67.22(452A) as follows:

701—67.22(452A) Tax refund offset. The department may apply any fuel tax refund against any other liability outstanding. See 701—Chapter 150, "Offset of Debts Owed State Agencies."

This rule is intended to implement Iowa Code section 452A.17 as amended by 1995 Iowa Acts, chapter 155, and Iowa Code section 421.17.

ITEM 5. Amend 701—Chapter 150 as follows:

Rescind the chapter title and adopt the following **new** title in lieu thereof:

**FEDERAL OFFSET FOR IOWA
INCOME TAX OBLIGATIONS**

Rescind rules **701—150.1(421)** to **701—150.16(421)**.

Amend rule 701—150.17(421,PL105-206) as follows:

701—150.17 1(421,PL105-206 26USC6402) Purpose and general application of offset of a federal tax overpayment to collect an Iowa income tax obligation. Effective for refunds of overpayments to the Internal Revenue Service (IRS) that are payable beginning January 1, 2000, the IRS may offset, in whole or in part, an amount of federal refund payable to an Iowa resident by the amount of any past due legally enforceable Iowa income tax obligation owed by such taxpayer. The purpose of this rule *chapter* is to establish a procedure to identify taxpayers that owe Iowa income tax liabilities and to establish a procedure for requesting the offset of the taxpayer's federal tax overpayment to collect a past due legally enforceable Iowa income tax obligation.

150.17(1) Definitions. 701—150.2(421,26USC6402) Definitions. The following definitions are applicable to the federal offset program:

"Assessment" means the determination of a past due tax obligation and includes self-assessments. An assessment includes the Iowa income tax, interest, penalties, fees or other charges associated with the past due legally enforceable Iowa income tax obligation.

"Department," "state of Iowa," "Iowa" or "the state" means the Iowa department of revenue and finance.

"Director" means the director of the Iowa department of revenue and finance.

"Overpayment" means a federal tax refund due and owing to a person or persons.

"Past due legally enforceable Iowa income tax obligation" means a debt which resulted from a judgment rendered by a court of competent jurisdiction which has determined an amount of state income tax to be due or a determination after an administrative hearing which has determined an amount of state income tax to be due and which is no longer subject to judicial review. In addition, this term also includes a debt which resulted from a state income tax which has been assessed but not collected, *for which* the time for redetermination which has expired, and which has not been delinquent for more than ten years.

"Resident of Iowa" means any person with a federal overpayment for the year in which Iowa seeks offset and such person has an Iowa address listed on that person's federal return for the tax period of overpayment.

"Secretary" means the Secretary of the Treasury for the federal government.

"State income tax obligation" or "Iowa income tax obligation" is intended to cover all Iowa income taxes. This term includes all local income taxes administered by the Iowa department of revenue and finance or determined to be a "state income tax" under Iowa law. Such taxes may include, but are not limited to, individual income tax, income surtax, fidu-

REVENUE DEPARTMENT[701](cont'd)

ciary income tax, withholding tax, or corporate income tax, and penalties, interest, fines, judgments, or court costs relating to such tax obligations.

“Tax refund offset” means withholding or reducing, in whole or in part, a federal tax refund payment by an amount necessary to satisfy a past due legally enforceable state income tax obligation owed by the payee (taxpayer) of the tax refund payment. This rule only involves the offset of tax refund payments under 26 U.S.C. 6402(e); it does not cover the offset of federal payments other than tax refund payments for the collection of past due legally enforceable state income tax obligations.

“Tax refund payment” means the amount to be refunded to a taxpayer by the federal government after the Internal Revenue Service (IRS) has applied the taxpayer’s overpayment to the taxpayer’s past due tax liabilities in accordance with 26 U.S.C. 6402(a) and 26 CFR 6402-3(a)(6)(i).

~~150.17(2) Prerequisites for requesting a federal offset. 701—150.3(421,26USC6402) Prerequisites for requesting a federal offset.~~ The following are the requirements that the state of Iowa must meet before the state can request an offset of a federal overpayment against an Iowa income tax obligation:

a. **150.3(1)** Pre-offset notice. At least 60 days prior to requesting the offset of a taxpayer’s federal overpayment for an Iowa income tax obligation, the state of Iowa must provide notice by certified mail, return receipt requested, to the person owing the Iowa income tax liability. This notice must state the following information:

(1) a. That the state proposes to request the offset of the person’s federal overpayment against a specified Iowa income tax obligation and that such an obligation is past due and legally enforceable;

(2) b. That the authority for this offset is Internal Revenue Service Restructuring and Reforms Act of 1998, Pub. L. 105-206, 112 Stat. 685, 779 (1998), as implemented by ~~701 IAC 150.17(421,PL105-206) this chapter;~~

(3) c. That the person owing the obligation has 60 days from the date of the notice to present evidence to the department that all or part of the obligation at issue is not past due or not legally enforceable;

(4) d. The mailing address for submitting such evidence;

(5) e. That failure to timely submit the evidence waives the taxpayer’s right to protest the amount, validity or qualification of the Iowa income tax obligation for offset at any time in the future; and

(6) f. Where contact can be made with the department for additional information or questions.

b. **150.3(2)** The state must consider any evidence presented by the person owing the obligation and determine whether the amount or amounts are past due and legally enforceable.

c. **150.3(3)** The state must have made written demand on the taxpayer to obtain payment of the state income tax obligation for which the request for offset is being submitted.

d. **150.3(4)** Additional pre-offset notices. The department must provide a taxpayer with an additional pre-offset notice if the amount of the obligation to be subject to offset is increased due to a new assessment. However, a new pre-offset notice is not required to be sent to the taxpayer by the department if there is an increase in the amount to be offset due to accrued interest, penalties or other charges associated with an Iowa income tax obligation in which notice has previously been given.

e. **150.3(5)** Before offset of the federal refund can be requested by the state of Iowa, the person’s Iowa income tax

liability must be at least \$25, unless otherwise provided based on the discretion of the department and the Secretary. If an individual owes more than one Iowa income tax obligation, the minimum amount will be applied to the aggregate amounts of such obligations owed to Iowa.

f. **150.3(6)** Offset applies to residents of Iowa as defined under ~~this rule these rules.~~

~~150.17(3) Procedure after submission of evidence. 701—150.4(421,26USC6402) Procedure after submission of evidence.~~ Upon timely receipt of evidence by the department from the taxpayer as set forth in ~~150.17(2)“a”“3), 150.3(1)“c,”~~ the department has 60 days to review the evidence and notify the taxpayer whether the evidence submitted is sufficient to terminate the intended offset. If the department determines that the evidence is sufficient, the procedure to initiate the federal offset shall be terminated for that obligation and the taxpayer’s record of Iowa income tax obligation for that particular obligation shall be adjusted accordingly. However, if the department determines that the evidence is insufficient to show that the amount or amounts at issue are not, in whole or in part, a past due and legally enforceable income tax obligation, the department must notify the taxpayer within 60 days of receiving the evidence from the taxpayer.

The contest of an offset under ~~this rule these rules~~ is subject to judicial review under Iowa Code section 17A.19 as “other agency action.”

In cases in which a taxpayer claims immunity from state taxation due to being an enrolled member of an Indian tribe who lives on that member’s reservation and derives all of that member’s income from that reservation, Iowa must consider such claims de novo on the merits, unless such claims have been previously adjudicated by a court of competent jurisdiction.

~~150.17(4) Notice by Iowa to the Secretary to request federal offset. 701—150.5(421,26 USC6402) Notice by Iowa to the Secretary to request federal offset.~~ Iowa must notify the Secretary of an Iowa income tax obligation in the manner prescribed by the Secretary.

~~150.17(5) Erroneous payments to Iowa. 701—150.6(421,26USC6402) Erroneous payments to Iowa.~~ If Iowa receives a notice from the Secretary that an erroneous payment has been made to Iowa under ~~this rule these rules,~~ Iowa must promptly pay to the Secretary, in accordance with such rules and regulations as the Secretary may prescribe, an amount equal to the amount of the erroneous payment (without regard to whether any other amounts payable to Iowa under ~~this rule these rules~~ have been paid to Iowa). In the alternative, Iowa may return the erroneous payment directly to the taxpayer. If this latter alternative is used by Iowa, then Iowa must notify the Secretary of the erroneous offset being paid to the taxpayer, and the taxpayer’s records will be adjusted accordingly.

~~150.17(6) Correcting and updating notice to the Secretary. 701—150.7(421,26USC6402) Correcting and updating notice to the Secretary.~~ Iowa must notify the Secretary of any deletion or decrease in the amount of past due legally enforceable Iowa income tax obligation referred to the Secretary for collection by offset under ~~this rule these rules.~~ Iowa may also notify the Secretary of any increases in the amount or amounts referred to the Secretary for collection by offset under ~~this rule these rules~~ provided that Iowa has complied with the requirements of ~~this rule these rules~~ with regard to such amount or amounts.

REVENUE DEPARTMENT[701](cont'd)

~~This rule is~~ *These rules are* intended to implement Iowa Code chapter 421 and ~~Pub. L. 105-206, 112 Stat. 685, 779 (1998) 26 U.S.C. 6402(e) et seq.~~

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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 421.17(19) and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 42, "Adjustments to Computed Tax," and Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," Iowa Administrative Code.

These amendments are proposed because of 2003 Iowa Acts, House Files 576 and 681.

Item 1 amends subrule 42.2(10) to eliminate the requirement, for tax years beginning on or after July 1, 2003, that eligible businesses whose projects primarily involve the production of value-added agricultural products only include cooperatives primarily involved in the production of ethanol.

Item 2 updates an implementation clause.

Item 3 amends subrule 52.10(4) to eliminate the requirement, for tax years beginning on or after July 1, 2003, that eligible businesses whose projects primarily involve the production of value-added agricultural products only include cooperatives primarily involved in the production of ethanol. This is similar to the change in Item 1.

Item 4 amends rule 52.14(422) to provide that eligible businesses in enterprise zones may be subject to repayment of tax credits previously taken if the business experiences a layoff or closes facilities within Iowa.

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 October 20, 2003, to the Policy Section, Compliance 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 October 17, 2003. Such written comments should be directed to the Policy Section, Compliance 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, Compliance 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 October 10, 2003.

These amendments are intended to implement Iowa Code section 15.333 as amended by 2003 Iowa Acts, House File 681, and section 15E.193 as amended by 2003 Iowa Acts, House File 576.

The following amendments are proposed.

ITEM 1. Amend subrule 42.2(10) as follows:

42.2(10) Investment tax credit. An investment tax credit of up to 10 percent of the new investment which is directly related to new jobs created by the location or expansion of an eligible business is available. The credit is available for machinery and equipment or improvements to real property placed in service after May 1, 1994. The credit is to be taken in the year the qualifying asset is placed in service. For business applications received by the Iowa department of economic development on or after July 1, 1999, purchases of real property made in conjunction with the location or expansion of an eligible business, the cost of land and any buildings and structures located on the land will be considered to be new investment which is directly related to new jobs for purposes of determining the amount of new investment upon which an investment tax credit may be taken.

If the eligible business within five years of purchase, sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which tax credit was claimed under this rule, the income tax liability of the eligible business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

a. to e. No change.

Any credit in excess of the tax liability for the tax year may be carried forward seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount of the credit claimed by the individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

For tax years beginning on or after July 1, 2001, an eligible business whose project primarily involves the production of value-added agricultural products may elect to receive a refund for all or a portion of an unused investment tax credit. ~~At~~ *For tax years beginning on or after July 1, 2001, but before July 1, 2003, an eligible business includes a cooperative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation income tax return, and whose project primarily involves the production of ethanol. For tax years beginning on or after July 1, 2003, an eligible business includes a cooperative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation income tax return.*

Eligible businesses shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department

REVENUE DEPARTMENT[701](cont'd)

of economic development will not issue tax credit certificates for more than \$4 million during a fiscal year. If applications are received for more than \$4 million, the applicants shall receive certificates for a prorated amount.

The Iowa department of economic development will issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be attached to the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, *except for a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol for tax years beginning on or after January 1, 2002, or for a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return for tax years beginning on or after July 1, 2003.*

For value-added agricultural projects involving ethanol, for cooperatives that are not required to file an Iowa income tax return because they are exempt from federal income tax, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The Iowa department of economic development will issue a tax credit certificate to each member on the list.

See 701—subrule 52.10(4) for examples illustrating how this subrule is applied.

For tax years beginning on or after January 1, 2002, but before July 1, 2003, a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol may elect to transfer all or a portion of its tax credit to its members. *For tax years beginning on or after July 1, 2003, a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return may elect to transfer all or a portion of its tax credit to its members.* The amount of tax credit transferred and claimed by a member shall be based upon the pro-rata share of the member's earnings in the cooperative. The Iowa department of economic development will issue a tax credit certificate to each member of the cooperative to whom the credit was transferred provided that tax credit certificates which total no more than \$4 million are issued during a fiscal year. The tax credit certificate must be attached to the tax return for the tax year during which the tax credit is claimed.

ITEM 2. Amend rule 701—42.2(422), implementation clause, as follows:

This rule is intended to implement Iowa Code section 15.333; ~~Iowa Code Supplement section 15.333 as amended by 2002 Iowa Acts, House File 2625; as amended by 2003 Iowa Acts, House File 681, and Iowa Code sections 422.10, as amended by 2001 Iowa Acts, chapter 127 and by 2002 Iowa Acts, House File 2116; and sections 422.11A, 422.12, and 422.12B.~~

ITEM 3. Amend rule 701—52.10(15) as follows:

Amend subrule 52.10(4) as follows:

52.10(4) Investment tax credit—value-added agricultural products. For tax years beginning on or after July 1, 2001, an eligible business whose project primarily involves the production of value-added agricultural products may elect to receive a refund for all or a portion of an unused investment credit. ~~For tax years beginning on or after July 1, 2001, but before July 1, 2003, an eligible business includes a coop-~~

erative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation tax return, and whose project primarily involves the production of ethanol. *For tax years beginning on or after July 1, 2003, an eligible business includes a cooperative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation income tax return.*

Eligible businesses that elect to receive a refund shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development will not issue tax credit certificates for more than \$4 million during a fiscal year. If applications are received for more than \$4 million, the applicants shall receive certificates for a prorated amount.

The Iowa department of economic development will issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be attached to the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol *for tax years beginning on or after January 1, 2002, or for a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return for tax years beginning on or after July 1, 2003.*

For value-added agricultural projects involving ethanol, for cooperatives that are not required to file an Iowa income tax return because they are exempt from federal income tax, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The Iowa department of economic development will issue a tax credit certificate to each member on the list.

For tax years beginning on or after January 1, 2002, but before July 1, 2003, a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol may elect to transfer all or a portion of its tax credit to its members. *For tax years beginning on or after July 1, 2003, a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return may elect to transfer all or a portion of its tax credit to its members.* The amount of tax credit transferred and claimed by a member shall be based upon the pro-rata share of the member's earnings in the cooperative. The Iowa department of economic development will issue a tax credit certificate to each member of the cooperative to whom the credit was transferred provided that tax credit certificates which total no more than \$4 million are issued during a fiscal year.

The following nonexclusive examples illustrate how this subrule applies:

EXAMPLES 1. to 6. No change.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code section 15.333; ~~Iowa Code Supplement section 15.333 as amended by 2002 Iowa Acts, House File 2625; as amended by 2003 Iowa Acts, House File 681, and Iowa Code section 15.335 as amended by 2001 Iowa Acts, chapter 127, and by 2002 Iowa Acts, House File 2116.~~

REVENUE DEPARTMENT[701](cont'd)

ITEM 4. Amend rule 701—52.14(422) as follows:

701—52.14(422) Enterprise zone tax credits. An eligible business in an enterprise zone may take the following tax credits:

1. to 3. No change.

If an eligible business in an enterprise zone fails to maintain the requirements of the enterprise zone program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of the enterprise zone program. This is because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

Effective July 1, 2003, eligible businesses in an enterprise zone may also be required to repay all or a portion of the tax incentives received on Iowa returns if the eligible business experiences a layoff of employees in Iowa or closes any of its facilities in Iowa.

This rule is intended to implement Iowa Code Supplement section 15A.9(8) 15E.193 as amended by 2002 2003 Iowa Acts, House File 2446 576, and section 15E.186.

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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 421.17(19) and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 42, "Adjustments to Computed Tax," Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," and Chapter 58, "Filing Returns, Payment of Tax, Penalty and Interest, and Allocation of Tax Revenues," Iowa Administrative Code.

These amendments are proposed because of 2003 Iowa Acts, Senate File 441.

Item 1 amends rule 42.13(15E) to provide that tax credit certificates must be issued to individuals who qualify for the eligible housing business tax credit and to provide for the transferability of the eligible housing business tax credit for individual income tax.

Item 2 amends subrule 42.15(4) to include in the tax credit certificate issued to individuals a place for the name and tax identification number of the transferee and amount of the tax credit transferred if the property rehabilitation tax credit is transferred.

Item 3 adopts new subrule 42.15(6) to provide that the property rehabilitation tax credit can be transferred for individual income tax.

Item 4 amends rule 52.15(15E) to provide that tax credit certificates must be issued to corporations that qualify for the eligible housing business tax credit and to provide for the transferability of the eligible housing business tax credit for corporation income tax purposes.

Item 5 amends subrule 52.18(4) to include in the tax credit certificate issued to corporations a place for the name and tax

identification number of the transferee and amount of the tax credit transferred if the property rehabilitation tax credit is transferred.

Item 6 adopts new subrule 52.18(6) to provide that the property rehabilitation tax credit may be transferred for corporation income tax.

Item 7 amends rule 58.8(15E) to provide that tax credit certificates must be issued to financial institutions that qualify for the eligible housing business tax credit and to provide for the transferability of the eligible housing business tax credit for franchise tax purposes.

Item 8 amends rule 58.10(422) to reference the transfer of the property rehabilitation tax credit.

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 October 20, 2003, to the Policy Section, Compliance 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 October 17, 2003. Such written comments should be directed to the Policy Section, Compliance 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, Compliance 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 October 7, 2003.

These amendments are intended to implement Iowa Code sections 15E.193B and 404A.4 as amended by 2003 Iowa Acts, Senate File 441.

The following amendments are proposed.

ITEM 1. Amend rule 701—42.13(15E) as follows:

701—42.13(15E) Eligible housing business tax credit. An individual who qualifies as an eligible housing business may receive a tax credit of up to 10 percent of the new investment which is directly related to the building or rehabilitating of homes in an enterprise zone. The tax credit may be taken on the tax return for the tax year in which the home is ready for occupancy.

An eligible housing business is one which meets the criteria in 1998 Iowa Acts, chapter 1179.

42.13(1) Computation of credit. New investment which is directly related to the building or rehabilitating of homes includes but is not limited to the following costs: land, surveying, architectural services, building permits, inspections, interest on a construction loan, building materials, roofing,

REVENUE DEPARTMENT[701](cont'd)

plumbing materials, electrical materials, amounts paid to subcontractors for labor and materials provided, concrete, labor, landscaping, appliances normally provided with a new home, heating and cooling equipment, millwork, drywall and drywall materials, nails, bolts, screws, and floor coverings.

New investment does not include the machinery, equipment, hand or power tools necessary to build or rehabilitate homes.

A taxpayer may claim on the taxpayer's individual income tax return the pro-rata share of the Iowa eligible housing business tax credit from a partnership, S corporation, limited liability company, estate, or trust. The portion of the credit claimed by the individual shall be in the same ratio as the individual's pro-rata share of the earnings of the partnership, S corporation, limited liability company, or estate or trust.

Any Iowa eligible housing business tax credit in excess of the individual's tax liability, less the credits authorized in Iowa Code sections 422.12 and 422.12B, may be carried forward for seven years or until it is used, whichever is the earlier.

If the eligible housing business fails to maintain the requirements of 1998 Iowa Acts, chapter 1179, to be an eligible housing business, the taxpayer may be required to repay all or a part of the tax incentives the taxpayer received. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the income tax credit may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of 1998 Iowa Acts, chapter 1179. This is because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

Prior to January 1, 2001, the tax credit cannot exceed 10 percent of \$120,000 for each home or individual unit in a multiple dwelling unit building. Effective January 1, 2001, the tax credit cannot exceed 10 percent of \$140,000 for each home or individual unit in a multiple dwelling unit building.

Effective for tax periods beginning on or after January 1, 2003, the taxpayer must receive a tax credit certificate from the Iowa department of economic development to claim the eligible housing business tax credit. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the date the project was completed, the amount of the eligible housing business tax credit and the tax year for which the credit may be claimed. 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 42.13(1). The tax credit certificate must be attached to the income tax return for the tax period in which the home is ready for occupancy.

42.13(2) *Transfer of the eligible housing business tax credit. For tax periods beginning on or after January 1, 2003, the eligible housing business tax credit certificates may be transferred to any person or entity if low-income housing tax credits authorized under Section 42 of the Internal Revenue Code are used to assist in the financing of the housing development.*

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the Iowa department of economic development, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the Iowa department of economic development will issue a replacement tax credit certificate to the transferee. If the

transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the housing business tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax period the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

~~This rule is intended to implement Iowa Code section 15E.193B as amended by 2001 Iowa Acts, chapter 141.~~

This rule is intended to implement Iowa Code section 15E.193B as amended by 2003 Iowa Acts, Senate File 441.

ITEM 2. Amend subrule 42.15(4), introductory paragraph, as follows:

42.15(4) Completion of the property rehabilitation project and claiming the property rehabilitation 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 rehabilitation credit, the state historic preservation office, in consultation with the Iowa department of economic development, is to issue a property rehabilitation tax credit certificate which is to be attached to the taxpayer's income tax return for the tax year in which the rehabilitation project is completed. 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 and the amount of the property rehabilitation 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 42.15(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 property rehabilitation 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. 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 3. Amend rule 701—42.15(422) as follows:

Adopt the following **new** subrule:

42.15(6) Transfer of the property rehabilitation tax credit. For tax periods beginning on or after January 1, 2003, the property rehabilitation tax credit certificates may be transferred to any person or entity.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to

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the state historic preservation office of the department of cultural affairs, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the state historic preservation office shall issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the property rehabilitation tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

If the property rehabilitation tax credit of the transferee exceeds the tax liability shown on the transferee's return, the refund shall be discounted as described in subrule 42.15(4) just as the refund would have been discounted on the Iowa income tax return of the taxpayer.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code chapter 404A and section 422.11D as amended by 2002 2003 Iowa Acts, House Senate File 2035 441, and section 422.11D.

ITEM 4. Amend rule 701—52.15(15E) as follows:

701—52.15(15E) Eligible housing business tax credit. A corporation which qualifies as an eligible housing business may receive a tax credit of up to 10 percent of the new investment which is directly related to the building or rehabilitating of homes in an enterprise zone. The tax credit may be taken on the tax return for the tax year in which the home is ready for occupancy.

An eligible housing business is one which meets the criteria in 1998 Iowa Acts, chapter 1179.

52.15(1) New investment which is directly related to the building or rehabilitating of homes includes but is not limited to the following costs: land, surveying, architectural services, building permits, inspections, interest on a construction loan, building materials, roofing, plumbing materials, electrical materials, amounts paid to subcontractors for labor and materials provided, concrete, labor, landscaping, appliances normally provided with a new home, heating and cooling equipment, millwork, drywall and drywall materials, nails, bolts, screws, and floor coverings.

New investment does not include the machinery, equipment, hand or power tools necessary to build or rehabilitate homes.

A taxpayer may claim on the taxpayer's corporation income tax return the pro-rata share of the Iowa eligible housing business tax credit from a partnership, limited liability company, estate, or trust. The portion of the credit claimed by the taxpayer shall be in the same ratio as the taxpayer's pro-rata share of the earnings of the partnership, limited liability company, or estate or trust.

Any Iowa eligible housing business tax credit in excess of the corporation's tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

If the eligible housing business fails to maintain the requirements of 1998 Iowa Acts, chapter 1179, to be an eligible housing business, the taxpayer may be required to repay all or a part of the tax incentives the business received. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the income tax credit may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of 1998 Iowa Acts, chapter 1179. This is because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

Prior to January 1, 2001, the tax credit cannot exceed 10 percent of \$120,000 for each home or individual unit in a multiple dwelling unit building. Effective January 1, 2001, the tax credit cannot exceed 10 percent of \$140,000 for each home or individual unit in a multiple dwelling unit building.

Effective for tax periods beginning on or after January 1, 2003, the taxpayer must receive a tax credit certificate from the Iowa department of economic development to claim the eligible housing business tax credit. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the date the project was completed, the amount of the eligible housing business tax credit and the tax year for which the credit may be claimed. 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 52.15(2). The tax credit certificate must be attached to the income tax return for the tax period in which the home is ready for occupancy.

52.15(2) *Transfer of the eligible housing business tax credit. For tax periods beginning on or after January 1, 2003, the eligible housing business tax credit certificates may be transferred to any person or entity if low-income housing tax credits authorized under Section 42 of the Internal Revenue Code are used to assist in the financing of the housing development.*

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the Iowa department of economic development, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the Iowa department of economic development will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the housing business tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income

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for individual income, corporation income or franchise tax purposes.

~~This rule is intended to implement Iowa Code section 15E.193B as amended by 2001 Iowa Acts, House File 349.~~

This rule is intended to implement Iowa Code section 15E.193B as amended by 2003 Iowa Acts, Senate File 441.

ITEM 5. Amend subrule 52.18(4), introductory paragraph, as follows:

52.18(4) Completion of the property rehabilitation project and claiming the property rehabilitation 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 rehabilitation credit, the state historic preservation office, in consultation with the Iowa department of economic development, is to issue a property rehabilitation tax credit certificate which is to be attached to the taxpayer's income tax return for the tax year in which the rehabilitation project is completed. 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, and the amount of the property rehabilitation 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 an S corporation, where the tax credit is allocated to the shareholders of the corporation, a list of the shareholders and the amount of credit allocated to each shareholder 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 property rehabilitation 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. 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 6. Amend rule 701—52.18(422) as follows:

Adopt the following **new** subrule:

52.18(6) Transfer of the property rehabilitation tax credit. For tax periods beginning on or after January 1, 2003, the property rehabilitation tax credit certificates may be transferred to any person or entity.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the state historic preservation office of the department of cultural affairs, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the state historic preservation office shall issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the property rehabilitation tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

If the property rehabilitation tax credit of the transferee exceeds the tax liability shown on the transferee's return, the refund shall be discounted as described in subrule 52.18(4) just as the refund would have been discounted on the Iowa income tax return of the taxpayer.

Amend the implementation clause as follows:

~~This rule is intended to implement Iowa Code chapter 404A and section 422.33 as amended by 2002 2003 Iowa Acts, House Senate File 2035 441, and section 422.33.~~

ITEM 7. Amend rule 701—58.8(15E) as follows:

701—58.8(15E) Eligible housing business tax credit. For tax years beginning on or after January 1, 2000, a financial institution may claim on the franchise tax return the pro-rata share of the Iowa eligible housing business tax credit from a partnership, limited liability company, estate or trust which has been approved as an eligible housing business by the Iowa department of economic development.

An eligible housing business may receive a tax credit of up to 10 percent of the new investment which is directly related to the building or rehabilitating of homes in an enterprise zone. The tax credit may be taken on the tax return for the tax year in which the home is ready for occupancy. The portion of the credit claimed by the taxpayer shall be in the same ratio as the taxpayer's pro-rata share of the earnings of the partnership, limited liability company, estate or trust. Any eligible housing business tax credit in excess of the franchise tax liability must be carried forward for seven years or until it is used, whichever is the earlier.

Prior to January 1, 2001, the tax credit cannot exceed 10 percent of \$120,000 for each home or individual unit in a multiple dwelling unit building. Effective January 1, 2001, the tax credit cannot exceed 10 percent of \$140,000 for each home or individual unit in a multiple dwelling unit building.

58.8(1) Computation of credit. New investment which is directly related to the building or rehabilitating of homes includes but is not limited to the following costs: land, surveying, architectural services, building permits, inspections, interest on a construction loan, building materials, roofing, plumbing materials, electrical materials, amounts paid to subcontractors for labor and materials provided, concrete, labor, landscaping, appliances normally provided with a new home, heating and cooling equipment, millwork, drywall and drywall materials, nails, bolts, screws, and floor coverings.

New investment does not include the machinery, equipment, hand or power tools necessary to build or rehabilitate homes.

If the eligible housing business fails to maintain the requirements of Iowa Code section 15E.193B to be an eligible housing business, the taxpayer may be required to repay all or a part of the tax incentives the business received. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the income tax credit may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of Iowa Code section 15E.193B. This is because it is a recovery

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of an incentive, rather than an adjustment to the taxpayer's tax liability.

Effective for tax periods beginning on or after January 1, 2003, the taxpayer must receive a tax credit certificate from the Iowa department of economic development to claim the eligible housing business tax credit. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the date the project was completed, the amount of the eligible housing business tax credit and the tax year for which the credit may be claimed. 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 58.8(2). The tax credit certificate must be attached to the income tax return for the tax period in which the home is ready for occupancy.

58.8(2) *Transfer of the eligible housing business tax credit. For tax periods beginning on or after January 1, 2003, the eligible housing business tax credit certificates may be transferred to any person or entity if low-income housing tax credits authorized under Section 42 of the Internal Revenue Code are used to assist in the financing of the housing development.*

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the Iowa department of economic development, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the Iowa department of economic development will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the housing business tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

~~This rule is intended to implement Iowa Code section 15E.193B as amended by 2001 Iowa Acts, House File 349.~~

~~This rule is intended to implement Iowa Code section 15E.193B as amended by 2003 Iowa Acts, Senate File 441.~~

ITEM 8. Amend rule 701—58.10(422) as follows:

701—58.10(422) Property rehabilitation tax credit. For tax years beginning on or after January 1, 2001, a property rehabilitation credit, subject to the availability of the credit, may be claimed against a taxpayer's Iowa franchise tax liability for 25 percent of the qualified rehabilitation costs to the extent the costs were incurred for the rehabilitation of eligible property in Iowa. For information on those types of property that are eligible for the rehabilitation credit, how to file applications for the credit, how the property rehabilitation credit is computed, *how the property rehabilitation credit can be*

transferred for tax periods beginning on or after January 1, 2003, and other details about the credit, see rule 701—52.18(422). See also the administrative rules for the property rehabilitation credit for the historical division of the department of cultural affairs under 223—Chapter 48.

~~This rule is intended to implement Iowa Code chapter 404A and section 422.60 as amended by 2002 2003 Iowa Acts, House Senate File 2035 441, and section 422.60.~~

ARC 2766B**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, 421.17(19), and 426A.7, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 78, “Property Tax Exemptions,” and Chapter 80, “Property Tax Credits and Exemptions,” Iowa Administrative Code.

Item 1 amends subrule 78.6(1) to require that property leased to others by the Department of Corrections and the Department of Human Services be subject to taxation.

Item 2 amends an implementation clause.

Item 3 amends paragraph 80.2(2)“c” to permit former members of the armed forces of the United States who opted to serve five years in the reserve forces of the United States to be eligible for the military service property tax exemption if any portion of their term of enlistment would have occurred during the Korean Conflict (June 25, 1950, to January 31, 1955).

Item 4 amends subrule 80.2(2) to require the person claiming the military service property tax exemption to record the veteran's military certificate of satisfactory service and evidence that the claimant owns the property on which the exemption is claimed. It also provides that the military certificate of satisfactory service is a confidential record.

Item 5 amends a parenthetical implementation statute and an implementation clause.

Item 6 amends paragraph 80.7(8)“b” to provide that state reimbursement for property tax revenue lost by counties from the phase-out of the tax on industrial machinery, equipment, and computers will end with the 2004 rather than the 2006 fiscal year (two years earlier than scheduled).

Item 7 amends an implementation clause.

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 October 20, 2003, to the Policy Section, Compliance Di-

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vision, 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 October 17, 2003. Such written comments should be directed to the Policy Section, Compliance 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, Compliance 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 October 10, 2003.

These amendments are intended to implement Iowa Code sections 22.7, 35.1, and 427.1, and Iowa Code chapters 426A and 427B as amended by 2003 Iowa Acts, House Files 665 and 674, and Senate Files 94 and 453.

The following amendments are proposed.

ITEM 1. Amend subrule **78.6(1)** by adding the following **new** paragraph **“c”**:

c. Property owned by the state and leased by the department of corrections or the department of human services pursuant to Iowa Code section 904.302, 904.705, or 904.706 to an entity that is not exempt from property tax is subject to taxation for the term of the lease. This provision applies to leases entered into on or after July 1, 2003. The lessor shall file a copy of the lease with the county assessor of the county where the property is located.

ITEM 2. Amend rule **701—78.6(427,441)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections ~~section 427.1(1), as amended by 2003 Iowa Acts, House File 665, and sections 427.1(2), 427.2, 427.18, and 427.19.~~

ITEM 3. Amend paragraph **80.2(2)“c”** as follows:

c. Former members of the United States armed forces, including members of the Coast Guard, must have served on active duty during one of the war or conflict time periods enumerated in Iowa Code section 35.1. *Former members who opted to serve five years in the reserve forces of the United States qualify if any portion of their enlistment would have occurred during the Korean Conflict (June 25, 1950, to January 31, 1955).* There is no minimum number of days a former member of the armed forces of the United States must have served on active duty. Former members of the Iowa national guard and reserve forces of the United States need not have performed any active duty if they served at least 20 years after January 28, 1973. Otherwise, they must have been activated for federal duty, for purposes other than training, for a minimum of 90 days. Also, it is not a requirement for a member of the Iowa national guard or a reservist to have performed service within a designated war or conflict time period.

ITEM 4. Amend subrule **80.2(2)** by adding the following **new** paragraph **“t”**:

t. The person claiming the exemption shall have recorded in the office of the county recorder evidence of property ownership and the military certificate of satisfactory service. The military certificate of satisfactory service shall be

considered a confidential record pursuant to Iowa Code section 22.7.

ITEM 5. Amend rule 701—80.2(426A), parenthetical implementation statute and implementation clause, as follows:

701—80.2(22,35,426A) Military service tax exemption.

This rule is intended to implement Iowa Code section 22.7 as amended by 2003 Iowa Acts, Senate File 94; section 35.1 as amended by 2003 Iowa Acts, House File 674; and chapter 426A as amended by 2002 Iowa Acts, House File 2622.

ITEM 6. Amend paragraph **80.7(8)“b”** as follows:

b. For fiscal years beginning July 1, 2001, and ending June 30, ~~2006~~ 2004, the county replacement amount shall be equal to the difference between the assessed value of computers and industrial machinery and equipment as of January 1 of the previous calendar year and the assessed value of such property as of January 1, 1994, less, if any, the increase in the assessed value of commercial and industrial property as of January 1 of the previous calendar year and the assessed value of such property as of January 1, 1994, multiplied by the tax levy rate for that fiscal year. If the calculation results in a negative amount, there will be no replacement for that fiscal year.

ITEM 7. Amend rule **701—80.7(427B)**, implementation clause, as follows:

This rule is intended to implement Iowa Code chapter 427B as amended by 1997 2003 Iowa Acts, ~~House Files 266 and 495~~ Senate File 453.

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for September is 5.00%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

- 74A.2 Unpaid Warrants Maximum 6.0%
- 74A.4 Special Assessments Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Iowa Banks and Iowa Savings Associations as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written de-

NOTICE—PUBLIC FUNDS INTEREST RATES(cont'd)

scription of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective September 10, 2003, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days	Minimum 0.70%
32-89 days	Minimum 0.70%
90-179 days	Minimum 0.70%
180-364 days	Minimum 0.80%
One year to 397 days	Minimum 0.90%
More than 397 days	Minimum 1.60%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

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UTILITIES DIVISION[199]

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 sections 17A.4 and 476.2 and 47 U.S.C. § 214(e), the Utilities Board (Board) gives notice that on August 25, 2003, the Board issued an order in Docket No. RMU-03-13, In re: Eligible Telecommunications Carrier Designation for Wireless Carriers, “Order Commencing Rule Making,” to receive public comment on proposed new 39.2(5)“c” and 39.5(476) granting eligible telecommunications carrier (ETC) status to wireless telecommunications carriers based on their certification from the Federal Communications Commission (FCC) and establishing filing procedures and service quality requirements for wireless carriers that seek and receive ETC status.

