IOWA ADMINISTRATIVE BULLETIN

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CONTENTS IN THIS ISSUE

Pages 724 to 830 include **ARC 5571B** to **ARC 5607B**

ALL AGENCIES
Schedule for rule making 716
Subscription information 717
Agency identification numbers 721

CITATION OF ADMINISTRATIVE RULES 720

EDUCATIONAL EXAMINERS BOARD[282]
EDUCATION DEPARTMENT[281]"umbrella"
Notice, International teacher exchange license, 14.120(4) **ARC 5589B** 724
Notice, Paraeducator certificate—fees, 14.121(1), 22.5, 22.13 **ARC 5592B** 724
Notice, Exceptional learner program, 14.123(3), 15.1(1), 15.10(2), 15.12(2) **ARC 5588B** 725
Notice, Teacher intern authorization, 14.129(1), 15.1 to 15.20 **ARC 5591B** 726
Notice, Evaluator endorsement and license, 20.57(1) **ARC 5590B** 726

EDUCATION DEPARTMENT[281]
Filed, Open enrollment, amendments to ch 17 **ARC 5605B** 826
Filed, Educational improvement projects, rescind ch 62 **ARC 5606B** 826

ELDER AFFAIRS DEPARTMENT[321]
Notice, Area agency on aging planning and administration, 6.8 to 6.18 **ARC 5607B** 727

ENVIRONMENTAL PROTECTION COMMISSION[567]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Notice, Air quality, amendments to chs 21 to 23, 25, 34 **ARC 5599B** 728
Notice, Water quality, 61.2(2)"h" **ARC 5598B** 733
Notice, Sanitary landfills for municipal solid waste, amend chs 101, 102, 104; rescind chs 111, 113; adopt ch 113 **ARC 5597B** 734
Filed, Mercury-added switch recovery from end-of-life vehicles, ch 215 **ARC 5600B** 827

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]
PUBLIC DEFENSE DEPARTMENT[601]"umbrella"
Notice—availability of public funds 723

HUMAN SERVICES DEPARTMENT[441]
Notice, Medicaid providers—increase in reimbursement, 83.2(2)"b," 83.22(2)"c"(2), 83.42(2)"b," 83.82(2)"d," 83.102(2)"b," 83.122(6)"b" **ARC 5577B** 794
Notice, Supervised community treatment, 151.32(2) **ARC 5580B** 794
Filed Emergency After Notice, Aftercare services and supports, 7.1, ch 187 **ARC 5582B** 819
Filed, Medicaid—nursing facility personal needs allowance, supplemental payments to eligible nursing home residents, 75.16(2)"a," 81.23 **ARC 5579B** 827
Filed Emergency, Medicaid providers—increase in reimbursement, 83.2(2)"b," 83.22(2)"c"(2), 83.42(2)"b," 83.82(2)"d," 83.102(2)"b," 83.122(6)"b" **ARC 5578B** 821
Filed Emergency, Supervised community treatment, 151.32(2) **ARC 5581B** 822

INSPECTIONS AND APPEALS DEPARTMENT[481]
Filed, Licensure—long-term acute care hospitals, 51.1, 51.2, 51.4, 51.51(3) **ARC 5585B** 828
Filed, Nursing facilities, amendments to chs 58, 61 **ARC 5587B** 829
Filed, Admission procedures for certain long-term care facilities, 58.12(1), 64.6, 65.10 **ARC 5586B** 829

INSURANCE DIVISION[191]
COMMERCE DEPARTMENT[181]"umbrella"
Notice, Organization of division, amendments to ch 1 **ARC 5594B** 795
Filed, Iowa business opportunity sales Act, rescind ch 55 **ARC 5572B** 830

Continued on page 715

PUBLISHED UNDER AUTHORITY OF IOWA CODE SECTIONS 2B.5 AND 17A.6

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 and rules adopted by state agencies.

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

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

KATHLEEN K. WEST, Administrative Code Editor
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LABOR SERVICES DIVISION[875]
WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"
Notice, Respiratory protection; exception for hexavalent chromium exposure in metal and surface finishing job shops, 10.4, 10.20, 26.1 **ARC 5596B** 797
Notice, Civil penalties, ch 34 **ARC 5583B** 798
Notice, Shoot fighting and professional boxing—blood-borne disease testing, 173.54, 177.5(11) **ARC 5584B** 800

NATURAL RESOURCE COMMISSION[571]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Notice, Mussel regulations—seasons, areas, methods, species, limits, 87.1, 87.2 **ARC 5603B** 801
Notice, Nonresident deer hunting, 94.1, 94.6, 94.8(2), 94.11 **ARC 5604B** 801
Filed, Development and management of recreation trails on state lands, amendments to ch 67 **ARC 5601B** 830
Filed, Fishing regulations, 81.2 **ARC 5602B** 830

PROFESSIONAL LICENSURE DIVISION[645]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Notice, Marital and family therapists and mental health counselors—licensure, 31.5(2), 31.7(2), 31.8 **ARC 5571B** 802

PUBLIC FUNDS—AVAILABILITY
Homeland Security and Emergency Management Division[605]
Predisaster mitigation competitive (PDM) grant for fiscal year 2007 723

PUBLIC HEALTH DEPARTMENT[641]
Notice, Emergency medical care candidates—increase in certification fee, 131.4(1)"k" **ARC 5574B** 803
Notice, Love our kids grant—funding categories, 141.1 to 141.4, 141.5(1) **ARC 5576B** 803
Filed Emergency, Emergency medical care candidates—increase in certification fee, 131.4(1)"k" **ARC 5573B** 823
Filed Emergency, Love our kids grant—funding categories, 141.1 to 141.4, 141.5(1) **ARC 5575B** 824

PUBLIC HEARINGS
Summarized list 718

REVENUE DEPARTMENT[701]
Notice of electric and natural gas delivery tax rates and municipal electric and natural gas transfer replacement tax rates for each competitive service area 804
Notice, Exclusion of ordinary or capital gain income, amendments to chs 40, 52, 53 **ARC 5593B** 808
Notice, Individual and corporate income tax credits, amendments to chs 42, 52, 58 **ARC 5595B** 811

USURY
Notice 818

Schedule for Rule Making
2007

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 27 '06	Jan. 17 '07	Feb. 6 '07	Feb. 21 '07	Feb. 23 '07	Mar. 14 '07	Apr. 18 '07	July 16 '07
Jan. 12	Jan. 31	Feb. 20	Mar. 7	Mar. 9	Mar. 28	May 2	July 30
Jan. 26	Feb. 14	Mar. 6	Mar. 21	Mar. 23	Apr. 11	May 16	Aug. 13
Feb. 9	Feb. 28	Mar. 20	Apr. 4	Apr. 6	Apr. 25	May 30	Aug. 27
Feb. 23	Mar. 14	Apr. 3	Apr. 18	Apr. 20	May 9	June 13	Sept. 10
Mar. 9	Mar. 28	Apr. 17	May 2	May 4	May 23	June 27	Sept. 24
Mar. 23	Apr. 11	May 1	May 16	*****May 16*****	June 6	July 11	Oct. 8
Apr. 6	Apr. 25	May 15	May 30	June 1	June 20	July 25	Oct. 22
Apr. 20	May 9	May 29	June 13	June 15	July 4	Aug. 8	Nov. 5
May 4	May 23	June 12	June 27	*****June 27*****	July 18	Aug. 22	Nov. 19
*****May 16*****	June 6	June 26	July 11	July 13	Aug. 1	Sept. 5	Dec. 3
June 1	June 20	July 10	July 25	July 27	Aug. 15	Sept. 19	Dec. 17
June 15	July 4	July 24	Aug. 8	Aug. 10	Aug. 29	Oct. 3	Dec. 31
*****June 27*****	July 18	Aug. 7	Aug. 22	*****Aug. 22*****	Sept. 12	Oct. 17	Jan. 14 '08
July 13	Aug. 1	Aug. 21	Sept. 5	Sept. 7	Sept. 26	Oct. 31	Jan. 28 '08
July 27	Aug. 15	Sept. 4	Sept. 19	Sept. 21	Oct. 10	Nov. 14	Feb. 11 '08
Aug. 10	Aug. 29	Sept. 18	Oct. 3	Oct. 5	Oct. 24	Nov. 28	Feb. 25 '08
*****Aug. 22*****	Sept. 12	Oct. 2	Oct. 17	Oct. 19	Nov. 7	Dec. 12	Mar. 10 '08
Sept. 7	Sept. 26	Oct. 16	Oct. 31	Nov. 2	Nov. 21	Dec. 26	Mar. 24 '08
Sept. 21	Oct. 10	Oct. 30	Nov. 14	*****Nov. 14*****	Dec. 5	Jan. 9 '08	Apr. 7 '08
Oct. 5	Oct. 24	Nov. 13	Nov. 28	Nov. 30	Dec. 19	Jan. 23 '08	Apr. 21 '08
Oct. 19	Nov. 7	Nov. 27	Dec. 12	*****Dec. 12*****	Jan. 2 '08	Feb. 6 '08	May 5 '08
Nov. 2	Nov. 21	Dec. 11	Dec. 26	*****Dec. 26*****	Jan. 16 '08	Feb. 20 '08	May 19 '08
*****Nov. 14*****	Dec. 5	Dec. 25	Jan. 9 '08	Jan. 11 '08	Jan. 30 '08	Mar. 5 '08	June 2 '08
Nov. 30	Dec. 19	Jan. 8 '08	Jan. 23 '08	Jan. 25 '08	Feb. 13 '08	Mar. 19 '08	June 16 '08
*****Dec. 12*****	Jan. 2 '08	Jan. 22 '08	Feb. 6 '08	Feb. 8 '08	Feb. 27 '08	Apr. 2 '08	June 30 '08
*****Dec. 26*****	Jan. 16 '08	Feb. 5 '08	Feb. 20 '08	Feb. 22 '08	Mar. 12 '08	Apr. 16 '08	July 14 '08

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
14	**Wednesday, December 13, 2006**	**January 3, 2007**
15	**Wednesday, December 27, 2006**	**January 17, 2007**
16	**Friday, January 12, 2007**	**January 31, 2007**

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*****

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April 1, 2007, to June 30, 2007	$ 82

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Legislative Services Agency
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AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
DENTAL EXAMINERS BOARD[650]		
Licensing, amendments to chs 1, 11, 13 to 15, 20, 22, 25, 27 to 29, 35 IAB 11/22/06 **ARC 5568B**	Conference Room, Suite D 400 SW 8th St. Des Moines, Iowa	December 12, 2006 10 a.m.
EDUCATIONAL EXAMINERS BOARD[282]		
International teacher exchange license, 14.120(4) IAB 12/6/06 **ARC 5589B**	Room 3 SW, Third Floor Grimes State Office Bldg. Des Moines, Iowa	December 27, 2006 1 p.m.
Licenses and endorsements— exceptional learner, 14.123(3), 15.1(1), 15.10(2), 15.12(2) IAB 12/6/06 **ARC 5588B**	Room 3 SW, Third Floor Grimes State Office Bldg. Des Moines, Iowa	December 27, 2006 1 p.m.
Licenses and endorsements— authorization, 14.129(1), 15.1 to 15.20 IAB 12/6/06 **ARC 5591B**	Room 3 SW, Third Floor Grimes State Office Bldg. Des Moines, Iowa	December 27, 2006 1 p.m.
Evaluator endorsement and license, 20.57(1) IAB 12/6/06 **ARC 5590B**	Room 3 SW, Third Floor Grimes State Office Bldg. Des Moines, Iowa	December 27, 2006 1 p.m.
Paraeducator certificates— renewal and fees, 22.5, 22.13 IAB 12/6/06 **ARC 5592B**	Room 3 SW, Third Floor Grimes State Office Bldg. Des Moines, Iowa	December 27, 2006 1 p.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Air quality, amendments to chs 21 to 23, 25, 34 IAB 12/6/06 **ARC 5599B**	Conference Rooms Air Quality Bureau 7900 Hickman Road Urbandale, Iowa	January 8, 2007 1 p.m.
Water quality, 61.2(2)“h” IAB 12/6/06 **ARC 5598B**	5th Floor E. Conference Room Wallace State Office Bldg. Des Moines, Iowa	December 26, 2006 1 p.m.
Solid and nonhazardous waste, amend chs 101, 102, 104; rescind chs 111, 113; adopt ch 113 IAB 12/6/06 **ARC 5597B**	Suite D, DNR Field Office 1 909 West Main St. Manchester, Iowa	January 22, 2007 10 a.m.
	DNR Field Office 4 1401 Sunnyside Lane Atlantic, Iowa	January 24, 2007 10 a.m.
	5th Floor Conference Rooms Wallace State Office Bldg. Des Moines, Iowa	January 26, 2007 10 a.m.

INSURANCE DIVISION[191]

Organization of division, ch 1 IAB 12/6/06 **ARC 5594B**	330 Maple St. Des Moines, Iowa	December 26, 2006 1 p.m.
Preferred mortality tables for use in determining minimum reserve liabilities, ch 94 IAB 11/22/06 **ARC 5550B**	330 Maple St. Des Moines, Iowa	December 13, 2006 10 a.m.

LABOR SERVICES DIVISION[875]

OSHA standards—respiratory protection; hexavalent chromium exposure, 10.4, 10.20, 26.1 IAB 12/6/06 **ARC 5596B**	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	December 28, 2006 1:30 p.m.
Civil penalties, ch 34 IAB 12/6/06 **ARC 5583B**	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	December 27, 2006 1:30 p.m. (If requested)
Professional boxing and shoot fighting—blood-borne disease testing, 173.54, 177.5(11) IAB 12/6/06 **ARC 5584B**	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	December 27, 2006 9 a.m. (If requested)

NATURAL RESOURCE COMMISSION[571]

Commercial mussel harvest closed; sport harvesting, 87.1, 87.2 IAB 12/6/06 **ARC 5603B**	4th Floor Conf. Rm. Wallace State Office Bldg. Des Moines, Iowa	January 4, 2007 1 p.m.
Nonresident deer hunting, 94.1, 94.6, 94.8(2), 94.11 IAB 12/6/06 **ARC 5604B**	4th Floor E. Conf. Rm. Wallace State Office Bldg. Des Moines, Iowa	January 11, 2007 10:30 a.m.

PROFESSIONAL LICENSURE DIVISION[645]

Licensure of marital and family therapists and mental health counselors, 31.5(2), 31.7(2), 31.8 IAB 12/6/06 **ARC 5571B**	Fifth Floor Board Conf. Rm. Lucas State Office Bldg. Des Moines, Iowa	January 9, 2007 9 to 9:30 a.m.
Cosmetology arts and sciences—continuing education, 64.2(1) IAB 11/22/06 **ARC 5546B**	5th Floor Board Conf. Rm. Lucas State Office Bldg. Des Moines, Iowa	December 12, 2006 9 to 9:30 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Prescription drug donation repository program, ch 109 IAB 11/22/06 **ARC 5563B**	Room 523 Lucas State Office Bldg. Des Moines, Iowa	December 12, 2006 10 to 11 a.m.
Public health response teams, ch 113 IAB 11/22/06 **ARC 5565B**	Room 518 Lucas State Office Bldg. Des Moines, Iowa	December 12, 2006 1 to 2 p.m.

PUBLIC SAFETY DEPARTMENT[661]

State building code, 300.5(4) IAB 11/22/06 **ARC 5561B**	Conference Room, Suite N 401 SW 7th St. Des Moines, Iowa	December 12, 2006 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).

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

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:

ADMINISTRATIVE SERVICES DEPARTMENT[11]
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
- Agricultural Development Authority[25]
- Soil Conservation Division[27]

ATTORNEY GENERAL[61]
AUDITOR OF STATE[81]
BEEF INDUSTRY COUNCIL, IOWA[101]
BLIND, DEPARTMENT FOR THE[111]
CAPITAL INVESTMENT BOARD, IOWA[123]
CITIZENS' AIDE[141]
CIVIL RIGHTS COMMISSION[161]
COMMERCE DEPARTMENT[181]
- Alcoholic Beverages Division[185]
- Banking Division[187]
- Credit Union Division[189]
- Insurance Division[191]
- Professional Licensing and Regulation Bureau[193]
  - Accountancy Examining Board[193A]
  - Architectural Examining Board[193B]
  - Engineering and Land Surveying Examining Board[193C]
  - Landscape Architectural Examining Board[193D]
  - Real Estate Commission[193E]
  - Real Estate Appraiser Examining Board[193F]
  - Interior Design Examining Board[193G]
- Savings and Loan Division[197]
- Utilities Division[199]

CORRECTIONS DEPARTMENT[201]
- Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]
- Arts Division[222]
- Historical Division[223]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
- City Development Board[263]
- Grow Iowa Values Board[264]
- Iowa Finance Authority[265]

EDUCATION DEPARTMENT[281]
- Educational Examiners Board[282]
- College Student Aid Commission[283]
- Higher Education Loan Authority[284]
- Iowa Advance Funding Authority[285]
- Libraries and Information Services Division[286]
- Public Broadcasting Division[288]
- School Budget Review Committee[289]

EGG COUNCIL, IOWA[301]
ELDER AFFAIRS DEPARTMENT[321]
EMPOWERMENT BOARD, IOWA[349]
ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
EXECUTIVE COUNCIL[361]
FAIR BOARD[371]
HUMAN RIGHTS DEPARTMENT[421]
- Community Action Agencies Division[427]
- Criminal and Juvenile Justice Planning Division[428]
- Deaf Services Division[429]
- Persons With Disabilities Division[431]
- Latino Affairs Division[433]
- Status of African-Americans, Division on the[434]
- Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]

INSPECTIONS AND APPEALS DEPARTMENT[481]
Employment Appeal Board[486]
Foster Care Review Board[489]
Racing and Gaming Commission[491]
State Public Defender[493]
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
LOTTERY AUTHORITY, IOWA[531]
MANAGEMENT DEPARTMENT[541]
Appeal Board, State[543]
City Finance Committee[545]
County Finance Committee[547]
NATURAL RESOURCES DEPARTMENT[561]
Energy and Geological Resources Division[565]
Environmental Protection Commission[567]
Natural Resource Commission[571]
Preserves, State Advisory Board for[575]
PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
Homeland Security and Emergency Management Division[605]
Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
Professional Licensure Division[645]
Dental Examiners Board[650]
Medical Examiners Board[653]
Nursing Board[655]
Pharmacy Examiners Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
Archaeologist[685]
REVENUE DEPARTMENT[701]
SECRETARY OF STATE[721]
SEED CAPITAL CORPORATION, IOWA[727]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
Railway Finance Authority[765]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]
VETERINARY MEDICINE BOARD[811]
VOLUNTEER SERVICE, IOWA COMMISSION ON[817]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
Labor Services Division[875]
Workers' Compensation Division[876]
Workforce Development Board and Workforce Development Center Administration Division[877]

AGENCY	PROGRAM	SERVICE DELIVERY AREA	ELIGIBLE APPLICANTS	TYPES OF PROJECTS	E-Grant Application DUE DATE
Iowa Homeland Security and Emergency Management Division (HLSEM)	Pre-Disaster Mitigation Competitive (PDM) Grant for Fiscal Year (FY) 2007 Authorized by §203 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (Stafford Act), 42 U.S.C. 5133, as amended by §102 of the Disaster Mitigation Act of 2000 (DMA)	Within the State of Iowa	• Other State Agencies and Local Governments • Federally recognized Indian Tribal governments, to include state recognized Indian Tribes, Authorized Tribal Organizations, and Alaska Native villages • Private non-profit organizations are not eligible to apply as sub-applicants; however, they may request a local government to submit an application for their proposed activity on their behalf. • All applicants and sub-applicants must be participating in the NFIP if they have been identified through the NFIP as having a Special Flood Hazard Area (SFHA) (a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM) has been issued. The Community must not be on probation, suspended or withdrawn from the NFIP. To learn more about the PDM program, use the following link on HLSEM's website: http://www.iowahomelandsecurity.org/asp/CoEM_FR/grant/index.asp Applicants must complete an application through the Electronic Grant (e-Grants) System. To learn more about the e-grant system use the following link on HLSEM's website: http://www.iowahomelandsecurity.org/asp/CoEM_FR/grant/Egrants.asp **For additional information please contact:** **John Wageman 515-725-3225** **Dennis Harper 515-725-3277** **Iowa Homeland Security and Emergency Management Division** **Camp Dodge, Bld W4** **Johnston, Iowa 50131**	**Eligible Project Types** • Acquisition or relocation of hazard-prone property for conversion to open space in perpetuity; • Construction of safe rooms (tornado and severe wind shelters); • Structural and non-structural retrofitting of existing buildings and facilities (including designs and feasibility studies when included as part of the construction project) for wildfire, seismic, wind or flood hazards (e.g., elevation, floodproofing, storm shutters, hurricane clips); • Minor structural hazard control or protection projects that may include vegetation management, stormwater management (e.g., culverts, floodgates, retention basins), or shoreline/landslide stabilization; and • Localized flood control projects, such as certain ring levees and floodwall systems, that are designed specifically to protect critical facilities and do not constitute a section of a larger flood control system. **Planning Activities:** Eligibility for a project grant is dependent on the Sub-applicant having a FEMA approved hazard mitigation plan. The outcome of a mitigation planning sub-grant award must be a FEMA-approved hazard mitigation plan that complies with the requirements of 44 CFR Part 201. The planning grant deliverable can be a new hazard mitigation plan or an update of an already FEMA approved hazard mitigation plan.	January 21, 2007

ARC 5589B

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

The proposed amendment would more easily facilitate a transition for teachers coming to Iowa through international programs by reducing barriers to licensure.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, December 27, 2006, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, 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 proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, December 29, 2006. Written comments and suggestions should be addressed to Barbara F. Hendrickson, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to barbara.hendrickson@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Adopt **new** subrule 14.120(4) as follows:

14.120(4) International teacher exchange license.

a. A nonrenewable international exchange license may be issued to an applicant under the following conditions:

(1) The applicant has completed a teacher education program in another country; and

(2) The applicant is not subject to any pending disciplinary proceedings in any state or country; and

(3) The applicant complies with all requirements with regard to application processes and payments of licensure fees; and

(4) The applicant is a participant in a teacher exchange program administered through the Iowa department of education.

b. Each exchange license shall be limited to the area(s) and level(s) of instruction as determined by an analysis of the application and the credential evaluation report.

c. This license shall not exceed three years.

d. After the term of the exchange license has expired, the applicant may apply to be fully licensed if the applicant has completed all requirements and is eligible for full licensure.

ARC 5592B

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," and Chapter 22, "Paraeducator Certificates," Iowa Administrative Code.

The proposed amendments to rules 22.5(272) and 22.13(272) incorporate the fees established in subrule 14.121(1) and eliminate a superfluous date.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, December 27, 2006, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, 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 proposed amendments. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147 or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendments before 4 p.m. on Friday, December 29, 2006. Written comments and suggestions should be addressed to Barbara F. Hendrickson, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to barbara.hendrickson@iowa.gov, or by fax to (515)281-7669.

These amendments are intended to implement Iowa Code chapter 272.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule **14.121(1)**, paragraphs **"a"** and **"b,"** as follows:

a. Fees for the issuance of licenses:

(1) to (12) No change.

(13) The fee for the issuance of a paraeducator certificate shall be $40.

b. Fees for the renewal of licenses:

(1) to (8) No change.

(9) The fee for the renewal of a paraeducator certificate shall be $40.

ITEM 2. Amend rule 282—22.5(272) as follows:

282—22.5(272) Certificate application fee. All fees are nonrefundable.

22.5(1) Issuance of certificates. The fee for the issuance of the paraeducator certificate shall be ~~$40~~ *as established in 282—subrule 14.121(1)*.

22.5(2) Adding areas of concentration. The fee for the addition of each area of concentration to a paraeducator certificate, following the issuance of the initial paraeducator certificate and any area(s) of concentration, shall be ~~$25~~ *as established in 282—subrule 14.121(1)*.

ITEM 3. Amend rule 282—22.13(272) as follows:

282—22.13(272) Renewal requirements.

22.13(1) The paraeducator certificate may be renewed upon application, payment of a ~~$25~~ renewal fee *as established in 282—subrule 14.121(1)*, and verification of successful completion of coursework totaling three units in any combination listed below.

a. to d. No change.

22.13(2) ~~Effective September 1, 2002, all~~ *All* applicants renewing a paraeducator certificate must submit documentation of completion of the child and dependent adult abuse training approved by the state abuse education review panel. A waiver of this requirement may apply under the following conditions with appropriate documentation of any of the following:

a. to d. No change.

ARC 5588B

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," and Chapter 15, "Requirements for Special Education Endorsements," Iowa Administrative Code.

The proposed amendments address the language of the exceptional learner provisions to reflect current terminology more accurately.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, December 27, 2006, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, 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 proposed amendments. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendments before 4 p.m. on Friday, December 29, 2006. Written comments and suggestions should be addressed to Barbara F. Hendrickson, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to barbara.hendrickson@iowa.gov, or by fax to (515)281-7669.

These amendments are intended to implement Iowa Code chapter 272.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 14.123(3) as follows:

14.123(3) Completion of the exceptional learner program, which must include preparation that contributes to the education of ~~the handicapped~~ *individuals with disabilities* and the gifted and talented.

ITEM 2. Amend subrule **15.1(1)**, paragraph **"c,"** as follows:

c. Completion of an exceptional learner program, which must include preparation that contributes to the education of ~~the handicapped~~ *individuals with disabilities* and the talented and gifted.

ITEM 3. Amend subrule **15.10(2)**, paragraph **"d,"** as follows:

d. The program must include preparation that contributes to the education of ~~the handicapped~~ *individuals with disabilities* and the gifted and talented.

ITEM 4. Amend subrule **15.12(2)**, paragraph **"d,"** as follows:

d. The program must include preparation that contributes to the education of ~~the handicapped~~ *individuals with disabilities* and the gifted and talented.

ARC 5591B

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," and Chapter 15, "Requirements for Special Education Endorsements," Iowa Administrative Code.

The proposed amendments give a more accurate description of the authority of a licensee to teach two grades above or two grades below the current range of grade levels in the licensee's endorsement area.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, December 27, 2006, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, 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 proposed amendments. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendments before 4 p.m. on Friday, December 29, 2006. Written comments and suggestions should be addressed to Barbara F. Hendrickson, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to barbara.hendrickson@iowa.gov, or by fax to (515)281-7669.

These amendments are intended to implement Iowa Code chapter 272.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 14.129(1) as follows:

14.129(1) Authorization. The teacher intern is authorized to teach in grades 7 to 12. ~~The following rule does not apply to the endorsements on a teacher intern license: 282—14.140(272), requirements for other teaching endorsements.~~

ITEM 2. Amend rules **282—15.1(272)** to **282—15.20(272)** by striking "K-6" wherever it appears and inserting in lieu thereof "K-8" and by striking "7-12" wherever it appears and inserting in lieu thereof "5-12."

ARC 5590B

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 20, "Evaluator Endorsement and License," Iowa Administrative Code.

The amendment is proposed to comply with statutory requirements. It has become increasingly easier for people to enroll in the evaluator class; therefore, several of the criteria for waiving the requirement of the evaluator endorsement have become unnecessary.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, December 27, 2006, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, 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 proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, December 29, 2006. Written comments and suggestions should be addressed to Barbara F. Hendrickson, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to barbara.hendrickson@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend subrule **20.57(1)** by striking paragraphs **"c"** and **"d"** as follows:

~~c. A person is practicing as a nonpublic school administrator in this state.~~

~~d. A person is practicing in a nonadministrative, nonevaluative position in this state.~~

ARC 5607B

ELDER AFFAIRS DEPARTMENT[321]

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 231.14, the Elder Affairs Department hereby gives Notice of Intended Action to amend Chapter 6, "Area Agency on Aging Planning and Administration," Iowa Administrative Code.

These proposed amendments establish the nomination and objection procedure to be used in replacing members of area agency on aging boards of directors and require nonprofit contractors or subgrantees to comply with Iowa Code chapter 504.

Any interested person may make written suggestions or comments on these proposed amendments before 4 p.m., December 29, 2006. Written comments should be directed to the Department of Elder Affairs, Jessie M. Parker Building, 510 E. 12th Street, Des Moines, Iowa 50319; E-mailed to sherry.james@iowa.gov; or faxed to (515)725-3300.

These amendments are intended to implement Iowa Code chapter 231 and Iowa Code Supplement section 231.23 as amended by 2006 Iowa Acts, House File 2734, section 106.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Renumber rules **321—6.8(231)** through **321—6.17(231)** as **321—6.9(231)** through **321—6.18(231)** and adopt the following **new** rule:

321—6.8(231) Nominations. Pursuant to subrule 6.7(3), each AAA shall incorporate in its bylaws a procedure for selection of members for the AAA's board of directors.

6.8(1) Nomination procedure. The procedure shall, at a minimum, include the following requirements:

a. All information related to the selection process, including but not limited to any objections submitted pursuant to subrule 6.8(2), shall be considered a public record under Iowa Code chapter 22 and shall be available for public review as established in rules promulgated by the department under Iowa Code chapter 17A.

b. All vacancies on an AAA board, regardless of the cause, shall be filled by the process provided in this rule.

c. The AAA shall establish a date certain on which selection of members shall be made to fill any vacancies.

d. Notice shall be published in official newspapers of each county located within the AAA requesting nomination of potential members not less than 90 days prior to the date established for member selection by the board. The notice shall include all of the following information:

(1) A summary of the nomination and selection process for board members;

(2) A description of the basic duties of an AAA board member;

(3) Term of office for the vacancy proposed to be filled in the current selection process;

(4) Contact information for the AAA to request information that explains how to submit a nomination;

(5) The deadline for submission of nominations; and

(6) Information describing how to obtain a listing of the persons nominated.

e. All nominations shall be sent to the Department of Elder Affairs, Jessie M. Parker Building, 510 East 12th Street, Des Moines, Iowa 50319, and to the AAA not less than 60 days prior to the date established in paragraph 6.8(1)"c." Nominations received after that deadline will not be considered.