Under existing Board rules, a telecommunications carrier that seeks and receives ETC designation is required to certify to the Board that it provides universal service fund (USF)-supported services throughout its entire service territory. In the past, the Board has applied this requirement to service territories that were based upon the historical wireline exchanges. The existing rules were written with a focus on wireline telecommunications carriers seeking ETC designation. Wireline carriers receive their operating certificates from the Board and their service territories typically follow Iowa’s established exchange boundaries.

The Board has generally required that wireline carriers base their service areas on the historical exchange boundaries in order to limit the opportunity for picking and choosing among customers, or cream-skimming, on a geographic basis. The requirement has also helped to ensure that all territory in the state is served by a local exchange utility, as required by Iowa Code section 476.29(1).

Wireless carriers differ from their wireline counterparts in that they receive their operating licenses from the FCC and those licenses include service areas that do not follow Iowa’s established exchanges. Consequently, wireless carriers often serve only parts of the historical wireline exchanges in Iowa. In the past, this has prevented wireless carriers from receiving ETC designation for those exchanges that they do not serve in their entirety. The Board proposes to remove this barrier to increase the availability of wireless ETC status, as the service area differences are the result of FCC licensing requirements and do not appear to present any significant cream-skimming concerns.

In addition, the Board’s service quality rules currently apply only to wireline carriers. Thus, when wireless carriers provide services supported by the USF, there is no assurance that the customers will receive service that is of reasonable quality. Moreover, it is possible that wireline carriers incur higher expenses to provide service that meets the established quality standards, while wireless carriers do not incur those expenses. If true, this could give wireless carriers an unfair advantage when providing USF-supported services.

Finally, because wireless carriers receive their operating licenses from the FCC and do not file tariffs or similar documents with the Board, the Board does not normally have immediate access to a wireless carrier’s customer service agreement, which details the rates and terms for its USF-funded local calling plans. This information is necessary if the Board is to respond appropriately to customer questions or complaints regarding USF-supported services.

In this docket, the Board proposes to define “service area” for wireless carriers offering USF-supported service, as that area where the wireless company has been licensed by the FCC to provide service, regardless of the established exchange boundaries. (Those historical boundaries will continue to apply to wireline carriers unless a waiver is granted.) The Board also proposes that its local exchange service quality rules set forth in 199 IAC 22.6(476) will apply to USF-supported services provided by wireless carriers that have been granted ETC status. Finally, the Board proposes to establish uniform filing requirements for all wireless carriers that include filing with the Board documentation of customer service agreements that is sufficient to detail the rates and terms for USF-supported local calling plans. The adoption of rules specifically regarding ETC designation for wireless carriers will facilitate the process of granting ETC designations for wireless carriers and help ensure uniform treatment of all carriers.

Pursuant to Iowa Code section 17A.4(1)“a” and “b,” any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before November 10, 2003, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author’s name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

A public hearing to receive comments on the proposed amendments will be held at 10 a.m. on Wednesday, December 10, 2003, in the Board’s hearing room at the address listed above. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515)281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

UTILITIES DIVISION[199](cont'd)

These amendments are intended to implement Iowa Code section 476.2 and 47 U.S.C. § 214(e).

The following amendments are proposed.

ITEM 1. Amend subrule **39.2(5)** by adding the following **new** paragraph “**c**”:

c. In the case of a wireless telecommunications carrier, “service area” means that area where the wireless company has been licensed by the FCC to provide service.

ITEM 2. Adopt the following **new** rule:

199—39.5(476) Standards for service quality for wireless carriers attaining designation as an eligible telecommunications carrier.

39.5(1) A wireless carrier that has received designation as an eligible telecommunications carrier shall comply with the service quality rules set forth in 199—22.6(476) with respect to all services provided as an eligible telecommunications carrier.

39.5(2) A wireless carrier that has received designation as an eligible telecommunications carrier shall file with the board documentation of the wireless carrier’s customer service agreements that sets out all the rates, terms, and conditions applicable to its ETC-eligible local calling plans.

ARC 2782B

UTILITIES DIVISION[199]

Summary of Regulatory Analysis and Amended Notice of Intended Action

On July 3, 2003, the Utilities Board (Board) issued an “Order Commencing Rule Making” in this docket, pursuant to the authority of Iowa Code sections 17A.4 and 476.2, and 2003 Iowa Acts, Senate File 368, section 6. The proposed rules add new Chapter 43, and are intended to implement the broadband initiative created in 2003 Iowa Acts, Senate File 368. The proposed rules have been identified as **ARC**

2620B, published in the Iowa Administrative Bulletin on July 23, 2003.

On August 12, 2003, the Administrative Rules Review Committee (Committee) voted to request a regulatory analysis concerning **ARC 2620B**, pursuant to its authority set forth in Iowa Code section 17A.4A. In lieu of the factors set out in Iowa Code section 17A.4A, the regulatory analysis took the form of 13 specific questions to which responses were requested. The Board has submitted to the Committee complete responses to the questions posed in the regulatory analysis. The responses include a general description of the nature and extent of competition in the telecommunications industry in Iowa and a discussion of the proposed rules and their relationship to 2003 Iowa Acts, Senate File 368, and federal law. The responses emphasize the need for regulatory flexibility in order to balance the sometimes conflicting goals of competitive neutrality and enhanced broadband deployment. A copy of the complete regulatory analysis is available on the Board’s Web site at www.state.ia.us/iub.

Pursuant to Iowa Code section 17A.4A(4), the end of the period during which persons may file written comments on the proposed rule should be extended to 20 days after the publication of this concise summary of the regulatory analysis in the Iowa Administrative Bulletin. Therefore, the existing deadline for written comments of October 3, 2003, will be extended to October 8, 2003. An original and ten copies of written statements, submitted in a form substantially complying with 199 IAC 2.2(2), should clearly state the author’s name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

Due to a scheduling conflict, the public hearing date for receiving oral comments on the proposed rule scheduled for October 21, 2003, will be changed to October 22, 2003. The public hearing will be held in the Board’s hearing room at the address listed above, beginning at 10 a.m. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515)281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

ARC 2780B**ADMINISTRATIVE SERVICES
DEPARTMENT[11]****Adopted and Filed Emergency**

Pursuant to the authority of 2003 Iowa Acts, House File 534, section 4, the Department of Administrative Services hereby rescinds 401—Chapter 1, “Department Organization,” 471—Chapter 1, “Organization and Operation,” and rule 581—19.1(19A), “State System of Personnel”; and adopts 11—Chapter 1, “Department Organization,” Iowa Administrative Code.

The purpose of this new chapter is to convert rules regarding department organization from the former departments of General Services, Personnel, and Information Technology and the accounting function of the Department of Revenue and Finance to the new Department of Administrative Services and consolidate common rules into a single chapter that sets forth the organization and mission of the new Department.

In compliance with Iowa Code section 17A.4(2), the Department hereby finds that notice and public participation are unnecessary and impracticable because of the immediate need to issue rules describing the organization of the new Department of Administrative Services created by the 80th General Assembly in 2003 Iowa Acts, House File 534, effective July 1, 2003. Statutory powers and duties require the Director to appoint personnel and establish an internal organizational structure to promote the economic and efficient administration and operation of the Department.

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of the amendments should be waived and the amendments should be made effective on September 2, 2003, as they confer a benefit to the customers of the agency and to the public by promptly and clearly setting forth the agency’s organizational structure.

The Department of Administrative Services adopted these amendments on August 29, 2003.

These amendments are also published herein under Notice of Intended Action as **ARC 2788B** to allow public comment.

These amendments are intended to implement 2003 Iowa Acts, House File 534, sections 2, 3, 4, 18, 29, 58 and 84.

These amendments became effective on September 2, 2003.

The following amendments are adopted.

ITEM 1. Rescind **401—Chapter 1, 471—Chapter 1,** and rule **581—19.1(19A).**

ITEM 2. Adopt the following **new** chapter:

CHAPTER 1
DEPARTMENT ORGANIZATION

11—1.1(80GA,HF534) Creation and mission. The department of administrative services (DAS) was established by the 80th General Assembly in 2003 Iowa Acts, House File 534. The department was created for the purpose of managing and coordinating the major resources of state government, including the human, financial, physical and informational resources.

The mission of the department is to implement a world-class, customer-focused organization that provides a complement of valued products and services to the internal customers of state government.

11—1.2(80GA,HF534) Location. The department’s primary office is located in the Hoover State Office Building, Level A-South, 1305 East Walnut Street, Des Moines, Iowa 50319-0150; telephone (515)242-5120. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The department’s Web site at www.das.iowa.gov provides information about all department organizational units and services.

1.2(1) General services enterprise location. The general services enterprise’s primary office is located in the Hoover State Office Building, Level A-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)242-5120. Office hours are 7:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

1.2(2) Human resources enterprise location. The human resources enterprise’s primary office is located in the Grimes State Office Building, First Floor, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0150; telephone (515) 281-3351. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

1.2(3) Information technology enterprise location. The information technology enterprise is located in the Hoover State Office Building, Level B, Des Moines, Iowa 50319. The general office telephone number is (515)281-5503. Hours of operation are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

1.2(4) State accounting enterprise location. The state accounting enterprise’s primary office is located in the Hoover State Office Building, Fourth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-3206. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

11—1.3(80GA,HF534) Director. The chief executive officer of the department is the director, who is appointed by the governor with the approval of two-thirds of the members of the senate. The director serves at the pleasure of the governor.

The director has the statutory authority to designate an employee of the department to carry out the powers and duties of the director in the absence of the director, or due to the inability of the director to do so.

Specific powers and duties of the department and its director, boards, task forces, advisory panels, and employees are set forth in Iowa Code chapters 19B, 20, 70A, and 509A; 2003 Iowa Acts, House File 534; and these administrative rules.

11—1.4(80GA,HF534) Administration of the department. In order to carry out the functions of the department, the following enterprises and divisions have been established:

1.4(1) General services enterprise. The mission of the general services enterprise is to act as the state’s business agent to meet agencies’ needs for quality, timely, reliable and cost-effective support services and provide a work environment that is healthy, safe, and well maintained. The chief operating officer, appointed by the director, heads the general services enterprise. The following divisions have been established within the general services enterprise:

a. Capitol complex maintenance. The capitol complex maintenance division is responsible for the assignment of office space and the maintenance, appearance, and facility sanitation of the capitol complex buildings and grounds, including environmental control (heating, ventilation and cooling) and all support features including, but not limited to, parking lot maintenance, main electrical distribution, water supply, wastewater removal, and major maintenance projects associated with the capitol complex. Distribution of state surplus

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

property is managed by Iowa Prison Industries under an agreement with the department.

b. Design and construction. The design and construction division is responsible for vertical infrastructure management; building and monument restoration; management of leases and office space on and off the capitol complex; utilities management; and management of capital projects, including architectural, engineering, and construction management services for state agencies except for the board of regents, the department of transportation, the national guard, the natural resource commission and the Iowa public employees' retirement system.

c. Fleet and mail. The fleet and mail division is responsible for the management of vehicular risk and travel requirements for state agencies not exempted by law, and for the processing and delivering of mail for state agencies on the capitol complex and in the Des Moines metropolitan area.

d. Printing. The printing division is responsible for all copy machines; formal bids, contracts, and bonds for printing purchases; centralized printing; maintaining satellite copy centers on the capitol complex; and publication of certain state documents.

e. Service delivery. The service delivery division is responsible for the following functions for the enterprise: customer satisfaction activities including administration of parking and building access, receipt of work requests, collection of parking fines, coordination of special events on the capitol complex, and serving as a focal point for general information regarding use of the capitol complex; statewide purchasing and electronic procurement, including managing procurement of commodities, equipment and services for all state agencies not exempted by law; receipt and distribution of federal surplus property; and activities in support of process improvement, strategic planning and implementation of accountable government requirements.

1.4(2) Human resources enterprise. The human resources enterprise is responsible for human resource management in the executive branch of Iowa state government and provides limited services to the judicial and legislative branches. The mission of the human resources enterprise is to support state agencies in their delivery of services to the people of Iowa by providing programs that recruit, develop, and retain a diverse and qualified workforce, and to administer responsible employee benefits programs for the members and their beneficiaries. The director appoints the chief operating officer of the enterprise. The following divisions have been established within the human resources enterprise:

a. Risk and benefits management. The risk and benefits management division administers and coordinates the provision of health, dental, life, and disability insurance programs; employee leave programs; workers' compensation, return to work, and loss control and safety programs; 457 deferred compensation; 403(b) tax-sheltered annuity and 401(a) employer match programs; unemployment insurance; flexible spending and premium conversion programs for state employees.

b. Employment and organizational development. The employment and organizational development division provides application, referral, recruitment, selection, EEO/AA and diversity services related to state employment; organization and employee development services including workforce planning and performance evaluation; administration of the state classification and compensation programs; and audit of personnel and payroll transactions.

c. Program delivery services. The program delivery services division is responsible for employment relations be-

tween the state and the certified employee representative; provides consultative services to state departments, boards, and commissions on human resource program matters; and represents the state in contested case matters regarding such programs.

1.4(3) Information technology enterprise. The mission of the information technology enterprise is to provide high-quality, customer-focused information technology services and business solutions to government and to citizens. The director appoints the chief information officer for the state, who also serves as the chief operating officer of the enterprise. The following divisions have been established within the information technology enterprise:

a. Applications development and digital government. The applications development and digital government division is responsible for support of departmental information technology services; providing applications development, support, and training; and providing advice and assistance in developing and supporting business applications throughout state government.

b. Infrastructure services. The infrastructure services division is responsible for providing server systems, including mainframe and other server operations; desktop support; and applications integration.

c. Integrated Information for Iowa (I-3) project. The I-3 project office is responsible for the integration of information technology into all business aspects of state government. Through effective integration of information with innovative redesign of business process, I-3's vision is to provide greater responsiveness to customers, improved productivity, increased accountability and efficient delivery of services across state government, and consistent and accurate information that Iowans want.

d. Planning and administrative services. The planning and administrative services division is responsible for the administrative functions of the information technology enterprise. This division is also responsible for all information technology purchasing and contract administration for the information technology enterprise.

e. Advisory groups.

(1) Information technology council. The information technology council is granted authority to advise the department in the development of recommended standards for the procurement of information technology by all participating agencies; advise the department in the preparation and annual update of the strategic information technology plan for the use of information technology throughout state government; review legislative proposals regarding information technology; and review recommendations of the IOWAccess advisory council regarding rates to be charged for access to and for value-added services performed through IOWAccess. The information technology council shall annually elect its own chairperson from among the voting members of the council.

(2) IOWAccess advisory council. The IOWAccess advisory council is established within the department for the purpose of creating and providing to the citizens of this state a gateway for one-stop electronic access to government information and transactions, whether federal, state, or local.

1.4(4) State accounting enterprise. The state accounting enterprise was created to provide for the efficient management and administration of the financial resources of state government. The following divisions have been established within the state accounting enterprise:

- a. Centralized payroll;
- b. Daily processing;
- c. Financial reporting;

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

- d. Financial systems;
- e. Income offset.

1.4(5) Leadership functions. The following divisions and functions have been established to provide leadership for department functions.

a. Policy, standards and rules. The policy, standards and rules division provides a leadership function and is focused on establishing policies, standards and administrative rules which will uphold the principles that have been defined to be in the best interests of the citizens of the state.

b. Measurement and planning division. The measurement and planning division is responsible for developing, implementing, and maintaining an agency service delivery performance measurement and accountability system and process, as well as providing planning services, for and on behalf of the director.

c. Legislative liaison. The legislative liaison serves as the department's spokesperson on legislative matters, monitors all legislation for impact on the department, lobbies members of the general assembly and legislative staff on behalf of the department, coordinates with department staff, the governor's office and other departments on legislative initiatives, and manages the submission of legislative reports and studies.

1.4(6) Shared services. The following divisions and functions have been established to provide support for department functions.

a. Finance. The mission of the finance division is to provide efficient and effective financial administration and support to the department in a manner that provides accurate and timely financial and budget information, safeguards assets, and facilitates fiscally responsible decision making. The division establishes and implements internal control processes, procedures and segregation of duties to account for departmental funds and expenditures, bills and collects for department services, provides the means to maximize resources of the department, and provides DAS with the tools and support needed to establish rates and assess financial performance and risk. In addition, for the state enterprise as a whole, the division oversees statewide fixed asset inventory reporting and reviews information technology acquisition requests from participating agencies.

b. Internal operations. The internal operations division provides internal support services for the daily operations of the department. Among the services provided are inbound and outbound mail distribution, purchase of consumables, personnel assistant and related human resources support, travel coordination, facilities management, printing coordination, on-site safety consultation, records management, and emergency planning and response support.

c. Marketing and communications. Marketing and communications supplies the department's media, public relations, and employee communications services; supports product and service marketing within each of the department's enterprises; and coordinates customer council activities for the department.

These rules are intended to implement 2003 Iowa Acts, House File 534, sections 2, 3, 4, 18, 29, 58 and 84.

[Filed Emergency 8/29/03, effective 9/2/03]

[Published 9/17/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/17/03.

ARC 2778B

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Adopted and Filed Emergency

Pursuant to the authority of 2003 Iowa Acts, House File 534, section 4, the newly established Administrative Services Department hereby amends and transfers rules of the former General Services Department[401], Chapter 3, "Capitol Complex Operations"; Chapter 10, "Inventory Guidelines for State of Iowa Personal and Real Property"; Chapter 11, "State Employee Driving Guidelines"; Chapter 12, "Purchasing Standards for Service Contracts"; and Chapter 13, "Uniform Terms and Conditions for Service Contracts," to Administrative Services Department[11], Chapter 100, "Capitol Complex Operations"; Chapter 103, "State Employee Driving Guidelines"; Chapter 106, "Purchasing Standards for Service Contracts"; Chapter 107, "Uniform Terms and Conditions for Service Contracts"; and Chapter 110, "Inventory Guidelines for State of Iowa Personal and Real Property," Iowa Administrative Code.

These amendments are for the purpose of converting these five chapters from the authority of the former Department of General Services to the new statutorily established Department of Administrative Services. Content changes are merely editorial in nature.

Pursuant to Iowa Code section 17A.4(2), the Department hereby finds that notice and public participation are unnecessary as these amendments are solely for the purpose of transferring rules to a new agency number and chapter and bringing policy in line with statute.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments should be waived and these amendments should be made effective on September 2, 2003, as they confer a benefit to the customers of the agency and to the public by consolidating rules for the new agency under a single agency identification number.

The Department of Administrative Services adopted these amendments on August 29, 2003.

These amendments became effective on September 2, 2003.

These amendments are intended to implement 2003 Iowa Acts, House File 534, sections 4, 29, 36, 37, and 52.

The following amendments are adopted.

ITEM 1. Transfer **401—Chapter 3** to **11—Chapter 100**; **401—Chapter 10** to **11—Chapter 110**; **401—Chapter 11** to **11—Chapter 103**; **401—Chapter 12** to **11—Chapter 106** and **401—Chapter 13** to **11—Chapter 107**.

ITEM 2. Amend **11—Chapters 100, 103, 106, 107** and **110** by replacing all references to Iowa Code chapter 18 with references to 2003 Iowa Acts, House File 534, and by replacing all references to the department of general services with references to the department of administrative services.

ITEM 3. Amend **11—Chapter 100** by replacing all references to Iowa Code section 18.10 with references to 2003 Iowa Acts, House File 534, section 37.

ITEM 4. Amend rule **11—100.1(80GA,HF534)**, introductory paragraph, as follows:

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

11—100.1(80GA, HF534) Definitions. The definitions contained in ~~Iowa Code section 18.1~~ *2003 Iowa Acts, House File 534, sections 1 and 28*, shall be applicable to such terms when used in this chapter. In addition, the following definitions shall apply:

ITEM 5. Amend subrules **100.5(1)** and **100.5(2)** by replacing the cross reference to 3.4(4) with a cross reference to 100.4(4).

ITEM 6. Amend subrule **100.6(6)** by replacing the cross reference to Iowa Code section 18.6 with a cross reference to 2003 Iowa Acts, House File 534, section 30.

ITEM 7. Amend **11—Chapter 100**, implementation clause, as follows:

These rules are intended to implement *2003 Iowa Acts, House File 534, sections 4, 36 and 37, and Iowa Code sections 18.3, 18.4, 18.8, 18.10 and section 303.9* and chapters 142B and 216D.

ITEM 8. Amend subrule 103.3(1), introductory paragraph, as follows:

103.3(1) Agencies subject to vehicle assignment standards. Pursuant to ~~Iowa Code section 18.115(4)“a,”~~ *2003 Iowa Acts, House File 534, section 52*, the agencies listed below shall assign all vehicles within their possession, control, or use in accordance with the standards set forth in rule ~~11.4(18) 103.4(80GA, HF534)~~. The following agencies are subject to the vehicle assignment standards in rule ~~11.4(18) 103.4(80GA, HF534)~~:

ITEM 9. Amend subrule **103.3(3)** by replacing the reference to the Iowa department of personnel with a reference to the department of administrative services.

ITEM 10. Amend subrule **103.12(6)** by replacing the cross reference to 11.12(2) with a cross reference to 103.12(2).

ITEM 11. Amend **11—Chapter 103**, implementation clause, as follows:

These rules are intended to implement ~~Iowa Code 2003 Iowa Acts, House File 534, sections 18.3(11) and 18.115(4)“a.”~~ *4, 29 and 52.*

ITEM 12. Amend rule **11—106.1(80GA, HF534)** by replacing the cross reference to Iowa Code section 18.3 with a cross reference to 2003 Iowa Acts, House File 534, section 29.

ITEM 13. Amend rule 11—106.5(80GA, HF534), introductory paragraph, as follows:

11—106.5(80GA, HF534) Use of competitive selection. Departments and establishments shall use competitive selection to acquire services from private agencies when the estimated annual value of the service contract is equal to or greater than \$5,000 or when the estimated value of the multiyear service contract in the aggregate, including any renewals, is equal to or greater than \$15,000 unless there is adequate justification for a sole source or emergency procurement pursuant to rule ~~12.7(18) 106.7(80GA, HF534)~~ or ~~12.8(18) 106.8(80GA, HF534)~~ or another provision of law.

ITEM 14. Amend subrule **106.7(2)**, paragraph “c,” as follows:

c. The contract for the sole source procurement shall comply with ~~401 IAC 13.4(8,18) II IAC 107.4(8,80GA, HF534)~~, uniform terms and conditions for service contracts, or ~~401 IAC 13.5(8,18) II IAC 107.5(8,80GA, HF534)~~, special terms and conditions.

ITEM 15. Amend subrule **106.8(2)**, paragraph “c,” as follows:

c. If an emergency procurement results in the extension of an existing contract that contains performance criteria, the contract extension shall comply with ~~401 IAC 13.4(8,18) II IAC 107.4(8,80GA, HF534)~~, uniform terms and conditions for service contracts, or ~~401 IAC 13.5(8,18) II IAC 107.5(8,80GA, HF534)~~, special terms and conditions.

ITEM 16. Amend subrule 106.9(1) as follows:

106.9(1) When utilizing an informal competition as defined in rule ~~12.3(18) 106.3(80GA, HF534)~~, the department or establishment may contact the prospective service providers in person, by telephone, fax, E-mail or letter. When the department or establishment is not able to locate three prospective service providers, the department or establishment must justify contacting fewer than three service providers. The justification shall be included in the contract file.

ITEM 17. Amend subrule 106.11(3) as follows:

106.11(3) A service contract should be competitively selected on a regular basis so that a department or establishment obtains the best value for the funds spent, avoids inefficiencies, waste or duplication and may take advantage of new innovations, ideas and technology. A service contract, including all optional renewals, shall not exceed a term of six years unless the department or establishment obtains a waiver of this provision pursuant to rule ~~12.16(18) 106.16(80GA, HF534)~~.

ITEM 18. Amend subrule 106.15(2) as follows:

106.15(2) Nothing in this chapter is intended to supplant or supersede the requirements adopted by the department of ~~revenue and finance~~ *administrative services* relating to the processing of claims. Departments or establishments entering into personal services contracts should refer to procedure 240.102 of the department of ~~revenue and finance~~ *administrative services, state accounting enterprise policy and procedure manual*.

ITEM 19. Amend **11—Chapter 106**, implementation clause, as follows:

These rules are intended to implement ~~Iowa Code 2003 Iowa Acts, House File 534, sections 18.3 and 18.4~~ *4 and 29.*

ITEM 20. Amend subrule **107.4(1)**, introductory paragraph, by replacing the cross reference to Iowa Code section 421.40 with a cross reference to 2003 Iowa Acts, House File 534, section 96.

ITEM 21. Amend rule 11—107.5(8,80GA, HF534) as follows:

11—107.5(8,80GA, HF534) Special terms and conditions. Rule ~~13.4(8,18) 107.4(8,80GA, HF534)~~ does not apply to service contracts containing special terms and conditions adopted by a department or establishment for use in its service contracts with the approval of the department of management, in cooperation with the office of the attorney general, *and the department of general administrative services, the department of personnel and the department of revenue and finance* as provided for in Iowa Code Supplement section 8.47(2) *as amended by 2003 Iowa Acts, House File 534, section 124.*

ITEM 22. Amend subrule 107.6(3) as follows:

107.6(3) These rules do not apply to service contracts entered into as the result of an emergency procurement in accordance with ~~401 IAC 12.8(18) II IAC 106.8(80GA, HF534)~~, unless the emergency procurement results in the ex-

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tension of an existing contract that contains performance criteria.

ITEM 23. Amend **11—Chapter 107**, implementation clause, as follows:

These rules are intended to implement Iowa Code Supplement section 8.47 and Iowa Code section 18.4 2003 Iowa Acts, House File 534, section 4.

ITEM 24. Amend subrule **110.2(1)** by replacing the reference to the department of revenue and finance with a reference to the department of revenue.

[Filed Emergency 8/29/03, effective 9/2/03]
[Published 9/17/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/17/03.

ARC 2743B**INSURANCE DIVISION[191]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 514L.3, subsection 2, the Insurance Division hereby adopts Chapter 78, "Uniform Prescription Drug Information Card," Iowa Administrative Code.

These rules establish requirements for a uniform prescription drug information card that provides a standard set of data elements to allow for efficient and effective processing of prescription orders and submissions. These rules apply to all carriers and public self-funded entities that provide health care coverage in Iowa and that are regulated by the Iowa Insurance Division.

2001 Iowa Acts, chapter 77 [Senate File 452], was enacted in 2001 and provided for the Insurance Division to adopt rules to implement the provisions of that legislation, new Iowa Code chapter 514L. The Division was untimely in commencing rule making in regard to Iowa Code chapter 514L. Therefore, in June and July of 2003, the Division met with interested parties from the insurance industry and the pharmacy industry to discuss the rules and their implementation. Parties quickly came to approve the following rules.

It was agreed between the parties that the rules should take effect immediately. However, given the emergency filing, carriers would need time to update their regulations and computer programming to implement the new rules. It was agreed that the Division would take no regulatory action against a carrier or public self-funded entity until January 1, 2004. While the rules take effect upon filing, carriers and public self-funded entities will implement the new rules as drug card benefits are renewed and new cards are issued.

In compliance with Iowa Code section 17A.4(2), the Division finds that notice and public participation are impracticable and contrary to the public interest due to the fact that the rules were to go into effect on July 1, 2003, and the rules confer a benefit on the public immediately by reducing the time required in fulfilling drug prescription requests and reimbursements.

The Division finds that, pursuant to Iowa Code section 17A.5(2)"b"(2), the normal effective date of the rules, 35 days after publication, should be waived and the rules be made effective August 27, 2003, upon filing. These rules confer a benefit upon the public because they enhance the ef-

iciency and effectiveness of prescription drug submissions and provide for pharmacy services to be more streamlined.

The Iowa Insurance Division adopted these rules on August 25, 2003.

These rules are intended to implement Iowa Code chapter 514L.

These rules became effective on August 27, 2003.

The following amendment is adopted.

Adopt the following **new** chapter:

CHAPTER 78
UNIFORM PRESCRIPTION DRUG
INFORMATION CARD

191—78.1(514L) Purpose. The purpose of this chapter is to implement the use of a uniform prescription drug information card or other technology by the providers of third-party payment or prepayment of prescription drug expenses, by the providers' contractors or agents and pharmacy benefit managers, and by administrators of the providers and payors. The purpose of the uniform prescription drug information card or other technology is to benefit patients, insurers, pharmacy benefit managers and pharmacists through enhanced patient convenience and processing of claims for prescription benefits, decreased calls to help desks due to missing or incorrect card information, and improved delivery of prescription benefit services to consumers.

191—78.2(514L) Definitions.

"Administrator" or "administrator of the payor" means the claims administrator or administrators to which claims for prescription drug benefits are submitted, processed and adjudicated, and includes pharmacy benefit managers, and excludes administrators for self-funded employer-sponsored health benefit plans qualified under the federal Employee Retirement Income Security Act of 1974.

"BIN number," "IIN/BIN number," "BIN," or "RxBIN" means the ANSI-assigned issuer identification number, or IIN, which was formerly known as the "bank identification number" or "BIN," and which is identified in the National Council for Prescription Drug Programs Pharmacy ID Card Implementation Guide as the "BIN number." The "Rx" prefix is not required if the same BIN number is used for pharmacy and medical claims submission.

"Card" or "card or other technology for claims processing" means a card or other technology that is issued to insureds, enrollees, and covered individuals. Insureds, enrollees, and covered individuals provide the card to pharmacies to receive prescription drug benefits. Pharmacies use the information, required by Iowa Code chapter 514L to be on the card, for prescription drug claims submission, processing and adjudication with providers, administrators, pharmacy benefit managers or similar entities.

"Cardholder ID" means the cardholder's unique identification number that is issued by the provider to the insured, enrollee, or covered individual, and which is identified in the National Council for Prescription Drug Programs Pharmacy ID Card Implementation Guide.

"Cardholder name" means the cardholder's first name, middle initial and last name.

"Card issuer identifier number" means the number identified in the National Council for Prescription Drug Programs Pharmacy ID Card Implementation Guide as the international identifier for the United States of America, which has not yet been enumerated and may remain blank on cards until such number is determined.

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“Card issuer’s name and logo” means the name and identifying mark of the entity issuing the card or other technology, identified in the National Council for Prescription Drug Programs Pharmacy ID Card Implementation Guide.

“Consistent with the guide” means that the information and data elements on the card shall conform to the standards set forth in the most recent release of the National Council for Prescription Drug Programs Pharmacy ID Card Implementation Guide, except that the address of the pharmacy benefit manager may be excluded and the information and data elements may be placed at different locations on the card as reasonably necessary to accommodate space and logistical needs.

“Group ID number,” “Grp,” or “RxGrp” means the group identification number or group ID number as identified in the National Council for Prescription Drug Programs Pharmacy ID Card Implementation Guide. The “Rx” prefix is not required if the same group number is used for pharmacy and medical claims submission.

“Guide” or “National Council for Prescription Drug Programs Pharmacy ID Card Implementation Guide” means the most recent document issued by the National Council for Prescription Drug Programs.

“Pharmacy benefit manager” means an entity that receives and processes claims for payment or prepayment for prescription drug expenses from pharmacies and that may issue cards or other technology for prescription claims processing.

“Processor control number,” “PCN,” or “RxPCN” means the processor control number as identified in the National Council for Prescription Drug Programs Pharmacy ID Card Implementation Guide. The “Rx” prefix is not required if the same PCN number is used for pharmacy and medical claims submission.

“Provider of third-party payment or prepayment of prescription drug expenses” or “provider” means a provider of an individual or group policy of accident or health insurance or an individual or group hospital or health care service contract issued pursuant to Iowa Code chapter 509, 514 or 514A, a provider of a plan established pursuant to Iowa Code chapter 509A for public employees, a provider of an individual or group health maintenance organization contract issued and regulated under Iowa Code chapter 514B, a provider of an organized delivery system contract regulated under rules adopted by the director of public health, a provider of a preferred provider contract issued pursuant to Iowa Code chapter 514F, a provider of a self-insured multiple employer welfare arrangement, and any other entity providing health insurance or health benefits which provide for payment or prepayment of prescription drug expenses coverage subject to state insurance regulation.

“Substantially consistent with the guide” means that the location of the uniform prescription drug information on the card or other technology shall conform to the standards set forth in the most recent National Council for Prescription Drug Programs Pharmacy ID Card Implementation Guide. The information may be placed at different locations on the card as reasonably necessary to accommodate space and logistical needs.

“Uniform prescription drug information” means the requirements set forth in the most recent National Council for Prescription Drug Programs Pharmacy ID Card Implementation Guide, including the data elements information required on the card, such as the content, format and the location.

191—78.3(514L) Implementation.

78.3(1) Cards or other technology for prescription claims processing issued by providers, administrators, pharmacy

benefit managers, and other entities shall contain data elements and other required information that is substantially consistent with the most recent National Council for Prescription Drug Programs Pharmacy ID Card Implementation Guide. The location of the data elements and information shall be substantially consistent with the guide, and the cards or other technology shall at a minimum contain the following:

- a. The BIN number labeled as “BIN” or “RxBIN.”
- b. The processor control number labeled as “PCN” or “RxPCN” if required for claims processing.
- c. The group identification number labeled as “Grp” or “RxGrp” if required for claims processing.
- d. The card issuer’s identification number if available.
- e. The cardholder’s name.
- f. The card issuer’s name or logo.
- g. The help desk name and telephone number for claims submission, processing and other assistance clearly labeled as “Help Desk” or “Pharmacy Service,” except that this information may be excluded from the card if the name and telephone number is provided electronically in a readable manner to the pharmacy computer at the time of claims processing and submission.

Notwithstanding the foregoing, nothing in this rule shall be interpreted to preclude the inclusion of additional data elements and information.

78.3(2) If the card or other technology is issued by the provider of third-party payment or prepayment of prescription drug expenses, the provider shall be responsible for issuing the card or other technology in compliance with these rules.

78.3(3) If the card or other technology is not issued by the provider of third-party payment or prepayment of prescription drug expenses and the card or other technology is issued by an administrator, pharmacy benefit manager, or other entity, the provider and entity shall enter into an agreement as to whether the provider or entity shall be responsible for compliance with these rules.

78.3(4) For new insureds, enrollees, or otherwise covered individuals, the provider, administrator, pharmacy benefit manager, or other entity responsible for issuing cards or other technology in compliance with these rules shall issue the cards or other technology no later than 30 days after the insured, enrollee, or covered individual becomes eligible for prescription drug benefits.

78.3(5) The provider, administrator, pharmacy benefit manager, or other entity responsible for issuing cards or other technology shall reissue cards in compliance with these rules at least once per year if the material information required on the cards or other technology under these rules changes. Nothing in these rules shall prevent such entities from issuing cards or other technology more than once per year.

78.3(6) The data elements and information required on the cards or other technology pursuant to these rules shall be printed in a clear and readable form.

78.3(7) Nothing in this rule shall prohibit the provider, administrator, pharmacy benefit manager or any other entity required to comply with these rules from issuing a card or other technology containing a magnetic strip or other technological component or device enabling the electronic transmission of information for prescription claims submission, processing, or adjudication, provided that the information required by these rules is printed on the card or other technology in a clear and readable form.

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These rules are intended to implement Iowa Code chapter 514L.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/17/03.

ARC 2771B

LOTTERY AUTHORITY, IOWA[531]

Adopted and Filed Emergency

Pursuant to the authority of 2003 Iowa Acts, Senate File 453, section 9, subsection 3, the Iowa Lottery Authority hereby rescinds 705—Chapters 1 to 8, 11, 13 and 14 and adopts Chapter 1, “General Operation of the Lottery,” Chapter 2, “Purchasing,” Chapter 3, “Procedure for Rule Making,” Chapter 4, “Waiver and Variance Rules,” Chapter 5, “Contested Cases,” Chapter 6, “Declaratory Orders,” Chapter 11, “Prizes,” Chapter 12, “Licensing,” Chapter 13, “Licensed Retailers,” Chapter 14, “Monitor Vending Machine Licensing,” Chapter 18, “Scratch Ticket General Rules,” Chapter 19, “Pull-Tab General Rules,” and Chapter 20, “Computerized Games—General Rules,” Iowa Administrative Code.

These rules are necessary as a result of major statutory changes to the way the Iowa Lottery operates. Prior to July 1, 2003, the Iowa Lottery was a division of the Department of Revenue and Finance. On July 1, 2003, the Lottery Division of the Department of Revenue and Finance became the Iowa Lottery Authority, an autonomous instrumentality of the state of Iowa, no longer connected to an executive branch department. Because of the organizational change, the Lottery's former administrative rules are rescinded and new rules are adopted.

In compliance with Iowa Code section 17A.4(2), the Iowa Lottery Authority finds that notice and public participation are impracticable because of the immediate need for rule changes needed to implement the provisions of 2003 Iowa Acts, Senate File 453, Division XVIII.

The Iowa Lottery Authority also finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of these rules should be waived and that these rules should be made effective upon filing with the Administrative Rules Coordinator on August 28, 2003, because they confer a benefit on the public by eliminating confusion that could arise as a result of the Iowa Lottery Authority's not having rules in place that reference its new statute and instead only having rules of the Lottery Division of the Department of Revenue and Finance that reference Iowa Code chapter 99E, which has been repealed by the legislature.

The Iowa Lottery Authority Board adopted these rules on August 22, 2003.

These rules are also published herein under Notice of Intended Action as **ARC 2770B** to allow for public comment. This emergency filing permits the Iowa Lottery Authority to implement the new provisions of 2003 Iowa Acts, Senate File 453, Division XVIII.

These rules are intended to implement Iowa Code section 17A.3(1)“a” and 2003 Iowa Acts, Senate File 453, Division XVIII.

These rules became effective August 28, 2003.

The following amendments are adopted.

ITEM 1. Rescind **705—Chapters 1 to 8, 11, 13 and 14.**

ITEM 2. Adopt the following **new** chapters:

CHAPTER 1

GENERAL OPERATION OF THE LOTTERY

531—1.1(17A) Purpose. The Iowa lottery authority was established by 2003 Iowa Acts, Senate File 453, Division XVIII, to operate the state lottery.

This rule is intended to implement Iowa Code section 17A.3(1).

531—1.2(17A) Organization. The lottery is administered by the lottery authority board. The lottery is directed and supervised by the chief executive officer of the lottery. The lottery authority board has rule-making authority for the lottery.

This rule is intended to implement Iowa Code section 17A.3(1).

531—1.3(17A) Location. Lottery headquarters is located at 2015 Grand Avenue, Des Moines, Iowa 50312-4999. The lottery has regional offices located throughout the state offering some of the services available at the headquarters office. Information regarding lottery headquarters and regional offices can be obtained on the lottery Web site, www.ialottery.com, on point-of-sale game-play publications, and by contacting the lottery headquarters. The lottery authority board may be contacted through lottery headquarters. Office hours at all offices are 8 a.m. to 4:30 p.m., Monday through Friday. Prize redemption operations close at 4 p.m.

This rule is intended to implement Iowa Code section 17A.3(1).

531—1.4(17A) Board meetings. The lottery authority board shall meet at least quarterly and may meet more often if necessary. The chief executive officer, the chairperson of the board, or a majority of the board may call a special board meeting. Board meetings are generally held at lottery headquarters at 2015 Grand Avenue, Des Moines, Iowa 50312. Board meetings may be held by teleconference.

This rule is intended to implement Iowa Code section 17A.3(1)“a.”

531—1.5(17A,22,80GA,SF453) Public records and fair information practices.

1.5(1) In general, the business records of the lottery shall be public to the extent described in Iowa Code chapter 22. However, under 2003 Iowa Acts, Senate File 453, section 87, the following records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information:

a. Marketing plans, research data, and proprietary intellectual property owned or held by the lottery under contractual agreements.

b. Personnel, vendor, and player social security or tax identification numbers.

c. Computer system hardware, software, functional and system specifications, and game play data files.

d. Security records pertaining to investigations and intelligence-sharing information between lottery security officers and those of other lotteries and law enforcement agencies, the security portions or segments of lottery requests for proposals, proposals by vendors to conduct lottery operations, and records of the security division of the lottery pertaining to game security data, ticket validation tests, and processes.

e. Player name and address lists, provided that the names and addresses of prize winners shall not be withheld.

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f. Operational security measures, systems, or procedures and building plans.

g. Security reports and other information concerning bids or other contractual data, the disclosure of which would impair the efforts of the lottery to contract for goods or services on favorable terms.

h. Information that is otherwise confidential obtained pursuant to investigations.

1.5(2) Records, documents, and information in the possession of the lottery received pursuant to an intelligence-sharing, reciprocal use, or restricted use agreement entered into by the lottery with a federal department or agency, any law enforcement agency, or the lottery regulation or gaming enforcement agency of any jurisdiction shall be considered investigative records of a law enforcement agency not subject to Iowa Code chapter 22 and shall not be released under any condition without the permission of the person or agency providing the record or information. Additionally, the results of background investigations conducted pursuant to 2003 Iowa Acts, Senate File 453, section 72(8), shall not be considered public records.

1.5(3) The lottery shall maintain and make available for public inspection at its offices during regular business hours a detailed listing of the estimated number of prizes of each particular denomination that are expected to be awarded in any game that is on sale or the estimated odds of winning the prizes and, after the end of the claim period, shall maintain and make available a listing of the total number of tickets or shares sold in a game and the number of prizes of each denomination that were awarded.

1.5(4) Notwithstanding any statutory confidentiality provision, the lottery may share information with the child support recovery unit through manual or automated means for the sole purpose of identifying licensees or applicants subject to enforcement under Iowa Code chapter 252J or 598.

1.5(5) Copies of public lottery business records may be obtained upon a written request made to the Iowa Lottery Authority, 2015 Grand Avenue, Des Moines, Iowa 50312-4999. The lottery may charge reasonable fees, including staff research and copying time, for the processing of any public records production requests.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 72(8), 87, and 94, Iowa Code sections 22.11 and 252J.2 and Iowa Code chapter 598.

531—1.6(80GA,SF453) Specific game rules. Specific game rules as authorized in 2003 Iowa Acts, Senate File 453, section 71(4), shall be made available by the lottery as necessary for the efficient conduct of specific lottery games. These rules may include, but are not limited to, descriptions of specific games, special promotions, and drawing procedures. Specific game rules shall be provided to board members as soon as is practical following issuance by the lottery. The promulgation of specific game rules is not subject to the requirements of Iowa Code chapter 17A.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, section 71(4).

531—1.7(80GA,SF453) Lottery contracting authority. The chief executive officer shall enter into contracts necessary for day-to-day operations, including without limitation, contracts for accounting services, security services, annuity purchases, equipment and production, communications, auditing services, legal services, space planning, and remodeling. The chief executive officer may enter into these contracts without presenting these contracts to the board for approval or ratification. Contracts for consulting services that are ex-

pected to cost in excess of \$25,000 and all contracts for major procurements as defined in 2003 Iowa Acts, Senate File 453, section 65(8), must be ratified by the board in order to be binding on the lottery.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 69, 71(2), and 74.

531—1.8(80GA,SF453) Location of ticket sales by retailers. Tickets may be sold on premises specified on a lottery license. Tickets may be sold on premises where alcoholic beverages, beer, or wine are sold or served pursuant to Iowa Code chapter 123. Tickets may not be sold by a retailer through the mail or by any technological means except as the lottery may provide or authorize.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, section 83.

531—1.9(80GA,SF453) Distribution of tickets by lottery authority. The lottery itself may sell lottery tickets. Ticket sales may be made by the lottery at any location or event deemed appropriate by the lottery. The lottery may distribute lottery tickets or shares for promotional purposes.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 74 and 83.

531—1.10(80GA,SF453) Ticket purchase restrictions. Tickets shall not be purchased by those persons designated in 2003 Iowa Acts, Senate File 453, section 84(2g,h), or by the assistant attorney general assigned to the lottery. The lottery may restrict the purchase of tickets by lottery contractors through contractual provisions if the lottery determines that restrictions are appropriate.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 64(3) and 84(2).

531—1.11(80GA,SF453) Employee incentive programs. The lottery may design lottery employee incentive programs intended to increase lottery revenues. All employee incentive programs shall be approved by the board before implementation.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, section 72(5).

531—1.12(80GA,SF453) Advertising. Advertising for lottery games may include but is not limited to print advertisements, Internet, radio and television advertisements, billboards, and point of purchase display materials. Promotional and advertising items may be produced and distributed to the public, vendors, and retailers.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 64, 69, and 74.

531—1.13(80GA,SF453) Promotional agreements with businesses. The chief executive officer may enter into agreements with business entities for the purpose of promoting any lottery game. Promotional agreements may require a business entity to fund or provide prizes or advertising.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 64, 69, and 74.

531—1.14(80GA,SF453) Agreements for the sale of advertising. The lottery may enter into agreements with other units of state government or with individuals, corporations, or other entities outside of state government for the purpose of selling advertising space on such items as lottery tickets or equipment and in lottery publications or promotional materials. The lottery may also enter into such agreements to sell lottery tickets or merchandise marked with the lottery logo.

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This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 64, 69, 71, and 74.

531—1.15 to 1.27 Reserved.

531—1.28(80GA,SF453) Promotional use of tickets by persons without lottery licenses. Other than the lottery, no person, business, or other organization may sell lottery tickets unless licensed by the lottery. Tickets may, however, be given away for promotional purposes. Tickets may be given away for promotional purposes in conjunction with the required purchase of a product or service or an admission fee without violating this provision provided that the actual cost of the product or service or admission fee is not calculated to include the ticket price, and the promotion is not designed, intended, or conducted to circumvent the lottery's licensing requirements.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71, 78, and 83.

531—1.29(80GA,SF453) Employee background investigation. The lottery shall require a background investigation by the department of public safety division of criminal investigation in connection with the employment of lottery personnel. Background investigations to be conducted are as follows:

1.29(1) Standard background investigations. The lottery may require a standard division of criminal investigation background investigation of any prospective lottery employee, consisting of a state criminal history background check, work history, and financial review.

1.29(2) Sensitive position background investigations. The board shall identify those sensitive positions that require full background investigations. Such positions shall include, at a minimum, any officer of the lottery, and any employee with operational management responsibilities, security duties, or system maintenance or programming responsibilities related to the lottery's data processing or network hardware, software, communication, or related systems. In addition to a work history and financial review, a full background investigation may include a national criminal history record check through the Federal Bureau of Investigation. The screening of employees through the Federal Bureau of Investigation shall be conducted by submission of fingerprints through the state criminal history record repository to the Federal Bureau of Investigation.

1.29(3) Alternative sources for investigations. In lieu of a division of criminal investigation standard or full background investigation, or any component thereof, the chief executive officer, at the chief executive officer's discretion and in cooperation with the division of criminal investigation, may accept a report furnished by the division of criminal investigation based on information furnished by authorities in another state of a recent, comparable investigation conducted by said authorities communicated between law enforcement agencies, which may be updated with any information reflecting changes during the interim between the Iowa and the earlier investigations.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3) and 72.

CHAPTER 2
PURCHASING

531—2.1(80GA,SF453) Applicability of competitive bidding. All "major procurements" shall be obtained as a result of competitive bidding. Major procurements include consulting agreements and the major procurement contract with a

business organization for the printing of tickets or for the purchase or lease of equipment or services essential to the operation of a lottery game.

Items, including goods or services, other than major procurements, that are expected to cost in the aggregate in excess of \$2500 will be obtained as a result of a formal or informal competitive bidding process conducted by the lottery or through the department of administrative services whenever such procurement is in the best interests of the lottery. Items other than major procurements expected to cost less than \$2500 in the aggregate may be obtained in any manner deemed appropriate by the lottery.

The lottery may exempt an item from competitive bidding if the item is noncompetitive or is purchased in quantities too small to be effectively purchased through competitive bidding; if there is an immediate or emergency need for the item; if the purchase of the item facilitates compliance with set-aside procurement provisions; or if the lottery determines that its best interests will be served by exemption from the bidding process and the item to be purchased is not a major procurement.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 69, 71, 74, and 76.

531—2.2(80GA,SF453) Methods of obtaining bids or proposals used by the lottery. Formal or informal bids or proposals are to be obtained by one of the following methods. If more than one method is applicable to the purchase of a particular item, the lottery shall choose the method of bidding to be utilized.

2.2(1) Formal bids may be required for any item if cost is the major criterion for selection. If cost is the major criterion for selection, formal bids shall be required for all items costing in the aggregate more than \$5000.

The lottery shall prepare a written invitation-to-bid document and shall send it via the United States Postal Service or electronic mail to selected vendors in the business of providing the goods or services sought by the lottery. Goods or services may also be obtained by the lottery using reverse auction methods via the lottery's Internet Web site.

The invitation to bid shall contain the due date and time of the bid opening, a complete description of the item needed, and any other necessary or proper items.

Formal bids, other than major procurement sealed bids, received prior to the submission deadline set in the bidding document shall be made available to any interested party on the date and hour designated on the bid form. As the bids are opened they will be tabulated, and the results of the tabulation shall be made available to any interested party. The original bids and the tabulations will be maintained at the lottery for one year following the date on which the bids were opened.

An award shall be made within 60 calendar days from the date of the bid opening unless a different time frame is stated by the lottery in the invitation to bid or subsequently agreed to by the vendors. The price quoted by the vendors shall remain binding throughout the applicable time period. If an award is not made within the applicable time frame, all bids shall be deemed rejected.

2.2(2) Informal bids may be required for any item if cost is the major criterion for selection and if the item is expected to cost in the aggregate more than \$2500 but less than \$5000. Informal bids may be obtained by the lottery through use of a written bid form, over the telephone, via facsimile transmission, or in electronic format, including over the Internet or through electronic mail. When requesting informal bids, the lottery shall contact selected vendors supplying the goods or

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services sought by the lottery and shall communicate to each vendor the date on which bids must be received, a complete description of the item to be purchased, and the time period during which the bid must remain valid. Goods or services may also be obtained by the lottery using reverse auction methods via the lottery's Internet Web site.

Written informal bids shall be opened as received and informal telephone, facsimile, or electronic bids shall be recorded as received. If a bid is received over the telephone, a telephone bid form shall be used to record the bid received. If an electronic bid is received, a screen print shall be used to record the bid received. Following the submission deadline, the lottery shall tabulate the bids received and make the award. The bids and the tabulations shall be available to interested parties after the submission deadline and shall be maintained by the lottery for one year following the submission deadline.

If an award is not made within the time frame indicated by the lottery when requesting bids, all bids shall be deemed rejected.

2.2(3) Whenever a requirement exists for an item or a major procurement and cost may not be the sole criterion for selection, the lottery may issue a request for proposals. The purpose of a request for proposals is to provide the vendor with sufficient information about the lottery's requirements and goals to allow the vendor to propose a solution to the lottery's requirements.

The lottery shall prepare a written request for proposals and shall send the proposal via the United States Postal Service or electronic mail to selected vendors in the business of supplying the goods or services sought by the lottery.

The lottery requires that bids submitted in response to a request for proposals in a major procurement for award of a contract for the printing of tickets or for the purchase or lease of equipment or services essential to the operation of a lottery game be submitted as sealed bids. The contents of sealed bids shall be made available to any interested party at the time designated in the request for proposals. A bidder shall identify with clear markings the pages, sections, or documents submitted as part of a proposal package that the bidder claims are exempt from disclosure because they contain sensitive business or trade secret information.

To ensure the fairness and integrity of the evaluation process, the lottery may elect to evaluate and score any of the technical, financial, security, and marketing components of major procurement sealed bid proposals prior to opening and integrating the scoring of the pricing component. When scoring has been completed, the evaluation team shall prepare a recommendation report for an award and, if applicable, for rejection of any or all proposals under consideration. The recommendation report shall be submitted to the chief executive officer and the lottery board for such action as the chief executive officer and board may deem appropriate. The report shall be made available to any interested person immediately upon transmittal to the chief executive officer and the board. Prior to making an award, the board and chief executive officer shall receive and consider the results of a background investigation conducted by the department of public safety division of criminal investigation.

An award shall be made within 60 calendar days from the date of the proposal opening unless a different time frame is stated by the lottery in the request for proposal or subsequently agreed to by the vendors. The terms quoted by the vendor shall remain binding throughout the applicable time frame. If an award is not made within the applicable time frame, all proposals shall be deemed rejected and not binding.

At a minimum, a request for proposals shall address the following criteria: the need for a proposal conference; the purpose and background of the request; important dates in the proposal and the award process including the submission deadline; administrative requirements for submitting the proposal and the format required by the lottery; the scope of the work to be performed and any specific requirements which the vendor must meet; and any contractual terms and conditions which the lottery anticipates may affect the terms of the vendor's proposal.

This rule is intended to implement Iowa Code section 72.3 and 2003 Iowa Acts, Senate File 453, sections 69, 71, 74, and 76.

531—2.3(80GA,SF453) Items purchased through the department of administrative services. Goods and services may be obtained by the lottery through the department of administrative services whenever procurement through administrative services is in the best interests of the lottery. Items procured through administrative services may be obtained by administrative services in any manner deemed appropriate by administrative services.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 69, 71, 74, and 76.

531—2.4(80GA,SF453) Advertising solicitations. Formal bids and requests for proposals issued by the lottery shall be advertised in a daily paper in Iowa. The advertisement shall indicate that it is a notice to prospective bidders, contain the bid due date and time of opening, describe the items to be purchased, and provide the name, address and telephone number of the person to be contacted to obtain official bidding documents.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 69, 71, 74, and 76.

531—2.5(80GA,SF453) Contract purchases. The lottery may enter into contract purchase agreements for items, groups of items, or services. Contract purchase agreements are subject to the competitive bidding requirements previously outlined where applicable.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 69, 71, 74, and 76.

531—2.6(80GA,SF453) Blanket purchase agreements. If the lottery foresees a requirement for frequent purchases of off-the-shelf items, the lottery may establish blanket purchase agreements. A blanket purchase agreement is a formally approved charge account that is designed to reduce paperwork and the number of checks issued. Blanket purchase agreements are subject to the competitive bidding requirements previously outlined where applicable.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 69, 71, 74, and 76.

531—2.7(80GA,SF453) Prospective vendor selection.

2.7(1) Any firm or business legally conducting business within Iowa may request placement on the approved vendor list for a particular service or commodity by filing a vendor application form with the lottery. The lottery may mail copies of solicitation documents to vendors on the list for a particular item or to any other vendor that the lottery chooses to contact. A vendor may be refused placement on the list or suspended or permanently removed from the list for any of the following reasons: failure to respond to three consecutive solicitations; failure to deliver within specified delivery dates; failure to deliver in accordance with specifications; attempts to influence the decision of any state employee involved in the procurement process; evidence of agreements

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by the vendor to restrain trade or impede competitive bidding; and any other activities of the vendor which the lottery determines would render the vendor unsuitable.

The lottery shall notify a vendor in writing prior to refusing placement on the list, suspending the vendor from the list, or permanently removing the vendor from the list. The vendor shall be provided a reasonable opportunity to explain and cure any misconduct identified by the lottery. If the lottery ultimately refuses placement on the list or removes the vendor from the list, the vendor may appeal the lottery's action to the lottery board pursuant to the criteria for vendor appeals contained in these rules.

2.7(2) The lottery shall select vendors to receive solicitation documents based on the lottery's knowledge of the vendors in the particular market. The initial vendor selection shall be designed to promote the competitive bidding process, the set-aside procurement programs, and the best interests of the lottery. The lottery shall also provide solicitation documents to qualified vendors upon request when the request is made during the solicitation period. The vendor is solely responsible for ensuring that solicitation documents are received by the vendor.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 69, 71, 74, and 76.

531—2.8(80GA,SF453) Bids and proposals to conform with specifications. All bids and proposals must conform to the specifications indicated by the lottery. Bids and proposals that do not conform to the specifications stated may be rejected. The lottery reserves the right to waive deficiencies in the bids or proposals if in the judgment of the lottery its best interests would be served by the waiver.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 69, 71, 74, and 76.

531—2.9(80GA,SF453) Time of delivery. When evaluating bids or proposals the lottery may consider the time of delivery when determining the successful vendor.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 69, 71, 74, and 76.

531—2.10(80GA,SF453) Cash discounts. When evaluating bids or proposals the lottery may consider cash discounts.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 69, 71, 74, and 76.

531—2.11(80GA,SF453) Tie bids. The lottery shall resolve ties among bids or proposals which are equal in all respects by drawing lots unless only one of the tied bidders is an Iowa business. If only one of the bidders tied for an award is an Iowa business, the Iowa business shall be given preference over all tied out-of-state businesses.

If it is necessary to draw lots, the drawing shall be held in the presence of the vendors who submitted the tied bids or proposals whenever practical. If the tied vendors are not present, the drawing shall be held in front of at least two persons, and the lottery shall document the drawing.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 69, 71, 74, and 76.

531—2.12(80GA,SF453) Time of submission. All formal bids and proposals shall be submitted by the vendor in sufficient time to actually reach the lottery prior to the submission deadline specified in the bid document. All informal bids shall be submitted by the vendor in time to reach the lottery prior to the submission deadline indicated by the lottery. Formal bids and proposals shall be marked by the lottery with the date and time received by the lottery. Formal bids and proposals received after the submission deadline shall be returned to

the vendor unopened. All vendors to whom invitations to bid or requests for proposals are sent shall be notified of any changes in submission deadline.

If a formal bid or request for proposals is canceled prior to the submission deadline, any responses already received shall be returned unopened. If an informal bid is canceled prior to the submission deadline, any bids already received shall be destroyed.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 69, 71, 74, and 76.

531—2.13(80GA,SF453) Modification or withdrawal of bids. Bids or proposals may be modified or withdrawn prior to the time and date set for the bid or proposal opening. Modifications or withdrawals shall be in writing and delivered in a sealed envelope that properly identifies the correct bid or proposal to be modified or withdrawn. A bid or proposal may be withdrawn after opening only with the approval of the lottery if the lottery finds that an honest error was made by the vendor that will cause undue financial hardship to the vendor and that will not cause undue financial hardship or inconvenience to the lottery.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 69, 71, 74, and 76.

531—2.14(80GA,SF453) Financial security. The lottery may require bid security, litigation security, and performance security on formal bids or proposals. When required, security may be by certified check, certificate of deposit, letter of credit made payable to the lottery, or any other form specified by the lottery.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 69, 71, and 74 to 76.

531—2.15(80GA,SF453) Rejection of bids and proposals. The lottery reserves the right to reject any or all bids or proposals. Bids and proposals may be rejected because of faulty specifications, abandonment of the project, insufficient funds, evidence of unfair or flawed bidding procedures, failure of a vendor to meet the lottery's requirements, or for any other reason if the lottery determines that its best interests will be served by rejecting any or all bids. Following the rejection of bids, new bids may be requested by the lottery at any time deemed convenient by the lottery.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 69, 71, 74, and 76.

531—2.16(80GA,SF453) Background and informational statements.

2.16(1) Criminal history and background checks.

a. All bidders for major procurements, as defined in 2003 Iowa Acts, Senate File 453, section 65, and any other bidders that the chief executive officer, in the chief executive officer's sole discretion, may require (hereinafter "bidder") shall submit to lottery business entity criminal history checks and background investigations (hereinafter "bidder investigations") as conditions for submission of a bid.

b. Bidders for major procurements shall be required to describe their organizational structure, identify key personnel, and subject key personnel to lottery bidder key personnel investigations.

c. Bidders that are not bidders for major procurements may be required to describe their organizational structure, identify key personnel, and subject key personnel to lottery bidder key personnel investigations.

d. For all bidders, any change in key personnel during the bidding process or during the contract term must be re-

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ported to the lottery authority before the change occurs. Replacement personnel will be subject to investigation.

e. If, during the course of any investigation, it is determined that either a bidder for a major procurement or any persons employed by or associated with a bidder for a major procurement who are the subjects of key personnel investigations in accordance with subrule 2.16(3) have been convicted of any state or federal felony related to the security or integrity of the lottery in Iowa or any other jurisdiction, the bidder will be automatically disqualified from the selection process without further investigation.

2.16(2) Bidder investigations.

a. General provisions. The Iowa lottery major procurement business entity background investigation form (Class L form) must be completed for each bid submitted in response to a lottery major procurement solicitation.

The Class L form shall be posted on the lottery's Web site and is intended to serve both as a vehicle for collection of information pertaining to bidders and as an overview of the scope of the bidder investigations to be conducted.

The department of public safety division of criminal investigation shall utilize the information provided in the Class L form as the basis for developing the initial scope of the bidder investigation and due diligence to be conducted with respect to a bidder. Should the division of criminal investigation desire to pursue avenues of inquiry beyond the parameters of the information requested by and furnished in the Class L form, the division of criminal investigation shall consult with the lottery chief executive officer, or the chief executive officer's designee, who shall determine the scope and extent of any further investigation to be pursued.

b. Class L form requirements. The Class L form shall solicit the following information:

(1) The names, addresses, and telephone numbers of all persons who gathered information and prepared the Class L form on behalf of the bidder; the name, address and type of business entity on whose behalf the Class L form is furnished; and the name and telephone number of a contact person for purposes of the procurement.

(2) The location of the bidder's business records; the state and date of incorporation or establishment of the bidder; the federal and state employer identification numbers of the bidder; the names and addresses of any parent companies, subsidiaries, or affiliates of the bidder; whether the bidder's stock is publicly or closely held; and a copy of the articles of incorporation or charter, bylaws, organizational chart, corporate certificate, or partnership agreement of the bidder, as may be applicable.

(3) The following information for each corporate officer and director and, if not a publicly held corporation, each partner (general or limited) or stockholder holding 5 percent or more of the outstanding stock of the bidder: name; positions held; business and residence addresses and telephone numbers; date of birth; social security number; percentage of stock held; amount of compensation received from the bidder in excess of \$10,000, including but not limited to salary or wages, director's fees, and stock options and dividends; and designation as to whether the named person will be empowered with signature authority to legally bind the bidder in the context of the procurement process with respect to which the disclosure of information is furnished.

(4) The identity of any other persons not named in subparagraph (3) above who will be empowered with signature authority to legally bind the bidder in the context of the procurement process with respect to which the disclosure of information is furnished.

(5) If the bidder is a publicly held corporation, a copy of the bidder's most recent annual report.

(6) The name and address of each officer, director, partner or stockholder actively involved in the conduct of the day-to-day operation of the bidder.

(7) The name and address of the internal certified public accountant employed by the bidder and the name, address, and telephone number of the external certified public accountant employed by the bidder.

(8) A list of all criminal proceedings and civil proceedings predicated in whole or part on alleged criminal activity involving the bidder during the ten-year period immediately preceding the submission date of the Class L form.

(9) Whether the bidder or any subsidiary, parent, intermediary, holding company or related corporation of the bidder is or has been the subject of a criminal or grand jury investigation, or has been indicted, convicted, or arrested for any criminal offense within the last seven years. An explanation of any such occurrence shall be furnished and shall include the dates of the occurrences, any governmental agencies involved, and descriptions of the nature and the dispositions of the investigations, indictments, convictions, or arrests.

(10) Whether any officer or director of the bidder or any subsidiary, parent, intermediary, holding company or related corporation of the bidder is or has ever been the subject of a criminal or grand jury investigation, or has been indicted, convicted, or arrested for any criminal offense. An explanation of any such occurrences shall be furnished and shall include the dates of the occurrences, any governmental agencies involved, and descriptions of the nature and the dispositions of the investigations, indictments, convictions, or arrests.

(11) A list of any proceedings within the last five years involving allegations against the bidder or its officers or directors of antitrust violations, trade regulation violations, security judgments, and insolvency proceedings.

(12) A list of any license denials, suspensions, or revocations within the last seven years involving any officers or directors of the bidder.

(13) Whether the bidder has sustained a loss within the last ten years in which an insurance payment of \$50,000 or more was received; if so, a detailed explanation listing the nature, date and disposition of the incident and the name and address of the insurance company that made the settlement.

(14) Whether the bidder sustained a loss by fire in which arson was suspected within the past ten years; if so, a detailed explanation listing circumstances surrounding the fire and the name and address of the investigating agency should also be included.

(15) A list of any application to or any permit, license, certificate or qualification from a licensing agency in Iowa or any other state or other jurisdiction in connection with any gambling venture in which the bidder or any subsidiary, parent, intermediary, holding company, or related corporation of the bidder has been involved. The list should include the date of application; the name and address of the licensing agency; the type and number of the license; and the disposition (approval, rejection, or withdrawal) of any such application. For purposes of this paragraph, "gambling venture" means all types of racing and gaming activities, including but not limited to dog track, horse track, greyhound racing, horse racing, lottery, casino, and pari-mutuel operations.

(16) Whether the bidder has ever petitioned for or declared bankruptcy or insolvency within the last seven years; if so, the filing date, docket number, and name and address of the court in which the petition or declaration was filed, and

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the name and address of the filing party and of the trustee should also be included.

(17) Copies of any audited financial statements and auditors' reports for the bidder and any subsidiaries for each entity's last fiscal year or, if the entity does not normally have its financial statements audited, copies of unaudited financial statements for the last two fiscal years.

(18) A list of all holding companies, business organizations, other business entities, or individuals that hold any financial interest of 5 percent or more in the bidder. This list shall describe the nature, type, terms, covenants, and priorities of any outstanding bonds, loans, mortgages, trust deeds, notes, debentures, or other forms of indebtedness issued or executed, which mature more than one year from the date of issuance.

(19) A list and copies of all notes and mortgages or other instruments of outstanding long-term debt of the bidder, with the name and address of the entity owed and the amount and purpose of each such mortgage or debt.

(20) A list of all dormant or shell company names used or owned by the bidder within the past ten years.

(21) A list of any financial or ownership interest in any gambling venture in any jurisdiction that the bidder and any parent or subsidiary owns or holds and a description of the nature and the percentage of each interest owned or held. For purposes of this paragraph, "gambling venture" means all types of racing and gaming activities, including but not limited to dog track, horse track, greyhound racing, horse racing, lottery, casino and pari-mutuel operations.

(22) A list of all political contributions made by or on behalf of the bidder and any parent or subsidiary to any candidate for any office or position in any jurisdiction in the state of Iowa during the last two years. The list should include the candidate's name, the office or position for which the candidate is or was running, and the amount and date of the contribution.

(23) A list of all Iowa lobbyists and political consultants utilized by the bidder and any parent or subsidiary of the bidder, the names of individuals employed by the bidder and any parent or subsidiary who act as liaisons with the lobbyists or political consultants, and descriptions of fee arrangements made with the lobbyists or political consultants. Also included should be a statement identifying any cash fund established with respect to an Iowa lobbyist or political consultant, any pledge of any items of monetary value to a lobbyist or political consultant as a reward for obtaining commission approval of a contract, and any cash transferred in any manner to an attorney's trust account for dispersal to an Iowa lobbyist or political consultant.

(24) An organizational chart of the bidder showing its relationship to existing parent, subsidiary, and affiliated companies.

(25) A list of all persons or business entities with which the bidder has contracts or agreements worth \$1 million or more that exceed one year in duration.

(26) Authorization, in any form or forms approved by the division of criminal investigation and executed by a competent signatory of the bidder, for a review, full disclosure, and release of any and all records concerning the bidder, including but not limited to verification of filing and outstanding balance status of federal income tax returns.

2.16(3) Bidder key personnel investigations.

a. General provisions. The chief executive officer may require a full lottery Class L-1 department of public safety division of criminal investigation background investigation for any person identified as an officer, director, trustee, partner,

sole proprietor, employee or other person by the lottery or the division of criminal investigation as a key person in a sensitive position or relationship with a bidder in a major procurement, as defined in rule 2.1(80GA,SF453).

The lottery Class L-1 form shall be posted on the lottery's Web site, and is intended to serve as a vehicle for collection of background information and as an overview of the scope of the background investigations to be conducted.

The division of criminal investigation shall utilize the information provided in the lottery Class L-1 form as the basis for developing the initial scope of the key personnel investigation and due diligence to be conducted. Should the division of criminal investigation desire to pursue avenues of inquiry beyond the parameters of the information requested by and furnished in the lottery Class L-1 form, the division of criminal investigation shall consult with the chief executive officer, or the chief executive officer's designee, who shall determine the scope and extent of any further investigation to be pursued.

b. Class L-1 form requirements. The lottery Class L-1 form shall solicit the following information about key personnel selected to be investigated (hereinafter "subject"):

(1) The subject's name, business and residence addresses and telephone numbers, date and place of birth, social security number, height, weight, eye color, sex, and any past or present aliases used.

(2) The name and address of the subject's present employer, the subject's job title and a summary of duties, and the subject's supervisor.

(3) The subject's citizenship or alien residence status.

(4) A ten-year residential history of the subject, including addresses, dates, ownership or rental status, and landlord's or mortgage holder's name(s), address(es), and telephone number(s).

(5) The subject's marital status and, if applicable, the subject's spouse's full name, including maiden (if applicable), business and residence addresses and telephone numbers, date and place of birth, occupation, and the name and address of the spouse's present employer.

(6) Whether the subject has been divorced, legally separated, or had a marriage annulled and, if applicable, the name, birth date, and current address, if known, of the subject's spouse or former spouse, the date and place of any applicable judicial order, and the nature of the action.

(7) The full names, including maiden (if applicable), dates of birth, and addresses of all the subject's children, including stepchildren and adopted children.

(8) The full names, including maiden (if applicable), dates of birth, most recent occupations, or retired status (if appropriate), and addresses of all parents, parents-in-law, legal guardians, and siblings of the subject. If any such person is deceased, that person's date of death, last address, and last occupation should also be given.

(9) The subject's educational background, including the names, types, and locations of any schools attended, dates of attendance, and graduation status, certificates, or degrees obtained. For purposes of this paragraph, "schools" includes all secondary, postsecondary, graduate, and professional educational institutions.

(10) If applicable, information regarding the subject's military service, including dates of service, type of discharge, and details of any court-martial proceedings in which the subject was involved.

(11) A list of all political contributions made by or on behalf of the subject to any candidate for any office or position in any jurisdiction in the state of Iowa during the last two

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years. Such list should include the candidate's name, the office or position for which the candidate ran or is running, and the amount and date of the contribution.

(12) The state, license number, date of expiration, and name and address shown on the subject's current driver's license.

(13) A list of three personal references, including a name, address, and telephone number for each reference as well as a brief statement describing the relationship between the subject and each reference and how long the subject has been acquainted with each reference.

(14) A summary of the subject's employment record for the last ten years, including names, addresses, and telephone numbers of prior employers, dates of employment, and positions held.

(15) A list of personal litigation during the last ten years other than divorce, legal separation, or annulment proceedings to which the subject has been a party.

(16) A list of any litigation within the past ten years wherein a business entity owned by the subject, or in which the subject held an ownership interest or served as an officer or director, was a defendant and in which the defendant's conduct was allegedly criminal.