6.8(2) Objections to nominations. Objections to a nominee from any source must be in writing and must be received by the department and the AAA not less than 30 days prior to the selection date. Objections submitted shall be on a form furnished by the department and shall contain, at a minimum, the following information:

a. The name, address, telephone number and, if applicable, the E-mail address of the person or entity submitting the objection. The department and the AAA may contact persons or entities submitting objections for additional information.

b. The name of the AAA considering the person for selection.

c. The name of the person whose nomination is opposed.

d. The date the board member selection is to occur.

e. The reason(s) for the objection(s) to the nominee. Unsubstantiated allegations and frivolous comments will not be considered.

f. A statement affirming that the objector is:

(1) An Iowan aged 60 or older.

(2) A resident of a county or counties which the nominee would represent if selected to serve on the board.

g. The form must contain the signature(s) of the person(s) objecting to the nomination and be must be dated on the date of signature.

6.8(3) When 25 or more Iowans aged 60 or older submit objections to a particular nominee, the department shall, not less than 15 days prior to the date for selection of members, eliminate that person from the selection process.

6.8(4) The department shall notify objectors of the disposition of their objections.

6.8(5) Records. The AAA shall maintain all records relating to the notice, nominations, selection results and any related correspondence for a period of three years from the end of the fiscal year after the person selected no longer serves on the board.

ITEM 2. Amend renumbered rule 321—6.12(231) by adding the following **new** subrule:

6.12(4) The AAA shall require all nonprofit contractors or subgrantees to comply with Iowa Code chapter 504, "Revised Iowa Nonprofit Corporation Act."

ARC 5599B

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 21, "Compliance," Chapter 22, "Controlling Pollution," Chapter 23, "Emission Standards for Contaminants," Chapter 25, "Measurement of Emissions," and Chapter 34, "Provisions for Air Quality Emissions Trading Programs," Iowa Administrative Code.

The purpose of the proposed amendments is to adopt into the state air quality rules several federal regulations that the U.S. Environmental Protection Agency (EPA) recently finalized. The proposed amendments also include clarifications and corrections to state air quality rules for variances and for the operating permit program requirements.

Item 1 rescinds paragraph 21.2(4)"c" and adopts a new paragraph to clarify the eligibility requirements for variances. Under federal regulations, the Department may not issue a variance for conditions or standards specified under such federal regulations as Prevention of Significant Deterioration (PSD), New Source Performance Standards (NSPS), or National Emission Standards for Hazardous Air Pollutants (NESHAP). The Department may grant a variance which does not alter the facility's obligation to comply with elements of these federal regulations. The amendment is the Department's effort to clarify the variance eligibility requirements.

Item 2 amends rule 567—22.6(455B) to update the reference to federal regulations under 40 Code of Federal Regulations (CFR) 81.316 that designates Iowa's attainment status with the National Ambient Air Quality Standards (NAAQS). These federal regulations were last updated for Iowa on January 5, 2005. At that time, EPA designated all areas in Iowa as being in attainment ("better than national standards") or unclassifiable ("cannot be classified").

Item 3 amends subrule 22.7(1) to update the reference to federal regulations under 40 CFR 81.316. This reference is being updated for the same reasons as explained for Item 2 above.

Item 4 amends paragraph 22.7(2)"d" to update a reference to federal regulations for hazardous air pollutants under 40 CFR Part 61 that were adopted by reference into subrule 23.1(3) in a previous rule making.

Items 5, 6, 7 and 8 amend subrules 22.105(2), 22.106(6), 22.201(2) and 22.300(3), respectively, to correct cross references to rules for Title V permits, Acid Rain permits, and permits by rule for small sources for amendments that were adopted in a previous rule making.

Item 9 amends the introductory paragraph of subrule 23.1(2) for new source performance standards (commonly known as NSPS) to reflect the recent federal amendments to 40 CFR Part 60.

EPA made a number of minor technical and administrative changes to the federal NSPS regulations. EPA made minor technical corrections to the continuous monitoring requirements in Performance Specification 1. EPA also made technical amendments to correct errors relating to the testing requirements and test methods in Subpart J (Petroleum Refineries), Subpart BB (Kraft Pulp Mills), Subpart WWW (Municipal Solid Waste Landfills), and Appendix B (Performance Specification 2). Additionally, EPA revised the standards for new, large municipal waste combustors (MWC) under Subpart Eb. The changes to the MWC standards, according to EPA, will reflect the performance level achievable by MWC units constructed in the future. The Department is not aware of any proposed MWC in the state.

EPA also amended Subpart B, which contains the requirements for adoption and submittal of state plans, to revise the definition of "electric generating unit (EGU)." The amendment codified what the Department had already presumed to be the definition of "EGU" for the purposes of the Clean Air Mercury Rule (CAMR).

Item 10 amends paragraph 23.1(2)"z" to reflect the date of recent federal changes to the standards for electric utility steam generating units (Subpart Da) to clarify the applicability requirements for CAMR. EPA made clarifications to the definition of "coal-fired electric utility steam generating unit" and clarified the emission standard for mercury. The federal amendments reflect the Department's previous understanding of these provisions, and do not alter CAMR's applicability to Iowa's facilities.

Item 11 adopts and subsequently reserves a new paragraph 23.1(2)"xxx" to coincide with a similarly reserved paragraph in the federal NSPS regulations.

Item 12 adds a new paragraph 23.1(2)"yyy" for a new NSPS. EPA issued final standards for diesel engines that are stationary compression ignition internal combustion engines for which construction modification or reconstruction commenced after July 11, 2005. Although these standards are modeled after the EPA standards for mobile source diesel engines, these standards do not apply to motor vehicles. These standards will regulate emissions of particulate matter (PM), nitrogen oxides (NO_x), carbon monoxide (CO), and nonmethane hydrocarbons (NMHC) over three phases. Sulfur dioxide (SO_2) will also be reduced through the use of lower sulfur fuel. In the first phase, owners and operators of pre-2007 engine models will be required to maintain the engine according to the manufacturer's instructions. The second phase begins with 2007 model-year engines, and requires that the engines meet the PM, NO_x, CO and NMHC standards specified under EPA's standards for nonroad and marine diesel engines. The third phase requires engine manufacturers for 2011 model years and later to install add-on controls to achieve additional emission reductions of these pollutants. At this time, the Department is not aware of any projects in Iowa that will include diesel engines that will be subject to the second and third phases of these standards. These phases of the standards impact new stationary diesel engines, so the Department expects that there will eventually be engines in the state that will be subject to these standards.

Item 13 adopts and subsequently reserves a new paragraph 23.1(2)"zzz" to coincide with a similarly reserved paragraph in the federal NSPS regulations.

Item 14 adopts a new paragraph 23.1(2)"aaaa" for a new NSPS. EPA issued final standards for stationary combustion turbines with a heat input load equal to or greater than 10 MMBtu that commenced construction, modification or reconstruction after February 19, 2005. These standards will reduce the emissions of NO_x and SO_2 by 80 and 90 percent, respectively. EPA states that these standards will allow owners and operators the flexibility to meet their emission limit targets by increasing the efficiency of their turbines. Owners

of turbines can choose to meet either a concentration-based or output-based limit for NO_x emissions. The NO_x limits differ based on the fuel input at peak load, fuel, application and location of the turbine. The SO_2 limits depend on the location of the turbine but are not dependent on size or fuel type. Compliance with the SO_2 limit can be met by using lower sulfur fuel. At this time, the Department is aware of one possible project to which these new standards will apply. However, since these rules will impact new engines, the Department expects that more turbines will be subject to these standards in the future.

Item 15 amends the introductory paragraph of subrule 23.1(4), which contains the National Emission Standards for Hazardous Air Pollutants (commonly known as NESHAPs) for source categories to reflect recent amendments to 40 CFR Part 63. From February through October 2006, EPA made numerous minor changes to 40 CFR Part 63, which included both technical and administrative updates and corrections. The substantive changes to 40 CFR Part 63 include the following:

- EPA amended several NESHAPs to address residual risk, which is required of EPA under Section 122(f)(2) of the Clean Air Act. EPA took final action on five NESHAPs, determining that no further control of Hazardous Air Pollutants (HAPs) was necessary, and making only minor administrative changes to the standards. These standards apply to the following source categories: hydrochloric acid production, magnetic tape manufacturing, ethylene oxide sterilizers, industrial process cooling towers, and gasoline distribution facilities.
- EPA amended the NESHAP General Conditions (Subpart A) to revise certain aspects of the startup, shutdown and malfunction (SSM) requirements. EPA removed the requirement that an SSM plan must be followed during periods of SSM to allow sources flexibility in addressing emissions during these periods. According to EPA, this in no way alleviates the responsibility of a source to minimize emissions during SSM. EPA fully expects owners and operators to follow their SSM plans during periods of SSM. Owners and operators are still required to keep records and report actions taken to minimize emissions during periods of SSM whenever there are excess emissions.
- EPA amended the NESHAP for Printing and Publishing (Subpart KK) to resolve inconsistencies, clarify language and add additional compliance flexibility. EPA simultaneously amended the NESHAP for Paper and Other Web Coating (Subpart JJJJ) and the NESHAP for Printing, Coating, and Dyeing of Fabric and Other Textiles (Subpart OOOO) to clarify the interaction between the three NESHAPs. According to EPA, these amendments will not have a discernable effect on the stringency of these NESHAPs.
- EPA amended the NESHAP for Organic Liquids Distribution (non-gasoline) under Subpart EEEE. These revisions provide an additional, equivalent control option for vapor balancing for transfer racks that allows routing of displaced HAP vapors to a storage tank with a common header. The amendments also add an option to allow vapor balancing back to the transport vehicle for storage tanks when they are being filled with organic liquids. As part of this action, EPA amended the NESHAP for General Conditions (Subpart A) to incorporate by reference a new standard test method.
- EPA amended the NESHAP for Miscellaneous Organic Chemical (MON) manufacturing (Subpart FFFF). These revisions clarify applicability, provide additional compliance options, modify initial and continuous compliance requirements, and simplify the record-keeping and reporting requirements. EPA claims that these amendments will reduce the burden associated with demonstrating compliance without affecting the emissions control or the ability of states to ensure compliance.
- EPA amended the NESHAP for Integrated Iron and Steel Manufacturing (Subpart FFFFF) to add a new compliance option, revise emission limitations and reduce the frequency of repeat performance tests for certain emission units, add corrective action requirements, and clarify monitoring, record-keeping, and reporting requirements. The amendments revise the applicability of emission limits for sinter cooler stacks at new and existing sinter plants. The standards also establish a 10 percent opacity standard, in lieu of a PM standard, for a sinter cooler at an existing sinter plant. Additionally, the emission limits apply to each sinter cooler instead of each sinter cooler stack. EPA states that these amendments do not affect the level of emission control required under the existing NESHAP, but, rather, reduce the costs of implementation in future years.
- EPA amended the NESHAP for Miscellaneous Coating Manufacturing (Subpart HHHHH) to clarify the applicability of the federal regulations and to minimize the compliance burden on affected facilities. In summary, these amendments:
- Clarify that coating manufacturing means the production of coatings using operations such as mixing and blending, not the reaction or the separation of processes used in chemical manufacturing;
- Extend the compliance date for certain coating manufacturing equipment that is also part of a chemical manufacturing process unit; and
- Clarify that operations by end users that modify a purchased coating prior to application at the purchasing facility are exempt from these regulations.

Item 16 amends paragraph 23.1(4)"m" to adopt by reference the recent EPA changes to the federal NESHAP for Drycleaning facilities that use the HAP, perchloroethylene (Subpart M). As required under Section 112 of the Clean Air Act, EPA assessed the remaining residual risk to public health from the control standards imposed in 1993 under the original NESHAP. EPA is now revising the standards to take into account new developments in production practices, processes and control technologies. EPA also determined that more stringent control of perchloroethylene (commonly known as perc) was needed to protect public health with an ample margin of safety. EPA has identified perc as a "possible to probable" human carcinogen. As such, the NESHAP amendments provide a further reduction in perc emissions beyond those required in the original NESHAP. These perc emissions reductions are based on application of new equipment and work practice standards and, in certain situations, will disallow the use of perc at dry cleaning facilities.

Large industrial and commercial dry cleaners are classified as major sources, meaning that they emit more than 10 tons of perc per year. Major source dry cleaners must continue to implement the Maximum Achievable Control Technology (MACT) specified under the original regulations, and also must implement state-of-the-art equipment to detect and repair leaks. EPA is aware of only 12 major source dry cleaners nationally, none of which are located in Iowa.

Small or "area source" dry cleaners are those that emit less than 10 tons of perc per year. Small, existing dry cleaners located in the same complex as residential apartments (sometimes termed "co-residential") will be required to phase out perc use by 2020. These "co-residential" dry cleaners may

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

continue to operate after 2020, as long as they use alternative technologies that do not use perc. Until 2020, owners or operators of "co-residential" dry cleaners with existing perc machines must use enhanced technology beyond what was required under the original regulations to detect and repair leaks.

Any small, new "co-residential" dry cleaner that begins operation after July 13, 2006, may not use perc. Small, new "co-residential" dry cleaners that began operating a perc dry cleaning machine between December 21, 2005, and July 13, 2006, must install control equipment, such as refrigerated condensers, carbon adsorbers, and vapor barriers, to aggressively control perc emissions, conduct weekly inspection and repair of leaks, and eliminate all use of perc by July 27, 2009.

Small, "free standing" dry cleaners that are located in a shopping center or as a stand-alone building are required to use improved leak detection and repair. Small, existing "free standing" dry cleaners are also prohibited from using transfer machines after July 27, 2008. Small, new dry cleaners were prohibited from using transfer machines under the original regulations. Transfer machines move wet clothes from one machine to another for drying. Transfer machines are considered the highest-emitting type of dry cleaning equipment. The Department is aware of a small number of existing transfer machines that remain in operation in the state.

The original NESHAP for dry cleaners did not have distinct provisions for "co-residential" facilities. The Department's central and field office staff, along with small business assistance staff at the Iowa Department of Economic Development and the University of Northern Iowa (UNI), will be coordinating our efforts to identify these facilities. At this time, the Department and UNI are not aware of any existing "co-residential" dry cleaners operating in the state. The Department and its partners will work with dry cleaning facilities, including those facilities that still operate transfer machines, to ensure compliance with the new regulations by the prescribed deadlines. Since compliance at existing sources is not required until July 2008, this should allow sufficient time for the Department and its partners to provide outreach and compliance assistance to dry cleaning facilities.

Item 17 amends paragraph 23.1(4)"be" to reflect the most recent amendments to the standards for hazardous waste combustors. EPA agreed to reconsider the particulate matter standard for new cement kilns that burn hazardous waste, and proposed to change the standard on March 23, 2006. On October 25, 2006, EPA suspended the obligation of new cement kilns to comply with the particulate matter standard until EPA takes final action on its proposed changes. This amendment does not affect other standards applicable to new or existing hazardous waste burning cement kilns. The Department is not aware of any facilities in the state that are subject to these standards.

Item 18 amends subrule 23.1(5) to reflect the most recent federal amendments to the emission guidelines. EPA made clarifications and technical corrections to the standards for CAMR-affected units. The specific changes are summarized below in Items 24 and 25. These changes did not affect the Iowa facilities that are subject to CAMR.