(17) A description of any known criminal investigations and dispositions thereof regarding the subject or any business entity in which the subject holds or has held an ownership interest of 5 percent or more. The description should include the name and address of the investigating agency, the nature of the investigation, and the approximate dates on which the investigation commenced and concluded.

(18) A list of any arrest, indictment, charge or conviction, or any naming as an unindicted party or coconspirator in a criminal offense involving the subject or any of the following family members of the subject: children, including stepchildren and adopted children; parents; parents-in-law; legal guardians; or siblings. The list should include the name of the family member (if applicable); the nature of the charge, conviction or proceeding; the name and address of the governmental agency or court involved; and the disposition.

(19) A list of any pardon for any criminal offense in Iowa or any other jurisdiction pertaining to the subject or any of the following family members of the subject: children, including stepchildren and adopted children; parents; parents-in-law; legal guardians; or siblings. This list should include the name of the family member (if applicable), the offense, the reason for and date of the pardon, and the name and address of the pardoning authority.

(20) A list of any personal or business loss within the past ten years involving an insurance payment of more than \$10,000.

(21) A list of and explanation regarding any personal or business property owned by the subject that was destroyed by fire or an explosion.

(22) A list of any application to and any permit, license, certificate, or qualification from a licensing agency in Iowa or any other state or other jurisdiction in connection with any gambling venture in which the subject is or has been involved. The list should include the date of application, the name and address of the licensing agency, the type and number of licenses, and the disposition (approval, rejection or withdrawal) of any such application, together with a description of any financial or ownership interest in any such gambling venture. For purposes of this paragraph, "gambling venture" means all types of racing and gaming activities, including but not limited to dog track, horse track, greyhound racing, horse racing, lottery, casino and pari-mutuel operations.

(23) A description of the extent of involvement, if any, the subject has or anticipates having in participation in the management or operation of the bidder.

(24) Information regarding the filing and status of state and federal income tax returns for the previous three years. Copies of said returns should also be included.

(25) A statement regarding any financial or ownership interest of 5 percent or more that the subject has or had in any active or dormant companies and any failed or abandoned business projects in which the subject was invested in 5 percent or more of the business project or was a significant planner, to the extent that such interest or interests are within the scope of a gambling venture or with an Iowa lottery vendor.

(26) Such sworn consents and authorizations as may be requested by the division of criminal investigation to gain access to records pertaining to the subject for use in investigating the information furnished by the subject in the lottery Class L-1 form and any derivation thereof, including without limitation the subject's federal and state tax records and any other records, public or private, including confidential and criminal history records.

2.16(4) Alternative sources for business entity investigations. In lieu of a division of criminal investigation lottery business entity investigation or any component thereof, the lottery chief executive officer, at the chief executive officer's discretion and in cooperation with the division of criminal investigation, may accept a report furnished by authorities in another state of a recent, comparable investigation conducted by said authorities communicated between law enforcement agencies, which may be updated with any information reflecting changes during the interim between the Iowa and the earlier investigations.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 69, 71, and 74 to 76.

531—2.17(80GA,SF453) Vendor appeals. Any vendor whose bid or proposal has been timely filed and who is aggrieved by the award of the lottery may appeal the decision by filing a written notice of appeal before the Iowa Lottery Authority Board, 2015 Grand Avenue, Des Moines, Iowa 50312, within three days of the date of the award, exclusive of Saturdays, Sundays, and state legal holidays. The notice of appeal must actually be received at this address within the time frame specified to be considered timely. The notice of appeal shall state the grounds upon which the vendor challenges the lottery's award. Following receipt of a notice of appeal which has been timely filed, the board shall notify the aggrieved vendor and the vendor who received the contract award of the procedures to be followed in the appeal. The board may appoint a designee to proceed with the appeal on its behalf.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 69, 71, 74, and 76.

CHAPTER 3

PROCEDURE FOR RULE MAKING

531—3.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the Iowa lottery authority are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

531—3.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the lottery may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)"a," solicit comments from the public on a subject matter of possible rule making by the lottery by causing no-

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tice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

531—3.3(17A) Public rule-making docket.

3.3(1) Docket maintained. The lottery shall maintain a current public rule-making docket.

3.3(2) Anticipated rule making. The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed “anticipated” from the time a draft of proposed rules is distributed for internal discussion within the lottery. For each anticipated rule-making proceeding the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the board for subsequent proposal under the provisions of Iowa Code section 17A.4(1)“a,” the name and address of agency personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the lottery of that possible rule. The lottery may also include in the docket other subjects upon which public comment is desired.

3.3(3) Pending rule-making proceedings. The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1)“a,” to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule becoming effective. For each rule-making proceeding, the docket shall indicate:

- a. The subject matter of the proposed rule;
- b. A citation to all published notices relating to the proceeding;
- c. Where written submissions on the proposed rule may be inspected;
- d. The time during which written submissions may be made;
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;
- f. Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons, has been filed; whether such an analysis or statement or a fiscal impact statement has been issued; and where any such written request, analysis, or statement may be inspected;
- g. The current status of the proposed rule and any agency determinations with respect thereto;
- h. Any known timetable for agency decisions or other action in the proceeding;
- i. The date of the rule’s adoption;
- j. The date of the rule’s filing, indexing, and publication;
- k. The date on which the rule will become effective; and
- l. Where the rule-making record may be inspected.

531—3.4(17A) Notice of proposed rule making.

3.4(1) Contents. At least 35 days before the adoption of a rule the lottery shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rule;
- b. The specific legal authority for the proposed rule;
- c. Except to the extent impracticable, the text of the proposed rule;
- d. Where, when, and how persons may present their views on the proposed rule; and

e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the lottery shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the lottery for the resolution of each of those issues.

3.4(2) Incorporation by reference. A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 3.12(2) of this chapter.

3.4(3) Copies of notices. Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the lottery a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the lottery shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the lottery for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of six months.

531—3.5(17A) Public participation.

3.5(1) Written comments. For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the Iowa Lottery Authority, 2015 Grand Avenue, Des Moines, Iowa 50312-4999, or the person designated in the Notice of Intended Action.

3.5(2) Oral proceedings. The lottery may, at any time, schedule an oral proceeding on a proposed rule. The lottery shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the lottery by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

- a. A request by one or more individual persons must be signed by each person and include the address and telephone number of each person.
- b. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

c. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

3.5(3) Conduct of oral proceedings.

a. Applicability. This subrule applies only to those oral rule-making proceedings in which an opportunity to make

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oral presentations is authorized or required by Iowa Code section 17A.4(1)“b” or this chapter.

b. **Scheduling and notice.** An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

c. **Presiding officer.** The lottery authority board, a member of the lottery authority board, or another person designated by the lottery authority board who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the lottery authority board does not preside, the presiding officer shall prepare a memorandum for consideration by the board summarizing the contents of the presentations made at the oral proceeding unless the board determines that such a memorandum is unnecessary because the board will personally listen to or read the entire transcript of the oral proceeding.

d. **Conduct of proceeding.** At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the lottery at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the lottery authority board's decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the lottery.

(6) The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by

those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

3.5(4) Additional information. In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the lottery may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

3.5(5) Accessibility. The lottery shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the Iowa Lottery Authority, 2015 Grand Avenue, Des Moines, Iowa 50312-4999, telephone (515)281-7900 in advance to arrange access or other needed services.

531—3.6(17A) Regulatory analysis.

3.6(1) Definition of small business. A “small business” is defined in Iowa Code section 17A.4A(7).

3.6(2) Mailing list. Small businesses or organizations of small businesses may be registered on the lottery's small business impact list by making a written application addressed to the Iowa Lottery Authority, 2015 Grand Avenue, Des Moines, Iowa 50312-4999. The application for registration shall state:

- a. The name of the small business or organization of small businesses;
- b. Its address;
- c. The name of a person authorized to transact business for the applicant;
- d. A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact.
- e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The lottery may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The lottery may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

3.6(3) Time of mailing. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the lottery shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the lottery shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

3.6(4) Qualified requesters for regulatory analysis—economic impact. The lottery shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2a), after a proper request from:

- a. The administrative rules coordinator;

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b. The administrative rules review committee.

3.6(5) Qualified requesters for regulatory analysis—business impact. The lottery shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2b), after a proper request from:

a. The administrative rules review committee;

b. The administrative rules coordinator;

c. At least 25 or more persons who sign the request provided that each represents a different small business;

d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

3.6(6) Time period for analysis. Upon receipt of a timely request for a regulatory analysis the lottery shall adhere to the time lines described in Iowa Code section 17A.4A(4).

3.6(7) Contents of request. A request for a regulatory analysis is made when it is mailed or delivered to the lottery. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A(1).

3.6(8) Contents of concise summary. The contents of the concise summary shall conform to the requirements of Iowa Code section 17A.4A(4,5).

3.6(9) Publication of a concise summary. The lottery shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A(5).

3.6(10) Regulatory analysis contents—rules review committee or rules coordinator. When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2a), unless a written request expressly waives one or more of the items listed in the section.

3.6(11) Regulatory analysis contents—substantial impact on small business. When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2b).

531—3.7(17A,25B) Fiscal impact statement.

3.7(1) A proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

3.7(2) If the lottery determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the lottery shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

531—3.8(17A) Time and manner of rule adoption.

3.8(1) Time of adoption. The lottery shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the lottery shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

3.8(2) Consideration of public comment. Before the adoption of a rule, the lottery shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

3.8(3) Reliance on agency expertise. Except as otherwise provided by law, the lottery may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

531—3.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

3.9(1) The lottery shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and

b. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and

c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

3.9(2) In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the lottery shall consider the following factors:

a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;

b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and

c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

3.9(3) The lottery shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the lottery finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

3.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the lottery to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

531—3.10(17A) Exemptions from public rule-making procedures.

3.10(1) Omission of notice and comment. To the extent the lottery for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the lottery may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The lottery shall incorporate the re-

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quired finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

3.10(2) Categories exempt. The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class:

- a. Rules relating to lottery games.
- b. Reserved.

3.10(3) Public proceedings on rules adopted without them. The lottery may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 3.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the lottery shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 3.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the lottery may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 3.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

531—3.11(17A) Concise statement of reasons.

3.11(1) General. When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the lottery shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Iowa Lottery Authority, 2015 Grand Avenue, Des Moines, Iowa 50312-4999. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

3.11(2) Contents. The concise statement of reasons shall contain:

- a. The reasons for adopting the rule;
- b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;
- c. The principal reasons urged in the rule-making proceeding for and against the rule, and the lottery's reasons for overruling the arguments made against the rule.

3.11(3) Time of issuance. After a proper request, the lottery shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

531—3.12(17A) Contents, style, and form of rule.

3.12(1) Contents. Each rule adopted by the lottery shall contain the text of the rule and, in addition:

- a. The date the lottery adopted the rule;
- b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by Iowa Code section 17A.4(1b) or the lottery in its discretion decides to include such reasons;

c. A reference to all rules repealed, amended, or suspended by the rule;

d. A reference to the specific statutory or other authority authorizing adoption of the rule;

e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;

f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by Iowa Code section 17A.4(1b), or the lottery in its discretion decides to include such reasons; and

g. The effective date of the rule.

3.12(2) Incorporation by reference. The lottery may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the lottery authority board finds that the incorporation of its text in the lottery's proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the lottery's proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The lottery may incorporate such matter by reference in a proposed or adopted rule only if the lottery makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from the lottery, and how and where copies may be obtained from an agency of the United States, this state, another state, or the organization, association, or persons originally issuing that matter. The lottery shall retain permanently a copy of any materials incorporated by reference in a rule of the lottery.

If the lottery adopts standards by reference to another publication, it shall provide a copy of the publication containing the standards to the administrative rules coordinator for deposit in the state law library and may make the standards available electronically.

3.12(3) References to materials not published in full. When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the lottery shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the lottery. The lottery will provide a copy of that full text (at actual cost) upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

At the request of the administrative code editor, the lottery shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

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3.12(4) Style and form. In preparing its rules, the lottery shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

531—3.13(17A) Agency rule-making record.

3.13(1) Requirement. The lottery shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

3.13(2) Contents. The lottery rule-making record shall contain:

a. Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of agency submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the lottery's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

c. All written petitions, requests, and submissions received by the lottery, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the lottery and considered by the chief executive officer of the lottery, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the lottery is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the lottery shall identify in the record the particular materials deleted and state the reasons for that deletion;

d. Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

e. A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;

f. A copy of the rule and any concise statement of reasons prepared for that rule;

g. All petitions for amendments or repeal or suspension of the rule;

h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general;

i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(4), and any agency response to that objection;

j. A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and

k. A copy of any executive order concerning the rule.

3.13(3) Effect of record. Except as otherwise required by a provision of law, the lottery rule-making record required by this rule need not constitute the exclusive basis for agency action on that rule.

3.13(4) Maintenance of record.

a. The lottery shall maintain the rule-making record for a period of not less than five years from the later of the date the

rule to which it pertains became effective or the date of the Notice of Intended Action.

b. The lottery will maintain a separate file of any written criticism received regarding any of its rules for a period of not less than five years from the date the first written criticism for a rule was received as described in 3.13(2) "g," "h," "i," or "j."

531—3.14(17A) Filing of rules. The lottery shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the lottery shall use the standard form prescribed by the administrative rules coordinator.

531—3.15(17A) Effectiveness of rules prior to publication.

3.15(1) Grounds. The lottery may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The lottery shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

3.15(2) Special notice. When the lottery makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)"b"(3), the lottery shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the lottery to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the lottery of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)"b"(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 3.15(2).

531—3.16(17A) General statements of policy.

3.16(1) Compilation, indexing, public inspection. The lottery shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(10)"a," "c," "f," "g," "h," and "k." Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(7)"f," or otherwise authorized by law to be kept confi-

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dential, the compilation must be made available for public inspection and copying.

3.16(2) Enforcement of requirements. A general statement of policy subject to the requirements of this rule shall not be relied on by the lottery to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 3.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

531—3.17(17A) Review by agency of rules.

3.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the lottery to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the lottery shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The lottery may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

3.17(2) In conducting the formal review, the lottery shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the lottery's findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the lottery or granted by the lottery. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the lottery's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

These rules are intended to implement Iowa Code chapter 17A.

CHAPTER 4
WAIVER AND VARIANCE RULES

531—4.1(80GA,SF453) Waiver or variance of rules. These rules outline a uniform process for the granting of waivers or variances from rules adopted by the Iowa lottery authority.

531—4.2(80GA,SF453) Definition. For purposes of this chapter, "a waiver or variance" means action by the lottery authority board that suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term "waiver" shall include both a "waiver" and a "variance."

531—4.3(80GA,SF453) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the lottery authority board in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific

provision shall supersede this chapter with respect to any waiver from that rule.

531—4.4(80GA,SF453) Applicability of chapter. The lottery authority board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or imposed by statute.

531—4.5(80GA,SF453) Criteria for waiver or variance. In response to a petition completed pursuant to rule 531—5.6(17A), the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equivalent protection of public health, safety and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

531—4.6(80GA,SF453) Filing of petition. A petition for a waiver must be submitted in writing to the board, as follows:

4.6(1) License application. If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question.

4.6(2) Contested cases. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

4.6(3) Other. If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the board's executive secretary.

531—4.7(80GA,SF453) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the person or entity for which a waiver is being requested and the case number of any related contested case;
2. A description and citation of the specific rule from which a waiver is requested;
3. The specific waiver requested, including the precise scope and duration;
4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 531—4.5(80GA,SF453). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver;
5. A history of any prior contacts between the board and the petitioner relating to the activity or license affected by the proposed waiver, including a description of each affected license held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the activity or license within the last five years;
6. Any information known to the requester regarding the board's treatment of similar cases;
7. The name, address, and telephone number of any public agency or political subdivision which also regulates the

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activity in question, or which might be affected by the granting of a waiver;

8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition;

9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver;

10. Signed releases of information authorizing persons with knowledge regarding the petition to furnish the board with information relevant to the waiver.

531—4.8(80GA,SF453) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and a quorum of the board.

531—4.9(80GA,SF453) Notice. The board shall acknowledge a petition upon receipt. The board shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve notice on all persons to whom notice is required by any provision of law and provide a written statement to the board attesting that notice has been provided.

531—4.10(80GA,SF453) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to agency proceedings for a waiver only when the board so provides by rule or order or is required to do so by statute.

531—4.11(80GA,SF453) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

4.11(1) Board discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors. The board shall evaluate each fact based on the unique, individual circumstances set out in the petition for waiver.

4.11(2) Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a board rule.

4.11(3) Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

4.11(4) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

4.11(5) Conditions. The board may place any condition on a waiver that the board finds desirable to protect the public health, safety, and welfare.

4.11(6) Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

4.11(7) Time for ruling. The board shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

4.11(8) When deemed denied. Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

4.11(9) Service of order. Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

531—4.12(80GA,SF453) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying waiver petitions are public records under Iowa Code chapter 22. Some petitions or orders may contain information the board is authorized or required to keep confidential. The board may accordingly redact confidential information from petitions or orders prior to public inspection.

531—4.13(80GA,SF453) Summary reports. Semiannually, the board shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by the rules, and a general summary of the reasons justifying the board's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

531—4.14(80GA,SF453) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

1. The person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

2. The substantially equivalent means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or

3. The subject of the waiver order has failed to comply with all conditions contained in the order.

531—4.15(80GA,SF453) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

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531—4.16(80GA,SF453) Defense. After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

531—4.17(80GA,SF453) Judicial review. Judicial review of the board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code chapter 17A, 2003 Iowa Acts, Senate File 453, Division XVIII, and Executive Order Number 11.

CHAPTER 5 CONTESTED CASES

531—5.1(17A) Scope and applicability. This chapter applies to contested case proceedings related to lottery licensees and lottery licenses.

531—5.2(17A) Definitions. Except where otherwise specifically defined by law:

“Contested case” means a proceeding defined by Iowa Code subsection 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

“Hearing board” means the board designated to resolve license disputes pursuant to 2003 Iowa Acts, Senate File 453, section 80, and these rules.

“Issuance” means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

“Party” means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

“Presiding officer” means the administrative law judge.

“Proposed decision” means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the hearing board did not preside.

531—5.3(17A) Hearing board. A three-member hearing board for the purpose of conducting hearings relating to controversies concerning the issuance, suspension, or revocation of licenses is created. One member shall be a designee of the lottery authority board, one member shall be the lottery's chief financial officer or the chief financial officer's designee, and one member shall be the lottery vice-president of external relations or the vice-president of external relations' designee.

531—5.4(17A) Time requirements.

5.4(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

5.4(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rule. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

531—5.5(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the agency action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific agency action which is disputed, and where the requester is

represented by a lawyer identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

531—5.6(17A) Notice of hearing.

5.6(1) Delivery. Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure; or
- b. Certified mail, return receipt requested; or
- c. First-class mail; or
- d. Publication, as provided in the Iowa Rules of Civil Procedure.

5.6(2) Contents. The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted. If the lottery or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;
- e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the lottery or the state and of parties' counsel where known;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Reference to the procedural rules governing informal settlement;
- h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., the hearing board, the chief executive officer of the lottery, members of the lottery authority board, administrative law judge from the department of inspections and appeals); and
- i. Notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11(1) and rule 5.6(17A), that the presiding officer be an administrative law judge.

531—5.7(17A) Presiding officer.

5.7(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing that identifies or describes the presiding officer as the agency head or members of the agency.

5.7(2) The chief executive officer of the lottery may deny the request only upon a finding that one or more of the following apply:

- a. Neither the agency nor any officer of the agency under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.
- b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

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c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

e. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

f. The request was not timely filed.

g. The request is not consistent with a specified statute.

h. The contested case involves a license dispute which must be decided by the hearing board pursuant to 2003 Iowa Acts, Senate File 453, section 80, and these rules.

5.7(3) The chief executive officer of the lottery shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge, the parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

5.7(4) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the lottery. A party must seek any available appeal with the lottery in order to exhaust adequate administrative remedies.

5.7(5) Unless otherwise provided by law, the chief executive officer or a designee, and members of the lottery authority board, when reviewing a proposed decision upon appeal to the lottery, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

531—5.8(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

531—5.9(17A) Disqualification.

5.9(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

5.9(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 and subrules 5.9(3) and 5.23(9).

5.9(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

5.9(4) If a party asserts disqualification on any appropriate grounds, including those listed in subrule 5.9(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code subsection 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 5.25(17A) and seek a stay under rule 5.29(17A).

531—5.10(17A) Consolidation and severance.

5.10(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

5.10(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

531—5.11(17A) Pleadings.

5.11(1) Requirement. Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

5.11(2) Petition.

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

(1) The persons or entities on whose behalf the petition is filed;

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(2) The particular provisions of statutes and rules involved;

(3) The relief demanded and the facts and laws relied upon for such relief; and

(4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

5.11(3) Answer. An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

5.11(4) Amendment. Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

531—5.12(17A) Service and filing of pleadings and other papers.

5.12(1) When service required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the agency, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code subsection 17A.16(2), the party filing a document is responsible for service on all parties.

5.12(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule or order.

5.12(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the Office of the Chief Executive Officer, Iowa Lottery Authority, 2015 Grand Avenue, Des Moines, Iowa 50312-4999. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously in the office of the chief executive officer.

5.12(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the chief executive officer's office, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

5.12(5) Proof of mailing. Proof of mailing includes either: a legible United States Postal Service postmark on the

envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States Post Office mail box with correct postage properly affixed or state interoffice mail).

(Date)

(Signature)

531—5.13(17A) Discovery.

5.13(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be provided in the Iowa Rules of Civil Procedure.

5.13(2) Any motion relating to discovery shall allege that the moving party has previously made a good faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 5.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

5.13(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

531—5.14(17A) Subpoenas.

5.14(1) Issuance.

a. An agency subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

5.14(2) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

531—5.15(17A) Motions.

5.15(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

5.15(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the lottery or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

5.15(3) The presiding officer may schedule oral argument on any motion.

5.15(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the lottery or an order of the presiding officer.

5.15(5) Motions for summary judgment. Motions for summary judgment shall comply with the requirements of

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Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 5.28(17A) and appeal pursuant to rule 5.27(17A).

531—5.16(17A) Prehearing conference.

5.16(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than 15 days prior to the hearing date. A prehearing conference shall be scheduled not less than 10 business days prior to the hearing date. Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause the presiding officer may permit variances from this rule.

5.16(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

5.16(3) In addition to the requirements of subrule 5.16(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

5.16(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

531—5.17(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

5.17(1) A written application for continuance shall:

a. Be made at the earliest possible time and no less than ten days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The agency may waive notice of such requests for a particular case or an entire class of cases.

5.17(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

531—5.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with agency rules. Unless otherwise provided, a withdrawal shall be with prejudice.

531—5.19(17A) Intervention.

5.19(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

5.19(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

5.19(3) Grounds for intervention. The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

5.19(4) Effect of intervention. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

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531—5.20(17A) Hearing procedures.

5.20(1) The presiding officer presides at the hearing and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

5.20(2) All objections shall be timely made and stated on the record.

5.20(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

5.20(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

5.20(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

5.20(6) Witnesses may be sequestered during the hearing.

5.20(7) The presiding officer shall conduct the hearing in the following manner:

- a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;
- b. The parties shall be given an opportunity to present opening statements;
- c. Parties shall present their cases in the sequence determined by the presiding officer;
- d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;
- e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

531—5.21(17A) Evidence.

5.21(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

5.21(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

5.21(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

5.21(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

5.21(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may

rule on the objection at the time it is made or may reserve a ruling until the written decision.

5.21(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

531—5.22(17A) Default.

5.22(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

5.22(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

5.22(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 5.27(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

5.22(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

5.22(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

5.22(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

5.22(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 5.25(17A).

5.22(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

5.22(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues; but unless the defaulting party has appeared, it cannot exceed the relief demanded.

5.22(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 5.29(17A).

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531—5.23(17A) Ex parte communication.

5.23(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communications, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the lottery or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 5.9(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

5.23(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

5.23(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

5.23(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 5.12(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

5.23(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

5.23(6) The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 5.23(1).

5.23(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 5.17(17A).

5.23(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be

submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

5.23(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

5.23(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the lottery. Violation of ex parte communication prohibitions by agency personnel shall be reported to the chief executive officer of the lottery for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

531—5.24(17A) Record costs. Upon request, the Iowa lottery shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporter rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

531—5.25(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the hearing board may review an interlocutory order of the presiding officer. In determining whether to do so, the hearing board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the agency at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

531—5.26(17A) Final decision.

5.26(1) When the hearing board presides over the reception of evidence at the hearing, its decision is a final decision.

5.26(2) When the hearing board does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the hearing board within the time provided in rule 5.27(17A).

531—5.27(17A) Appeals and review.

5.27(1) Appeal by party. Any adversely affected party may appeal a proposed decision to the hearing board within 30 days after issuance of the proposed decision.

5.27(2) Review. The hearing board may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

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5.27(3) Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the Iowa lottery. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

5.27(4) Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The hearing board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

5.27(5) Scheduling. The presiding officer shall issue a schedule for consideration of the appeal.

5.27(6) Briefs and arguments. Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The hearing board may resolve the appeal on the briefs or provide an opportunity for oral argument. The hearing board may shorten or extend the briefing period as appropriate.

531—5.28(17A) Applications for rehearing.

5.28(1) By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

5.28(2) Content of application. The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule 5.27(4), the applicant requests an opportunity to submit additional evidence.

5.28(3) Time of filing. The application shall be filed with the Iowa lottery within 20 days after issuance of the final decision.

5.28(4) Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the Iowa lottery shall serve copies on all parties.

5.28(5) Disposition. Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

531—5.29(17A) Stays of agency actions.

5.29(1) When available.

a. Any party to a contested case proceeding may petition the lottery for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the agency. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The hearing board may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the lottery for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

5.29(2) When granted. In determining whether to grant a stay, the presiding officer or hearing board shall consider the factors listed in Iowa Code section 17A.19(5).

5.29(3) Vacation. A stay may be vacated by the issuing authority upon application of the lottery or any other party.

531—5.30(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

531—5.31(17A) Emergency adjudicative proceedings.

5.31(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the constitution and other provisions of law, the lottery may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the lottery by emergency adjudicative order. Before issuing an emergency adjudicative order the lottery shall consider factors including, but not limited to, the following:

- a. Whether there has been a sufficient factual investigation to ensure that the lottery is proceeding on the basis of reliable information;
- b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;
- c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and
- e. Whether the specific action contemplated by the agency is necessary to avoid the immediate danger.

5.31(2) Issuance of order.

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the lottery's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

- (1) Personal delivery;
- (2) Certified mail, return receipt requested, to the last address on file with the agency;
- (3) Certified mail to the last address on file with the agency;
- (4) First-class mail to the last address on file with the agency; or

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(5) Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the agency shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

5.31(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the agency shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

5.31(4) Completion of proceedings. After the issuance of an emergency adjudicative order, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which agency proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further agency proceedings to a later date will be granted only in compelling circumstances upon application in writing.

531—5.32(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

These rules are intended to implement 2003 Iowa Acts, Senate File 453, section 80(3), and Iowa Code chapter 17A.

CHAPTER 6
DECLARATORY ORDERS

531—6.1(17A) Petition for declaratory order. Any person may file a petition with the lottery for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the lottery, at the Iowa Lottery Authority, 2015 Grand Avenue, Des Moines, Iowa 50312-4999. A petition is deemed filed when it is received by that office. The lottery shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the lottery an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

THE IOWA LOTTERY

Petition by (Name of Petitioner) for a Declaratory Order on (cite provisions of law involved).	}	PETITION FOR DECLARATORY ORDER
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The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.

5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.

6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.

7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.

8. Any request by petitioner for a meeting provided for by 6.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

531—6.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the lottery shall give notice of the petition to all persons not served by the petitioner pursuant to 6.6(17A) to whom notice is required by any provision of law. The lottery may also give notice to any other persons.

531—6.3(17A) Intervention.

6.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 25 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

6.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the lottery.

6.3(3) A petition for intervention shall be filed at the Iowa Lottery Authority, 2015 Grand Avenue, Des Moines, Iowa 50312-4999. Such a petition is deemed filed when it is received by that office. The lottery will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

THE IOWA LOTTERY

Petition by (Name of Petitioner) for a Declaratory Order on (cite provisions of law involved).	}	PETITION FOR INTERVENTION
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The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those ques-

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tions have been decided by, are pending determination by, or are under investigation by, any governmental entity.

5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.

6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

531—6.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The lottery may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

531—6.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Chief Executive Officer, Iowa Lottery Authority, 2015 Grand Avenue, Des Moines, Iowa 50312-4999.

531—6.6(17A) Service and filing of petitions and other papers.

6.6(1) When service required. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

6.6(2) Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Iowa Lottery Authority, 2015 Grand Avenue, Des Moines, Iowa 50312-4999. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the lottery.

6.6(3) Method of service, time of filing, and proof of mailing. Method of service, time of filing, and proof of mailing shall be as provided by 531 IAC 5.11(17A).

531—6.7(17A) Consideration. Upon request by petitioner, the lottery must schedule a brief and informal meeting between the original petitioner, all intervenors, and the lottery, a member of the lottery authority board, or a member of the staff of the lottery, to discuss the questions raised. The lottery may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the lottery by any person.

531—6.8(17A) Action on petition.

6.8(1) Within the time allowed by Iowa Code section 17A.9(5) after receipt of a petition for a declaratory order, the chief executive officer of the lottery or a designee shall take action on the petition as required by Iowa Code section 17A.9(5).

6.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule 531—5.2(17A).

531—6.9(17A) Refusal to issue order.

6.9(1) The lottery shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1), and may

refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.

2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the lottery to issue an order.

3. The lottery does not have jurisdiction over the questions presented in the petition.

4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.

5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.

9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

10. The petitioner requests the lottery to determine whether a statute is unconstitutional on its face.

6.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

6.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

531—6.10(17A) Contents of declaratory order—effective date.

In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

531—6.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

531—6.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the lottery, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the lottery. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code chapter 17A.

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CHAPTER 11
PRIZES

531—11.1(80GA,SF453) Claiming prizes.

11.1(1) A prize claim shall be entered in the name of a single individual or organization. A claim may be entered in the name of an organization only if the organization is a legal entity and possesses or has applied for a federal employer's identification number (FEIN) as issued by the Internal Revenue Service. Groups, family units, organizations, clubs, or other organizations that are not legal entities, do not possess a FEIN, or have not applied for a FEIN must designate one individual in whose name the claim will be entered.

11.1(2) By submitting a claim, a player agrees that the state, the lottery authority board, the lottery authority, and the officials, officers, and employees of each shall be discharged from all further liability upon payment of the prize.

11.1(3) By submitting a claim, the player also agrees that the prizewinner's name may be used for publicity purposes by the lottery.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), and 84.

531—11.2(80GA,SF453) Claim period. A prize must be claimed within the time limit specifically designated in these rules or as specified by the lottery in the specific game rules.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), and 84.

531—11.3(80GA,SF453) Invalid tickets not entitled to prize payment. If a ticket presented to the lottery is invalid pursuant to the terms of these rules or the specific game rules, the ticket is not entitled to prize payment.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), and 84.

531—11.4(80GA,SF453) Ticket is a bearer instrument. A ticket is a bearer instrument until signed in the space designated on the ticket for signature if a signature space is provided. The person who signs the ticket is thereafter considered the owner of the ticket. Payment of any prize may be made to the physical possessor of an unsigned ticket or to the person whose signature appears on the ticket. All liability of the state, the lottery authority board, the lottery authority, the chief executive officer, and the employees of the lottery terminates upon payment.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), and 84.

531—11.5(80GA,SF453) Assignment of prizes. Payments of prizes shall be made as follows:

11.5(1) The lottery shall pay all prizes to only one person or one legal entity per winning ticket.

11.5(2) If a prize is payable in installments, all future installments of the prize must be made to the person or legal entity that received the initial installment of the prize or to a person designated by the court to receive payment following the prizewinner's death, unless otherwise assigned according to these rules.

11.5(3) Payment of a prize may be made to the estate of a deceased prizewinner or to another person pursuant to an appropriate judicial order.

11.5(4) The right to control receipt of a lottery prize shall be substantially limited. See 26 U.S.C. 451 and Treas. Reg. 1.451-2(a). The right to receive payment of a lottery prize or a future installment of a lottery prize shall not be sold, assigned or otherwise transferred in any manner without an appropriate judicial order or statutory authorization. An ap-

propriate judicial order is an order of a court of competent jurisdiction.

11.5(5) In the event that a legal entity other than an individual is entitled to a lottery prize won jointly by more than one individual, the individuals originally entitled to share the prize cannot sell, assign or otherwise transfer their interest in the legal entity receiving prize payment or their right to receive future payments from the legal entity without an appropriate judicial order or statutory authorization. An appropriate judicial order is an order of a court of competent jurisdiction.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), and 84.

531—11.6(80GA,SF453) Prize payment to minors. If the person entitled to a prize is under the age of 18, the payment of the prize may be made by delivery of a draft payable to the order of the minor or to a parent or legal guardian of the minor. Claim forms submitted by minors must be signed by a parent or legal guardian of the minor.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), 83(3), and 84.

531—11.7(80GA,SF453) Time of prize payment. All prizes shall be paid within a reasonable time after a claim is verified by the lottery and a winner is determined. The date of the first installment payment of any prize to be paid in installment payments shall be the date the claim is validated and processed unless a different date is specified for a particular game in these rules or the specific game rules. Subsequent installment payments shall be made approximately weekly, monthly, or annually, from the date the claim is processed and validated in accordance with the type of prize won and the rules applicable to the prize. The lottery may, at any time, delay any prize payment in order to review a change in circumstances relative to the prize awarded, the payee, or the claim.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), and 83.

531—11.8(80GA,SF453) Prizes payable for the life of the winner. If any prize is payable for the life of the winner, only an individual may claim and receive the prize for life. If a group, corporation, or other organization is the winner, the life of the winner shall be deemed to be 20 years.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), and 84.

531—11.9(80GA,SF453) Prizes payable after death of winner. All prizes and portions of prizes that remain unpaid at the time of the prizewinner's death shall be payable to the court-appointed representative of the prizewinner's estate or to a single individual pursuant to the terms of a final order closing the estate.

The lottery may withhold payment until it is satisfied that the proper payee has been identified, or it may petition the court to determine the proper payee. In making payment, the lottery may rely wholly on the presentation of a certified copy of the letters of appointment as an administrator, executor, or other personal representative for the prizewinner's estate or on a certified copy of the final order closing the estate. Payment to the representative of the estate of the deceased owner of any prize winnings or to another individual pursuant to a final order closing the estate shall absolve the lottery authority and employees of the lottery authority of any further liability for payment of prize winnings.

If the winner received an annuitized prize funded through the Multi-State Lottery Association (MUSL) or any other multijurisdictional lottery organization in which the Iowa

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lottery participates as a member, the MUSL board or other organization board, as may be appropriate, in its sole discretion, upon the petition of the estate of the lottery winner (the "estate"), may accelerate the payment of all of the remaining lottery proceeds to the estate. If the winner received an annuitized prize funded solely through the sales from the Iowa lottery, the lottery board, in its sole discretion, upon the petition of the estate of the lottery winner (the "estate"), may accelerate the payment of all of the remaining lottery proceeds to the estate. If such a determination is made, then securities or cash held for the deceased lottery winner, that represents the present value of that portion of the future lottery payments that are to be accelerated, shall be distributed to the estate. The valuation of the securities and determination of the present value of the accelerated lottery payments shall be at the sole discretion of the board granting the petition.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), and 84.

531—11.10(80GA,SF453) Disability of prizewinner. The lottery may petition any court of competent jurisdiction for a determination of the rightful payee for the payment of any prize winnings which are or may become due a person under a disability because of, but not limited to, underage, mental deficiency, or physical or mental incapacity.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), and 84.

531—11.11(80GA,SF453) Stolen or lost tickets. The lottery has no responsibility for paying prizes attributable to stolen or lost tickets.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), and 84.

531—11.12(80GA,SF453) Effect of game rules. In purchasing a ticket, the player agrees to comply with 2003 Iowa Acts, Senate File 453, Division XVIII, these rules, the specific game rules, lottery instructions and procedures, and the final decisions of the lottery. The lottery's decisions and judgments in respect to the determination of winning tickets or any other dispute arising from the payment or awarding of prizes shall be final and binding upon all participants in the lottery. If a dispute between the lottery and a player occurs as to whether a ticket is a winning ticket and the prize is not paid, the lottery may, solely at the lottery's option, replace the ticket with an unplayed ticket of equivalent price from any game or refund the price of the ticket. This shall be the sole and exclusive remedy of the player.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), and 84.

531—11.13(80GA,SF453) Disputed prizes. If there is a dispute, or it appears that a dispute may occur relative to the payment of any prize, the lottery may refrain from making payment of the prize pending a final determination by the lottery or by a court of competent jurisdiction as to the proper payment of the prize.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), and 84.

531—11.14(80GA,SF453) Prize payment for prizes paid over a term exceeding ten years.

11.14(1) A prizewinner who wins a prize that is payable over a term exceeding ten years may, not later than 60 days after the player became entitled to the prize, elect to have the prize paid in cash or by annuity consistent with 26 U.S.C. § 451. If the payment election is not made by the prizewinner at the time of purchase or is not made within 60 days after the prizewinner becomes entitled to the prize, then the prize shall

be paid as an annuity prize. An election for an annuity payment made by a prizewinner before the ticket purchase or by system default or design may be changed to a cash payment at the election of the prizewinner until the expiration of 60 days after the prizewinner becomes entitled to the prize. The election to take the cash payment may be made at the earlier of the following dates:

a. The time of the prize claim; or

b. Within 60 days after the prizewinner becomes entitled to the prize.

An election made after the prizewinner becomes entitled to the prize is final and cannot be revoked, withdrawn or otherwise changed.

11.14(2) In the event there is more than one prizewinner for a prize paid over a period exceeding ten years, the shares of the prize shall be determined by dividing the cash available in the prize pool equally among all the winners of the prize. Winners who elect a cash payment shall be paid their share in a single cash payment. The annuitized option prize shall be determined by multiplying a winner's share of the prize pool by the annuity factor used by the lottery. The lottery's annuity factor is determined by the best price obtained through a competitive bid of qualified, preapproved brokers or insurance companies made after it is determined that the prize is to be paid as an annuity prize or after the expiration of 60 days after the prizewinner becomes entitled to the prize.

11.14(3) The lottery shall not be responsible or liable for changes in the advertised or estimated annuity prize amount and the actual amount of the prize value purchased from the time the player becomes eligible for the prize and the time the prizewinner claims the prize.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), and 84.

CHAPTER 12 LICENSING

531—12.1(80GA,SF453) License eligibility criteria.

12.1(1) A person, partnership, unincorporated association, authority, or other business entity shall not be selected as a lottery retailer if the person or entity meets any of the following conditions:

a. Has been convicted of a criminal offense related to the security or integrity of the lottery in Iowa or any other jurisdiction.

b. Has been convicted of any illegal gambling activity, false statements, perjury, fraud, or a felony in Iowa or any other jurisdiction.

c. Has been found to have violated the provisions of 2003 Iowa Acts, Senate File 453, Division XVIII, or any regulation, policy, or procedure of the lottery, unless either ten years have passed since the violation or the board finds the violation both minor and unintentional in nature.

d. Is a vendor or any employee or agent of any vendor doing business with the lottery.

e. Resides in the same household as an officer of the authority.

f. If an individual, is less than 18 years of age.

g. Does not demonstrate financial responsibility sufficient to adequately meet the requirements of the proposed enterprise.

h. Has not demonstrated that the applicant is the true owner of the business proposed to be licensed and that all persons holding at least a 10 percent ownership interest in the applicant's business have been disclosed.

i. Has knowingly made a false statement of material fact to the authority.

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12.1(2) The applicant shall be current in filing all applicable tax returns to the state of Iowa and in payment of all taxes, interest, and penalties owed to the state of Iowa, excluding items under formal appeal pursuant to applicable statutes.

12.1(3) The lottery will deny a license to any applicant who is an individual if the lottery has received a certificate of noncompliance from the child support recovery unit with regard to the individual, until the unit furnishes the lottery with a withdrawal of the certificate of noncompliance.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 69(1), 71(3), 74(2), and 77, and Iowa Code section 252J.2.

531—12.2(80GA,SF453,252J) Factors relevant to license issuance. The lottery may issue a license to any applicant to act as a licensed retailer who meets the eligibility criteria established by 2003 Iowa Acts, Senate File 453, Division XVIII, and these rules. In exercising its licensing discretion the lottery shall consider the following factors: the background and reputation of the applicant in the community for honesty and integrity; the financial responsibility and security of the person and business or activity; the type of business owned or operated by the applicant to ensure consonance with the dignity of the state, the general welfare of the people, and the operation and integrity of the lottery; the accessibility of the applicant's place of business or activity to the public; the sufficiency of existing licenses to serve the public convenience; the volume of expected sales; the accuracy of the information supplied in the application for a license; the applicant's indebtedness to the state of Iowa, local subdivisions of the state, or the United States government; if an individual, indebtedness owed for child support payments; and any other criteria or information relevant to determining if a license should be issued.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), and 77(5), and Iowa Code section 252J.2.

531—12.3(80GA,SF453) Applicant or person defined. For purposes of determining whether an applicant or person is eligible for a license, the term "applicant" or "person" shall include the owner of a sole proprietorship, all partners or participants in a partnership or joint venture, the officers of a fraternal organization, the officers and directors of a corporation, persons owning at least 10 percent or more of a corporation, and any legal entity applying for a license.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3) and 77.

531—12.4(80GA,SF453,252J) Lottery licenses.

12.4(1) The lottery has discretion to license a qualified applicant to sell any one of the following lottery products or any combination of the following products: scratch tickets; pull-tab tickets; and computerized game tickets, if available. The lottery may require an applicant to sell one or more lottery products as a condition of selling any other lottery product. A lottery license authorizes the licensee to sell only the type of lottery products specified on the license.

12.4(2) Any eligible applicant may apply for a license to act as a retailer by first filing with the lottery an application form together with any supplements required. Supplements may include, but are not limited to, authorizations to investigate criminal history, financial records and financial resources, and authorizations to allow the lottery to conduct site surveys.

12.4(3) All lottery license applications must be accompanied by a nonrefundable fee of \$25.

12.4(4) Retailers who are currently licensed may apply for a license modification to allow the sale of additional lottery products. A current retailer may be required to complete an additional application or application supplements.

12.4(5) The lottery may waive the payment of any license fee to facilitate an experimental program or a research project.

12.4(6) A limited number of retailers may be selected as licensees from applications received. The selection shall be made based on criteria designed to produce the maximum amount of net revenue and serve public convenience. The lottery may refuse to accept license applications for a period of time if the lottery determines that the number of existing retailers is adequate to market any lottery product.

12.4(7) The lottery will grant, deny, or place on hold all applications within 60 days of acceptance of an application. Applications placed on hold shall be considered denied for purposes of appeal. If an application is denied because the lottery has received a certificate of noncompliance from the child support recovery unit in regard to an individual, the effective date of denial of the issuance of the license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the applicant.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 69, 71(3), 74(2), 77, and 83, and Iowa Code sections 252J.2 and 252J.8.

531—12.5(80GA,SF453) Transfer of licenses prohibited. Lottery licenses may not be transferred to any other person or entity and do not authorize the sale of lottery products at any location other than the licensed premises specified on the license.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), 77(3), 78, and 83.

531—12.6(80GA,SF453) Expiration of licenses. A license is valid until it expires, is terminated by a change of circumstances, is surrendered by the licensee, or is revoked by the lottery. A license that does not have an expiration date will continue indefinitely until surrendered, revoked, or terminated by a change in circumstances.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), 77(3), and 80.

531—12.7(80GA,SF453) Provisional licenses. The lottery may issue a provisional license to an applicant for a lottery license after receipt of a fully completed license application, the authorization for a complete personal background check, completion of a credit check, and completion of a preliminary background check. The provisional license shall expire at the time of issuance of the requested license or 90 days from the date the provisional license was issued, whichever occurs first, unless the provisional license is extended by the lottery.

Notwithstanding the foregoing, the lottery will deny a provisional license to any applicant who is an individual if the lottery has received a certificate of noncompliance from the child support recovery unit with regard to the individual, until the unit furnishes the lottery with a withdrawal of the certificate of noncompliance. If an application is denied because the lottery has received a certificate of noncompliance from the child support recovery unit in regard to an individual, the effective date of denial of the issuance of the license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the applicant.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), 78, and 80, and Iowa Code sections 252J.2 and 252J.8.

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531—12.8(80GA,SF453) Off-premises licenses. Any licensed retailer who has been issued a license or provisional license to sell tickets may apply for an off-premises license to sell tickets in locations other than that specified on the existing license. The lottery must specifically approve the geographical area in which sales are to be made and the types of locations at which off-premises sales are to be made prior to issuance of an off-premises license. Additional instructions and restrictions may be specified by the lottery to govern off-premises sales. An off-premises license shall expire at the time designated on the off-premises license. An off-premises license may be renewed at the lottery's discretion.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), and 83.

531—12.9(80GA,SF453) Duplicate licenses. Upon the loss, mutilation, or destruction of any license issued by the lottery, application for a duplicate shall be made. A statement signed by the retailer which details the circumstances under which the license was lost, mutilated, or destroyed may be required by the lottery.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), 77, and 83.

531—12.10(80GA,SF453) Reporting changes in circumstances of the retailer. Every change of business structure of a licensed business, such as from a sole proprietorship to a corporation, and every change in the name of a business must be reported to the lottery prior to the change. Substantial changes in the ownership of a licensed business must also be reported to the lottery prior to the change. A substantial change of ownership is defined as the transfer of 10 percent or more equity in the licensed business from or to another single individual or legal entity. If a change involves the addition or deletion of one or more existing owners or officers, the licensee shall submit a license application reflecting the change and any other documentation the lottery may require. All changes will be reviewed by the lottery to determine if the existing license should be continued.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), and 80(1).

531—12.11(80GA,SF453) License not a vested right. The possession of a license issued by the lottery to any person to act as a retailer in any capacity is a privilege personal to that person and is not a legal right. The possession of a license issued by the lottery to any person to act as a retailer in any capacity does not automatically entitle that person to sell tickets or obtain materials for any particular game.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), and 80.

531—12.12(80GA,SF453) Suspension or revocation of a license.

12.12(1) The lottery may suspend or revoke any license issued pursuant to these rules for one or more of the following reasons:

a. Failing to meet or maintain the eligibility criteria for license application and issuance established by 2003 Iowa Acts, Senate File 453, Division XVIII, or these rules.

b. Violating any of the provisions of 2003 Iowa Acts, Senate File 453, Division XVIII, these rules, or the license terms and conditions.

c. Failing to file any return or report or to keep records required by the lottery; failing to maintain an acceptable level of financial responsibility as evidenced by the financial condition of the business, incidents of failure to pay taxes or other debts, or by the giving of financial instruments that are dishonored or electronic funds transfers that are not paid; fraud,

deceit, misrepresentation, or other conduct prejudicial to the public confidence in the lottery.

d. If public convenience is adequately served by other licenses.

e. Failing to sell a minimum number of tickets as established by the lottery.

f. A history of thefts or other forms of losses of tickets or revenue from the business.

g. Violating federal, state, or local law or allowing the violation of any of these laws on premises occupied by or controlled by any person over whom the retailer has substantial control.

h. Obtaining a license by fraud, misrepresentation, concealment or through inadvertence or mistake.

i. Making a misrepresentation of fact to the board or lottery on any report, record, application form, or questionnaire required to be submitted to the board or lottery.

j. Denying the lottery or its authorized representative, including authorized local law enforcement agencies, access to any place where a licensed activity is conducted.

k. Failing to promptly produce for inspection or audit any book, record, document, or other item required to be produced by law, these rules, or the terms of the license.

l. Systematically pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates cause to believe that the participation of such person in these activities is inimical to the proper operation of an authorized lottery.

m. Failing to follow the instructions of the lottery for the conduct of any particular game or special event.

n. Failing to follow security procedures of the lottery for the management of personnel, handling of tickets, or for the conduct of any particular game or special event.

o. Making a misrepresentation of fact to a purchaser, or prospective purchaser, of a ticket, or to the general public with respect to the conduct of a particular game or special event.

p. For a licensee who is an individual, where the lottery receives a certificate of noncompliance from the child support recovery unit in regard to the licensee, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

q. Allowing activities on the licensed premises that could compromise the dignity of the state.

r. Failing to accurately or timely account or pay for lottery products, lottery games, revenues, or prizes as required by the lottery.

s. Filing for or being placed in bankruptcy or receivership.

t. Engaging in any conduct likely to result in injury to the property, revenue, or reputation of the lottery.

u. Making any material change, as determined in the sole discretion of the lottery, in any matter considered by the lottery in executing the contract with the retailer.

12.12(2) The effective date of revocation or suspension of a license, or denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the licensee. All other notices of revocation or suspension shall be 20 days following service upon a licensee.

12.12(3) If a retailer's license is suspended for more than 180 days from the effective date of the suspension, the lottery will revoke the retailer's license upon 15 days' notice served in conformance with 531—2.13(80GA,SF453,252J).

12.12(4) Upon suspicion that a retailer has sold a ticket to an underage player, the lottery will investigate and provide a

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written warning to the retailer describing the report of the event and of the potential violation of 2003 Iowa Acts, Senate File 453, section 83(3). In the event a retailer sells a ticket to an underage player and the lottery can substantiate the claim, the lottery shall suspend the retailer's license for 7 days. When a retailer sells a ticket to an underage player and the lottery can substantiate the claim a second time in a period of one year from the date of the first event, the lottery shall suspend the retailer's license for a period of 30 days. When a retailer sells a ticket to an underage player and the lottery can substantiate the claim a third time in a period of one year from the date of the first event as described in this rule, the retailer's license shall be suspended for one year.

12.12(5) Upon revocation or suspension of a retailer's license of 30 days or longer, the retailer shall surrender to the lottery, by a date designated by the lottery, the license, lottery identification card, and all other lottery property. The lottery will settle the retailer's account as if the retailer had terminated its relationship with the lottery voluntarily.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), 77, 80, 83(3), and 88, and Iowa Code section 252J.8.

531—12.13(80GA,SF453,252J) Methods of service. The notice required by Iowa Code section 252J.8 shall be served upon the licensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee may accept service personally or through authorized counsel.

Notice of a license revocation or a suspension for the reasons described in 531—12.12(80GA,SF453) shall be served upon the licensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee may accept service personally or through authorized counsel. The notice shall set forth the reasons for the suspension or revocation and provide for an opportunity for a hearing. A hearing on the suspension or revocation shall be held within 180 days or less after the notice has been served.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), and 77, and Iowa Code section 252J.8.

531—12.14(80GA,SF453,252J) Licensee's obligation. Licensees and license applicants shall keep the lottery informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J, and shall provide the lottery with copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3) and 74(2), and Iowa Code section 252J.8.

531—12.15(80GA,SF453,252J) Calculating the effective date. In the event a licensee or applicant files a timely district court action following service of a lottery notice pursuant to Iowa Code sections 252J.8 and 252J.9, the lottery shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the lottery to proceed. For purposes of determining the effective date of revocation or suspension, or denial of the issuance or renewal of a license, the lottery shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3) and 74(2), and Iowa Code sections 252J.8 and 252J.9.

531—12.16(80GA,SF453) Financial responsibility. The lottery shall use the following guidelines to determine financial responsibility for a retailer seeking a license to sell lottery products.

12.16(1) Sole proprietorship. The lottery will not require a bond from a sole proprietor if the account history for the applicant for the past two years discloses no more than four accounts past due and no accounts over 90 days past due.

12.16(2) Partnership. If the license applicant is a partnership, 50 percent of the partners must meet the credit guidelines listed in subrule 12.16(1). If the credit history discloses that the requirements of subrule 12.16(1) are satisfied, the lottery will not require a bond.

12.16(3) Fraternal or civic associations. If the license applicant is a fraternal association, civic organization or other nonprofit entity, the applicant must meet the credit guidelines set forth in subrule 12.16(1). If the fraternal or civic association or other nonprofit entity has no credit history or the credit history is incomplete in the sole discretion of the lottery, then the officers of the fraternal or civic association or other nonprofit entity must meet the requirements of subrule 12.16(1). If the credit history discloses that the requirements of subrule 12.16(1) are satisfied, the lottery will not require a bond.

12.16(4) Corporations and limited liability companies—two years or more. If the license applicant is a corporation or a limited liability company and the corporation or the limited liability company has been in existence for more than two years from the date of the application, the license applicant must meet all of the following financial responsibility guidelines:

a. The license applicant is paying 60 percent of its suppliers on time or within terms; and

b. The license applicant must have a credit risk class provided by a financial and credit reporting entity of less than 5 or an equivalent rating.

If the corporation or the limited liability company meets the guidelines described in this rule, the lottery will not require a bond from the license applicant.

12.16(5) Corporations and limited liability companies—less than two years. If a corporation has been in existence for less than two years from the date of the application, the lottery will review the credit history of the corporate officers who hold 10 percent or more of the stock of the corporation. If a limited liability company has been in existence for less than two years, the lottery will review the credit history of the members of a limited liability company who have contributed 10 percent or more to the capital of the limited liability company. Fifty percent or more of the corporate officers or members of the limited liability company must meet the credit guidelines set forth in subrule 12.16(1). If the corporate officers or the members of the limited liability company meet the requirements set forth in subrule 12.16(1), the lottery will not require the corporation or the limited liability company to obtain a bond.

12.16(6) Bonding requirements. With respect to any license applicant whose credit history does not meet the guidelines described in subrules 12.16(1) and 12.16(4), the applicant will be required to obtain a bond from a surety company authorized to do business in Iowa or offer a cash bond in the amounts generally described herein. The amount of the bond will vary depending on the type of lottery products sold by the license applicant, the sales history of the retail location or

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the average volume of sales of lottery products at the location, or a combination of the above factors. The following minimum amounts will be required:

- a. Sale of pull-tab tickets only, \$500.
- b. Sale of pull-tab and instant tickets only, \$1,500.
- c. Sale of all products including on-line games, \$2,500.

12.16(7) Holding period for bond. The lottery will hold the bond provided by license applicant for a minimum time period of one year. Thereafter, the lottery will review the credit history of the licensed retailer. If the retailer's account history shows no delinquent payments, the lottery will release the bond.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 69(1) and 79.

531—12.17(80GA,SF453) Monitor vending machine retailers. Unless specifically noted in 531—Chapter 14, the rules contained in this chapter do not apply to entities holding licenses pursuant to 531—Chapter 14.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, section 71(3).

CHAPTER 13 LICENSED RETAILERS

531—13.1(80GA,SF453) Licensed retailers. All lottery retailers shall be licensed in the manner provided in 2003 Iowa Acts, Senate File 453, Division XVIII, and these rules. Retailers shall abide by all applicable laws and administrative rules, the terms and conditions of the license, and all other directives and instructions issued by the lottery.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 77, 78, 80, 83, and 84.

531—13.2(80GA,SF453) Requirements for the sale of tickets.

13.2(1) Retailers shall be knowledgeable about the lottery and lottery products and may be required to take training in the operation of lottery games. Retailers shall make the purchase of tickets convenient to the public.

13.2(2) Tickets shall be sold at the price designated by the lottery. Retailers shall not sell tickets for a price other than that specified by the lottery.

13.2(3) No retailer or any employee or member of a retailer shall attempt to identify a winning ticket prior to the sale of the ticket.

13.2(4) Retailers shall pay all prizes that the lottery requires retailers to pay during normal business hours at the location designated on the license.

13.2(5) Retailers shall not purchase tickets previously sold by the retailer.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 83, and 84.

531—13.3(80GA,SF453) Display and availability of lottery license certificates, rules and promotional materials provided by the lottery.

13.3(1) Retailers shall display the lottery license certificates or a facsimile thereof in an area visible to the general public wherever tickets are being sold.

13.3(2) Retailers shall display brochures, flyers, or similar items provided by the lottery that are designed to provide the rules of lottery games near the point at which tickets are sold.

13.3(3) Retailers shall display point-of-sale material provided by the lottery in a manner that is readily seen by and available to the public. The lottery may require the removal of objectionable material or the discontinuance of objection-

able advertising that may have an adverse impact on the lottery.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 77, and 80.

531—13.4 Reserved.

531—13.5(80GA,SF453) Ownership of tickets and other property. All instant tickets accepted by a licensed retailer are the property of the licensed retailer. Tickets that are erroneous or mutilated when received by a retailer may be returned to the lottery for credit. After confirmation of delivery, the retailer is responsible for the condition and security of the tickets and for any losses resulting from tickets which become lost, stolen, or damaged. The lottery may credit retailers for lost, stolen, or damaged instant tickets if the lottery determines that the best interests of the lottery will be served by issuing a credit.

Unless otherwise indicated in writing, all lottery property provided to a licensed retailer for use in selling products, as opposed to property and tickets sold to a retailer, remains the property of the lottery. The retailer shall deliver lottery property to the lottery upon request.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 69, 71(3), 74, and 80.

531—13.6(80GA,SF453) Retailer costs and compensation.

13.6(1) Retailers shall purchase pull-tab tickets for a price equal to the retail price of the tickets less the value of prizes that the retailer is required to pay and any discounts or commissions authorized by the lottery. Retailers shall purchase scratch tickets at retail price and shall be credited for validations and commissions.

13.6(2) The lottery may impose a service fee on retailers to cover operational costs.

13.6(3) The lottery, with board approval, shall set the base amount of retailer compensation. The base amount of compensation shall be specified in the agreement between the retailer and the lottery. The lottery may increase the total amount of retailer compensation by implementing sales incentive programs.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74, and 77.

531—13.7(80GA,SF453) Retailer payment methods. Retailers are required to pay for lottery tickets or shares by means of an electronic funds transfer from the retailer's account. The lottery may allow a retailer to make payments by another method if the retailer can show that the electronic funds transfer system imposes a significant hardship on the retailer or if the lottery determines that the retailer's payment history justifies use of an alternative payment method.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 69, 71(3), 80, 81, and 93.

531—13.8(80GA,SF453) Dishonored checks and electronic funds transfers. Any payment made to the lottery by an applicant for a license or by a licensed retailer either by a check which is dishonored or by an electronic funds transfer (EFT) which is not paid by the depository shall be grounds for immediate denial of the application for a license or for the suspension or revocation of an existing license. The lottery may assess a surcharge up to the maximum allowed by applicable state law for each dishonored check or EFT. The lottery may also alter the payment terms of a retailer's license and require a retailer to reimburse the lottery for costs which occur as a result of a dishonored check or EFT.

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This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 78, 80, 83, and 84.

531—13.9(80GA,SF453) Inspection of lottery materials and licensed premises. Retailers shall allow the lottery to enter upon the licensed premises in order to inspect lottery materials, tickets, and the premises. All books and records pertaining to the retailer's lottery activities shall be available to the lottery for inspection and copying during the normal business hours of the retailer and between 8 a.m. and 5 p.m., Monday through Friday. All books and records pertaining to the retailer's lottery activities are subject to seizure by the lottery without prior notice.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 77, 80, and 81.

531—13.10(80GA,SF453) Individuals who may sell lottery tickets. Lottery tickets may be sold only by a licensed retailer or an employee of a licensed retailer who is authorized to sell lottery tickets. If the retailer is a nonprofit organization, members of the organization may also sell lottery tickets if authorized by the organization. The retailer is responsible for the conduct of its employees and members that is within the scope of the retailer's lottery license.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 77, 78, and 83.

531—13.11(80GA,SF453) Ticket sales restrictions. The lottery reserves the right to limit or terminate the sale of computerized game tickets at any licensed retail location if such sales may compromise the operation and integrity of the lottery, reflect conduct prejudicial to the public confidence in the lottery or reflect activity of an illegal nature under local, state or federal laws.

13.11(1) Plays may only be entered manually using the lottery terminal keypad or touch screen or by means of a play slip provided by the lottery and hand-marked by the player or by such other means approved by the lottery. Retailers shall not permit any device to be connected to a lottery terminal to enter plays, except as approved by the lottery.

13.11(2) A ticket or combination of tickets which would guarantee such purchaser a jackpot win shall not directly and knowingly be sold to any person or entity.

13.11(3) An offer to buy and an offer to sell a ticket shall be made only at a location and only by a method which is licensed by the lottery.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74, 77, 80, and 84.

531—13.12(80GA,SF453) Placement of lottery equipment. The chief executive officer shall determine the need for and type of lottery equipment to be installed at licensee sales outlet locations. Decisions regarding placement of lottery equipment shall be at the sole discretion of the chief executive officer. In the exercise of discretion, the chief executive officer may consider any of the following:

1. The availability of equipment.
2. The suitability of the type of equipment for the specific retail outlet under consideration.
3. The location, equipment, business type and proximity of other extant retail outlets compared with an outlet under consideration.
4. The sufficiency of existing licensed outlets to serve the public convenience.
5. Such minimum sales criteria as may be appropriate based on current market conditions.
6. The cost of equipment and potential return on lottery investment.

7. Such other factors as the chief executive officer may deem appropriate to the exercise of prudent business judgment in reaching a decision.

The decision of the chief executive officer regarding placement of equipment is solely discretionary and final.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 69, 71(3), and 74.

531—13.13(80GA,SF453) Monitor vending machine retailers. Unless specifically noted in 531—Chapter 14, the rules contained in this chapter do not apply to entities holding licenses pursuant to 531—Chapter 14.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, section 71(3).

CHAPTER 14

MONITOR VENDING MACHINE LICENSING

531—14.1(80GA,SF453) License eligibility criteria. An applicant shall be eligible to hold a monitor vending machine ("MVM") license only if the applicant meets the requirements set forth in rule 531—12.1(80GA,SF453).

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 69(1), 71(3), 74(2), and 77, and Iowa Code section 252J.2.

531—14.2(80GA,SF453,252J) Factors relevant to license issuance. The lottery may issue an MVM license to any applicant who meets the eligibility criteria established by 2003 Iowa Acts, Senate File 453, Division XVIII, and these rules. In exercising its licensing discretion the lottery shall consider the factors identified in rule 531—12.2(80GA,SF453,252J).

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), and 77(5), and Iowa Code section 252J.2.

531—14.3(80GA,SF453) Definitions. For purposes of this chapter, the following definitions shall apply:

"Applicant" and "person" shall have the definition set forth in rule 531—12.3(80GA,SF453).

"Monitor vending machine" means a vending machine that dispenses or prints and dispenses lottery tickets that have been determined to be winning or losing tickets by a predetermined pool drawing machine prior to the dispensing of the tickets.

"MVM" means monitor vending machine.

"MVM distributor" means a person or business other than an MVM manufacturer, who sells or leases MVMs.

"MVM license" means a license issued pursuant to these rules to sell lottery tickets by means of an MVM.

"MVM premises" means a business establishment or other location where one or more MVMs are located or are proposed to be located.

"MVM premises operator" means the person who owns the primary business or enterprise conducted at the MVM premises.

"MVM retailer" means a person who possesses an MVM license and who sells lottery products from one or more lottery-approved MVMs that are owned or leased by the person and that are located on premises owned by the MVM retailer or by a third party.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3) and 74(2).

531—14.4(80GA,SF453,252J) MVM licenses.

14.4(1) The lottery has discretion to license a qualified applicant to sell lottery products from MVMs. An MVM license authorizes the licensee to sell only the type of lottery products specified on the license and only from MVMs that

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have been certified by the chief executive officer of the lottery pursuant to rule 14.17(80GA,SF453). The lottery shall maintain a list of MVMs that have been certified by the chief executive officer as meeting lottery requirements.

14.4(2) An MVM license is not limited to a specific location, but MVMs may only be used to sell lottery products on premises that have been certified pursuant to rule 14.18(80GA,SF453). The lottery shall maintain a list of certified MVM premises.

14.4(3) Any eligible applicant may apply for a license to operate as an MVM retailer by first filing with the lottery an application form together with any supplements required. Supplements may include, but are not limited to, authorizations to investigate criminal history, financial records and financial resources, and authorizations to allow the lottery to conduct site surveys.

14.4(4) All lottery MVM license applications must be accompanied by a nonrefundable fee of \$25, plus the actual costs incurred by the lottery in conducting financial and criminal background checks, as required by 2003 Iowa Acts, Senate File 453, section 77.

14.4(5) The lottery may waive the payment of any license fee to facilitate an experimental program or a research project.

14.4(6) A limited number of MVM retailers may be selected as MVM licensees from applications received. The selection shall be made based on criteria designed to produce the maximum amount of net revenue and serve the public convenience. The lottery may refuse to accept MVM license applications for a period of time if the lottery determines that the number of existing MVM retailers is adequate to market lottery products.

14.4(7) The lottery will grant, deny, or place on hold all applications within 60 days of acceptance of an application. Applications placed on hold shall be considered denied for purposes of appeal. If an application is denied because the lottery has received a certificate of noncompliance from the child support recovery unit in regard to an individual, the effective date of denial of the issuance of the license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the applicant.

14.4(8) Notwithstanding any of the foregoing, a lottery licensee holding a lottery license pursuant to 531—Chapters 12 and 13 may sell lottery products from MVMs without possessing a separate MVM license, but only on the licensed premises, and only once the premises have been certified pursuant to rule 14.18(80GA,SF453).

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), 77, and 83, and Iowa Code sections 252J.2 and 252J.8.

531—14.5(80GA,SF453) Transfer of licenses prohibited. MVM licenses may not be transferred to any other person or entity and do not authorize the sale of lottery products at any location other than those permitted by lottery rules.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), 77(3), 78, and 83.

531—14.6(80GA,SF453) Expiration of MVM licenses. An MVM license is valid until it expires, is terminated by a change of circumstances, is surrendered by the licensee, or is revoked by the lottery. An MVM license that does not have an expiration date will continue indefinitely until it is surrendered, revoked, or terminated by a change in circumstances.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), 77(3), and 80.

531—14.7(80GA,SF453) Provisional licenses. The lottery may issue a provisional MVM license to an applicant after receipt of a fully completed license application, the authorization for a complete personal background check, completion of a credit check, and completion of a preliminary background check. The provisional MVM license shall expire at the time of issuance of the requested MVM license or 90 days from the date the provisional MVM license was issued, whichever occurs first, unless the provisional MVM license is extended by the lottery.

Notwithstanding the foregoing, the lottery will deny a provisional MVM license to any applicant who is an individual if the lottery has received a certificate of noncompliance from the child support recovery unit with regard to the individual, until the unit furnishes the lottery with a withdrawal of the certificate of noncompliance. If an application is denied because the lottery has received a certificate of noncompliance from the child support recovery unit in regard to an individual, the effective date of denial of the issuance of the MVM license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the applicant.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), 78, and 80, and Iowa Code sections 252J.2 and 252J.8.

531—14.8(80GA,SF453) MVM placement and operation. Licensed MVM retailers shall locate their MVMs at their discretion, subject to the following requirements:

1. All MVMs shall be located only on certified MVM premises.

2. No MVM shall be located in any establishment that is incompatible with the dignity of the state.

3. Only MVMs certified by the lottery's chief executive officer pursuant to rule 14.17(80GA,SF453) may be used. A list of such certified MVMs may be obtained from the lottery and shall be published on the lottery's web site.

4. Only graphics displays and audio authorized by the lottery shall be used on MVMs. MVM retailers shall make no changes, alterations, or additions to the lottery-authorized graphics displays, the lottery-authorized audio played by the MVMs, or to the cabinet exteriors of MVMs.

5. In cases where an MVM is located on MVM premises not owned by the MVM retailer, the MVM retailer shall be solely responsible for securing the rights necessary to locate the MVM on such premises and shall provide proof of such rights to the lottery upon request. Under no circumstances shall the lottery be responsible to the MVM premises operator or owner as a consequence of the placement of an MVM by an MVM retailer.

6. The MVM retailer shall be responsible for ensuring that a source of power is available for the MVM. If an MVM requires telecommunications capabilities, the MVM retailer shall be solely responsible for providing the necessary telephone lines or other required physical infrastructure. Under no circumstances shall the lottery be responsible for the expense of installing electrical circuits or telecommunications lines or for any power or telecommunications services.

7. The MVM retailer shall post its MVM license certificate, or a facsimile, at each MVM premises at which the MVM retailer has an MVM. The license certificate or a facsimile thereof may be affixed to the MVM.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 69, 71(3), and 74.

531—14.9(80GA,SF453) Duplicate licenses. Upon the loss, mutilation, or destruction of any MVM license issued by

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the lottery, application for a duplicate shall be made. A statement signed by the retailer which details the circumstances under which the license was lost, mutilated, or destroyed may be required by the lottery.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), 77, and 83.

531—14.10(80GA,SF453) Reporting changes in circumstances of the MVM retailer. Every change of business structure of a licensed MVM retailer, such as from a sole proprietorship to a corporation, and every change in the name of a business must be reported to the lottery prior to the change. Substantial changes in the ownership of a licensed MVM retailer must also be reported to the lottery prior to the change. A substantial change of ownership is defined as the transfer of 10 percent or more equity in the licensed business from or to another single individual or legal entity. If a change involves the addition or deletion of one or more existing owners or officers, the licensee shall submit a license application reflecting the change and any other documentation the lottery may require. All changes will be reviewed by the lottery to determine if the existing license should be continued.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), and 80(1).

531—14.11(80GA,SF453) License not a vested right. The possession of an MVM license issued by the lottery to any person to act as an MVM retailer is a privilege personal to that person and is not a legal right. The possession of an MVM retailer license issued by the lottery to any person to act as an MVM retailer does not automatically entitle that person to sell tickets or obtain materials for any particular game.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), and 69.

531—14.12(80GA,SF453) Suspension or revocation of a license.

14.12(1) The lottery may suspend or revoke any MVM license issued pursuant to these rules for one or more of the following reasons:

a. Failing to meet or maintain the eligibility criteria for MVM license application and issuance established by 2003 Iowa Acts, Senate File 453, Division XVIII, or these rules.

b. Violating any of the provisions of 2003 Iowa Acts, Senate File 453, Division XVIII, these rules, or the MVM license terms and conditions.

c. Failing to file any return or report or to keep records required by the lottery; failing to maintain an acceptable level of financial responsibility as evidenced by the financial condition of the business, incidents of failure to pay taxes or other debts, or by the giving of financial instruments which are dishonored or electronic funds transfers that are not paid; fraud, deceit, misrepresentation, or other conduct prejudicial to the public confidence in the lottery.

d. If public convenience is adequately served by other licensed MVM retailers.

e. Failing to sell a minimum number of tickets as established by the lottery.

f. The MVM retailer displays a history of thefts or other forms of losses of tickets or revenue.

g. Violating federal, state, or local law or allowing the violation of any of these laws in connection with the operation of MVMs.

h. Obtaining a license by fraud, misrepresentation, concealment or through inadvertence or mistake.

i. Making a misrepresentation of fact to the board or lottery on any report, record, application form, or questionnaire required to be submitted to the board or lottery.

j. Denying the lottery or its authorized representative, including authorized local law enforcement agencies, access to any place where a licensed activity is conducted.

k. Failing promptly to produce for inspection or audit any book, record, document, or other item required to be produced by law, these rules, or the terms of the license.

l. Systematically pursuing economic gain in an occupational manner or context that is in violation of the criminal or civil public policy of this state if such pursuit creates cause to believe that the participation of such person in these activities is inimical to the proper operation of an authorized lottery.

m. Failing to follow the instructions of the lottery for the conduct of any particular game or special event.

n. Failing to follow security procedures of the lottery for the management of personnel, handling of tickets, or for the conduct of any particular game or special event.

o. Making a misrepresentation of fact to a purchaser, or prospective purchaser, of a ticket, or to the general public with respect to the conduct of a particular game or special event.

p. For a licensee who is an individual, where the lottery receives a certificate of noncompliance from the child support recovery unit in regard to the licensee, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

14.12(2) The effective date of revocation or suspension of a license, or denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the licensee. All other notices of revocation or suspension shall be 20 days following service upon a licensee.