Item 19 amends subparagraph 23.1(5)"a"(2) to correct a cross reference to Title V program rules for amendments that were adopted in a previous rule making.

Item 20 amends subparagraph 23.1(5)"b"(2) to similarly correct a cross reference to Title V program rules for amendments that were adopted in a previous rule making.

Item 21 amends subrule 25.1(9) to update references to test methods in 40 CFR Part 60, Appendix B, that are being adopted by reference as indicated in Item 9.

Item 22 amends paragraph 25.1(10)"a" to update a reference to federal regulations in 40 CFR Part 60 that are being adopted by reference as indicated in Item 9.

Item 23 amends rule 567—34.300(455B) to reflect EPA's recent amendments to CAMR. The specific changes are outlined below in Items 24 and 25.

Item 24 amends rule 567—34.301(455B) to adopt by reference EPA's minor amendments to the federal CAMR regulations under 40 CFR 60.4104. EPA amended the CAMR applicability provisions for existing coal-fired EGUs. The amendments codified what had already been the Department's presumption of CAMR's applicability to Iowa facilities.

Item 25 amends rule 567—34.304(455B) to adopt by reference the recent, minor changes to the CAMR provisions under 40 CFR 60.4141. EPA amended the timing requirements for Hg allowance allocations. The amendments codified what had already been the Department's presumption of the timing requirements for CAMR.

Any person may make written suggestions or comments on the proposed amendments on or before January 9, 2007. Written comments should be directed to Christine Paulson, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322; fax (515) 242-5094; or by electronic mail to christine.paulson@dnr.state.ia.us.

A public hearing will be held on Monday, January 8, 2007, at 1 p.m. in the conference rooms at the Department's Air Quality Bureau located at 7900 Hickman Road, Urbandale, Iowa. Comments may be submitted orally or in writing at the public hearing. All comments must be received no later than January 9, 2007.

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

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

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Rescind paragraph **21.2(4)"c"** and adopt the following **new** paragraph in lieu thereof:

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

(1) Case-by-case MACT, 567—paragraph 22.1(1)"b";

(2) PSD, rule 567—22.4(455B);

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

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

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

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

ITEM 2. Amend rule 567—22.6(455B) as follows:

567—22.6(455B) Nonattainment area designations. Section 107(d) of the federal Clean Air Act, 42 U.S.C. §7457(d), requires each state to submit to the Administrator of the federal Environmental Protection Agency a list of areas that ex-

ceed the national ambient air quality standards, that are lower than those standards, or that cannot be classified on the basis of current data. A list of Iowa's nonattainment area designations is found at 40 CFR Part 81.316 as amended through ~~April 30, 2004~~ *January 5, 2005*. The commission uses the document entitled "Criteria for Revising Nonattainment Area Designations"* (June 14, 1979) to determine when and to what extent the list will be revised and resubmitted.

*Filed with Administrative Rules Coordinator, also available from the department.

ITEM 3. Amend subrule 22.7(1), introductory paragraph, as follows:

22.7(1) Applicability. The owner or operator of any source located in an area with attainment or unclassified status (as published at 40 CFR §81.316 amended ~~March 19, 1998~~ *January 5, 2005*) or located in an area with an approved State Implementation Plan (SIP) demonstrating attainment by the statutory deadline may apply for an alternative set of emission limits if:

ITEM 4. Amend paragraph **22.7(2)"d"** as follows:

d. Hazardous air pollutants designated in 40 CFR Part 61, as amended through ~~October 14, 1997~~ *July 20, 2004*, will not be exchanged for nonhazardous air pollutants;

ITEM 5. Amend subrule 22.105(2), introductory paragraph, as follows:

22.105(2) Standard application form and required information. To apply for a Title V permit, applicants shall complete the standard permit application form available only from the department of natural resources and supply all information required by the filing instructions found on that form. The information submitted must be sufficient to evaluate the source and its application and to determine all applicable requirements and to evaluate the fee amount required by rule 22.106(455B). If a source is not a major source and is applying for a Title V operating permit solely because of a requirement imposed by paragraphs ~~22.101(2)"c" and "d,"~~ *22.101(1)"c" and "d,"* then the information provided in the operating permit application may cover only the emissions units that trigger Title V applicability. The applicant shall submit the information called for by the application form for each emissions unit to be permitted, except for activities which are insignificant according to the provisions of rule 22.103(455B). The applicant shall provide a list of all insignificant activities and specify the basis for the determination of insignificance for each activity. Nationally standardized forms shall be used for the acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act. The standard application form and any attachments shall require that the following information be provided:

ITEM 6. Amend subrule 22.106(6) as follows:

22.106(6) Title V ~~deferred~~ *exempted* stationary sources. No fee shall be required to be paid for emissions until the year in which sources ~~deferred~~ *exempted* under ~~subrule 22.101(2)~~ *subrules 22.102(1) and 22.102(2)* are required to apply for a Title V permit. Fees shall be paid for the emission year preceding the year in which the application is due and thereafter.

ITEM 7. Amend subrule 22.201(2) as follows:

22.201(2) Exceptions.

a. Any affected source subject to the provisions of Title IV of the Act or sources required to obtain a Title V operating permit under paragraph ~~22.101(1)"e"~~ *22.101(1)"f"* or any solid waste incinerator unit required to obtain a Title V operating permit under Section 129(e) of the Act is not eligible for a voluntary operating permit.

b. Sources which are not major sources but subject to a standard or other requirement under 567—subrule 23.1(2) (standards of performance for new stationary sources) or Section 111 of the Act; or 567—subrule 23.1(3) (emissions standards for hazardous air pollutants), 567—subrule 23.1(4) (emissions standards for hazardous air pollutants for source categories) or Section 112 of the Act are eligible for a voluntary operating permit. These sources shall be required to obtain a Title V operating permit when the ~~deferment period~~ *exemptions* specified in ~~567—subrule 22.101(2) has expired~~ *subrules 22.102(1) and 22.102(2)* no longer ~~applies~~ *apply.*

ITEM 8. Amend subrule 22.300(3) as follows:

22.300(3) Exceptions to eligibility.

a. Any affected source subject to the provisions of Title IV of the Act or any solid waste incinerator unit required to obtain a Title V operating permit under Section 129(e) of the Act is not eligible for an operating permit by rule for small sources.

b. Sources which meet the registration criteria established in 22.300(2)"a" and meet all applicable requirements of rule 22.300(455B), and are subject to a standard or other requirement under 567—subrule 23.1(2) (standards of performance for new stationary sources) or Section 111 of the Act are eligible for an operating permit by rule for small sources. These sources shall be required to obtain a Title V operating permit when the ~~deferment period~~ *exemptions* specified in ~~subrule 22.101(2) has expired or~~ *subrule 22.102(1) or 22.102(2)* no longer ~~applies~~ *apply.*

c. Sources which meet the registration criteria established in 22.300(2)"a" and meet all applicable requirements of rule 22.300(455B), and are subject to a standard or other requirement under 567—subrule 23.1(3) (emissions standards for hazardous air pollutants), 567—subrule 23.1(4) (emissions standards for hazardous air pollutants for source categories) or Section 112 of the Act are eligible for an operating permit by rule for small sources. These sources shall be required to obtain a Title V operating permit when the ~~deferment period~~ *exemptions* specified in ~~subrule 22.101(2) has expired or~~ *subrule 22.102(1) or 22.102(2)* no longer ~~applies~~ *apply.*

ITEM 9. Amend subrule 23.1(2), introductory paragraph, as follows:

23.1(2) New source performance standards. The federal standards of performance for new stationary sources, as defined in 40 Code of Federal Regulations Part 60 as amended or corrected through ~~February 27, 2006~~ *September 21, 2006*, are adopted by reference, except § 60.530 through § 60.539b (Part 60, Subpart AAA), and shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.

ITEM 10. Amend paragraph **23.1(2)"z"** as follows:

z. Electric utility steam generating units. An electric utility steam generating unit that is capable of combusting more than 250 million Btus per hour (73 megawatts) heat input of fossil fuel for which construction or modification or reconstruction is commenced after September 18, 1978, or an electric utility combined cycle gas turbine that is capable of combusting more than 250 million Btus per hour (73 mega-

watts) heat input. An electric utility steam generating unit is any fossil fuel-fired combustion unit of more than 25 megawatts electric (MW) that serves a generator that produces electricity for sale. A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 MW output to any utility power distribution system for sale is also an electric utility steam generating unit. This standard also includes a provision for mercury emissions for any coal-fired electric utility steam generating unit other than an integrated gasification combined cycle electric steam generating unit, for which construction or reconstruction commenced after January 30, 2004. (Subpart Da as amended through ~~May 18, 2005~~ *June 9, 2006*).

ITEM 11. Amend subrule **23.1(2)** by adopting and reserving the following **new** paragraph **"xxx"**:

xxx. Reserved.

ITEM 12. Amend subrule **23.1(2)** by adopting the following **new** paragraph **"yyy"**:

yyy. Stationary compression ignition internal combustion engines. Unless otherwise exempted, these standards apply to each stationary compression ignition internal combustion engine whose construction, modification or reconstruction commenced after July 11, 2005. (Part 60, Subpart IIII)

ITEM 13. Amend subrule **23.1(2)** by adopting and reserving the following **new** paragraph **"zzz"**:

zzz. Reserved.

ITEM 14. Amend subrule **23.1(2)** by adopting the following **new** paragraph **"aaaa"**:

aaaa. Stationary combustion turbines. Unless otherwise exempted, these standards apply to stationary combustion turbines with a heat input at peak load equal to or greater than 10 MMBtu per hour, based on the higher heating value of the fuel, that commence construction, modification, or reconstruction after February 18, 2005. (Part 60, Subpart KKKK)

ITEM 15. Amend subrule 23.1(4), introductory paragraph, as follows:

23.1(4) Emission standards for hazardous air pollutants for source categories. The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended or corrected through ~~February 16, 2006~~ *October 25, 2006*, are adopted by reference, except those provisions which cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is in parentheses. 40 CFR Part 63, Subpart B, incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded (F_{bio}) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purpose of this subrule, "hazardous air pollutant" has the same meaning found in 567—22.100(455B). For the purposes of this subrule, a "major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an "area source" means any stationary source of hazardous air pollutants that is not a "major source" as defined in this subrule. Paragraph 23.1(4)"a," general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below. The provisions of 40 CFR Part 60, Subparts A, B, Da, and HHHH for the Clean Air Mercury Rule (CAMR), are found at ~~subrule~~ *subrules* 23.1(2) and 23.1(5) and in 567—Chapter 34.

ITEM 16. Amend paragraph **23.1(4)"m"** as follows:

m. Perchloroethylene air emission standards for dry cleaning facilities. These standards apply to the owner or operator of each dry cleaning facility that uses perchloroethylene *(also know as perc)*. New and existing major source dry cleaning facilities are required to control emissions to the level of the maximum achievable control technology (MACT), *and must use state-of-the-art equipment, as specified in the federal regulations, to detect and repair perc leaks from dry cleaning machines*. New and existing area source dry cleaning facilities are required to control emissions to the level ~~achieved by generally available control technologies (GACT) or management practices~~ *specified in the federal regulations*. ~~All coin-operated dry cleaning machines are exempt from the requirements of this subpart.~~ *New area sources that are located in residential buildings and that commence operation after July 13, 2006, are prohibited from using perc. New area sources located in residential buildings that commenced operation between December 21, 2005, and July 13, 2006, must install the emissions control equipment as specified in the federal regulations, conduct weekly inspection and repair of equipment leaks, and eliminate all use of perc by July 27, 2009. Existing area sources located in residential buildings must conduct enhanced leak detection and repair as specified in the federal regulations and eliminate all use of perc by December 21, 2020. New area sources that are not located in residential buildings are prohibited from using transfer machines, and must conduct inspection and repair of equipment leaks as specified in the federal regulations. Existing area sources that are not located in residential buildings must also conduct the specified leak detection and repair and are prohibited from operating transfer machines after July 27, 2008.* (Subpart M, *as amended through July 27, 2006, and corrected on September 21, 2006*)

ITEM 17. Amend paragraph **23.1(4)"be"** as follows:

be. Emission standards for hazardous air pollutants from hazardous waste combustors. These standards apply to all hazardous waste combustors: hazardous waste incinerators, hazardous waste burning cement kilns, hazardous waste burning lightweight aggregate kilns, hazardous waste solid fuel boilers, hazardous waste liquid fuel boilers, and hazardous waste hydrochloric acid production furnaces, except as specified in Subpart EEE. Both area sources and major sources are subject to this subpart as of April 19, 1996, and are subject to the requirement to apply for and obtain a Title V permit. (Part 63, Subpart EEE, as amended through ~~December 19, 2005~~ *October 25, 2006*)

ITEM 18. Amend subrule 23.1(5), introductory paragraph, as follows:

23.1(5) Emission guidelines. The emission guidelines and compliance times for existing sources, as defined in 40 Code of Federal Regulations Part 60 as amended through ~~May 18, 2005~~ *June 9, 2006*, shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. The control of the designated pollutants will be in accordance with federal standards estab-

lished in Sections 111 and 129 of the Act and 40 CFR Part 60, Subpart B (Adoption and Submittal of State Plans for Designated Facilities), and the applicable subpart(s) for the existing source. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.

ITEM 19. Amend subparagraph **23.1(5)"a"(2)**, numbered paragraph **"3,"** as follows:

3. For MSW landfills subject to ~~567—subrule 22.101(1)~~ *rule 567—22.101(455B)* only because of applicability to subparagraph 23.1(5)"a"(2), the following apply for obtaining and maintaining a Title V operating permit under 567—22.104(455B):

ITEM 20. Amend subparagraph **23.1(5)"b"(2)**, numbered paragraph **"9,"** as follows:

9. The Title V operating permit requirements, as stated in ~~567—subrule 22.101(1)~~ *rule 567—22.101(455B)*, are applicable to designated facilities subject to paragraph 23.1(5)"b." They must apply for an operating permit as specified by 567—subrule 22.105(1) no later than September 15, 2000.

ITEM 21. Amend subrule 25.1(9) as follows:

25.1(9) Methods and procedures. Stack sampling and associated analytical methods used to evaluate compliance with emission limitations of 567—Chapter 23 or a permit condition are those specified in the "Compliance Sampling Manual"* adopted by the commission on May 19, 1977, as revised through January 30, 2003. Sampling methods, analytical determinations, minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are those found in Appendices A (as amended through October 17, 2000), B (as amended through ~~May 18, 2005~~ *September 21, 2006*) and F (as amended through January 12, 2004) of 40 CFR Part 60, and Appendices A (as amended through May 18, 2005), B (as amended through May 18, 2005), F (as amended through May 18, 2005) and K (as amended through May 18, 2005) of 40 CFR Part 75.

*Available from the department.

ITEM 22. Amend paragraph **25.1(10)"a"** as follows:

a. An affected source is subject to a new source performance standard promulgated in 40 CFR Part 60 as amended through ~~August 14, 2001~~ *September 21, 2006*.