14.12(3) If an MVM license is suspended for more than 180 days from the effective date of the suspension, the lottery will revoke the license upon 15 days' notice served in conformance with rule 531—12.13(80GA,SF453,252J).

14.12(4) Upon revocation or suspension of an MVM license of 30 days or longer, the MVM retailer shall surrender to the lottery, by a date designated by the lottery, the MVM license, lottery identification card, and all other lottery property. The lottery will settle the MVM retailer's account as if the MVM retailer had terminated its relationship with the lottery voluntarily.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), 77, 80, 83, and 88, and Iowa Code section 252J.8.

531—14.13(80GA,SF453,252J) Methods of service. Notice required by Iowa Code section 252J.8 and notice of a license revocation or a suspension for the reasons described in rule 14.12(80GA,SF453) shall be as set forth in rule 531—12.13(80GA,SF453,252J). The notice shall set forth the reasons for the suspension or revocation and provide for an opportunity for a hearing. A hearing on the suspension or revocation shall be held within 180 days or less after the notice has been served.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), and 77, and Iowa Code section 252J.8.

531—14.14(80GA,SF453,252J) Licensee's obligation. MVM retailers and license applicants shall keep the lottery informed of all court actions and all relevant child support recovery unit actions taken under or in connection with Iowa Code chapter 252J, and shall provide the lottery with copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdraw-

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als of certificates of noncompliance by the child support recovery unit.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3) and 74(2), and Iowa Code section 252J.8.

531—14.15(80GA,SF453,252J) Calculating the effective date. In the event an MVM licensee or applicant files a timely district court action following service of a lottery notice pursuant to Iowa Code sections 252J.8 and 252J.9, the lottery shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the lottery to proceed. For purposes of determining the effective date of revocation or suspension, or denial of the issuance or renewal of an MVM license, the lottery shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3) and 74(2), and Iowa Code sections 252J.8 and 252J.9.

531—14.16(80GA,SF453) Financial responsibility. The lottery shall use the following guidelines to determine financial responsibility for a person seeking an MVM license.

14.16(1) Sole proprietorship. The lottery will not require a bond from a sole proprietor if the account history for the applicant for the past two years discloses no more than four accounts past due and no accounts over 90 days past due.

14.16(2) Partnership. If the MVM license applicant is a partnership, 50 percent of the partners must meet the credit guidelines listed in subrule 14.16(1). If the credit history discloses that the requirements of subrule 14.16(1) are satisfied, the lottery will not require a bond.

14.16(3) Fraternal or civic associations. If the MVM license applicant is a fraternal association, civic organization or other nonprofit entity, the applicant must meet the credit guidelines set forth in subrule 14.16(1). If the fraternal or civic association or other nonprofit entity has no credit history or the credit history is incomplete as determined in the sole discretion of the lottery, then the officers of the fraternal or civic association or other nonprofit entity must meet the requirements of subrule 14.16(1). If the credit history discloses that the requirements of subrule 14.16(1) are satisfied, the lottery will not require a bond.

14.16(4) Corporations and limited liability companies—two years or more. If the MVM license applicant is a corporation or a limited liability company and the corporation or the limited liability company has been in existence for more than two years from the date of the application, the MVM license applicant must meet the following financial responsibility guidelines:

a. The MVM license applicant is paying 60 percent of its suppliers on time or within terms; and

b. The license applicant must have a credit risk class provided by a financial and credit reporting entity of less than 5 or an equivalent rating. If the corporation or the limited liability company meets the guidelines described in this rule, the lottery will not require a bond from the license applicant.

14.16(5) Corporations and limited liability companies—less than two years. If a corporation has been in existence for less than two years from the date of the application, the lottery will review the credit history of the corporate officers who hold 10 percent or more of the stock of the corporation. If a limited liability company has been in existence for less than two years, the lottery will review the credit history of the members of a limited liability company who have contrib-

uted 10 percent or more to the capital of the limited liability company. Fifty percent or more of the corporate officers or members of the limited liability company must meet the credit guidelines set forth in subrule 14.16(1). If the corporate officers or the members of the limited liability company meet the requirements set forth in subrule 14.16(1), the lottery will not require the corporation or the limited liability company to obtain a bond.

14.16(6) Bonding requirements. With respect to any MVM license applicant whose credit history does not meet the guidelines described in subrules 14.16(1) and 14.16(4), the applicant will be required to obtain a bond from a surety company authorized to do business in Iowa or offer a cash bond in the amount of \$250 per MVM to be operated by the MVM license applicant; provided, however, that the total amount of such bond shall not exceed \$50,000.

14.16(7) Holding period for bond. The lottery will hold the bond provided by the license applicant for a minimum time period of one year. Thereafter, the lottery will review the credit history of the licensed retailer. If the retailer's account history shows no delinquent payments, the lottery will release the bond.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 69(1) and 79.

531—14.17(80GA,SF453) MVM certification. Before an MVM may be used to vend lottery products, it must be certified by the chief executive officer of the lottery. An MVM shall be certified only after all of the following requirements have been met:

14.17(1) The manufacturer of the MVM and, if the machine is not purchased or leased by the MVM retailer directly from the manufacturer, any MVM distributor shall have passed a criminal background check.

14.17(2) The manufacturer shall have passed a financial responsibility background check.

14.17(3) It is demonstrated to the lottery's satisfaction that the MVM can perform all of the following:

a. Reliably vend lottery-approved tickets, either pre-printed or printed on demand from a predetermined electronic "pack" of tickets.

b. Display, in the process of vending tickets, lottery-approved graphics and sound, indicating whether the vended ticket is a winner.

c. Communicate reliably with a central computer system, as described below, in order to transmit data.

d. Shut itself off if it fails to communicate with the central computer system for a period of 48 hours.

e. Keep lottery tickets and cash receipts secure.

f. Account for the number of tickets sold.

14.17(4) The manufacturer shall demonstrate the ability to securely, reliably, and consistently produce either pre-printed tickets or electronic "packs" of tickets that meet the lottery's specifications as set forth in the game rules.

14.17(5) It shall be demonstrated that the MVM can operate reliably with a central computer system capable, at a minimum, of all of the following:

a. Communicating with MVMs located in all parts of the state.

b. Retrieving data from MVMs.

c. Transmitting data to MVMs.

d. Storing data received from MVMs.

e. Allowing secure access to data by the lottery and MVM retailers.

f. Producing printed reports in a format usable by the lottery.

g. Performing security checks on MVMs.

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h. Consistently and reliably operating at least 16 hours per day.

14.17(6) The MVM manufacturer must commit contractually to provide the lottery with the data required by the lottery in a timely manner. The lottery may negotiate directly with manufacturers of certified MVMs for these services.

14.17(7) The manufacturer shall pay a fee of \$25, plus all actual costs incurred by the lottery in performing the necessary criminal background and financial responsibility checks. The lottery may require a manufacturer to pay the estimated cost of the criminal background and financial responsibility checks in advance.

14.17(8) As a condition of certification, the manufacturer shall provide to the lottery a working example of each model of MVM it proposes to have certified for testing and troubleshooting purposes. The lottery may keep the working example for such time as the model remains certified.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 83, and 84.

531—14.18(80GA,SF453) MVM premises certification.

Before an MVM may be used to vend lottery products, the premises on which the MVM is to be located must be certified by the chief executive officer of the lottery. An MVM premises shall be certified only after all of the following requirements have been met:

1. The MVM premises operator shall have passed a criminal background check.

2. The MVM premises shall have been demonstrated to be compatible with the dignity of the state.

3. The chief executive officer shall have determined that the MVM premises are an age-controlled environment. Examples of age-controlled environments are premises where, by law, the age of patrons is monitored by the employees of the establishment and whose clientele consists primarily of adults. Such locations include, but shall not be limited to, establishments licensed by the state to sell liquor by the drink and tobacco outlet stores.

4. A fee of \$25 shall have been paid to the lottery for certification of the MVM premises.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 83, and 84.

531—14.19(80GA,SF453) Suspension or revocation of a certification.

14.19(1) The lottery may suspend or revoke any certification made pursuant to these rules for one or more of the following reasons:

a. Failing to meet or maintain the certification criteria established by these rules.

b. Violating any of the provisions of 2003 Iowa Acts, Senate File 453, Division XVIII, or these rules.

c. Fraud, deceit, misrepresentation, or other conduct prejudicial to the public confidence in the lottery.

d. Violating federal, state, or local law or allowing the violation of any laws in connection with the production or operation of MVMs.

e. Obtaining a certification by fraud, misrepresentation, concealment or through inadvertence or mistake.

f. Making a misrepresentation of fact to the board or lottery on any report, record, application form, or questionnaire required to be submitted to the board or lottery.

g. Systematically pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates cause to believe that the participation of such person in these activi-

ties is inimical to the proper operation of an authorized lottery.

h. Failing to follow security procedures of the lottery for the management of personnel, handling of tickets, or for the conduct of any particular game or special event.

i. Making a misrepresentation of fact to a purchaser, or prospective purchaser, of a ticket, or to the general public with respect to the conduct of a particular game or special event.

j. In the case of MVM premises, certification may be suspended or revoked for any of the following additional reasons:

(1) Where the lottery receives a certificate of noncompliance from the child support recovery unit in regard to the MVM premises operator who is an individual, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

(2) A history of thefts or other forms of losses of tickets or revenue occurs at the MVM premises.

(3) Conduct or business activities on the premises which would undermine the public confidence in the lottery.

(4) Substantiated instances of purchases of lottery tickets by underage persons on the MVM premises.

k. In the case of the certification of MVMs, certification may be suspended or revoked for any of the following additional reasons:

(1) Repeated failure or inability of the MVM or the associated central computer system to operate properly.

(2) The occurrence of any event or the existence of any state of facts that would cause the MVM manufacturer to fail a criminal background check or a financial responsibility check.

14.19(2) The effective date of revocation or suspension of a certification, or denial of the issuance or renewal of a certification, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice. All other notices of revocation or suspension shall be 20 days following service upon a licensee.

14.19(3) Upon suspicion that an underage player has purchased one or more lottery products from an MVM, the lottery will investigate and provide a written warning to the MVM retailer and the MVM premises operator describing the report of the event and of the potential violation of 2003 Iowa Acts, Senate File 453, section 77(9). In the event the lottery can substantiate the claim that an underage player has purchased a product from an MVM, the lottery shall suspend the certification of the MVM premises in question for 7 days. If the lottery can substantiate the claim that an underage player has purchased a product from an MVM a second time in a period of one year from the date of the first event on the same MVM premises, the lottery shall suspend the MVM premises certification for a period of 30 days. If the lottery can substantiate the claim that an underage player has purchased a product from an MVM at a given MVM premises a third time in a period of one year from the date of the first event as described in this rule, the lottery shall suspend the certification of the MVM premises in question for one year.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), 77, and 80.

531—14.20(80GA,SF453) Requirements for the sale of tickets.

14.20(1) Prior to the vending of any lottery products by an MVM retailer, the lottery and the MVM retailer shall enter into a written agreement specifying the compensation to be received by the MVM retailer, providing for the provisioning

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of tickets and paper stock, and other matters as the parties shall agree upon.

14.20(2) Tickets shall be sold at the price designated by the lottery unless the lottery specifically authorizes their sale at a different price.

14.20(3) No MVM retailer or any employee, member, or agent of an MVM retailer shall attempt to identify a winning ticket prior to the sale of the ticket.

14.20(4) MVM retailers shall arrange for the MVM premises operator or agent(s) or employees of the MVM premises operator to pay all prizes less than \$600 during normal business hours at the MVM premises where the prize-winning ticket was vended. Prizes of \$600 or more shall be paid at lottery headquarters in Des Moines. Prizes must be claimed prior to the MVM premise's first close of business following the vending of the winning ticket.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), 77, 83, and 84.

531—14.21(80GA,SF453) Ownership of tickets and other property. All tickets or electronic "packs" of tickets accepted by a licensed MVM retailer are the property of the MVM retailer. After confirmation of delivery, the retailer is responsible for the condition and security of the tickets and for any losses resulting from tickets that become lost, stolen, or damaged. The lottery may credit MVM retailers for lost, stolen, or damaged instant tickets if the lottery determines that the best interests of the lottery will be served by issuing a credit.

Unless otherwise indicated in writing, all lottery property provided to an MVM retailer for use in selling products, as opposed to property and tickets sold to an MVM retailer, remains the property of the lottery. The retailer shall deliver lottery property to the lottery upon request.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 69, 71(3), 77, and 80.

531—14.22(80GA,SF453) Retailer costs and compensation.

14.22(1) Retailers shall be responsible for purchasing the MVM tickets, including electronic tickets, and the paper stock on which to print electronic tickets. The tickets and paper stock shall be purchased from either the manufacturer of a certified MVM or from the lottery, according to the terms of the agreement entered into between the lottery and the MVM retailer.

14.22(2) The lottery may impose a service fee on MVM retailers to cover operational costs relating to MVMs incurred by the lottery. The service fee shall not exceed the actual costs incurred by the lottery.

14.22(3) The lottery, with board approval, shall set the base amount of retailer compensation. The base amount of compensation shall be specified in the agreement between the retailer and the lottery. The lottery may increase the total amount of retailer compensation by implementing sales incentive programs.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74, and 77.

531—14.23(80GA,SF453) Retailer payment methods. Retailers are required to pay for lottery tickets or shares by means of an electronic funds transfer (EFT) from the retailer's account. The lottery may allow a retailer to make payments by another method if the retailer can show that the electronic funds transfer system imposes a significant hardship on the retailer or if the lottery determines that the retailer's payment history justifies use of an alternative payment method.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 69, 71(3) 80, 81, and 93.

531—14.24(80GA,SF453) Dishonored checks and electronic funds transfers. Any payment made to the lottery by an applicant for a license or by a licensed retailer either by a check which is dishonored or by an electronic funds transfer which is not paid by the depository shall be grounds for immediate denial of the application for a license or for the suspension or revocation of an existing license. The lottery may assess a surcharge up to the maximum allowed by applicable state law for each dishonored check or EFT. The lottery may also alter the payment terms of a retailer's license and require a retailer to reimburse the lottery for costs which occur as a result of a dishonored check or EFT.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 77, and 80.

531—14.25(80GA,SF453) Inspection of lottery materials and licensed premises. Retailers shall allow the lottery to inspect lottery materials, tickets, and the premises. All books and records pertaining to the MVM retailer's lottery activities shall be available to the lottery for inspection and copying during the normal business hours of the MVM retailer and between 8 a.m. and 5 p.m., Monday through Friday. All books and records pertaining to the MVM retailer's lottery activities are subject to seizure by the lottery without prior notice.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 77, 80, and 81.

531—14.26(80GA,SF453) Payment of MVM ticket prizes. Prizes won by MVM tickets may be paid only by an agent or employee of the MVM premises operator where the winning ticket was vended. If the MVM premises operator is a nonprofit organization, members of the organization may also pay prizes if authorized by the organization. The MVM retailer shall be responsible for ensuring that prizes are paid.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), 77, 83, and 84.

531—14.27(80GA,SF453) Ticket sales restrictions. The lottery reserves the right to limit or terminate the sale of tickets from any MVM or at any MVM premises if such sales may compromise the operation and integrity of the lottery, reflect conduct prejudicial to the public confidence in the lottery or reflect activity of an illegal nature under local, state or federal laws.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74(2), 77, 80, 83, and 84.

CHAPTER 18

SCRATCH TICKET GENERAL RULES

531—18.1(80GA,SF453) Authorization of scratch ticket games. The lottery authority board authorizes the sale of scratch tickets that meet the criteria set forth in this chapter.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, section 71(3).

531—18.2(80GA,SF453) Definitions.

"Play symbols" means the numbers or symbols appearing under the removable covering on the ticket.

"Scratch ticket" as used in this chapter means an instant lottery ticket that is played by removing a rub-off covering on the ticket.

"Validation number" means the characters or numbers found on a ticket or ticket stub.

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This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 65 and 71(3).

531—18.3(80GA,SF453) Scratch ticket price. The lottery shall specify the price of scratch tickets in the specific game rules for each game.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3) and 74.

531—18.4(80GA,SF453) Method of play. Winners of a prize may be determined by such activities as locating, matching, or adding the play symbols on the tickets or by any other play action approved by the lottery. The exact method of designating a winning ticket shall be determined by the lottery and shall be set forth in the specific game rules.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3) and 74.

531—18.5(80GA,SF453) Prizes.

18.5(1) The number and amount of prizes shall be determined by the lottery and set forth in the specific game rules.

18.5(2) At the lottery's discretion, a scratch ticket game may include a special prize event. The number of prizes and the amount of each prize in the prize event shall be determined by the lottery. The dates and times, as well as the procedures for conducting any elimination drawings or prize events, shall be determined by the lottery in the specific game rules. Finalists for prize events shall be selected in the manner stated in the specific game rules.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74, and 84.

531—18.6(80GA,SF453) Annuity prizes. If a prize offered in a scratch game is an annuity, the prize shall consist of an initial prize payment followed by yearly installments as described in the specific game rules. If the current cash value of an annuity prize attributable to a single ticket or entry is less than \$100,000, the lottery may elect to pay the current cash value of the prize in one lump-sum payment.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74, and 84.

531—18.7(80GA,SF453) Disclosure of odds. The overall probability of purchasing a winning ticket shall be displayed on each ticket.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3) and 74.

531—18.8(80GA,SF453) Claiming prizes.

18.8(1) Claim period. Prizes must be claimed within 90 days of the announced end of the scratch game.

18.8(2) Prizes claimed at retailer. The specific game rules shall specify prizes that shall be claimed from the retailer. To claim a prize from a retailer, the winner shall sign the back of the winning ticket and fill out a claim form if required by the specific game rules. If a retailer can verify the claim, the retailer shall pay the prize. If a retailer cannot verify the claim, the player shall submit the ticket and a completed claim form to the lottery. If the claim is validated by the lottery, a draft shall be forwarded to the player in payment of the amount due. If the claim is not validated by the lottery, the claim shall be denied and the player shall be promptly notified.

18.8(3) Prizes claimed at lottery. The specific game rules shall specify prizes that may be claimed only from the lottery. To claim a prize from the lottery, the player may personally present the completed claim form obtained from a licensed retailer or any lottery office and the ticket to any lottery office or may mail the ticket and claim form to the Iowa Lottery Authority, 2015 Grand Avenue, Des Moines, Iowa 50312-4999.

If the claim is validated by the lottery, the prize or a check, warrant, or draft shall be forwarded to the player in payment of the amount due less any applicable state or federal income tax withholding. If the claim is not validated by the lottery, the claim shall be denied and the player shall be promptly notified.

18.8(4) Prizes in special events. The specific game rules shall set forth the manner in which prizes won in special events or drawings may be claimed.

18.8(5) Variation by specific game rules. The specific game rules may vary the terms of this rule in respect to the manner in which prizes are claimed or the claim period applicable to any scratch game or special event.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74, and 84.

531—18.9(80GA,SF453) Ticket validation requirements.

18.9(1) To be a valid scratch ticket, a ticket must meet all of the following validation requirements. A ticket must:

- a. Have been issued by the lottery in an authorized manner.
- b. Not be altered, unreadable, reconstructed or tampered with in any manner.
- c. Not be counterfeit in whole or in part.
- d. Not be stolen or appear on any list of omitted tickets on file with the lottery.
- e. Be complete and not blank or partially blank, miscut, misregistered, defective, or printed or produced in error.
- f. Have play symbols and captions as described in the specific game rules. All symbols, numbers and codes must be present in their entirety, legible, right side up, and not reversed in any manner.
- g. Have the appropriate bar code, pack-ticket number, retailer verification code and security code.
- h. Have a validation number that appears on the lottery's official list of validation numbers of winning tickets. A ticket with that validation number shall not have been previously paid.
- i. Pass all additional validation requirements stated in the specific game rules and any confidential validation requirements established by the lottery.

18.9(2) Any ticket not passing all applicable validation requirements is invalid and is ineligible for any prize. The chief executive officer's determination that a ticket is invalid is final.

The chief executive officer, in the chief executive officer's sole discretion, may choose to pay an amount equal to the prize that would have been won on an invalid ticket if the lottery is able to determine the prize which would have been won by use of a symbol, number, color code, or other mechanism. The chief executive officer's decision as to whether to pay a player the sum equal to the prize on an invalid ticket is final.

If an invalid ticket is purchased by a player, the only responsibility or liability of the lottery shall be to replace the invalid ticket with an unplayed ticket from the same game or any other game or issue a refund of the sale price.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74, and 84.

531—18.10(80GA,SF453) Official end of game. The lottery shall announce the official end of each scratch game. Retailers may continue to sell tickets for each game up to the cutoff date specified by the lottery.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3) and 74.

LOTTERY AUTHORITY, IOWA[531](cont'd)

531—18.11(80GA,SF453) Board approval of games. The lottery shall provide board members with a written description of each specific scratch game. The chairperson or a quorum of the board may call a special meeting to review the instant game selection. The board shall not contest the selection of a scratch game more than five days after receiving written notice of the selection.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3) and 74.

CHAPTER 19

PULL-TAB GENERAL RULES

531—19.1(80GA,SF453) Authorization of pull-tab games. The lottery authority board authorizes the lottery to sell pull-tab tickets which meet the criteria specified in this chapter.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, section 71(3).

531—19.2(80GA,SF453) Definitions. As used in this chapter the following definitions are applicable.

“Low-tier prizes” are prizes which are included in the guaranteed low-end prize structure of a pull-tab game.

“Pull-tab tickets” are instant lottery tickets that are played by opening tabs to reveal if a prize was won. “Pull-tab tickets” do not include “scratch tickets” that are played by removing a rub-off covering from the play area.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 65 and 71(3).

531—19.3(80GA,SF453) Pull-tab ticket price. The lottery shall specify the price of pull-tab tickets in the specific game rules for each game.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3) and 74.

531—19.4(80GA,SF453) Method of play. Each pull-tab ticket shall have tabs under which play symbols shall appear. A winning ticket shall be determined by matching, aligning, adding, or locating symbols or numbers under the tabs.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3) and 74.

531—19.5(80GA,SF453) Ticket validation requirements.

19.5(1) Winning tickets shall be validated by use of a symbol, number, or color-coded marking. A ticket is not valid if it fails to meet any of the following requirements. The ticket must:

- a. Have been issued by the Iowa lottery authority in an authorized manner.
- b. Not be altered, unreadable, reconstructed, or tampered with in any manner.
- c. Not be counterfeit in whole or in part.
- d. Not be stolen or appear on any list of omitted tickets on file with the lottery.
- e. Be complete and not blank or partially blank, miscut, misregistered, defective, or printed in error.
- f. Have the exact play symbols and captions specified in the specific game rules.
- g. Pass all validation tests including confidential validation tests.

If a ticket is invalid when sold it is not eligible to receive any prize, and the purchaser's sole remedy is to submit the ticket to lottery headquarters to obtain a refund of the retail sale price. The lottery shall have no liability or responsibility for tickets invalidated after the time of sale.

The chief executive officer may, in the chief executive officer's sole discretion, choose to pay a sum equal to the prize

on an invalid ticket if the lottery is able to determine the prize that would have been won on the invalid ticket by use of a symbol, number, color code or other mechanism. The chief executive officer's determinations that a ticket is valid or invalid, that a ticket was valid when sold and was subsequently invalidated, and whether a sum equal to the prize on an invalid ticket will be paid shall be final.

19.5(2) Reserved.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74, and 84.

531—19.6(80GA,SF453) Prizes. The number and the amount of prizes shall be determined by the lottery and set forth by the specific game rules.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74, and 84.

531—19.7(80GA,SF453) Disclosure of odds. The overall probability of purchasing a winning ticket shall be stated on the ticket.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3) and 74.

531—19.8(80GA,SF453) Prize claims. All prizes must be claimed only at the place of business of the retailer that sold the ticket. Prizes must be claimed prior to the retailer's first close of business following the sale of the ticket. The winning ticket must be submitted to the retailer to obtain payment of any prize.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74, and 84.

531—19.9(80GA,SF453) Owner of ticket. Retailers shall pay prizes only to persons who present winning tickets. The person in physical possession of a pull-tab ticket shall be deemed to be the owner of the ticket who is entitled to prize payment regardless of any signature or other writing that may have been placed on the ticket after purchase.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74, and 84.

531—19.10(80GA,SF453) Disputed claim. If a purchaser and a retailer cannot agree as to whether a prize should be paid on any ticket, the purchaser may submit the ticket to any lottery office. The chief executive officer's determination as to whether a prize shall be awarded is final.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74, and 84.

531—19.11(80GA,SF453) Lottery logo. All pull-tab tickets sold by the Iowa lottery authority shall be conspicuously marked with the logo of the lottery.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74, and 84.

531—19.12(80GA,SF453) End of game. The chief executive officer shall announce the end of any pull-tab game or games.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3) and 74.

531—19.13(80GA,SF453) Board approval of game. After selection of a particular pull-tab game, the lottery shall provide board members with written notification that a particular game has been selected. The chairperson of the board or a quorum of the board may call a meeting to review the game selection. If the lottery board does not disapprove of the game within five working days following receipt of notice that the game has been selected, the board may not later disapprove of the game.

LOTTERY AUTHORITY, IOWA[531](cont'd)

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3) and 74.

CHAPTER 20

COMPUTERIZED GAMES—GENERAL RULES

531—20.1(80GA,SF453) Authorization of computerized lottery games. The lottery authority board authorizes the sale of computerized games to be played in compliance with the criteria set forth in this chapter.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, section 71(3).

531—20.2(80GA,SF453) Computerized lottery definitions. For the purposes of interpreting this chapter, the following definitions are applicable unless the context requires a different meaning.

“Central computer” or “central computer system” is a computer system designated to control, monitor, and communicate with the terminals and to record the transactions processed by the terminals.

“Drawing” means that process that is used to randomly select a winning combination for the game plays.

“Drawing machine” means a computer or other device that determines the outcome of the process of selection of winning and losing tickets or shares in a lottery.

“Easy pick” means the random selection by the computer terminal of a valid play for the game that was selected.

“Electronic ticket” or “e-ticket” means a lottery ticket or share for which an electronic visual facsimile on a computer is available from the lottery.

“Game” shall mean any computerized game conducted by the lottery.

“Game ticket” or “ticket” means a ticket or share produced by a terminal or manufacturing process that is the tangible evidence to prove participation in a game.

“Gaming machine” means a drawing machine that upon winning dispenses coins, currency, or a ticket, credit, or token that is redeemable for cash or a prize.

“Lotto terminal” means a vending machine that prints and dispenses tickets or shares that will be determined to be winning or losing tickets or shares either by a predetermined pool drawing machine or by a drawing machine at some time subsequent to the dispensing of the tickets or shares.

“Monitor vending machine” means a vending machine that dispenses or prints and dispenses lottery tickets or shares that have been determined to be winning or losing tickets or shares by a predetermined pool drawing machine prior to the dispensing of the tickets or shares.

“On-line vending machine” means a vending machine that prints and dispenses lottery tickets or shares that have been determined to be winning or losing tickets or shares by a predetermined pool drawing machine prior to the dispensing of the tickets or shares.

“Panel” or “game panel” means that area of a play slip that contains marked squares that may be played.

“Play” or “game plays” means the selection of an appropriate number of available variables that constitutes a valid entry in the game or the purchase of a ticket or share with a sequentially generated variable appearing on the face of the ticket or share that constitutes a valid entry in a pool exhaustion game.

“Play slip” means a card used by the player in marking a player’s game plays.

“Pool exhaustion game” means a game where a predetermined pool of plays is established.

“Predetermined pool drawing machine” means a computer or other device external to a lotto terminal, scratch ticket vending machine, on-line vending machine, or monitor vending machine that predetermines winning and losing tickets or shares, assigns them to preprogrammed and prepackaged sequential electronic pool files and subsequently utilizes the files in production and distribution of electronic game cards and paper game tickets or shares produced in manufactured packs or through lotto terminals or vending machines.

“Retailer” means the person or entity licensed by the Iowa lottery to sell game plays.

“Scratch (instant) ticket vending machine” or “ITVM” means a vending machine that dispenses preprinted paper lottery tickets with a scratch-off area or electronic game cards with preprogrammed and prepackaged sequential electronic pool files that have been determined to be winning or losing tickets by a predetermined pool drawing machine prior to the dispensing of the tickets.

“Specific game rules” means the rules promulgated by the lottery pursuant to 2003 Iowa Acts, Senate File 453, section 71(4), that contain the features of a particular computerized game or promotion.

“Terminal” means a device that is authorized by the lottery to function with a central computer system for the purpose of issuing, entering, receiving, and processing lottery transactions.

“Vending machine” means a lottery ticket or share dispensing machine either with a mechanical operating mechanism or with computer components that perform accounting functions and activate the ticket or share dispensing mechanism.

“Winning numbers” means the selection of an appropriate number of the variables, randomly selected at each drawing, which shall be used to determine winning plays contained on a game ticket or share.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 65 and 71(3).

531—20.3(80GA,SF453) Method of play. If required by the specific game rules, a player must select an appropriate number of the available game variables. A player may select each game variable by marking a play slip and submitting the play slip to a retailer or by verbally requesting “easy pick” from a retailer. Players may also purchase game plays from player-activated terminals by use of a touch screen if player-activated terminals are available. A drawing is held in which an appropriate number of the game variables are drawn on a random basis.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3) and 74.

531—20.4(80GA,SF453) Cancellation by a player. A ticket or share may be canceled by returning the ticket or share to the selling retailer provided that the ticket or share is returned to the retailer the same day it was purchased in time to permit canceling to be fully completed prior to the closing time for that drawing. In the event that a ticket or share is canceled, the player will be entitled to a refund from the retailer equal to the purchase price of the ticket or share.

Cancellations will not be allowed in certain games as outlined in the specific game rules.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3) and 74.

531—20.5(80GA,SF453) Prizes and odds. The amount of prizes and the odds of winning shall be set forth in the specific

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game rules. Specific game rules may allow alternative prize structures.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74, and 84.

531—20.6(80GA,SF453) Payment of annuity jackpot prizes. The lottery may offer cash prizes, annuitized installment prizes, and prizes with cash or annuity payment options available to the winners. If the jackpot prize or share of the jackpot prize will be paid as an annuity, it will consist of the initial payment followed by such number of yearly installments as may be provided in the specific game rules for the game unless the cash value of the annuity prize attributable to a single play is less than \$100,000. If the cash value of the annuity prize attributable to a single play is under \$100,000, the lottery may elect to pay the cash value of the prize in one lump-sum prize payment. This rule does not apply to multistate or other multijurisdictional lottery games. Provision for payment of prizes for multistate and other multijurisdictional games shall be outlined in the specific game rules for such games.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74, and 84.

531—20.7(80GA,SF453) Unclaimed prizes. Unclaimed jackpot prizes, shares of the jackpot prize, and other lotto prizes do not increase a prize simultaneously won by any other player in the game. Unclaimed jackpot shares shall be added to future jackpot prize pools at times determined by the lottery. Other unclaimed prizes shall be added to future prize pools for any lottery game. This rule shall also apply to such games offered in Iowa, except as may otherwise be provided in the specific game rules of a multistate lottery or other multi-jurisdictional lottery with which the Iowa lottery may be affiliated.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74, and 84.

531—20.8(80GA,SF453) Disclosure of odds. The overall probability of purchasing a winning ticket or share shall be stated on the game ticket and in the game literature made available by the lottery.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3) and 74.

531—20.9(80GA,SF453) Price. The price of a game play shall be outlined in the specific game rules.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3) and 74.

531—20.10(80GA,SF453) Changes for special promotions. The lottery may alter the price of the tickets or shares, features, or prizes of the game or drawings to accommodate special promotions. Alterations made by the lottery shall be contained in the specific rules for the promotion.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 69, 71(3), and 74.

531—20.11(80GA,SF453) Ticket or share ownership and prize entitlement.

20.11(1) A ticket or share is owned by its physical possessor until a signature is placed on the back of a ticket in the area designated for signature. When a signature is placed on the back of the ticket or share in the designated space, the person whose signature appears in the designated space is the owner of the ticket or share and is entitled to any prize attributable to the ticket or share.

20.11(2) Notwithstanding any name or names submitted on a claim form, the lottery shall make payment to the person

whose signature appears on the back of the ticket or share in the designated space. If the signatures of more than one person appear in that space, the lottery shall make payment to the person identified on the winner's claim form to receive payment, which designation shall be made by all persons whose signatures appear on the reverse side of the ticket or share. In the event that all persons whose signatures appear in the appropriate space cannot identify one person to whom payment should be made, the lottery may withhold payment until the proper payee is determined. In no event shall more than one person be entitled to a particular prize.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74, and 84.

531—20.12(80GA,SF453) Ticket validation requirements.

20.12(1) All claims for prizes are subject to validation by the lottery. To be a valid ticket or share and eligible to receive a prize, all of the following requirements must be satisfied.

a. The ticket or share must have been issued by the lottery directly or through a retailer, via a terminal, in an authorized manner.

b. The information on the ticket or share must correspond precisely with the lottery's computer record.

c. The ticket or share serial number must appear in its entirety, and correspond, using a computer validation file, to the winning game play or plays printed on the ticket or share.

d. A ticket or share shall be void unless the ticket or share is printed on a paper stock roll that was validly issued to and used, at the time of the play, by the retailer from whom the ticket or share was purchased.

e. The ticket or share must not be produced in error, counterfeit in whole or in part, altered, mutilated, unreadable, tampered with in any manner, incomplete, blank or partially blank, miscut, or defective.

f. The ticket or share must pass all other security criteria determined by the lottery.

g. The ticket or share must not be stolen.

h. The ticket or share must not be canceled.

i. The ticket or share must pass additional validation requirements that may be stated in the specific game rules.

20.12(2) In the event that a ticket or share fails to pass all of the validation criteria set forth in this rule and the specific game rules, it is invalid and ineligible for any prize. The lottery, in its sole discretion, may choose to pay a sum equal to the prize on an invalid ticket or share if the lottery can determine the prize that would have been won by the ticket or share by use of a symbol, code number, color code, or other mechanism. The lottery's decisions as to whether a ticket or share is invalid and whether a sum equal to the prize on an invalid ticket or share will be paid are final. If the lottery determines that a ticket or share is not eligible to receive a prize or a sum equivalent to the prize amount, the lottery may replace the invalid ticket or share with a ticket or share of equivalent sale price from any current lottery game or refund the purchase price of the ticket or share. Replacement of the ticket or share, or refund of the purchase price shall be the claimant's sole and exclusive remedy.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74, and 84.

531—20.13(80GA,SF453) Claim period. All prizes for games not associated with another state's lottery must be claimed as directed within 90 calendar days of the drawing in which the prize was won, unless otherwise specified in the specific game rules for the game. All prizes for games associated with another state's lottery must be claimed as directed

LOTTERY AUTHORITY, IOWA[531](cont'd)

within the specific game rules. For purposes of determining the claim period, the drawing date shall not be counted. If a prize is claimed by mail, the lottery must actually receive the ticket or share and claim form within the claim period. Any prize not properly claimed within the specified period shall be forfeited. The claim period for a game may be altered by the lottery in the specific game rules.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74, and 84.