ITEM 23. Amend rule 567—34.300(455B) as follows:

567—34.300(455B) Provisions for air emissions trading and other requirements for the Clean Air Mercury Rule (CAMR). The CAMR provisions in 40 CFR Part 60, Subpart HHHH, as amended through ~~May 18, 2005~~ *June 9, 2006*, are adopted as indicated in rules 567—34.301(455B) through 567—34.308(455B). Additional provisions for CAMR are set forth in subrule 567—23.1(2), *567*—paragraph 23.1(2)"z," ~~subrule~~ *567—subrules* 23.1(5)~~,~~ and ~~subrule~~ 25.1(9) and rule 567—25.3(455B).

ITEM 24. Amend rule 567—34.301(455B) as follows:

567—34.301(455B) Mercury (Hg) budget trading program general provisions. The provisions in 40 CFR 60.4101 through 60.4108 as amended through ~~May 18, 2005~~ *June 9, 2006*, are adopted by reference, except that the definition of "permitting authority" in 60.4102 shall mean the department of natural resources. Other terms contained in rules 567—34.301(455B) through 567—34.308(455B), and in Tables 3A and 3B, shall have the meanings set forth in 60.4102.

ITEM 25. Amend rule 567—34.301(455B) as follows:

567—34.304(455B) Hg allowance allocations. The provisions in 40 CFR 60.4141 as amended through ~~May 18, 2005~~ *June 9, 2006*, are adopted by reference, except as indicated in this rule.

ARC 5598B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 61, "Water Quality Standards," Iowa Administrative Code.

The proposed amendment will provide water quality certification pursuant to Section 401 of the federal Clean Water Act (33 U.S.C. Section 1341) for 49 U.S. Army Corps of Engineers' Nationwide Permits (NWPs) and three Regional Permits (RPs).

Section 404 of the Clean Water Act requires a permit from the Corps of Engineers for the discharge of dredged or fill materials into the nation's waters. Section 401 of the Act requires that before the Corps can issue a Section 404 permit, the state water quality agency must certify that the proposed activity will not violate state water quality standards.

Section 404 authorizes the Corps to issue general permits on a state, regional or nationwide basis for categories of activities when such activities will have minimal adverse effects. The Corps has used its general permit authority to issue a number of general permits on a nationwide basis (i.e., NWPs). General permits, including nationwide permits, may be issued for a period not exceeding five years, and a state water quality agency must provide Section 401 certification for a Section 404 general permit before the general permit is valid for that particular state. The Commission previously provided Section 401 certification for 43 NWPs and four regional permits. These permits are referenced in 61.2(2)"h."

The Corps recently issued a notice of intent to reissue the existing NWPs, general conditions and definitions with some modifications. The Corps is also proposing six new NWPs and one new General Condition. The Rock Island District has added four new Regional Conditions to be used within the state of Iowa. The Rock Island District also issued two public notices describing two new Regional Permits. A copy of the Federal Register with the proposed NWPs is on file with the Department of Natural Resources. This amendment would provide Section 401 certification for the modified and new NWPs.

The Rock Island District is also proposing two new Regional Permits, 33 and 34 (RP 33 and RP 34). Regional Per-

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

mit 33, Small Natural Resources Conservation Service Structures in the state of Iowa, authorizes the placement of fill materials in waters of the United States in Iowa for the construction of small ponds, dams and grade stabilization structures whether planned by and/or funded by the NRCS, or in cooperation with other local, state, or federal agencies when NRCS is the lead federal agency. Regional Permit 34, Conservation Reserve Enhancement Program Structures in the State of Iowa, authorizes the placement of fill materials in waters of the United States to create wetlands and ponded water through the construction of earthen embankments and/or dams when funding or technical assistance is being provided through the Conservation Reserve Enhancement Program and when the Farm Service Agency is the lead agency.

Any interested person may file written comments on the proposed amendment on or before December 26, 2006. Written comments or questions regarding the proposed action or the Corps' NWPs should be directed to Christine Schwake, Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319-0034; telephone (515)281-6615; fax (515)281-8895; E-mail: christine.schwake@dnr.state.ia.us. Oral or written comments will also be accepted at a public hearing to be held on December 26, 2006, at 1 p.m. in the Fifth Floor East Conference Room of the Wallace State Office Building, East 9th Street and Grand Avenue, Des Moines, Iowa.

The Corps has requested comments on the proposed NWPs and, therefore, the NWPs adopted by the Corps may differ from the proposals contained in the September 26, 2006, Federal Register. The Commission will not take final action on this proposed amendment prior to the Corps' publication of the adopted NWPs and will consider all comments provided during the public comment period before taking final action.

This amendment may have an impact on small businesses.

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

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend subrule **61.2(2)**, paragraph **"h,"** as follows:

h. This policy shall be applied in conjunction with water quality certification review pursuant to Section 401 of the Act. In the event that activities are specifically exempted from flood plain development permits or any other permits issued by this department in 567—Chapters 70, 71, and 72, the activity will be considered consistent with this policy. Other activities not otherwise exempted will be subject to 567—Chapters 70, 71, and 72 and this policy. The repair and maintenance of a drainage district ditch as defined in 567—70.2(455B,481A) will not be considered a violation of the antidegradation policy for the purpose of implementing Title IV of these rules. United States Army Corps of Engineers (Corps) nationwide permits 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, ~~and~~ 44, *A, B, C, D, E, and F* as promulgated March ~~18, 2002~~ *19, 2007*, are certified pursuant to Section 401 of the Clean Water Act subject to the following regional conditions:

(1) Side slopes of a newly constructed channel will be no steeper than 2*:1* ~~horizontal to 1 vertical~~ and planted to permanent, perennial, native vegetation if ~~it is~~ not armored.

(2) Nationwide permits with mitigation may require recording of the *nationwide* permit *and pertinent drawings* with the registrar of deeds or other appropriate official charged with the responsibility for maintaining records of title to, or interest in, real property and *may also require the permittee to* provide proof of *that* recording to the Corps.

(3) Mitigation shall be scheduled for construction prior to, or concurrent with, the ~~construction of the main project~~ *discharge of dredged or fill material into waters of the United States*.

(4) For discharges of dredged or fill material resulting in the permanent loss of more than 1/10 acre of waters of the United States (including jurisdictional wetlands), a compensatory mitigation plan to offset those losses will be required. In addition, a preconstruction notice to the Corps of Engineers in accordance with general condition 27 will be required.

(5) For newly constructed channels through areas that are not naturally vegetated, native grass filter strips or a riparian buffer with native trees or shrubs a minimum of 35 feet wide must be planted along both sides of the new channel.

(6) For single-family residences authorized under nationwide permit 29, the permanent loss of waters of the United States (including jurisdictional wetlands) must not exceed 1/4 acre.

(7) For nationwide permit B, the discharge of dredged or fill material into ditches and canals that would sever the jurisdiction of an upstream water of the United States from a downstream water of the United States is not allowed.

Regional permit numbers ~~2,~~ 7, ~~12~~ *33*, and ~~20~~ *34* of the Rock Island District of the Corps are also certified. No specific Corps permit or 401 certification is required for activities covered by these permits unless required by the nationwide permit or the Corps, and the activities are allowed subject to the terms of the nationwide and regional permits. The department will maintain and periodically update a guidance document listing special waters of concern. This document will be provided to the Corps for use in determining whether preconstruction notices should be provided to the department and other interested parties prior to taking action on applications for projects that would normally be covered by a nationwide or regional permit and not require preconstruction notice under ~~national~~ nationwide permit conditions.

ARC 5597B

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.304, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 101, "Solid Waste Comprehensive Planning Requirements," Chapter 102, "Permits," and Chapter 104, "Sanitary Disposal Projects with Processing Facilities"; to rescind Chapter 111, "Financial Assurance Requirements for Municipal Solid Waste Land-

fills"; and to rescind Chapter 113, "Sanitary Landfills: Municipal Solid Waste," and adopt new Chapter 113, "Sanitary Landfills for Municipal Solid Waste: Groundwater Protection Systems for the Disposal of Nonhazardous Wastes," Iowa Administrative Code.

Chapters 101, 102 and 104 are being amended to provide more clarity and consistency with the adoption of new Chapter 113. Chapter 101 is being amended by deleting subparagraphs 101.13(1)"j"(4)"1" and 101.13(1)"j"(4)"2." Both items will be included in the new Chapter 113. Also, because proposed new Chapter 113 does not apply to municipal solid waste landfills that did not receive waste after October 9, 1991, Chapter 102 is being amended to include new rule 102.15(455B) that addresses ongoing postclosure care requirements for municipal solid waste landfills that closed prior to October 9, 1991. Additionally, Chapter 104 is being amended by adding new rule 567—104.25(455B) to address certification requirements for operators of solid waste incinerators. These requirements are found in existing Chapter 113. Chapter 111 is being rescinded and will be incorporated in its entirety as rule 567—113.14(455B).

The purpose of rescinding Chapter 113 and adopting a new chapter in lieu thereof is to improve the current regulations by preventing groundwater contamination from municipal solid waste (MSW) landfills to the maximum extent practical. Ninety-two percent of Iowans depend on groundwater as a drinking water source. It is essential to health, welfare, and economic prosperity of all citizens in Iowa that groundwater is protected and that the prevention of groundwater contamination is of paramount importance. Furthermore, Iowa's Groundwater Protection Act, Iowa Code chapter 455E, sets the policy of the state as "… to prevent further contamination of groundwater from any source to the maximum extent practical."

Revisions to the rules regulating municipal solid waste disposal have been included in the Department's Solid Waste Rules Revision Plan since November 2000. At that time, regulations for all sanitary landfills were found in 567—Chapter 103. Since the regulations did not differentiate between municipal solid waste, construction and demolition waste, coal combustion residue or industrial waste landfills, the initial step in the plan was to separate the rules for each type of sanitary landfill into individual chapters. This step was completed in December 2002. The plan also called for subsequent rule making to revise Department rules for MSW landfills so that they more closely mirrored the U.S. Environmental Protection Agency (EPA) requirements found in 40 Code of Federal Regulations (CFR) Part 258 (commonly referred to as RCRA Subtitle D standards). This rule making is intended to implement all parts of the RCRA Subtitle D standards.

Since Iowa's receipt of delegation and approval to administer RCRA Subtitle D in 1997, there has been a lack of clarity and consistency in regard to the approval of vertical and horizontal expansions of MSW landfills. The uncertainty in regard to the applicability of liner requirements and other federal requirements to vertical expansions in particular has caused confusion in the regulated community and may have led to continuing noncompliance with the federal requirements. Thirty-two of the 59 operating landfills in Iowa do not have a Subtitle D compliant liner. Other states allowed a transition period for noncompliant landfills, and the EPA recommended that Iowa do the same by implementing a compliance schedule for updating the state's current rules and by adding a deadline for landfills to comply with all of the federal requirements, including those for liner systems. The Department's compliance date for RCRA Subtitle D compliance is October 1, 2007.

States that modify their Subtitle D program must notify the EPA of the modifications and may be required to resubmit an application to the EPA for program approval. 40 CFR Part 239, which was not in place when Iowa received program approval in 1997, specifies the requirements that state permit programs must meet in order for the state Subtitle D permit programs to be determined adequate by the EPA and the procedures EPA will follow in determining the adequacy of state Subtitle D permit programs. The EPA has requested that Iowa resubmit an application for program adequacy as part of this rule-making effort and that the approval of the state's municipal solid waste permitting program will be guided by 40 CFR Part 239.

Some of the more significant changes to Chapter 113 that impact MSW landfills include:

- Improving contaminant detection by decreasing spacing in between downgradient monitoring wells from 600 feet to 300 feet and determining monitoring well placement through groundwater flow modeling;
- Implementing the minimum federal requirements for groundwater monitoring. The current list for routine sampling at MSW landfills consists of approximately 9 parameters. There are 62 parameters under Appendix I in RCRA Subtitle D;
- Modeling of alternative clay liners to determine their ability to prohibit groundwater contamination. This will include correcting language in current Chapter 113 to link the point of compliance modeling to the groundwater monitoring system;
- Implementing the EPA's new rules to allow states to issue research, development and demonstration permits for the addition of liquids into a MSW unit which was previously prohibited and allowing flexibility to final cover requirements;
- Adding a compliance date of October 1, 2007, for all MSW landfills to meet the minimum federal requirements for operating over a RCRA Subtitle D compliant liner with a leachate collection system; and
- Extending the length of permit issuance from three years to five years.

Although new requirements are being added with this rule making, the proposed rules provide flexibility through variances for MSW landfills to propose alternative methods so long as the same goals of monitoring environmental impacts and ultimately protecting the public are met. This rule making also updates references to Chapter 113 contained in other solid waste related rules. Subrules that are no longer applicable to Chapter 113 (i.e., solid waste incinerator operator certification and postclosure requirements for landfills closed prior to October 9, 1994) are moved to other solid waste related rules.

Furthermore, Iowa Code section 455B.105(3) requires that whenever the Commission proposes or adopts rules to implement a specific federal environmental program and the rules impose requirements more restrictive than the federal program being implemented requires, the Commission shall identify in its Notice of Intended Action or the preamble of the Adopted and Filed rule making each rule that is more restrictive than the federal program requires and shall state the reasons for proposing or adopting the more restrictive requirements. Proposed Chapter 113 contains some variation from the federal requirements and addresses necessary areas of regulation not specifically addressed in the federal requirements. The determination of whether these provisions are

more restrictive than the federal requirements will vary, depending upon site-specific factors, and may be subjective. Therefore, the remainder of this preamble provides information in regard to variance from or addition to the federal program, regardless of whether such variation is, in fact, more restrictive than the federal language.

Iowa Code section 455B.105(3) requires: "When the commission proposes or adopts rules to implement a specific federal environmental program and the rules impose requirements more restrictive than the federal program being implemented requires, the commission shall identify in its notice of intended action or adopted rule preamble of each rule that is more restrictive than the federal program requires and shall state the reasons for proposing or adopting the more restrictive requirement." Proposed Chapter 113 is intended to implement the requirements of the federal Resource Conservation and Recovery Act as it relates to nonhazardous solid waste. The federal rules applicable to this chapter are found at 40 Code of Federal Regulations (CFR) Parts 239 through 258. Additionally, federal provisions related to aviation and endangered species protection are not addressed by this statement.

1. Subrule 113.2(8) adds the requirement that the operator comply with all other state and local regulations in addition to the preexisting federal requirements. The operator must comply with other state and local requirements, regardless of the presence of this language but the Department believes it is beneficial to provide this notification.

2. In rule 113.3(455B), in the definition of "aquifer," the Department has elected to retain the "aquifer" definition contained in the existing rules. While this definition varies from the federal definition, it has been previously approved and conforms to the terminology of existing water supply rules. The following definitions included in 113.3(455B) will also be affected:

"Existing MSWLF unit." The federal regulation contains a specific effective date. The proposed rule substitutes "as of the most recent permit renewal" in place of the specific date. This change is intended to clarify the applicability of certain subrules and to differentiate between currently existing landfill units and those future landfills which must be constructed in compliance with the rules pertaining to a "new MSWLF unit," as defined below.

"Facility." The proposed rule adds clarifying language as requested by stakeholders.

"Municipal solid waste landfill (MSWLF) unit." The proposed rule adds "construction and demolition debris" to the list of other types of waste that may be accepted by an MSWLF landfill for clarification.