531—20.14(80GA,SF453) Manner of claiming prizes.

20.14(1) To receive payment for a prize or prizes on any single game ticket or share that total \$600 or less, the winner may take the signed ticket or share directly to any lottery retailer authorized to sell and validate the game, or to any lottery office, or mail the signed ticket or share, along with a completed claim form, to Iowa Lottery Authority, 2015 Grand Avenue, Des Moines, Iowa 50312-4999.

If there is any alteration, mutilation, tear, or other ambiguity on the ticket or share, the retailer is not authorized to make direct payment of a prize and a claim form and the ticket or share must be submitted to the lottery.

20.14(2) To receive payment for a prize or prizes on any single game ticket or share that total more than \$600, the winner may submit the signed ticket or share and a completed claim form directly to any lottery office. The winner may also mail the signed ticket or share and claim form to Iowa Lottery Authority, 2015 Grand Avenue, Des Moines, Iowa 50312-4999.

20.14(3) Claim forms are available at all computerized lottery retailers and lottery offices. The lottery or, at the lottery's direction, a lottery retailer may require the person claiming a prize of any amount to fill out a claim form.

20.14(4) If a prize is claimed by mail, the ticket or share and the claim form must actually be received by the lottery within the claim period.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74, and 84.

531—20.15(80GA,SF453) Presentation of ticket. No prize payments shall be made unless the player submits a valid, uncanceled ticket or share. A play slip has no pecuniary or prize value and is not evidence of ticket purchase or of numbers selected.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74, and 84.

531—20.16(80GA,SF453) One prize per game play. The holder of a winning ticket or share may win only one prize per game play in connection with the winning numbers drawn and shall be entitled only to the prize won by those numbers in the highest matching prize category.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74, and 84.

531—20.17(80GA,SF453) Corrections. The lottery reserves the right to correct and adjust, up or down, the amount of any prize or prizes, whether all or part of the prize or prizes has been paid, if it is determined that one or more players are entitled to a portion of a prize and were not included in the prize calculations or were included in the prize calculations by mistake.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74, and 84.

531—20.18(80GA,SF453) Risk of error. The placing of plays is done at the player's own risk. It is solely the player's responsibility to verify the accuracy of game plays and all

other data printed on the ticket. In the event of any error, the player's only remedy is cancellation of the ticket or share according to the procedure specified in this chapter. The lottery and lottery retailers have no other responsibility for tickets or shares printed in error.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3), 74, and 84.

531—20.19(80GA,SF453) Multidraw plays and advance plays.

Multidraw plays and advance plays may be available. This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3) and 74.

531—20.20(80GA,SF453) Drawings.

Drawings will be held as specified in the game rules. This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3) and 74.

531—20.21(80GA,SF453) Cancellation or delay of play.

The lottery reserves the right to cancel or delay drawings or ticket or share sales in the event of technical difficulties, and on days of special importance or on days the drawings would be impractical or inappropriate.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3) and 74.

531—20.22(80GA,SF453) Pool exhaustion game—method of play.

20.22(1) Players may purchase tickets or shares for a specific game. Each ticket or share sold for a pool exhaustion game will be generated separately. Tickets or shares shall be sold against the pool until the pool of plays is exhausted or until the game ends in accordance with the specific game rules.

20.22(2) Each ticket or share will bear a sequentially generated variable on the face of the ticket or share.

20.22(3) Drawings for the prizes for a specific game shall randomly select a winner or winners from the tickets or shares actually sold. The drawing method shall be described in the specific game rules.

20.22(4) Prizes shall be awarded as specified in the specific game rules.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3) and 74.

531—20.23(80GA,SF453) Prize insurance fund.

20.23(1) The lottery may provide that up to 10 percent of the funds designated for the jackpot prize level in the prize structure of the specific game rules for a game or that any prize funding not awarded by the conclusion of the relevant claim period for a fixed-prize game shall be transferred to a prize insurance fund.

20.23(2) The prize insurance fund may be used for any of the following purposes:

a. To pay prizes for any on-line game prize obligation if the amount available to fund an on-line game prize is insufficient;

b. To support a special promotion to retire an on-line game, e.g., a television show or a second chance drawing;

c. To transfer amounts to a successor game to pay prize obligations for a different on-line game.

This rule is intended to implement 2003 Iowa Acts, Senate File 453, sections 71(3) and 74.

[Filed Emergency 8/28/03, effective 8/28/03]

[Published 9/17/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/17/03.

ARC 2762B
MEDICAL EXAMINERS
BOARD[653]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medical Examiners hereby amends Chapter 8, "Fees," and Chapter 9, "Permanent Physician Licensure," Iowa Administrative Code.

The amendments raise the licensure fees for renewal and reinstatement of permanent physician licenses. Physicians who renew their permanent licenses via an on-line application will continue to pay less than those who submit paper applications.

Notice of Intended Action regarding these amendments was published in the July 23, 2003, Iowa Administrative Bulletin as **ARC 2638B**. These amendments are identical to those published under Notice of Intended Action.

The Board adopted the amendments to Chapters 8 and 9 during a telephone conference call on August 27, 2003.

The Board finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments should be waived and these amendments should be made effective on September 1, 2003, as they confer a benefit to the public because higher fees will guarantee that the Board generates sufficient revenue in fiscal year 2004 to cover the Board's expenditures, as required by law.

These amendments are intended to implement Iowa Code section 147.80.

These amendments became effective on September 1, 2003.

The following amendments are adopted.

ITEM 1. Amend subrule **8.4(1)**, paragraphs "c" and "g," as follows:

c. Renewal of an active license to practice, ~~\$325~~ *\$350* if renewal is made via paper application or ~~\$300~~ *\$312.50* if renewal is made via on-line application, per biennial period or prorated portion thereof if the current license was issued for a period of less than 24 months.

g. Reinstatement of a license within one year of becoming inactive, the renewal fee for the most recent license period plus a \$175 reinstatement penalty. The renewal fee is ~~\$325~~ *\$350* except when the license in the most recent license period had been granted for less than 24 months; in that case, the renewal fee is prorated according to the date of issuance and the physician's month and year of birth.

ITEM 2. Amend subrule **9.11(3)**, paragraph "a," as follows:

a. The renewal fee is ~~\$325~~ *\$350* if the renewal is made via paper application or ~~\$300~~ *\$312.50* if the renewal is made via on-line application.

ITEM 3. Amend subrule **9.13(1)**, paragraph "a," as follows:

a. Fees for reinstatement within one year of the license's becoming inactive. The fee shall include the renewal fee for

the most recent license period plus a \$175 reinstatement penalty. The renewal fee is ~~\$325~~ *\$350* except when the license in the most recent period had been granted for less than 24 months; in that case, the renewal fee is prorated according to the date of issuance and the physician's month and year of birth.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/17/03.

ARC 2763B

MEDICAL EXAMINERS
BOARD[653]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medical Examiners hereby amends Chapter 8, "Fees," Iowa Administrative Code.

The amendment imposes a convenience fee on physicians who renew their licenses on line.

Notice of Intended Action regarding this amendment was published in the April 30, 2003, Iowa Administrative Bulletin as **ARC 2428B**. This amendment is identical to that published under Notice of Intended Action.

The Board finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment should be waived and this amendment should be made effective on September 1, 2003, as it confers a benefit to the public because higher fees will guarantee that the Board generates sufficient revenue in fiscal year 2004 to cover the Board's expenditures, as required by law. Emergency implementation of the on-line convenience fee is needed to coincide with the license fee increase for on-line renewals. Both will become effective on September 1, 2003.

The Board adopted the amendment to Chapter 8 during a telephone conference call held on August 27, 2003.

This amendment is intended to implement Iowa Code section 147.80.

This amendment became effective September 1, 2003.

The following amendment is adopted.

Amend subrule **8.4(1)**, paragraph "c," as follows:

c. Renewal of an active license to practice, \$325 if renewal is made via paper application or \$300 if renewal is made via on-line application, per biennial period or a prorated portion thereof if the current license was issued for a period of less than 24 months. *A convenience fee will be charged for on-line renewal.*

[Filed Emergency After Notice 8/28/03, effective 9/1/03]

[Published 9/17/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/17/03.

ARC 2777B**ADMINISTRATIVE SERVICES
DEPARTMENT[11]****Adopted and Filed**

Pursuant to the authority of 2003 Iowa Acts, House File 534, sections 4 and 11, the Department of Administrative Services hereby adopts Chapter 10, "Customer Councils," Iowa Administrative Code.

This chapter is intended to implement the provisions of 2003 Iowa Acts, House File 534, which establishes the Department of Administrative Services and creates customer councils to oversee the provision of services for which the Department is the sole provider. The rules establish three customer councils: general services, human resources, and information technology; provide a method of appointing voting and ex-officio members; set the terms of membership; describe the basic organization of the councils; establish the powers and duties of the councils; provide for a customer complaint resolution process; and set forth related Department responsibilities for accepting customer input and creating an annual service listing.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 23, 2003, as **ARC 2637B**. In addition, these rules were simultaneously Adopted and Filed Emergency as **ARC 2635B**. A public hearing was held August 13, 2003, with no attendance from individuals other than Department employees. Some comments were received from other agencies, including customer council members.

Changes from the Notice include the following:

- Specify that utility services are funded by "fees paid by" the recipients of the service;
- Change the definition of a quorum from a majority to two-thirds of the voting members present;
- Specify that the definitions of "small agency," "medium-sized agency," and "large agency" include "permanent" employees;
- Change the name of the technology council to the information technology council;
- Change the selection process for customer council members from a designation of three agencies by the group of like-sized agencies with the designated agencies then each selecting a representative to a process by which the group of like-sized agencies vote directly on representatives nominated by each agency;
- Specify that an agency shall not provide more than one representative to a particular customer council at one time, notwithstanding the option to designate an alternate member;
- Clarify subsequent year selections of additional members and the selection process for the initial one-year terms;
- Add the option for customer councils to allow designated agencies and unions to name an alternate member;
- Add that alternate electronic means of member presence at meetings must be approved by the customer council;
- Clarify that only eligible members may vote; and
- Clarify that each represented agency or union on a customer council shall have only one vote.

The Department adopted these rules on August 28, 2003.

These rules shall become effective October 22, 2003, at which time the Adopted and Filed Emergency rules are hereby rescinded.

These rules are intended to implement 2003 Iowa Acts, House File 534, section 11.

The following **new** chapter is adopted:

**CHAPTER 10
CUSTOMER COUNCILS****11—10.1(80GA,HF534) Definitions.**

"Customer council" means a group responsible for overseeing operations with regard to a service funded by fees paid by a governmental entity or subdivision receiving the service when the department of administrative services (DAS) has determined that DAS shall be the sole provider of that service.

"Department" means the department of administrative services (DAS) created by 2003 Iowa Acts, House File 534, section 2.

"Economies of scale" means mass purchasing of goods or services, which results in lower average costs.

"Large agency" means a state agency with more than 700 permanent employees.

"Leadership function" means a service provided by the department and funded by a general appropriation. Leadership functions typically relate to development of policy and standards and are appropriate when standardization is required and the ultimate customer is the taxpayer.

"Marketplace service" means a service that the department is authorized to provide, but which governmental entities may provide on their own or obtain from another provider of the service.

"Medium-sized agency" means a state agency with 70 to 700 permanent employees.

"Quorum" means the presence of no less than two-thirds of the members eligible to vote.

"Small agency" means a state agency with fewer than 70 permanent employees.

"Utility" means a service funded by fees paid by the governmental entity receiving the service and for which DAS is the sole provider of the service.

11—10.2(80GA,HF534) Purpose. The purpose of this chapter is to establish DAS customer councils to oversee operations with regard to services provided when the department has determined that DAS shall be the sole provider of a service and to ensure that the department meets the needs of affected governmental entities and subdivisions and those citizens served.

11—10.3(80GA,HF534) Utility determination. Services for which the department has determined that DAS shall be the sole provider are designated "utilities" as part of entrepreneurial management in Iowa state government. Customers may choose the amount of service they purchase, but must buy from the single source. Utilities are those services for which a monopoly structure makes sense due to economies of scale. The process for determining whether the department shall be the sole provider of a service shall include consideration of economic factors, input from customer councils and input from upper levels of the executive branch.

11—10.4(80GA,HF534) Customer councils established. In order to ensure that DAS utilities provide effective, efficient, and high-quality services that benefit governmental entities and the citizens they serve, this chapter establishes the following customer councils: general services, human resources, and information technology.

11—10.5(80GA,HF534) Customer council membership. DAS customer council membership shall consist of nine state agency representatives, a judicial branch representative overseeing DAS services provided to the judicial branch, a legisla-

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tive branch representative overseeing DAS services provided to the legislative branch, a representative from the public, a representative from a union representing state employees, and nonvoting ex-officio members.

10.5(1) Method of appointment of members.

a. Executive branch agency representation. Each customer council will include three members from large agencies, three members from medium-sized agencies and three members from small agencies.

(1) Selection. The individual nominated by an agency to become a customer council member shall be the individual the agency determines is most appropriate to provide guidance. Each agency may nominate one representative for a customer council. The directors or directors' designees from their respective large, medium-sized, or small agency groups shall select customer council members from the representatives nominated by the agencies in that group.

(2) Review. The directors or directors' designees from each agency size group shall review representation on each customer council prior to June 1 of each year for the terms ending June 30 of that year. An agency may provide representatives to fill no more than one position on a customer council at one time. The department will periodically review the definition of large, medium-sized and small agencies based on the number of permanent employees of the agencies in Iowa state government and make adjustments accordingly.

b. Legislative and judicial branch representation. If the service to be provided may also be provided to the judicial branch and legislative branch, then the chief justice of the supreme court and the legislative council may, in their discretion, each appoint a member to the applicable customer council.

c. Additional members. A member of the public and a member of a union representing state employees involved in providing services overseen by the council shall be selected before the customer council's second meeting after July 1, 2003, by the department directors or their designees. Subsequently, the department directors or their designees shall make these selections prior to June 1 of the year the term expires.

d. Ex-officio member(s). Ex-officio members shall not vote on the proceedings of the customer councils for which they have been selected, but shall provide input to the council based on their area of expertise. Each ex-officio member shall be approved by a majority of the voting members of the respective customer council. An ex-officio member may be recommended to the customer council by:

(1) A group representing agencies using a service overseen by the council, and

(2) Any other group approved by the customer council.

10.5(2) Membership changes. As utility services and customer groups change, customer councils may add members to provide for equitable representation.

10.5(3) Term of membership. Each member will serve a two-year term; however, to ensure continuity of council functions, the first term for one representative of a large agency, one representative of a medium-sized agency, and two representatives of small agencies will be a 12-month term. The agencies filling the initial 12-month terms shall be selected by a vote of the members from agencies in each respective size group. Initial membership terms shall begin on July 1, 2003.

11—10.6(80GA,HF534) Organization of customer council. The operations of the customer councils shall be governed by a set of bylaws as adopted by each council. Bylaws shall address the following issues.

10.6(1) Member participation. Each member is expected to attend and actively participate in meetings. Participation will include requesting input and support from the group each member represents.

a. Substitutes for members absent from meetings will not be allowed; however, members may attend by telephone or other electronic means approved by the customer council.

b. Upon the approval of the customer council, an alternate member may be selected by an agency, group or union that provides a representative to that customer council to participate in customer council meetings and vote in place of the representative when the representative is unable to participate.

10.6(2) Voting. A quorum is required for a customer council vote.

a. Eligible members may vote on all issues brought before the group for a vote. Members may be present to vote during a meeting in person, by telephone or other electronic means approved by the customer council.

b. Each member, other than the ex-officio members, has one vote. Designated alternates may only vote in the absence of the representative from their organization. A simple majority of the members voting shall determine the outcome of the issue being voted upon.

c. Customer council bylaws may be amended by a simple majority vote of all members.

10.6(3) Officers. Officers shall be elected at the first meeting after July 1 each year by a simple majority of the voting members present and may be removed by a simple majority of the voting members present. The elected officers of each customer council shall be the chairperson and vice chairperson.

10.6(4) Duties of officers.

a. The chairperson shall preside at all meetings of the customer council.

b. The vice chairperson shall assist the chairperson in the discharge of the chairperson's duties as requested and, in the absence or inability of the chairperson to act, shall perform the chairperson's duties.

10.6(5) Committees.

a. The chairperson may authorize or dissolve committees as necessary to meet the needs of a customer council.

b. Members of a customer council and individuals who are not members of a customer council may be appointed by the chairperson to serve on committees.

c. Committees shall provide feedback to the chairperson and the customer council at the council's request.

d. Committees shall meet, discuss, study and resolve assigned issues as needed.

10.6(6) Administration. DAS shall provide staff support to assist the chairperson with the following administrative functions:

a. Keeping the official current and complete books and records of the decisions, members, actions and obligations of the customer councils;

b. Coordinating meeting notices and locations, keeping a record of names and addresses, including E-mail addresses, of the members of the customer councils; and

c. Taking notes at the meetings and producing minutes that will be distributed to all members.

Customer council books and records are subject to the open records law as specified in Iowa Code chapter 22.

10.6(7) Meetings. Customer council meetings are subject to the open meetings law as specified in Iowa Code chapter 21. Customer councils are responsible for the following:

a. Determining the frequency and time of their meetings.

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- b. Soliciting agenda items from the members in advance of an upcoming meeting.
- c. Sending electronic notice of meetings, including date, time and location of the meeting, at least one week prior to the meeting date.
- d. Providing an agenda, including those items requiring action, prior to the meeting. The agenda should also include any information necessary for discussion at the upcoming meeting.
- e. Conducting meetings using the most recent version of Robert's Rules of Order, revised.

11—10.7(80GA, HF534) Powers and duties of customer council.

10.7(1) Approval of business plans. The customer council shall, on an annual basis, review and recommend action on business plans submitted by the department for performance of the services the customer council oversees. Business plans shall include levels of service, service options, investment plans, and other information.

10.7(2) Complaint resolution. The customer council shall approve the procedure for resolution of complaints concerning the service provided. The procedure shall consist, at a minimum, of the following steps:

- a. Informal. An initial informal step is provided for DAS customer service delivery issues only. The customer may, orally or in writing, inform the person responsible for providing the service of the complaint. If the issue is resolved at this point, no further action is required.

- b. First level. If the customer is not satisfied with the decision of the DAS service contact at the initial informal step for a service delivery complaint or the complaint is about rates, billing, service level agreements, or some other issue, the customer may submit a written summary of the complaint to the DAS measurement and planning division (MAP). MAP will review and log the complaint and forward it to appropriate DAS management staff. DAS shall send the customer a written decision within five business days, unless additional research is required, in which case the decision shall be communicated within ten business days.

- c. Second level. If the customer is not satisfied with the decision made on the complaint at level one, MAP will forward the complaint to the appropriate DAS customer council to make a recommendation to the DAS director. MAP shall send the director's written decision to the customer within five business days, unless additional research is required, in which case the decision shall be communicated within ten business days.

- d. Third level. If the customer is not satisfied with the decision made on the complaint at level two, MAP will forward the complaint to the director of the department of management for final disposition. The director of DAS shall send the written decision of the director of the department of management to all affected parties within five business days, unless additional research is required, in which case the decision shall be communicated within ten business days.

10.7(3) Rate setting. The customer council shall approve the procedure for setting rates for the services that the customer council oversees and the resulting rates. Rates shall be established no later than September 1 of the year preceding the rate change.

10.7(4) Biennial review. Every two years the appropriate customer council shall review the decision made by the department that DAS be the sole provider of a service and make recommendations regarding that decision.

11—10.8(80GA, HF534) Customer input. The department shall establish procedures to provide for the acceptance of input from affected governmental entities. Input may take various forms, such as unsolicited comments, response to structured surveys, or an annual report on service requirements.

11—10.9(80GA, HF534) Annual service listing. The department shall annually prepare a listing separately identifying services determined by the department to be leadership functions, marketplace services, and utilities. The listing shall be completed no later than September 1 of the fiscal year preceding the proposed effective date of the change.

These rules are intended to implement 2003 Iowa Acts, House File 534, section 11.

[Filed 8/29/03, effective 10/22/03]

[Published 9/17/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/17/03.

ARC 2764B**CAPITAL INVESTMENT BOARD,
IOWA[123]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 15E.63, the Iowa Capital Investment Board hereby adopts amendments to Chapter 2, "Tax Credit for Investments in Qualifying Businesses and Community-Based Seed Capital Funds," and Chapter 3, "Tax Credit for Investments in Venture Capital Funds," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXVI; No. 2, p. 102, on July 23, 2003, as **ARC 2618B**.

Item 1 amends rule 123—2.1(15E) to provide that an individual taxed on income from a revocable trust can qualify for the tax credit provided for an investment in a qualifying business.

Item 2 amends rule 123—2.2(15E) by striking the reference to individual investors in the definition of "community-based seed capital fund" and by changing the definition of "investor" to include individuals taxed on income from a revocable trust.

Item 3 amends rule 123—2.3(15E) to provide that an individual receiving income from a revocable trust's investment in a qualified business may claim the tax credit.

Item 4 amends rule 123—2.7(15E) to provide that where the taxpayer dies prior to redeeming the entire tax credit, the remaining credit can be redeemed on the decedent's final income tax return.

Item 5 updates an implementation clause.

Item 6 amends rule 123—3.1(15E) to provide that an investor that makes separate investments into a community-based seed capital fund and a venture capital fund will be entitled to claim a tax credit for both investments.

Item 7 updates an implementation clause.

These amendments are being filed by the Department of Revenue on behalf of the Iowa Capital Investment Board pursuant to an Administrative Services Agreement between the Department and the Board.

These amendments are identical to those published under Notice of Intended Action.

CAPITAL INVESTMENT BOARD, IOWA[123](cont'd)

These amendments will become effective October 22, 2003, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code chapter 15E as amended by 2003 Iowa Acts, Senate File 458.

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 [2.1 to 2.3, 2.7, 3.1] is being omitted. These amendments are identical to those published under Notice as **ARC 2618B**, IAB 7/23/03.

[Filed 8/28/03, effective 10/22/03]
[Published 9/17/03]

[For replacement pages for IAC, see IAC Supplement 9/17/03.]

ARC 2765B

CAPITAL INVESTMENT BOARD, IOWA[123]

Adopted and Filed

Pursuant to the authority of Iowa Code section 15E.63, the Iowa Capital Investment Board hereby adopts Chapter 4, "Investment Tax Credits Relating to Investments in a Fund of Funds Organized by the Iowa Capital Investment Corporation," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXVI; No. 2, p. 104, on July 23, 2003, as **ARC 2617B** and the rules were simultaneously Adopted and Filed Emergency as **ARC 2623B**.

These rules adopt Chapter 4 to provide for contingent tax credits administered by the Iowa Capital Investment Board relating to investments in one or more funds organized by the Iowa Capital Investment Corporation.

These rules are being filed by the Department of Revenue on behalf of the Iowa Capital Investment Board pursuant to an Administrative Services Agreement between the Department and the Board.

One correction has been made to the Notice of Intended Action. The words "that regulations" should be stricken from the second unnumbered paragraph of rule 4.12(15E).

The second unnumbered paragraph of rule 4.12(15E) will read as follows:

"All notices, requests, and submissions required to be sent to the board shall be sent to the Iowa Capital Investment Board in care of the Iowa Department of Revenue, 1305 E. Walnut Street, Hoover State Office Building, Des Moines, Iowa 50319."

These rules will become effective October 22, 2003, at which time the Adopted and Filed Emergency rules are hereby rescinded.

These rules are intended to implement Iowa Code chapter 15E as amended by 2002 Iowa Acts, chapter 1005.

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 rules [Ch 4] is being omitted. With the exception of the

change noted above, these rules are identical to those published under Notice as **ARC 2617B** and Adopted and Filed Emergency as **ARC 2623B**, IAB 7/23/03.

[Filed 8/28/03, effective 10/22/03]
[Published 9/17/03]

[For replacement pages for IAC, see IAC Supplement 9/17/03.]

ARC 2786B

DENTAL EXAMINERS BOARD[650]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby amends Chapter 13, "Special Licenses," and Chapter 15, "Fees," Iowa Administrative Code.

These amendments allow the Board to issue a temporary permit authorizing the permit holder to practice dentistry or dental hygiene on a short-term basis in Iowa at a specific location or locations to fulfill an urgent need or to serve an educational purpose. The amendments specify the general requirements for a permit, eligibility requirements, and grounds for permit denial. The amendments also establish an application fee of \$100 for a temporary permit.

These amendments will be subject to waiver at the sole discretion of the Board in accordance with the rules adopted governing the issuance of waivers or variances. However, the application fee is not subject to waiver pursuant to 650—15.9(17A,147,153,272C).

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 14, 2003, as **ARC 2473B**. A public hearing on the amendments was held on June 3, 2003. Two written comments in support of the amendments were received. The Iowa Dental Association (IDA) suggested that the Board allow more than three temporary permits to be issued to a person. The Board determined, however, that permit holders who wish to continue to practice in multiple assignments in Iowa should seek permanent licensure. The IDA also suggested the Board consider allowing a waiver of the permit application fee for charitable endeavors. The Board, however, has determined that fees are not subject to waiver. Iowa Code section 147.80 requires the Board to set fees based upon costs of sustaining the Board and the actual cost of licensing, and requires the Board to generate revenues to equal projected costs. The Board must be able to collect fees uniformly in order to comply with statutory provision. The amendments are identical to those published under Notice.

These amendments were approved at the August 21, 2003, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code section 153.19.

These amendments will become effective on October 22, 2003.

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 [13.3, 15.1(16)] is being omitted. These

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amendments are identical to those published under Notice as **ARC 2473B**, IAB 5/14/03.

[Filed 8/29/03, effective 10/22/03]
[Published 9/17/03]

[For replacement pages for IAC, see IAC Supplement 9/17/03.]

ARC 2787B**DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby amends Chapter 15, "Fees," Chapter 20, "Dental Assistants," and Chapter 33, "Child Support Noncompliance," Iowa Administrative Code.

The amendments further define expanded functions for dental assistants and allow a dentist to delegate an expanded function to a dental assistant if the assistant has completed Board-approved training. Nine expanded function duties are proposed; the existing rules specify only six expanded functions.

Items 1, 3, and 4 of the amendments eliminate the need to submit an application and pay an application fee for issuance of an expanded function registration. The supervising dentist and registered dental assistant shall be responsible for maintaining in the office of practice documentation of training.

Item 6 establishes standards for expanded function training approval. Expanded function training shall be eligible for Board approval if the Board determines that the training is offered through a program accredited by the Commission on Dental Accreditation of the American Dental Association or another program prior-approved by the Board. Dentists who would like to train their own assistants in expanded functions may develop and submit a training program for Board approval or utilize a prior-approved program. To be eligible for approval, the training must consist of the components identified in rule 20.16(153). In all cases, clinical training for expanded functions may take place under the supervising dentist's personal supervision while the assistant is concurrently enrolled in the training program.

Expanded function training and delegation are voluntary. Any dentist who does not want to delegate expanded functions to a dental assistant may choose not to participate. Dental assistant participation in the training and performance of expanded functions is also voluntary. These rules will not affect the existing practice of dentistry or dental assisting if practitioners choose not to participate. The list of duties proposed for expanded functions does not restrict existing practice because all of the expanded function duties have traditionally been outside the scope of practice for dental assistants, either by rule or declaratory order. These amendments do not affect the services that are currently authorized under the rules.

These amendments will be subject to waiver at the sole discretion of the Board in accordance with the rules adopted governing the issuance of waivers or variances.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 14, 2003, as **ARC 2474B**. A public hearing on the amendments was held on June 3, 2003. Numerous written and oral comments on the proposed amendments were received. In response to those comments, the following changes from the Notice have been made.

- In subrule 20.3(3), the phrase "and the dentist provides direct supervision" has been removed because it is redundant. Board rules already require registered dental assistants to work under direct supervision for all intraoral functions.

- Proposed subrules 20.3(3) and 20.3(4) have been combined. Wording has also been changed to clarify that expanded function duties are in addition to other dental assistant duties authorized under rule 20.3(153,78GA,ch1002).

- Subrule 20.3(3) has been renumbered as subrule 20.3(4).

- The introductory paragraph to rule 650—20.16(153) has been changed to replace references to the word "course" with "training," and to clarify that the training may include on-the-job training offered by a dentist licensed in Iowa. Training must be prior-approved by the Board.

These amendments were approved at the August 21, 2003, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapter 153.

These amendments will become effective on October 22, 2003.

The following amendments are adopted.

ITEM 1. Rescind and reserve subrules **15.1(14)** and **15.2(7)**.

ITEM 2. Amend rule 650—20.3(153,78GA,ch1002) as follows:

650—20.3(153,78GA,ch1002) Scope of practice.

20.3(1) In all instances, a dentist assumes responsibility for determining, on the basis of diagnosis, the specific treatment patients will receive and which aspects of treatment may be delegated to qualified personnel as authorized in these rules.

20.3(2) A lawfully licensed dentist may delegate to a dental assistant those procedures for which the dental assistant has received training. This delegation shall be based on the best interests of the patient. The dentist shall exercise supervision and shall be fully responsible for all acts performed by a dental assistant. A dentist may not delegate to a dental assistant any of the following:

- a. Diagnosis, examination, treatment planning, or prescription, including prescription for drugs and medicaments or authorization for restorative, prosthodontic or orthodontic appliances.

- b. Surgical procedures on hard and soft tissues within the oral cavity and any other intraoral procedure that contributes to or results in an irreversible alteration to the oral anatomy.

- c. Administration of local anesthesia.

- d. Placement of sealants.

- e. Removal of any plaque, stain, or hard natural or synthetic material except by toothbrush, floss, or rubber cup coronal polish, or removal of any calculus.

- f. Dental radiography, unless the assistant is qualified pursuant to 650—Chapter 22.

- g. Those procedures that require the professional judgment and skill of a dentist.

20.3(3) *A dentist may delegate an expanded function duty to a registered dental assistant if the assistant has completed board-approved training pursuant to rule 20.16(153) in the specific expanded function that will be delegated. In addition to the other duties authorized under this rule, a dentist may delegate any of the following expanded function duties:*

- a. Taking occlusal registrations;

- b. Placement and removal of gingival retraction;

- c. Taking final impressions;

DENTAL EXAMINERS BOARD[650](cont'd)

- d. Fabrication and removal of provisional restorations;
- e. Applying cavity liners and bases, desensitizing agents, and bonding systems;
- f. Placement and removal of dry socket medication;
- g. Placement of periodontal dressings;
- h. Testing pulp vitality; and
- i. Monitoring of nitrous oxide inhalation analgesia.

20.3(3.4) A dental assistant may perform duties consistent with these rules under the supervision of a licensed dentist. The specific duties dental assistants may perform are based upon:

- a. The education of the dental assistant.
- b. The experience of the dental assistant.

ITEM 3. Amend rule 650—20.4(153,78GA,ch1002), introductory paragraph, as follows:

650—20.4(153,78GA,ch1002) Categories of dental assistants. There are ~~three~~ *two* categories of dental assistants. Both the supervising dentist and dental assistant are responsible for maintaining documentation of training. Such documentation must be maintained in the office of practice and shall be provided to the board upon request.

ITEM 4. Rescind subrules **20.4(3)** and **20.6(3)**.

ITEM 5. Amend rule 650—20.11(153,78GA,ch1002), introductory paragraph, as follows:

650—20.11(153,78GA,ch1002) Renewal of registration. A certificate of registration as a registered dental assistant ~~or expanded function dental assistant~~ must be renewed biennially.

ITEM 6. Adopt new rule 650—20.16(153) as follows:

650—20.16(153) Expanded function training approval. Expanded function training shall be eligible for board approval if the training is offered through a program accredited by the Commission on Dental Accreditation of the American Dental Association or another program prior-approved by the board, which may include on-the-job training offered by a dentist licensed in Iowa. Training must consist of the following:

1. An initial assessment to determine the base entry level of all participants in the program. At a minimum, participants must be currently certified by the Dental Assisting National Board or must have two years of clinical dental assisting experience;
2. A didactic component;
3. A laboratory component, if necessary;
4. A clinical component, which may be obtained under the personal supervision of the participant's supervising dentist while the participant is concurrently enrolled in the training program; and
5. A postcourse competency assessment at the conclusion of the training program.

ITEM 7. Amend rule **650—33.1(252J,598)**, definition of "registration," as follows:

"Registration" means registration to practice as a dental assistant trainee, *or* registered dental assistant, ~~or expanded function dental assistant.~~

[Filed 8/29/03, effective 10/22/03]
[Published 9/17/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/17/03.

ARC 2750B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 51, "Self-Employment Loan Program," and Chapter 55, "Targeted Small Business Financial Assistance Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2594B** on July 9, 2003. The IDED Board adopted the amendments on August 21, 2003.

The amendment rescinds the current program rules for SELP and adopts one rule to govern current SELP awards during the transition. The amendments to the Targeted Small Business Financial Assistance Program (TSBFAP) expand program eligibility to permit an applicant to qualify on the basis of low income. The amendments add new definitions of "low-income individual" and "sponsor," and revise threshold and eligibility requirements to include applicants that meet low-income guidelines.

A public hearing on the proposed amendments was held on July 29, 2003. No comments were received. The final amendments are identical to the proposed amendments.

These rules are intended to implement Iowa Code chapter 15 as amended by 2003 Iowa Acts, House File 390.

These rules will become effective on October 22, 2003.

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 [amendments to Chs 51, 55] is being omitted. These amendments are identical to those published under Notice as **ARC 2594B**, IAB 7/9/03.

[Filed 8/27/03, effective 10/22/03]
[Published 9/17/03]

[For replacement pages for IAC, see IAC Supplement 9/17/03.]

ARC 2751B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 59, "Enterprise Zones," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2592B** on July 9, 2003.

The IDED Board adopted the amendments on August 21, 2003.

The amendments establish a project initiation rule for a development business project; amend the definitions of "Act" and "Project initiation"; update the eligibility requirements and the procedures for certifying, amending, or decertifying Enterprise Zones; remove references to "alternative eligible business"; establish additional eligibility and reporting requirements for development business projects; update

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the method in which the repayment of benefits will be calculated; address how layoffs and closures elsewhere in the state would be handled; and allow the department the discretion to grant businesses a one-year extension to meet the requirements of the program.

A public hearing to receive comments about the proposed amendments was held on July 29, 2003. The public comments that were received were in favor of the amendments. A few minor changes were made in the final rules based on staff recommendation. A reference to "designation" in renumbered subparagraph 59.3(4)"a"(3) was changed to "certification" to be consistent with other amendments that make the same change. The subparagraph now reads as follows:

"(3) Resolution of the city council or board of supervisors, as appropriate, requesting certification of the enterprise zone(s). Included within this resolution may be a statement of the schedule of value-added property tax exemptions that will be offered to all eligible businesses and eligible development businesses that are approved for incentives and assistance. If a property tax exemption is made applicable only to a portion of the property within the enterprise zone, a description of the uniform criteria which further some planning objective that has been established by the city or county enterprise zone commission and approved by the eligible city or county must be submitted to the department. Examples of acceptable 'uniform criteria' that may be adopted include, but are not limited to, wage rates, capital investment levels, types and levels of employee benefits offered, job creation requirements, and specific targeted industries. 'Planning objectives' may include, but are not limited to, land use, rehabilitation of distressed property, or brownfields remediation. The city or county shall forward a copy of the official resolution listing the property tax exemption schedule(s) to the department and to the local assessor."

Language was added to renumbered paragraphs 59.3(4)"d" and "e" to clarify what documentation is needed to process amendment and decertification requests. In both of these instances, a resolution of the city council or board of supervisors is needed to request an amendment or decertification. The paragraphs now read as follows:

"d. Amendments. A certified enterprise zone may be amended at the request of the city or county that originally applied for the zone certification. Requests must be in writing and be received by the department prior to December 1, 2003, if the county is eligible pursuant to subrule 59.3(1) or July 1, 2005, if the county or city is eligible pursuant to subrule 59.3(2) or 59.3(3). Requests must include the enterprise zone name and number, as established by the department when the zone was certified, the date the zone was originally certified, the reason an amendment is being requested, the number of acres the zone will contain if the amendment is approved, and a resolution of the city council or board of supervisors, as appropriate, requesting the amendment. A legal description of the amended enterprise zone and a map which shows both the original enterprise zone boundaries and the proposed changes to those boundaries shall accompany the written request.

"A city requesting an amendment that consists of an area being added to the enterprise zone must include documentation that demonstrates that the area being added meets the eligibility requirements of subrule 59.3(3). A city requesting an amendment that consists of an area being removed from the enterprise zone must include documentation that demonstrates that the remaining area still meets the eligibility requirements of subrule 59.3(3).

"An amendment shall not extend the zone's ten-year expiration date, as established when the zone was initially certi-

fied by the board. The board will review the request and may approve, deny, or defer the proposed amendment.

"e. Decertification. A county or city may request decertification of an enterprise zone. Requests must be in writing and be received by the department prior to December 1, 2003, if the county is eligible pursuant to subrule 59.3(1) or July 1, 2005, if the county or city is eligible pursuant to subrule 59.3(2) or 59.3(3). Requests must include the enterprise zone name and number, as established by the department when the zone was certified, the date the zone was originally certified and resolution of the city council or board of supervisors, as appropriate, requesting the decertification. Requests for enterprise zone decertification will be reviewed by the board and may be approved, denied or deferred. If the county or city requesting decertification designates a subsequent enterprise zone, the expiration date of the subsequent enterprise zone shall be the same as the expiration date of the decertified enterprise zone. A county or city shall not be allowed to decertify an enterprise zone that contains an eligible business, eligible housing business, or eligible development business that has received incentives and assistance under this program."

These requirements were inadvertently omitted from the proposed amendments and reflect current Department practices.

These rules are intended to implement Iowa Code chapter 15E as amended by 2003 Iowa Acts, House File 576, and House File 681.

These amendments will become effective on October 22, 2003.

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 [59.1 to 59.7, 59.9, 59.10, 59.13, 59.14] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 2592B**, IAB 7/9/03.

[Filed 8/27/03, effective 10/22/03]

[Published 9/17/03]

[For replacement pages for IAC, see IAC Supplement 9/17/03.]

ARC 2748B

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

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby adopts new Chapter 62, "Cogeneration Pilot Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2593B** on July 9, 2003. These rules were also Adopted and Filed Emergency and published in the August 6, 2003, Iowa Administrative Bulletin as **ARC 2685B**.

The new chapter establishes application requirements, evaluation criteria and procedures for participation in the Cogeneration Pilot Program in accordance with 2003 Iowa Acts, House File 391.

A public hearing was held on July 29, 2003. Written comments were received from one business. The majority of the

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

comments were requests for clarification, and these were answered by staff. One substantive rule revision request was made and the revision is included in the final rules. The commenter mentioned that, while the stated purpose of the program was to diversify Iowa's electricity supply and foster economic development, this was not included as a factor during application review. In the final rules, new subrule 62.5(9) was added to take into account the diversification goal. The rest of the rules are as they appeared in the Notice. The new subrule reads as follows:

"62.5(9) The degree to which the project contributes to the diversification of Iowa's electricity supply and fosters economic development."

The IDED Board adopted the rules on August 21, 2003.

These rules are intended to implement 2003 Iowa Acts, House File 391.

These rules will become effective on October 22, 2003, at which time the Adopted and Filed Emergency rules are hereby 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 rules [Ch 62] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 2593B**, IAB 7/9/03, and Adopted and Filed Emergency as **ARC 2685B**, IAB 8/6/03.

[Filed 8/27/03, effective 10/22/03]

[Published 9/17/03]

[For replacement pages for IAC, see IAC Supplement 9/17/03.]

ARC 2774B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby amends Chapter 21, "Compliance," Chapter 22, "Controlling Pollution," Chapter 23, "Emission Standards for Contaminants," and Chapter 25, "Measurement of Emissions," Iowa Administrative Code.

Item 1 is applicable specifically for requesting variances from construction permitting for conducting a trial burn of an alternative fuel. This amendment identifies specific information the Department may request as a condition of a variance from construction permitting to conduct a trial burn using alternative fuels.

Item 2 references the most recent date for which changes to these federal regulations were published.

Item 3 clarifies that a permit must be obtained, not merely "applied for," before construction permit limits will be valid for the particular equipment described in the paragraph. Item 3 also pertains to which air quality programs an emission reduction through a construction permit can benefit. The existing language limits the applicability of the permitted reductions only to the prevention of significant deterioration program. The change in wording expands the utilization of the permitted reductions to additional air quality program applications, such as the Title V program or the hazardous air pollutant toxics program.

Items 4 and 5 provide updates of dates for federal regulations adopted by reference.

Item 6 adds clarification that the Subpart B referenced in the rule relates to Part 63 of the Code of Federal Regulations, Title 40.

Item 7 resolves a conflict in the existing rules with new EPA regulations pertaining to the federal 112(j) requirements, referred to as the "MACT hammer." The revisions provide the federal reference to the components of the Part 1 and Part 2 112(j) application that must be submitted as part of the Title V permit application if MACT promulgation deadlines are not met. The last revision to the paragraph serves to provide clarification on the definition of "Notice of MACT Approval" as well as to identify a reference to the procedure for how to submit a "Notice of MACT Approval."

Items 8 and 9 incorporate by reference recently promulgated federal "national emission standards for hazardous pollutants (NESHAPs)." There are 21 "new" NESHAPs.

Item 10 pertains to revisions to the Compliance Sampling Manual. The Compliance Sampling Manual has been revised to update procedures that have been outdated and to clarify and correct some of the existing language in the manual. A copy of the revised manual can be obtained from the Department. The Compliance Sampling Manual is adopted by reference in the Iowa Administrative Code, and the date change is the date of the revised manual.

Notice of Intended Action was published in the June 11, 2003, Iowa Administrative Bulletin as **ARC 2525B**. A public hearing was held on July 15, 2003. No oral or written comments were received on the proposed amendments. These amendments have not been modified from those published under Notice of Intended Action.

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

These amendments shall become effective on October 22, 2003.

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 [21.2(3), 21.2(4), 22.1(1), 22.1(2), 23.1(2), 23.1(4), 25.1(9)] is being omitted. These amendments are identical to those published under Notice as **ARC 2525B**, IAB 6/11/03.

[Filed 8/29/03, effective 10/22/03]

[Published 9/17/03]

[For replacement pages for IAC, see IAC Supplement 9/17/03.]

ARC 2761B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Adopted and Filed

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The amendments permit a permanent organization that makes a one-time contribution in excess of \$750 to a campaign committee the choice of filing a one-page form that registers the organization as a "political committee" and dis-

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

closes the contribution in lieu of filing a statement of organization, disclosure reports, and a notice of dissolution.

The amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on July 9, 2003, as **ARC 2605B**. No oral or written comments on the amendments were received. The amendments are identical to those published under Notice.

The Board adopted these amendments on August 27, 2003.

These amendments are intended to implement Iowa Code sections 56.2(15) and 56.6(6).

These amendments will become effective on October 22, 2003.

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 [4.1(1), 4.35] is being omitted. These amendments are identical to those published under Notice as **ARC 2605B**, IAB 7/9/03.

[Filed 8/28/03, effective 10/22/03]
[Published 9/17/03]

[For replacement pages for IAC, see IAC Supplement 9/17/03.]

ARC 2758B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Adopted and Filed

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The amendments reflect the current Board procedures concerning a campaign committee's generating disclosure reports that are different from paper reports generated by the Board. Also, a statement of organization or a disclosure report filed using the Board's electronic filing system is deemed to be a valid electronic signature. Finally, the rule is brought into compliance with the appropriate statutes.

The amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on July 9, 2003, as **ARC 2604B**. No oral or written comments on the amendments were received. The amendments are identical to those published under Notice.

The Board adopted these amendments on August 27, 2003.

These amendments are intended to implement Iowa Code sections 56.5, 56.7, and 68B.32A(2).

These amendments will become effective on October 22, 2003.

The following amendments are adopted.

ITEM 1. Rescind subrule 4.4(3) and adopt the following **new** subrule in lieu thereof:

4.4(3) Signatures. The candidate and treasurer shall sign the statement of organization filed by a candidate's committee. The chairperson and treasurer shall sign a statement of organization filed by any other type of committee. A statement of organization filed electronically using the board's Web site is deemed signed when filed.

ITEM 2. Rescind subrules 4.13(2) and 4.13(5) and adopt the following **new** subrules in lieu thereof:

4.13(2) Computer-generated reports. Committees may generate a disclosure report in lieu of using a board-approved paper report or the board's electronic filing system so long as the generated report contains the same information and is in the same basic format as a board-approved paper report. Committees generating their own reports must submit the reports for prior board approval before use.

4.13(5) Signature on DR-2 Report Summary Page. A disclosure report shall be signed by the individual filing the report. A disclosure report filed electronically using the board's Web site is deemed signed when filed.

[Filed 8/28/03, effective 10/22/03]
[Published 9/17/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/17/03.

ARC 2757B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Adopted and Filed

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The amendment permits the Board to electronically provide copies of campaign reports filed by county and local campaign committees to the appropriate county commissioner of elections. Also, it permits the county commissioners of elections to be able to retain copies of these reports electronically by creating an Internet link to the Board's Web site.

The amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin on July 9, 2003, as **ARC 2606B**. No oral or written comments on the amendment were received. The amendment is identical to that published under Notice.

The Board adopted the amendment on August 27, 2003.

This amendment is intended to implement Iowa Code section 56.4(2).

This amendment will become effective on October 22, 2003.

The following amendment is adopted.

Adopt **new** subrule 4.8(3) as follows:

4.8(3) The board shall make the reports in subrule 4.8(2) available to the appropriate county commissioner of elections electronically via the board's Web site at www.iowa.gov/ethics. A county commissioner of elections who establishes an Internet link between a public computer in the commissioner's office and the board's Web site shall be deemed in compliance with the requirement in Iowa Code section 56.4(2) to retain the reports.

[Filed 8/28/03, effective 10/22/03]
[Published 9/17/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/17/03.

ARC 2760B**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

These amendments reflect current Board policies concerning the permissible uses of campaign funds by candidates as announced in IECDB Advisory Opinions 2000-03, 2000-04, 2000-07, 2000-14, and 2000-16.

These amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on July 23, 2003, as **ARC 2633B**. No oral or written comments on the amendments were received. The amendments are identical to that published under Notice.

The Board adopted these amendments on August 27, 2003.

These amendments are intended to implement Iowa Code section 56.41.

These amendments will become effective on October 22, 2003.

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 [4.25(1)"f," "i," "s" to "u"] is being omitted. These amendments are identical to those published under Notice as **ARC 2633B**, IAB 7/23/03.

[Filed 8/28/03, effective 10/22/03]
[Published 9/17/03]

[For replacement pages for IAC, see IAC Supplement 9/17/03.]

ARC 2759B**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The amendment reflects the current Board procedures concerning the filing of campaign information by an out-of-state committee. Also, it brings the rule into compliance with the appropriate statute.

The amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin on July 9, 2003, as **ARC 2603B**. No oral or written comments on the amendment were received. The amendment is identical to that published under Notice.

The Board adopted the amendment on August 27, 2003.

This amendment is intended to implement Iowa Code section 56.5(5).

This amendment will become effective on October 22, 2003.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this rule [4.32] is being omitted. This rule is identical to that published under Notice as **ARC 2603B**, IAB 7/9/03.

[Filed 8/28/03, effective 10/22/03]
[Published 9/17/03]

[For replacement pages for IAC, see IAC Supplement 9/17/03.]

ARC 2756B**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby rescinds Chapter 5, "Complaint, Investigation, and Resolution Procedure"; rescinds Chapter 9, "Declaratory Orders," and adopts new Chapter 9, "Complaint, Investigation, and Resolution Procedures"; and adopts new Chapter 12, "Declaratory Orders," Iowa Administrative Code.

The amendments incorporate the subject matter of current Chapter 5 in new Chapter 9, and the subject matter of current Chapter 9 in new Chapter 12. Chapter 5 will be temporarily rescinded and reserved. The Board is in the process of placing similar subject matters together by chapter in the Board's rules. The amendments also reflect current Board policies and procedures.

The amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on July 23, 2003, as **ARC 2632B**. No oral or written comments on the amendments were received. The amendments are identical to those published under Notice.

The Board adopted these amendments on August 27, 2003.

These amendments are intended to implement Iowa Code chapters 17A and 68B.

These amendments will become effective on October 22, 2003.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [Chs 5, 9, 12] is being omitted. These amendments are identical to those published under Notice as **ARC 2632B**, IAB 7/23/03.

[Filed 8/28/03, effective 10/22/03]
[Published 9/17/03]

[For replacement pages for IAC, see IAC Supplement 9/17/03.]

ARC 2742B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 65, "Administration," Iowa Administrative Code.

These amendments implement final federal food stamp regulations published April 29, 2003, which take effect on November 1, 2003. Those regulations make the following changes to food stamp program policy:

- Non-monthly reporting households must report a change of more than \$50 in unearned income. (This change is incorporated by reference.)
- Non-monthly reporting households will not have a change in income acted upon unless the change will continue for at least one month beyond the month the change is reported. (This change is incorporated by reference.)
- Non-monthly reporting households must verify a change in the amount of income of more than \$50 at recertification. (This change is incorporated by reference.)
- States have a choice of two options for non-monthly reporting households to report ongoing changes in earned income. Because of a waiver of federal regulations (which is now rescinded), Iowa currently has a rule requiring these households to report a change in earned income of more than \$100. The language for the waiver is now one of the options in the final regulations. Iowa will continue with the current rule.
- Non-monthly reporting households must report changes within ten days of the date the change becomes known to the household. States can choose one of three options for determining when the change becomes known to the household. Iowa chooses to use the date the first payment reflecting the change is received as the date the change "becomes known" to the household.
- States have the option of determining how to average income. Iowa chooses to continue averaging by anticipating income fluctuations over the certification period.

These amendments do not provide for waivers in specified situations because the Department does not have the authority to waive federal law or regulation.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on June 25, 2003, as **ARC 2559B**. The Department received no comments on these amendments. These amendments are identical to the Notice of Intended Action.

The Council on Human Services adopted these amendments on August 13, 2003.

These amendments are intended to implement Iowa Code section 234.6, subsection 7.

These amendments shall become effective on November 1, 2003.

The following amendments are adopted.

ITEM 1. Amend rule 441—65.3(234), introductory paragraph, as follows:

441—65.3(234) Administration of program. The food stamp program shall be administered in accordance with the Food Stamp Act of 1977, 7 U.S.C. 2011 et seq., and in accordance with federal regulation, Title 7, Parts 270 through 283 as amended to ~~June 19, 2002~~ *April 29, 2003*.

ITEM 2. Amend rule **441—65.10(234)**, first unnumbered paragraph, as follows:

Households which are exempt from filing a monthly report must report a change in total household gross earned income of more than \$100 per month. *Households exempt from filing a monthly report must report changes in income within ten days of the date the household receives the first payment reflecting the change.*

ITEM 3. Amend rule 441—65.23(234) as follows:

441—65.23(234) Weekly or biweekly income and prospective Prospective budgeting.

65.23(1) Weekly or biweekly income and prospective budgeting. Households receiving benefits determined by prospective budgeting shall have the actual or converted amount of income that is received on a weekly or biweekly basis considered for that benefit month.

65.23(2) Income averaging. *The department shall average income by anticipating income fluctuations over the certification period. The number of months used to arrive at the average income should be the number of months that are representative of the anticipated income fluctuation.*

[Filed 8/26/03, effective 11/1/03]

[Published 9/17/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/17/03.

ARC 2744B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Psychology Examiners hereby amends Chapter 239, "Administrative and Regulatory Authority for the Board of Psychology Examiners," amends Chapter 240, "Licensure of Psychologists," and rescinds Chapter 242, "Discipline for Psychologists," Iowa Administrative Code, and adopts new Chapter 242 with the same title.

These amendments adopt new subrules for the conduct of persons who attend public meetings, requirements for notifying the Board of a name or address change, and criteria for issuing a duplicate certificate or wallet card. These amendments also adopt a newly revised discipline chapter that contains standard language that is used by other boards.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 28, 2003, as **ARC 2485B**. A public hearing was held on June 19, 2003, from 9 to 11 a.m. in the Professional Licensure Conference Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa. No public comments were received on the amendments.

The following changes have been made to the Notice of Intended Action:

- In rule 645—240.15(147), the term "renewal card" has been changed to "wallet card" because the first card issued at the time of initial licensure will not be a renewal card, and licensees must submit an application to obtain a duplicate wallet card or a duplicate certificate.

- Subrule 242.2(2) is reformatted for clarification.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

- Paragraphs “e” and “f” of subrule 242.2(29) were moved and are now paragraphs “e” and “f” of subrule 242.2(3).
- In subrule 242.2(6), only the introductory sentence is adopted.
- Subrule 242.2(9) is revised by adding the phrase “alteration or destruction of client or patient records with the intent to deceive.”
- Subrule 242.2(29) is reworded to clarify that the requirement refers to a license to practice psychology.

These amendments were adopted by the Board of Psychology Examiners on August 15, 2003.

These amendments will become effective October 22, 2003.

These amendments are intended to implement Iowa Code chapters 21, 147, 154B and 272C.

The following amendments are adopted.

ITEM 1. Amend subrules 239.4(2) and 239.4(3) as follows:

239.4(2) Notice of change of address. Each licensee shall notify the board ~~in writing~~ of a change of the licensee’s current mailing address within 30 days after the change of address occurs.

239.4(3) Notice of change of name. Each licensee shall notify the board *in writing* of ~~any a~~ change of name within 30 days after changing the name. ~~Notification requires a notarized copy of a marriage license or a notarized copy of court documents.~~

ITEM 2. Amend rule 645—239.6(17A), parenthetical implementation, as follows:

645—239.6(17A 21)

ITEM 3. Adopt new subrules 239.6(3) and 239.6(4) as follows:

239.6(3) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

239.6(4) Cameras and recording devices may be used at open meetings, provided the cameras or recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

ITEM 4. Amend the implementation clause for **645—Chapter 239** as follows:

These rules are intended to implement Iowa Code chapters 17A, 21, 147, and 154B, and 272C.

ITEM 5. Renumber rule **645—240.15(17A,147,272C)** as **645—240.16(17A,147,272C)** and adopt the following new rule:

645—240.15(147) Duplicate certificate or wallet card.

240.15(1) A duplicate wallet card or a duplicate certificate shall be required if the current wallet card or certificate is lost, stolen or destroyed. A duplicate wallet card or duplicate certificate shall only be issued under such circumstances.

240.15(2) A duplicate wallet card or duplicate certificate shall be issued upon receipt of a completed application from the licensee and receipt of the fee as specified in rule 645—243.1(147,154B).

240.15(3) If the board receives a completed application that states the wallet card or certificate was not received within 60 days after being mailed by the board, no fee shall be required for reissuing the duplicate wallet card or duplicate certificate.

ITEM 6. Rescind 645—Chapter 242 and adopt the following new chapter in lieu thereof:

CHAPTER 242

DISCIPLINE FOR PSYCHOLOGISTS

645—242.1(154B) Definitions.

“Board” means the board of psychology examiners.

“Discipline” means any sanction the board may impose upon licensees.

“Licensee” means a person licensed to practice psychology in Iowa.

645—242.2(147,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—242.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

242.2(1) Failure to comply with the Ethical Principles of Psychologists and Code of Conduct of the American Psychological Association, as published in the December 2002 edition of *American Psychologist*, hereby adopted by reference. Copies of the Ethical Principles of Psychologists and Code of Conduct may be obtained from the American Psychological Association’s Web site at <http://www.apa.org>.

242.2(2) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice in this state, which includes the following:

a. False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state; or

b. Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

242.2(3) Professional incompetency. Professional incompetency includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other psychologists in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average psychologist acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of a licensed psychologist in this state.

e. Mental or physical inability reasonably related to and adversely affecting the licensee’s ability to practice in a safe and competent manner.

f. Being adjudged mentally incompetent by a court of competent jurisdiction.

242.2(4) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of psychology or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

242.2(5) Practice outside the scope of the profession.

242.2(6) Use of untruthful or improbable statements in advertisements.

242.2(7) Habitual intoxication or addiction to the use of drugs.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

a. The inability of a licensee to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

b. The excessive use of drugs which may impair a licensee's ability to practice with reasonable skill or safety.

242.2(8) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

242.2(9) Falsification, alteration or destruction of client or patient records with the intent to deceive.

242.2(10) Acceptance of any fee by fraud or misrepresentation.

242.2(11) Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession includes a failure to exercise due care, including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

242.2(12) Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice psychology. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

242.2(13) Violation of a regulation, rule, or law of this state, another state, or the United States, which relates to the practice of psychology.

242.2(14) Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory or country; or failure of the licensee to report such action within 30 days of the final action by such licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report shall be expunged from the records of the board.

242.2(15) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the individual's practice of psychology in another state, district, territory or country.

242.2(16) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

242.2(17) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

242.2(18) Engaging in any conduct that subverts or attempts to subvert a board investigation.

242.2(19) Failure to comply with a subpoena issued by the board or failure to cooperate with an investigation of the board.

242.2(20) Failure to respond within 30 days of receipt of communication from the board which was sent by registered or certified mail.

242.2(21) Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

242.2(22) Failure to pay costs assessed in any disciplinary action.

242.2(23) Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

242.2(24) Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

242.2(25) Knowingly aiding, assisting or advising a person to unlawfully practice psychology.

242.2(26) Failure to report a change of name or address within 30 days after it occurs.

242.2(27) Representing oneself as a licensed psychologist when one's license has been suspended or revoked, or when one's license is lapsed or has been placed on inactive status.

242.2(28) Permitting another person to use the licensee's license for any purpose.

242.2(29) Permitting an unlicensed employee or person under the licensee's control to perform activities that require a license to practice psychology.

242.2(30) Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but is not limited to, the following:

a. Verbally or physically abusing a patient or client.

b. Improper sexual contact with or making suggestive, lewd, lascivious or improper remarks or advances to a patient, client or coworker.

c. Betrayal of a professional confidence.

d. Engaging in a professional conflict of interest.

242.2(31) Repeated failure to comply with standard precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

645—242.3(147,272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.

2. Suspension of license until further order of the board or for a specific period.

3. Prohibit permanently, until further order of the board, or for a specific period the licensee's engaging in specified procedures, methods, or acts.

4. Probation.

5. Require additional education or training.

6. Require a reexamination.

7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.

8. Impose civil penalties not to exceed \$1000.

9. Issue a citation and warning.

10. Such other sanctions allowed by law as may be appropriate.

645—242.4(272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care for the citizens of this state;

2. The facts of the particular violation;

3. Any extenuating facts or other countervailing considerations;

4. The number of prior violations or complaints;

5. The seriousness of prior violations or complaints;

6. Whether remedial action has been taken; and

7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

These rules are intended to implement Iowa Code chapters 147, 154B and 272C.

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ARC 2772B

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code sections 17A.4, 476.1, 476.1A, 476.1B, and 476.47, the Utilities Board (Board) gives notice that on August 29, 2003, the Board issued an order in Docket No. RMU-03-8, In re: Alternate Energy Purchase Programs, "Order Adopting Rules." The Board is adopting a new definition in 199 IAC 15.1(476), a new rule 199 IAC 15.17(476), and a new subparagraph 199 IAC 20.9(2)"b"(9). The amendments are in response to Iowa Code section 476.47, which requires all electric utilities to offer by January 1, 2004, "alternate energy purchase programs that allow customers to contribute voluntarily to the development of alternate energy in Iowa."

On April 21, 2003, the Board issued an order in Docket No. RMU-03-8 to consider the amendments. Notice of Intended Action for the proposed rule making was published in IAB Vol. XXV, No. 23 (5/14/03) p. 1479, as **ARC 2459B**. Written or oral comments were submitted by Interstate Power and Light Company (IPL), MidAmerican Energy Company, the Consumer Advocate Division of the Department of Justice, the Iowa Sustainable Energy for Economic Development Coalition, Ag Processing Inc., the Iowa Association of Electric Cooperatives, the Iowa Association of Municipal Utilities, Missouri River Energy Services, and the Iowa Environmental Council. An oral presentation was held on June 27, 2003.

Several changes have been made to the Notice in response to the comments. The definition of "alternate energy purchase program" has been changed to allow small utilities to implement a program such as a customer contribution fund with the proceeds donated to Iowa Energy Center. Such a program would further the development of alternate energy in Iowa, consistent with the statutory mandate. The Board will retain the voluntary aspects of the program. This is consistent with the statute, which provides that utilities are to "offer" such programs.

The Board will also adopt changes allowing for pooled facilities, such as those that are used in IPL's current Second Nature Program. This multistate program uses pooled resources, which allows for potential cost savings in administration and marketing. The statutory intent of the legislation, which is for an Iowa program based on Iowa resources, will be satisfied so long as the pooled resources include sufficient Iowa resources to match Iowa customer participation.

Other changes to the Notice have also been adopted. The Board will not detail here the reasons for adopting these changes because those reasons have been delineated in the Board's order, referred to above, and issued simultaneously with this Adopted and Filed rule making. This order is available at the Board's Web site, <http://www.state.ia.us/iub>. This order is also available in hard copy for review or purchase at the Board's Records Center, 350 Maple Street, Des Moines, Iowa 50319-0069; telephone (515)281-5563.

The changes to the Notice are in response to the comments. The Board finds that no additional notice is required.

A separate waiver provision is included for municipal utilities and cooperatives, but the Board's waiver provision in 199 IAC 1.3(17A,474,78GA, HF2206) will be generally applicable to these rules.

These amendments are intended to implement Iowa Code sections 476.1, 476.1A, 476.1B, and 476.47.

These amendments will become effective on October 22, 2003.

The following amendments are adopted.

ITEM 1. Amend rule **199—15.1(476)** by adding the following **new** definition in alphabetical order:

"Alternate energy purchase (AEP) program" means a utility program that allows customers to contribute voluntarily to the development of alternate energy in Iowa.

ITEM 2. Add **new** rule 199—15.17(476) as follows:

199—15.17(476) Alternate energy purchase programs.

Any consumer-owned utility, including any electric cooperative corporation or association or any municipally owned electric utility, may apply to the board for a waiver under this rule.

This rule shall not apply to non-rate-regulated electric utilities physically located outside of Iowa that serve Iowa customers.

15.17(1) Obligation to offer programs.

a. Beginning January 1, 2004, each electric utility, whether or not subject to rate regulation by the board, shall offer an alternate energy purchase program that allows customers to contribute voluntarily to the development of alternate energy in Iowa, and allows for the exceptions listed in paragraph 15.17(1)"c."

b. Each electric utility subject to rate regulation by the board, except for utilities that elect rate regulation pursuant to Iowa Code section 476.1A, shall demonstrate on an annual basis that it produces or purchases sufficient energy from program AEP facilities located in Iowa to meet the needs of its Iowa program. These Iowa-based AEP facilities shall not include AEP facilities for which the utility has sought cost recovery under rule 199—20.9(476) prior to July 1, 2001.

c. The electric utility may partially or fully base its program on energy produced by AEP facilities located outside of Iowa under any of the following circumstances:

(1) The energy is purchased by the electric utility pursuant to a contract in effect prior to July 1, 2001, and continues until the expiration of the contract, including any options to renew that are exercised by the electric utility;

(2) The electric utility has a financial interest, as of July 1, 2001, in an AEP facility that is located outside of Iowa or in an entity that has a financial interest in an AEP facility located outside of Iowa; or

(3) The energy is purchased by an electric utility that is not subject to rate regulation by the board, or which elects rate regulation pursuant to Iowa Code section 476.1A, and that is required to purchase all of its electric power requirements from one or more suppliers that are physically located outside of Iowa.

15.17(2) Customer notification.

a. Each electric utility shall notify eligible customer classes of its alternate energy purchase program and proposed program modifications at least 60 days prior to implementation of the program or program modification. The notification shall include, as applicable:

(1) A description of the availability and purpose of the program or program modification, clarifying that customer contributions will not involve the direct sale of alternate energy to individual customers;

(2) The effective date of the program or program modification;

(3) Customer classes eligible for participation;

(4) Forms and levels of customer contribution available to program participants;

UTILITIES DIVISION[199](cont'd)

(5) A utility telephone number for answering customers' questions about the program; and

(6) Customer instructions that explain how to participate in the program.

b. In addition to the notification requirements under paragraph 15.17(2)"a," each electric utility subject to rate regulation by the board, excluding utilities that elect rate regulation pursuant to Iowa Code section 476.1A, shall:

(1) Include fuel report information described under subrule 15.17(5); and

(2) Submit the proposed notification to the board for approval at least 30 days prior to the proposed date of issuance of the notification.

15.17(3) Program plan filing requirements for rate-regulated utilities. On or before October 1, 2003, each electric utility subject to rate regulation by the board, excluding utilities that elect rate regulation pursuant to Iowa Code section 476.1A, shall file with the board a plan for the utility's alternate energy purchase program. Initial program plans and any subsequent modifications will be subject to board approval. Modification filings need only include information about elements of the program that are being modified. The initial program plan filing shall include:

a. The program tariff;

b. The program effective date;

c. A sample of the customer notification, including a description of the method of distribution;

d. Customer classes eligible for participation and the schedule for extending participation to all customer classes;

e. Identification of each AEP facility used for the program, including:

(1) Fuel type;

(2) Nameplate capacity;

(3) Estimated annual kWh output;

(4) Estimated in-service date;

(5) Ownership, including any utility affiliation;

(6) A copy of any contract for utility purchases from the facility;

(7) A description of the method or procedure used to select the facility;

(8) Facility location; and

(9) If the facility is located outside of Iowa, an explanation of how the facility qualifies under paragraph 15.17(1)"c";

f. The forms and levels of customer contribution available to program participants, including, but not limited to:

(1) kWh rate premiums applied to percentages of participant kWh usage, with an explanation of how the kWh rate premiums are derived; or

(2) kWh rate premiums applied to fixed kWh blocks of participant usage, with an explanation of how the kWh rate premiums are derived; or

(3) Fixed contributions, with an explanation of how the fixed amounts are derived;

g. The maximum allowable time lag between the beginning of customer contributions and the in-service date for identified AEP facilities, and the procedures for suspending customer contributions if the maximum time lag is exceeded;

h. The intended treatment of program participants under 199—20.9(476) energy automatic adjustment and AEP automatic adjustment clauses;

i. An accounting plan for identifying and tracking participant contributions and program costs, including:

(1) Identification of incremental program costs not otherwise recovered through the utility's rates, including but not limited to: program start-up and administration costs; pro-

gram marketing costs; and program energy and capacity costs associated with identified AEP facilities;

(2) Methods for quantifying, assigning, and allocating costs of the program and for segregating those costs in the utility's accounts; and

j. Marketing and customer information plan, including schedules and copies of all marketing and information materials, as available.

15.17(4) Annual reporting requirements for rate-regulated utilities. On or before April 1, 2005, and annually thereafter, each electric utility subject to rate regulation by the board, excluding utilities that elect rate regulation pursuant to Iowa Code section 476.1A, shall file with the board a report of program activity for the previous calendar year. The annual report shall include:

a. Program information including:

(1) The number of program participants, by customer class;

(2) Participant contribution revenues, by customer class, by form and level of contribution, and associated participant kWh sales;

(3) Program electricity generated from each program AEP facility and the associated costs; and

(4) Other program costs, by cost type.

b. An annual reconciliation of participant contributions and program costs.

(1) Program costs are incremental costs associated with the utility's alternate energy purchase program not otherwise recovered through the utility's base tariff rates, and electricity costs dedicated to the program and separated from the utility's 199—20.9(476) energy or AEP automatic adjustment clauses.

(2) The excess of participant contributions over program costs is an annual program surplus, and the excess of program costs over participant contributions is an annual program deficit.

(3) Annual program surpluses and deficits are cumulative over successive years.

(4) A program deficit may be recovered through the utility's 199—20.9(476) AEP automatic adjustment clause.

(5) Any program surplus shall be used to offset prior years' program deficits previously recovered through the AEP automatic adjustment clause, and the offset amount shall be credited through the utility's AEP automatic adjustment clause.

c. Identification of any other AEP or renewable energy requirements being met with program AEP facilities and identification of any revenues derived from the separate sale of the renewable energy attributes of program AEP facilities.

d. Documentation that shows the energy produced by the utility's program AEP facilities in Iowa (whether contracted, leased, or owned), not including AEP facilities for which the utility has sought cost recovery under 199—20.9(476) prior to July 1, 2001, is sufficient to meet the requirement of the utility's Iowa alternate energy purchase program.

e. A description of program marketing and customer information activities, including schedules and copies of all marketing and information materials related to the program.

f. Program modifications and uses for any program surplus that are under consideration, including procurement or assignment of additional electricity from AEP facilities.

g. A copy of the utility's annual fuel report to customers under subrule 15.17(5).

15.17(5) Annual fuel reporting requirements for rate-regulated utilities.

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a. Each electric utility subject to rate regulation by the board, excluding utilities that elect rate regulation pursuant to Iowa Code section 476.1A, shall annually report to all its Iowa customers its percentage mix of fuel and energy inputs used to produce electricity. The report shall, to the extent practical, specify percentages of electricity produced by coal, nuclear energy, natural gas, oil, AEP electricity produced for the utility's alternate energy purchase program, non-program AEP electricity, and resources purchased from other companies. The percentages for AEP electricity shall further specify percentages of electricity produced by wind, solar, hydropower, biomass, and other technologies.

b. The report shall include an estimate of sulfur dioxide (SO₂), nitrogen oxide (NO_x), and carbon dioxide (CO₂) emissions for each known fuel and energy input type. The emission estimate shall be expressed in pounds per 1000 kWh.

15.17(6) Tariff filing requirements for non-rate-regulated utilities.

a. On or before January 1, 2004, each electric utility that is not subject to rate regulation by the board or that elects rate regulation pursuant to Iowa Code section 476.1A shall file with the board a tariff for the utility's alternate energy purchase program. Initial tariff filings and any subsequent modifications shall be filed for informational purposes only. Tariff modification filings need only include information about elements of the program that are being modified. The initial tariff filings shall include, as applicable:

- (1) The program tariff;
- (2) The program effective date;
- (3) A sample of the customer notification, including a description of the method of distribution;
- (4) Customer classes eligible for participation;

(5) Identification of any specific AEP facilities to be included in the program, including: fuel type; nameplate capacity; estimated annual kWh output; estimated in-service date; ownership, including any utility affiliation; location; and, if the facility is located outside of Iowa, an explanation of how the facility qualifies under paragraph 15.17(1)“c”; and

(6) Forms and levels of customer contribution available to program participants.

b. Joint filings. An electric utility that is not subject to rate regulation by the board or that elects rate regulation pursuant to Iowa Code section 476.1A may file its tariff jointly with other non-rate-regulated utilities or through an agent. A joint tariff filing shall contain the information required by paragraph 15.17(6)“a,” separately identified for each utility participating in the joint tariff. The information for each utility may be provided by reference to an attached document or to a section of the joint tariff filing. A joint tariff filing filed by an agent shall state the agent's relationship to each utility and include a document from each utility authorizing the agent to act on the utility's behalf.

ITEM 3. Add **new** subparagraph **20.9(2)“b”(9)** as follows:

(9) Eligible costs or credits associated with the utility's annual reconciliation of its alternate energy purchase program under 199—paragraph 15.17(4)“b.”

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