"New MSWLF unit." The federal regulation contains the specific date of October 9, 1993. The proposed rule substitutes "as of the most recent permit renewal" in place of the specific date. This change is intended to clarify the applicability of certain subrules and to differentiate between currently existing landfill units and those future landfills which must be constructed in compliance with the rules.

"Operator." The proposed definition makes reference to the certified operator provisions of subrule 113.8(6). This issue will be addressed in response to 113.8(6).

3. Separation from groundwater (paragraph 113.6(2)"i"). The issue of separation from groundwater is not specifically addressed in the federal regulations. The Department asserts that such separation is necessary to the protection of groundwater pursuant to the goals and policies of the Groundwater Protection Act as stated at Iowa Code sections 455E.3 through 455E.5. This provision is a continuation of the current rule.

4. Well separation distance (paragraph 113.6(2)"j"). The solid waste rule is a restatement of the separation distance established for wells at 567—subrule 43.3(7) and 567—subrule 49.6(1). This provision makes those separation distances reciprocal. The setback distance addressed in Chapters 43 and 49 does not address plumes beyond the waste management unit boundary. Paragraph 113.6(2)"j" applies the 1,000-foot separation distance to both projected plumes and the waste management unit boundary. The Department recognizes both to be equal threats to public health, safety, and welfare.

5. Property line setback (paragraph 113.6(2)"k"). This issue is not specifically addressed in the federal regulations. However, the federal regulations require that the point of compliance and groundwater monitoring systems be located on property owned by the landfill operator. The 50-foot setback is necessary to allow for the placement of monitoring wells. The Department also believes that a 50-foot setback is necessary to prevent the deposition of wind-blown litter on neighboring properties and to allow vehicle access around all waste boundaries. This setback is contained in existing rules.

6. Housing and sensitive populations (paragraph 113.6(2)"l"). This rule requires a 500-foot separation distance between the MSWLF and any occupied residence, recreation area, child care facility, educational facility, or healthcare facility. The rule is intended to carry out the purposes of Iowa Code section 455B.305A in regard to siting of a sanitary landfill. Paragraphs "b," "c" and "d" of Iowa Code section 455B.305A require that a landfill meet the following criteria:

b. The project is designed, located and proposed to be operated so that the public health, safety, and welfare are protected.

c. (in part) The project is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property.

d. The plan of operations for the project is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents.

The 500-foot separation distance is necessary to carry out the purposes of Iowa Code section 455B.305A.

7. Soil and hydrogeologic investigations (subrule 113.6(3)). This rule is necessary to the characterization of the hydrology of the site for the purpose of designing adequate groundwater monitoring systems, which are required by the federal regulations.

8. Site exploration and characterization report (subrule 113.6(4)). This subrule requires the preparation of a report documenting the information obtained through compliance with rule 113.6(455B).

9. MSWLF unit subgrade (subrule 113.7(4)). This rule is necessary to ensure the integrity and stability of the liner. This subrule replaces paragraph 113.26(1)"u," which should result in conformance with the specific criteria set forth in the proposed rule.

10. Paragraph 113.7(5)"a. The rule requires that a liner be constructed in 8-inch lifts of compacted soil. This is a continuation of the current rule. Federal guidance calls for the soil to be compacted in 6-inch lifts. The Iowa rule is less restrictive than federal guidance.

11. Paragraph 113.7(5)"a." The rule requires that a composite liner have a slope toward the leachate collection pipes of at least 2 percent. The federal regulation requires the

leachate collection system to be designed and constructed to maintain less than a 30-cm depth of leachate. The 2 percent slope requirement is designed to meet the federal standard. This is a continuation of the current rule requirement.

12. Numbered paragraph 113.7(5)"a"(2)"1." The rule requires that a liner be constructed in 8-inch lifts of compacted soil. This is a continuation of the current rule. Federal guidance calls for the soil to be compacted in 6-inch lifts. The Iowa rule is less restrictive than federal guidance.

13. Numbered paragraph 113.7(5)"a"(2)"2." The landfill liner, pursuant to state and federal regulations, must be designed to ensure that contaminants escaping the landfill do not exceed the specified concentration levels for parameters sampled at an established "point of compliance." This rule establishes the point of compliance at 50 feet from the waste boundary, unless site conditions dictate otherwise. The federal regulation provides:

40 CFR Part 258.40, paragraph (d), states:

"(d) The relevant point of compliance specified by the Director of an approved State shall be no more than 150 meters from the waste management unit boundary and shall be located on land owned by the owner of the MSWLF unit. In determining the relevant point of compliance State Director shall consider at least the following factors:

"(1) The hydrogeologic characteristics of the facility and surrounding land;

"(2) The volume and physical and chemical characteristics of the leachate;

"(3) The quantity, quality, and direction, of flow of ground water;

"(4) The proximity and withdrawal rate of the groundwater users;

"(5) The availability of alternative drinking water supplies;

"(6) The existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water, and whether the ground water is currently used or reasonably expected to be used for drinking water;

"(7) Public health, safety, and welfare effects; and

"(8) Practicable capability of the owner or operator."

The federal regulation, in 40 CFR Part 258.51, paragraph (a), further provides, in regard to placement of monitoring systems:

"(a) A ground-water monitoring system must be installed that consists of a sufficient number of wells, installed at appropriate locations and depths, to yield ground-water samples from the uppermost aquifer (as defined in §258.2) that:

"(1) Represent the quality of background ground water that has not been affected by leakage from a unit. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

"(i) Hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; or

"(ii) Sampling at other wells will provide an indication of background ground-water quality that is as representative or more representative than that provided by the upgradient wells; and

"(2) Represent the quality of ground water passing the relevant point of compliance specified by Director of an approved State under §258.40(d) or at the waste management unit boundary in unapproved States. **The downgradient monitoring system must be installed at the relevant point of compliance specified by the Director of an approved State under §258.40(d)** or at the waste management unit boundary in unapproved States that ensures detection of ground-water contamination in the uppermost aquifer. When physical obstacles preclude installation of ground-water monitoring wells at the relevant point of compliance at existing units, the down-gradient monitoring system may be installed at the closest practicable distance hydraulically down-gradient from the relevant point of compliance specified by the Director of an approved State under §258.40 that ensure detection of groundwater contamination in the uppermost aquifer." [emphasis added]

Pursuant to the federal regulations, the groundwater monitoring system and the point of compliance must be the same. The Department's existing rules do not comply with the federal requirements. The existing rules allow a point of compliance of up to 150 meters from the waste boundary. Under the existing rules, the monitoring wells are required to be within 50 feet of the waste boundary. Thus, a system was created in which the liner was not designed to ensure that contaminants escaping the landfill do not exceed the specified concentration levels at the monitoring system location. Contamination above specified limits at the monitoring wells could still indicate compliance with approved design parameters.

Based upon the known soil types and hydrology of this state, the Department believes that a groundwater monitoring system must be no further than 50 feet from the waste boundary in order to ensure that contamination can be discovered and addressed in a timely manner. Groundwater moves relatively slowly through the soils found at most Iowa landfill locations. If specific site conditions warrant an alternative distance, the proposed rule allows for consideration of those conditions. It is also important to note that the federal regulations require the point of compliance and groundwater monitoring systems to be on the landfill property. Increasing the allowable distances for these wells will decrease the potentially usable area of the site.

14. Subparagraph 113.7(5)"a"(2), numbered paragraph "3," fourth bulleted paragraph. This rule allows the Department to consider the sensitivities and limitations of the modeling program used by the operator when determining the point of compliance. Different programs have varying strengths and weaknesses, and these variations must be considered when determining if the point of compliance will be an adequate indicator of the protection of groundwater provided by the proposed alternative liner.

15. Numbered paragraph 113.7(5)"a"(2)"4." The rule requires that an alternative liner have a slope toward the leachate collection pipes of at least 2 percent. The federal regulation requires the leachate collection system to be designed and constructed to maintain less than a 30-cm depth of leachate. The 2 percent slope requirement is designed to meet the federal standard. This is a continuation of the current rule requirement.

16. Leachate collection system (paragraph 113.7(5)"b"). The federal regulation simply requires a leachate collection system that is designed and constructed to maintain less than a 30-cm depth of leachate over the liner. The Iowa rule is designed to provide the necessary specifications to achieve the federal requirement.

17. Quality control and assurance programs (subrule 113.7(6)). Iowa has developed a Quality Control and Assurance Program in conjunction with, and supported by, the regulated community. The QC & A Program requires that a professional engineer be designated to oversee and document compliance with the statutes and regulations applicable to the

landfill. This program is intended to assist the landfill operator in maintaining compliance and ensuring that landfill systems continue to function as intended.

18. Vertical and horizontal expansion of MSWLF units (subrule 113.7(7)). Since Iowa's receipt of delegation and approval to administer the federal solid waste program, there has been a lack of clarity and consistency in regard to the approval of vertical and horizontal expansions. The uncertainty in regard to the applicability of liner requirements and other federal requirements to vertical expansions in particular has caused confusion in the regulated community and may have led to continuing noncompliance with the federal requirements. Subrule 113.7(7) is designed to rectify this situation and provide clear criteria to the regulated community for the approval of expansions.

The Department has proposed a minimum slope of 20 percent for abutment of new horizontal expansion cells against existing cells that do not have a Subtitle D compliant liner. The 20 percent slope requirement is designed to minimize the negative effects of differential and total settlement on the abutment liner and to maintain the effectiveness of the leachate collection system. The proposal to allow the 20 percent slope is a compromise position. There are technical justifications to ban such abutments to achieve the maximum level of groundwater protection and to facilitate any future groundwater remediation necessitated by the inferior liner requirements for the closed cells.

The 20 percent slope for abutments is designed to provide a safe level of protection to the groundwater while allowing for the economical use of existing unused landfill space.

19. Prohibited operations and activities (subrule 113.8(1)). This rule is required due to the statutory definition of solid waste found at Iowa Code section 455B.301(20). This rule is further required to provide notice to the landfill operator in regard to the prohibitions and restrictions found elsewhere in the Administrative Code or in statute.

20. Disposal operations and activities (subrule 113.8(2)). This rule establishes basic operating requirements for the staking of the landfill, filling operations, and covering of waste. Some of the requirements related to landfill cover are addressed in the federal regulations, but the majority of these operational considerations are omitted from the federal requirements.

21. Facility operations and activities (subrule 113.8(3)). This rule establishes additional basic requirements for proper landfill management and incorporates the federal regulations in regard to access control and vector control.

22. Development and operations plan (subrule 113.8(4)). This rule requires the landfill operator to maintain a plan which details how the facility will operate and how compliance will be maintained. Such a plan should be a standard operational practice for a municipal solid waste landfill.

23. Emergency response and remedial action plan (subrule 113.8(5)). This rule is required by Iowa Code section 455B.306(6)"d."

24. MSWLF operator certification (subrule 113.8(6)). The Department, in conjunction with the regulated community, has established a program for operator certification to ensure that a properly qualified operator is on site at a landfill during all hours of operation. The training is sponsored and provided by industry associations and organizations. Historically, both the Department and the regulated community have strongly supported the certification program.

25. Landfill gas (subrule 113.9(2)). The proposed rule requires that the operator ensure that subsurface migration of methane does not occur beyond the property boundaries of the facility. This requirement is warranted due to the danger to human health presented by the subsurface migration of this explosive gas and due to instances of methane migration at existing Iowa landfills.

26. Paragraphs 113.10(2)"c" and "d." The proposed rules establish technical requirements for the numbering, construction, and closure of monitoring wells. These issues are not addressed by the federal requirements. A uniform numbering system is necessary for reporting purposes and for the purpose of data comparison and compliance evaluation. The well casing and closure requirements are necessary to the protection of groundwater and are based upon the state's existing requirements for well construction and closure.

27. Hydrologic monitoring system plan (paragraph 113.10(2)"e"). This rule requires the preparation of a monitoring plan to ensure compliance with applicable requirements. This subject is not addressed by the federal regulations but is necessary to ensure that the groundwater and surface water monitoring systems are designed and functioning in compliance with the applicable requirements. The proposed rule requires a separation distance between monitoring wells of no more than 300 feet. The existing rules allow for a 600-foot separation. The Department originally proposed a 200-foot separation to provide for maximum detection of contaminants and protection of groundwater. The 300-foot distance is a compromise designed to reduce the impact of the rule for landfill operators that must retrofit existing monitoring systems, while continuing to ensure the protection of the groundwater. Landfill operators will now be required to place only one new well at each midpoint between existing wells, rather than two new wells.

Groundwater monitoring programs have been required for Iowa sanitary disposal projects for approximately 15 years. Based upon the data collected during that period, the Department has determined that leachate releases from unlined landfills are occurring in the state. The data indicates that plume widths of 600 feet or greater are rare and such plumes would typically be 200 feet wide or less. It is expected that the performance of leachate collection systems in newer landfills will decrease the plume widths associated with any leachate release. Therefore, the separation distance must be reduced in order to detect such releases.

28. Monitoring well maintenance and performance reevaluation plan (paragraph 113.10(2)"f"). The proposed rule requires the preparation and implementation of a plan designed to ensure the ongoing reliability of the monitoring wells. Such a plan is necessary to ensure that the existing monitoring systems continue to function adequately to protect the groundwater of the state. This requirement is contained in the existing rules.

29. Subrule 113.10(4). The proposed rule relates to the submission of groundwater data. The rule requires the use of a laboratory certified by the Department. This requirement is necessary to ensure the quality of the data received. Laboratory certification is required by the existing rules.

30. Surface water monitoring systems (subrule 113.10(3)). The proposed rule allows the Department to require a surface water monitoring system if there is reason to believe that a surface water of the state has been impacted as a result of facility operations. The federal regulations do not address this issue. In the event that leachate migration or other landfill operations are impacting a surface water of the state, this rule is designed to allow for the assessment of those impacts and the imposition of such requirements as are necessary to protect the surface waters of the state in compliance

with applicable state and federal regulations for the protection of surface waters.

31. Subparagraph 113.10(4)"i"(2). The proposed rule establishes a 45-day time period, from completion of sampling and analysis, for the landfill operator to determine whether there has been a statistically significant increase in the level of a contaminant in any monitoring well. The federal regulations state "a reasonable period of time." The Department asserts that 45 days is a reasonable time period in which to review the results of the sampling analysis.

32. Paragraphs 113.10(5)"a" and "b." The proposed rule establishes indicator parameters to be monitored as a part of the groundwater monitoring program. The Department asserts that these indicator parameters are essential to the determination of whether contamination exists and to the determination of proper functioning of the liner and monitoring systems.

33. Paragraph 113.10(6)"g." The proposed rule addresses the actions which must be taken when contamination is discovered. This is a federal requirement. Both the state and federal regulations allow a landfill operator to avoid the otherwise required actions if the landfill operator can show that the contamination has come from another source or has resulted from an error in sampling or analysis or that the contamination is due to a natural variation in groundwater quality. The proposed rule requires Department approval of any attempted demonstration of an alternate reason for the contamination. The Department asserts that where contamination is detected, Department review is necessary prior to any decision by the landfill operator to ignore such contamination.

34. Paragraph 113.10(6) "j." The proposed rule relates to the establishment of groundwater protection standards. Two additions to the federal language are contained in the proposed rule. The first is a recognition that the state must consider the policies of the Iowa Groundwater Protection Act. Paragraph 113.10(6)"j" is an acknowledgment that, when multiple contaminants have been detected, the effects of those contaminants are additive and must be considered together. The need to consider the additive effects is implicit in the federal requirement that the existence of multiple contaminants be considered.

35. Paragraph 113.10(7)"a." The proposed rule addresses the assessment of corrective measures when contamination has been detected. Both the state and federal regulations allow 90 days to initiate an assessment. The proposed rule establishes an additional 90-day deadline to submit the assessment. The combined effect of these deadlines is to allow 180 days from detection of contamination to the submission of a proposed assessment. The Department believes this is a reasonable period to allow for the completion of an assessment where groundwater contamination exists.

36. Paragraph 113.10(7)"d." The federal regulations require a public meeting with interested and affected parties to discuss the results of the assessment triggered by the detection of contaminants. The proposed rule provides additional clarification defining the public meeting requirements.

37. Subparagraph 113.10(8)"c"(5). The federal regulations require the consideration of community concerns when selecting a remedy to address detected contamination. The proposed rule defines that community concern to include concerns identified at the required public meeting.

38. Paragraph 113.10(9)"f." The proposed rule addresses the completion of the remedy to correct groundwater contamination. The federal rule requires certification of completion of the remedy. The proposed rule requires Department approval of the certification of completion. The Department asserts that such approval is necessary to ensure that the contamination has been fully addressed.

39. Subrule 113.11(1). Record keeping. The proposed rule sets forth the documents that must be maintained in the facility files of the landfill operator. In addition to the documents listed in the federal regulation, the proposed rule adds documents that are required elsewhere in Chapter 113.

40. Paragraph 113.12(1)"a." The Department is proposing a maximum final cover permeability of 1×10^{-7} cm/sec. This final cover permeability is currently standard practice at Iowa landfills as suitable soils are routinely available. Federal regulations also require the final cover to "have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present, or a permeability no greater than 1×10^{-5} cm/sec, whichever is less." Since all municipal landfills under this rule must have a liner whose permeability is no greater than 1×10^{-7} cm/sec, the proposed rule is consistent with federal regulations and does not affect landfills that are in compliance with the federal requirements for bottom liner systems. The proposed variation from 1×10^{-5} cm/sec to 1×10^{-7} cm/sec will only affect unlined landfills. Decreasing the permeability of the cover system for unlined landfills will minimize the amount of leachate which could impact groundwater. It is also the Department's understanding that the 1×10^{-5} standard described in federal regulations applies to those unlined landfills exempted from the liner requirements due to their small size and location in arid environs, which are located in more western states than Iowa.

41. Paragraphs 113.12(1)"b," "c," and "d." The proposed rules establish the final cover requirements for a closed landfill. The proposed rules increase the thickness of the infiltration layer from 18 inches to 24 inches and increases the thickness of the erosion layer from 6 inches to 24 inches. The Department asserts that a 24-inch infiltration layer is necessary to prevent the infiltration of surface water into the closed landfill, thereby preventing the contamination of that water through contact with waste. The Department asserts that a 24-inch erosion layer is necessary to provide an adequate final vegetative cover for the site. The vegetative cover is essential to prevent erosion and infiltration of surface waters.

42. Paragraph 113.12(1)"e." The proposed rule requires a final cover slope between 5 percent and 25 percent. The slope of the final cover is not addressed in the federal regulations. The Department asserts that these slope parameters are necessary to balance the need to prevent erosion with the need to minimize infiltration. This requirement is contained in existing rules.

43. Subrule 113.12(5). The proposed rule adds additional clarifying language to the closure notification requirements contained in the federal regulations.

44. Submission of documents. Throughout proposed Chapter 113, the Department has substituted the requirement that an operator submit a document to the Department in place of federal rule language that requires that the operator place the document in the operator's operating record. 40 CFR 258.29 requires that the operator notify the Department whenever such documents are placed in the operating record and further requires that the actual document be furnished upon request or be made available for inspection. The Department believes that the submission of the actual documents in lieu of the submission of written notification and additional submission upon request does not increase the burden placed upon the operator. Additionally, site visits are normally conducted by environmental specialists who may

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

lack technical expertise necessary to review engineering documents.

Any interested person may make written suggestions or comments pertaining to the proposed amendments on or before 4:30 p.m. on January 26, 2007. Such written materials should be directed to Alex Moon, Energy and Waste Management Bureau, Iowa Department of Natural Resources, 502 East 9th Street, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-8646; or E-mail alex.moon@dnr.state.ia.us. Persons wishing to convey their views orally should contact Alex Moon at (515)281-6807.

The Energy and Waste Management Bureau encourages stakeholders to utilize the following guidelines when submitting comments. These guidelines aid the Bureau in accurately understanding and creating a record of your input.

1. Include your mailing address and contact information.
2. Please state if you are submitting comments on behalf of a business, organization or as an individual.
3. Cite the specific rule(s) on which you are commenting.
4. Explain your views as clearly as possible by describing any assumptions, data, or technical information you utilized.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative language that you think would improve the specific rule(s) and explain why.

There will be three public hearings as follows:

10 a.m., January 22, 2007
Conference Room
DNR Field Office 1
909 West Main Street, Suite D
Manchester, Iowa

10 a.m., January 24, 2007
Conference Room
DNR Field Office 4
1401 Sunnyside Lane
Atlantic, Iowa

10 a.m., January 26, 2007
Fifth Floor Conference Rooms
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa

At the hearing, persons may present their views either orally or in writing. 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 persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources to advise of specific needs.

These amendments are intended to implement Iowa Code section 455B.304.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Rescind numbered paragraphs **101.13(1)"j"(4)"1"** and **101.13(1)"j"(4)"2."**

ITEM 2. Amend 567—Chapter 102 by adopting the following **new** rule:

567—102.15(455B) General postclosure requirements for municipal solid waste landfills. This rule applies to municipal solid waste landfill units that did not receive waste after October 9, 1994, and have been issued a closure permit.

102.15(1) The diversion and drainage system must be maintained to approved specifications to prevent run-on and runoff from eroding or otherwise damaging the final cover.

102.15(2) The integrity and effectiveness of the final cover must be maintained by making repairs as necessary to correct the effects of settling, subsidence, erosion, or other events. If damage to the compacted soil layer occurs, repairs shall be made to correct the damage and return it to its original specifications.

102.15(3) The vegetative cover shall be reseeded as necessary to maintain good vegetative growth. Any invading vegetation whose root system could damage the compacted soil layer shall be removed or destroyed immediately.

102.15(4) Hydrologic monitoring system operating requirements. The groundwater monitoring system shall be operated and maintained and shall comply with the following:

a. Operational sampling requirements. All sampling shall be conducted in accordance with an approved sampling protocol, components of which are described in subrule 113.10(4).

b. Groundwater levels. The elevation of water in each monitoring well shall be measured monthly and recorded to the nearest 0.01 foot. Level measurements must be made before a well is evacuated for sample collection.

c. Surface water levels. The water level or flow rate of each surface water body sampled shall be measured and recorded at the time of sample collection.

d. Routine semiannual water sampling. After the first year, each monitoring point must be sampled semiannually as specified in the facility's operation permit and analyzed for the following parameters.

(1) Chloride.
(2) Specific conductance (field measurement).
(3) pH (field measurement).
(4) Ammonia nitrogen.
(5) Iron, dissolved.
(6) Chemical oxygen demand.
(7) Temperature (field measurement).
(8) Any additional parameters deemed necessary by the department.

e. Routine annual water sampling. One sample per year from each monitoring point collected in a quarter specified in the facility's operation permit must be analyzed for the following parameters.

(1) Total organic halogen.
(2) Phenols.
(3) Any additional parameters deemed necessary by the department.

102.15(5) Laboratory procedures. The owner or operator of the solid waste facility must have the groundwater and surface water samples analyzed only by laboratories that are certified by the state of Iowa. All analyses of parameters not covered in the Safe Drinking Water Act (SDWA) must be performed according to methods specified in EPA test method SW-846 or approved by the United States Environmental Protection Agency (EPA). Any analytical method used on non-SDWA parameters deviating from those specified in SW-846 or approved by EPA must be approved by the department. All analyses must be recorded on forms which, in addition to the analytical results, show the precision of the data set, bias, and limit of detection.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

102.15(6) Analysis of sampling data. For routine semiannual monitoring parameters, as listed in paragraph 102.15(4)"d," mean and standard deviation shall be recalculated annually using all available analytical data. If the analytical results for a downgradient monitoring point do not fall within the control limits of two standard deviations above the mean parameter(s) level in a corresponding upgradient monitoring point, the owner or operator shall submit this information to the department within 30 days of receipt of the analytical results. If the analytical results from an upgradient monitoring point do not fall within two standard deviations of the mean parameter(s) level for that monitoring point, the department shall also be notified within 30 days.

102.15(7) Additional sampling. The department will determine if additional sampling is warranted, after receipt of information indicating a possible release as required in subrule 102.15(6).

The department may require any additional samples to be split and analyzed to determine if the values obtained outside the control limits were the result of laboratory or sampling error. Any additional analytical results shall be submitted to the department by the owner or operator within seven days of receipt. The department will review the information and determine if additional monitoring or preparation of a groundwater quality assessment plan, in accordance with subrule 102.15(9), is necessary.

102.15(8) Record keeping and recording.

a. The persons conducting the sampling must record the procedures, measurements, and observations at the time of sampling. The field records must be sufficient to document whether the procedures and requirements specified in the sampling protocol have been followed. The records must also contain the names of the persons conducting the sampling, the time and date when each monitoring point was sampled, and the required field measurement or test result. The owner or operator must submit copies of these field records to the department upon request.

b. The owner or operator shall keep records of analyses and the associated groundwater surface elevations for the active life and postclosure period of the facility. These records shall be kept at the site or in the administrative files of the owner or operator, and shall be available for review by the department upon request in the county in which the landfill is located.

c. The owner or operator shall provide the department with copies of the monitoring analytical results by the dates specified in the facility's closure permit.

d. An annual report summarizing the effect of the facility on groundwater and surface water quality shall be submitted to the department by November 30 each year. The summary shall be prepared by an engineer registered in the state of Iowa and shall be incorporated in the November semiannual engineer inspection report. The contents of this summary shall include the following items:

(1) A narrative describing the effects of the facility on surrounding surface water and groundwater quality and any changes made or maintenance needed in the monitoring network.

(2) Graphs showing concentrations versus time for all monitoring parameters for each well for as long as records exist for that parameter. Control limits (two standard deviations from the initial background value) must be shown in each graph.

(3) Results of activities and tests required by the well maintenance and performance reevaluation plan.

102.15(9) Groundwater quality assessment plan.

a. If leachate migration occurs, the owner or operator, as required by the department, shall develop and submit for approval a specific plan to conduct a groundwater quality assessment study at the facility to determine the rate of migration and the extent and constituent composition of the leachate release. At a minimum, the assessment monitoring plan must contain the following elements:

(1) Discussion of the hydrogeologic conditions at the site with an identification of potential contaminant pathways.

(2) Description of the present detection monitoring system.

(3) Description of the approach the owner or operator will take to substantiate any contention that the contamination may have been falsely indicated.

(4) Description of the investigatory approach used to characterize the rate and extent of leachate migration.

(5) Discussion of the number, location and depth of wells that will be initially installed as well as a strategy for installing more wells in subsequent investigatory phases.

(6) Information on well design and construction.

(7) Description of the sampling and analytical program used to obtain and analyze groundwater monitoring data.

(8) Description of data collection and analysis procedures.

(9) Schedule for the implementation of each phase of the assessment study.

b. After the plan has been approved by the department, the owner or operator shall implement the plan according to the schedule in the plan.

c. Within 90 days after the activities prescribed in the groundwater assessment plan have been completed, the owner or operator shall submit a written groundwater quality assessment report to the department.

d. If the department determines that no waste or waste constituents from the facility have entered the groundwater, the owner or operator shall reinstate the routine monitoring program.

If the department determines that waste or waste constituents have been released from the facility and have entered the groundwater, the owner or operator shall continue to make the determinations described by the assessment plan and develop a remedial action/mitigation plan to alleviate or reduce contamination to the fullest extent possible.

102.15(10) Semiannual inspections. Each sanitary landfill shall be inspected semiannually, or as otherwise specified in the permit, by a professional engineer registered in Iowa. A brief report by the engineer indicating areas of conformance or nonconformance with the approved closure permit shall be submitted to the department by the permit holder within 30 days of the inspections.

The reports shall contain information concerning the general conditions at the site, groundwater monitoring results, amount of leachate collected and treated monthly, leachate head levels, information concerning the landfill gas monitoring and collection system, and other information as may be required by the closure permit. In addition, locations and elevations of all permanent monuments shall be determined at least once every three years or more frequently in the event of obvious disturbance of the monument. The reports for the preceding six-month period shall be due by the dates specified in the closure permit.

102.15(11) The permanent surveying monuments shall be maintained.

102.15(12) Access to the site shall be restricted, and a gate shall be provided at the entrance to the site and shall be kept locked when an attendant or operator is not on duty.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

102.15(13) A copy of the closure permit, engineering plans and reports shall be kept at the site or in the administrative files of the owner or operator, and shall be available for review by the department upon request in the county in which the landfill is located.

ITEM 3. Amend 567—Chapter 104 by adopting the following **new** rule:

567—104.25(455B) Operator certification. Solid waste incinerator operators shall be trained, tested, and certified by a department-approved certification program.

104.25(1) A solid waste incinerator operator shall be on duty during all hours of operation of a solid waste incinerator, consistent with the respective certification.

104.25(2) To become a certified operator, an individual shall complete a basic operator training course that has been approved by the department or alternative, equivalent training approved by the department and shall pass a departmental examination as specified by this rule. An operator certified by another state may have reciprocity subject to approval by the department.

104.25(3) A solid waste incinerator operator certification is valid from the date of issuance until June 30 of the following even-numbered year.

104.25(4) Basic operator training course. The required basic operator training course for a certified solid waste incinerator operator shall have at least 12 contact hours and shall address the following areas, at a minimum:

a. Description of types of wastes;
b. Incinerator design;
c. Interpreting and using engineering plans;
d. Incinerator operations;
e. Environmental monitoring;
f. Applicable laws and regulations;
g. Permitting processes;
h. Incinerator maintenance;
i. Ash and residue disposal.

104.25(5) Alternative basic operator training must be approved by the department. It shall be the applicant's responsibility to submit any documentation the department may require to evaluate the equivalency of alternative training.

104.25(6) Fees.

a. The examination fee for each examination shall be $20.

b. The initial certification fee shall be $8 for each one-half year of a two-year period from the date of issuance to June 30 of the next even-numbered year.

c. The certification renewal shall be $24.

d. The penalty fee shall be $12.

104.25(7) Examinations.

a. The operator certification examinations will be based on the basic operator training course curriculum.

b. All persons wishing to take the examination required to become a certified operator of a solid waste incinerator shall complete the Operator Certification Examination Application, Form 542-1354. A listing of dates and locations of examinations is available from the department upon request. The application form requires the applicant to indicate the basic operator training course taken. Evidence of training course completion must be submitted with the application for certification. The completed application and the application fee shall be sent to the department and addressed to the central office in Des Moines. Application for examination must be received by the department at least 30 days prior to the date of examination.

c. A properly completed application for examination shall be valid for one year from the date the application is approved by the department.

d. Upon failure of the first examination, the applicant may be reexamined at the next scheduled examination. Upon failure of the second examination, the applicant shall be required to wait a period of 180 days between each subsequent examination.

e. Upon each reexamination when a valid application is on file, the applicant shall submit to the department the examination fee at least ten days prior to the date of examination.

f. Failure to successfully complete the examination within one year from the date of approval of the application shall invalidate the application.

g. Completed examinations will be retained by the department for a period of one year after which they will be destroyed.

h. Oral examinations may be given at the discretion of the department.

104.25(8) Certification.

a. All operators who passed the operator certification examination by July 1, 1991, are exempt from taking the required operator training course. Beginning July 1, 1991, all operators will be required to take the basic operator training course and pass the examination in order to become certified.

b. Application for certification must be received by the department within 30 days of the date the applicant receives notification of successful completion of the examination. All applications for certification shall be made on a form provided by the department and shall be accompanied by the certification fee.

c. Applications for certification by examination which are received more than 30 days but less than 60 days after notification of successful completion of the examination shall be accompanied by the certification fee and the penalty fee. Applicants who do not apply for certification within 60 days of notice of successful completion of the examination will not be certified on the basis of that examination.

d. For applicants who have been certified under other state mandatory certification programs, the equivalency of which has been previously reviewed and accepted by the department, certification without examination will be recommended.

e. For applicants who have been certified under voluntary certification programs in other states, certification will be considered. The applicant must have successfully completed a basic operator training course and an examination generally equivalent to the Iowa examination. The department may require the applicant to successfully complete the Iowa examination.

f. Applicants who seek Iowa certification pursuant to paragraph 104.25(8)"d" or 104.25(8)"e" shall submit an application for examination accompanied by a letter requesting certification pursuant to these paragraphs. Application for certification pursuant to these paragraphs shall be received by the department in accordance with paragraphs 104.25(8)"b" and 104.25(8)"c."

104.25(9) Renewals. All certificates shall expire every two years, on even-numbered years, and must be renewed every two years to maintain certification. Application and fee are due prior to expiration of certification.

a. Late application for renewal of a certificate may be made provided that such late application shall be received by the department or postmarked within 30 days of the expiration of the certificate. Such late application shall be on forms

provided by the department and accompanied by the penalty fee and the certification renewal fee.

b. If a certificate holder fails to apply for renewal within 30 days following expiration of the certificate, the right to renew the certificate automatically terminates. Certification may be allowed at any time following such termination, provided that the applicant successfully completes an examination. The applicant must then apply for certification in accordance with subrule 104.25(8).

c. An operator may not continue to operate a solid waste incinerator after expiration of a certificate without renewal thereof.

d. Continuing education must be earned during the two-year certification period. All certified operators must earn ten contact hours per certificate during each two-year period. The two-year period will begin upon certification.

e. Only those operators fulfilling the continuing education requirements before the end of each two-year period will be allowed to renew their certificates. The certificates of operators not fulfilling the continuing education requirements shall be void upon expiration, unless an extension is granted.

f. All activities for which continuing education credit will be granted must be related to the subject matter of the particular certificate to which the credit is being applied.

g. The department may, in individual cases involving hardship or extenuating circumstances, grant an extension of time of up to three months within which the applicant may fulfill the minimum continuing education requirements. Hardship or extenuating circumstances include documented health-related confinement or other circumstances beyond the control of the certified operator which prevent attendance at the required activities. All requests for extensions must be made 60 days prior to expiration of certification.

h. The certified operator is responsible for notifying the department of the continuing education credits earned during the period. The continuing education credits earned during the period shall be shown on the application for renewal.

i. A certified operator shall be deemed to have complied with the continuing education requirements of this rule during periods that the operator serves honorably on active duty in the military service; or for periods that the operator is a resident of another state or district having a continuing education requirement for operators and meets all the requirements of that state or district for practice there; or for periods that the person is a government employee working as an operator and is assigned to duty outside of the United States; or for other periods of active practice and absence from the state approved by the department.

104.25(10) Discipline of certified operators.

a. Disciplinary action may be taken on any of the following grounds:

(1) Failure to use reasonable care or judgment or to apply knowledge or ability in performing the duties of a certified operator. Duties of certified operators include compliance with rules and permit conditions applicable to incinerator operation.

(2) Failure to submit required records of operation or other reports required under applicable permits or rules of the department, including failure to submit complete records or reports.

(3) Knowingly making any false statement, representation, or certification on any application, record, report or document required to be maintained or submitted under any applicable permit or rule of the department.

b. Disciplinary sanctions allowable are:

(1) Revocation of a certificate.

(2) Probation under specified conditions relevant to the specific grounds for disciplinary action. Additional education or training or reexamination may be required as a condition of probation.

c. The procedure for discipline is as follows:

(1) The department shall initiate disciplinary action. The commission may direct that the department investigate any alleged factual situation that may be grounds for disciplinary action under paragraph 104.25(10)"a" and report the results of the investigation to the commission.

(2) A disciplinary action may be prosecuted by the department.

(3) Written notice shall be given to an operator against whom disciplinary action is being considered. The notice shall state the informal and formal procedures available for determining the matter. The operator shall be given 20 days to present any relevant facts and indicate the operator's position in the matter and to indicate whether informal resolution of the matter may be reached.

(4) An operator who receives notice shall communicate verbally, in writing, or in person with the department, and efforts shall be made to clarify the respective positions of the operator and department.

(5) The applicant's failure to communicate facts and positions relevant to the matter by the required date may be considered when appropriate disciplinary action is determined.

(6) If agreement as to appropriate disciplinary sanction, if any, can be reached with the operator and the commission concurs, a written stipulation and settlement between the department and the operator shall be entered into. The stipulation and settlement shall recite the basic facts and violations alleged, any facts brought forth by the operator, and the reasons for the particular sanctions imposed.

(7) If an agreement as to appropriate disciplinary action, if any, cannot be reached, the department may initiate formal hearing procedures. Notice and formal hearing shall be in accordance with 561—Chapter 7 related to contested and certain other cases pertaining to licensee discipline.

104.25(11) Revocation of certificates. Upon revocation of a certificate, application for certification may be allowed after two years from the date of revocation. Any such applicant must successfully complete an examination and be certified in the same manner as a new applicant.

104.25(12) A temporary operator of a solid waste incinerator may be designated for a period of six months when an existing certified operator is no longer available to the facility. The facility must make application to the department, explain why a temporary certification is needed, identify the temporary operator, and identify the efforts which will be made to obtain a certified operator. A temporary operator designation shall not be approved for greater than a six-month period except for extenuating circumstances. In any event, not more than one six-month extension to the temporary operator designation may be granted. Approval of a temporary operator designation may be rescinded for cause as set forth in subrule 104.25(10).

ITEM 4. Rescind and reserve **567—Chapter 111**.

ITEM 5. Rescind 567—Chapter 113 and adopt the following **new** chapter in lieu thereof:

CHAPTER 113
SANITARY LANDFILLS FOR MUNICIPAL SOLID WASTE: GROUNDWATER PROTECTION SYSTEMS FOR THE DISPOSAL OF NONHAZARDOUS WASTES

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

567—113.1(455B) Purpose. The purpose of this chapter is to protect human health and the environment through the implementation of minimum national standards pursuant to the Resource Conservation and Recovery Act ("RCRA" or "the Act") for all municipal solid waste landfill (MSWLF) units and under the Clean Water Act for MSWLFs that are used to dispose of sewage sludge.

This chapter details the permitting, siting, design, operating, monitoring, corrective action, reporting, recordkeeping, closure, and postclosure requirements for all sanitary landfills accepting municipal solid waste (MSW).

Groundwater is a precious natural resource. The vast majority of citizens in Iowa depend on groundwater as a drinking water source. Agriculture, industry and commerce also depend heavily on groundwater. It is essential to health, welfare, and economic prosperity of all citizens in Iowa that groundwater is protected and that the prevention of groundwater contamination is of paramount importance. Therefore, the intent of this chapter is to prevent groundwater contamination from MSWLF units to the maximum extent practical, and if necessary to restore the groundwater to a potable state, regardless of present condition, use, or characteristics.

567—113.2(455B) Applicability and compliance.

113.2(1) All sanitary landfills accepting municipal solid waste must comply with the provisions of this chapter.

113.2(2) These rules do not encompass the beneficial use of by-products as alternative cover material. For rules pertaining to the beneficial use of by-products as alternative cover material, see 567—Chapter 108.

113.2(3) These rules do not encompass the management and disposal of special wastes. For rules pertaining to the management and disposal of special wastes, see 567—Chapter 109.

113.2(4) This chapter does not apply to MSWLF units that did not receive waste after October 9, 1991. A general closure permit issued pursuant to 567—Chapter 102 shall govern such landfills.

113.2(5) MSWLF units that received waste after October 9, 1991, but stopped receiving waste before October 9, 1994, are exempt from all the requirements of this chapter, except the final cover requirement specified in subrule 113.12(1) or 113.12(2). The final cover must have been installed within one year after October 9, 1994. Owners or operators of MSWLF units described in this subrule that failed to complete cover installation within one year after October 9, 1994, will be subject to all the requirements of this chapter, unless otherwise specified.

113.2(6) MSWLF units failing to satisfy these criteria are considered open dumps for purposes of state solid waste management planning under RCRA. MSWLF units failing to satisfy these criteria constitute open dumps, which are prohibited under Section 4005 of RCRA.

113.2(7) MSWLF units containing sewage sludge and failing to satisfy the requirements of this chapter violate Sections 309 and 405(e) of the Clean Water Act.

113.2(8) Consideration of other laws. The issuance of an MSWLF permit by the department in no way relieves the permit holder of the responsibility of complying with all other local, state, or federal statutes, ordinances, and rules and other applicable requirements.

113.2(9) Closure of existing MSWLF units.

a. Existing MSWLF units that cannot make the demonstration specified in paragraph 113.6(2)"a," pertaining to airports, in 113.6(2)"b," pertaining to floodplains, or in 113.6(2)"f," pertaining to unstable areas, must close in accordance with rule 113.12(455B) and conduct postclosure activities in accordance with rule 113.13(455B).

b. Existing MSWLF units that do not comply with the leachate collection and liner requirements of subrule 113.7(5) shall close by October 1, 2007, in accordance with rule 113.12(455B) and conduct postclosure activities in accordance with rule 113.13(455B). If a new MSWLF unit is constructed, the construction of the new compliant MSWLF unit shall be completed by October 1, 2007, and at least 4 feet of select MSW placed over the basal portion of the MSWLF unit liner before December 31, 2007. No MSW shall be placed in an MSWLF unit that does not comply with the leachate collection and liner requirements of subrule 113.7(5) after October 1, 2007.

567—113.3(455B) Definitions. Unless otherwise noted, the definitions set forth in Iowa Code section 455B.301, which are incorporated by reference; the definitions that appear in specific rules within this chapter; and the following definitions shall apply to this chapter:

"Active life" means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with rule 113.12(455B).

"Active portion" means that part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance rule 113.12(455B).

"Aquifer" means a saturated geologic formation or combination of formations, which has appreciably greater ability to transmit water than do adjacent formations. Typically, an aquifer is capable of yielding usable quantities of water to a well.

"Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

"Existing MSWLF unit" means any municipal solid waste landfill unit that has received solid waste as of the most recent permit renewal.

"Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste. The facility is formally defined in the permit issued by the department. Buffer lands around a facility are not required to be included in the permitted boundary of a facility.

"Household waste" means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

"Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under Subtitle C of RCRA. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer and agricultural chemicals; food and related products and by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing and foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. "Industrial solid waste" does not include mining waste or oil and gas waste.

"Lateral expansion" means a horizontal expansion of the waste boundaries of an existing MSWLF unit.

"Municipal solid waste landfill (MSWLF) unit" means a discrete area of land or an excavation that receives household waste, and that is not a land application site, surface impoundment, injection well, or waste pile, as those terms are defined under 40 CFR Part 257.2. An MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, construction and demolition debris, and industrial solid waste. An MSWLF unit may be publicly or privately owned. An MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not an MSWLF unit.

"New MSWLF unit" means any municipal solid waste landfill unit that has not received waste prior to the most recent permit renewal.

"Open burning" means the combustion of solid waste without:

1. Control of combustion air to maintain adequate temperature for efficient combustion.
2. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion.
3. Control of the emission of the combustion products.

"Operator" means the person(s) responsible for the overall operation of a facility or part of a facility. For the purposes of this chapter, "operator" means a certified operator pursuant to subrule 113.8(6).

"Owner" means the person(s) who owns a facility or part of a facility.

"Residential lead-based paint waste" means waste containing lead-based paint that is generated as a result of activities such as abatement, rehabilitation, renovation and remodeling in homes and other residences. "Residential lead-based paint waste" includes, but is not limited to, lead-based paint debris, chips, dust, and sludges.

"Runoff" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

"Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

"Saturated zone" means that part of the earth's crust in which all voids are filled with water.

"Sewage sludge" has the same meaning as in 567—Chapter 67.

"Sludge" means any solid, semisolid, or liquid waste generated from a commercial or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, or any other such waste having similar characteristics and effects exclusive of the treated effluent from a wastewater treatment plant.

"Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

"Waste management unit boundary" means a vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

567—113.4(455B) Permits.

113.4(1) Permit required. An MSWLF unit shall not be constructed or operated without a permit from the department.

113.4(2) Construction and operation. An MSWLF unit shall be constructed and operated according to this chapter, any plans and specifications approved by the department, and the conditions of the permit. Any approved plans and specifications shall constitute a condition of the permit.

113.4(3) Transfer of title and permit. If title to an MSWLF unit is transferred, then the department shall transfer the permit within 60 days if the department has found that the following requirements have been met:

a. The title transferee has applied in writing to the department to request a transfer of the permit within 30 days of the transfer of the title.

b. The permitted facility is in compliance with Iowa Code chapters 455B and 455D, this chapter and the conditions of the permit.

113.4(4) Permit conditions. Any permit may be issued subject to conditions specified in writing by the department that are necessary to ensure that the facility is constructed and operated in a safe and effective manner, and in compliance with Iowa Code chapters 455B and 455D, this chapter and the conditions of the permit.

113.4(5) Effect of revocation. If an MSWLF permit held by any public or private agency is revoked by the department, then no new permit shall be issued to that agency for that MSWLF for a period of one year from the date of revocation. Such revocation shall not prohibit the issuance of a permit for the facility to another public or private agency.

113.4(6) Inspection of site and operation. The department shall be notified when the construction of a new facility or MSWLF unit or significant components thereof have been completed so that the department may inspect the facility to determine if the project has been constructed equally to or better than the design approved by the department. The department shall inspect and approve a new facility or MSWLF unit before MSW may be accepted. The department shall inspect a facility and its operations on a regular basis to determine if the facility is in compliance with this chapter.

113.4(7) Duration and renewal of permits.

a. Operating permits. An MSWLF permit shall be issued and may be renewed for a period no longer than five years, unless the MSWLF adopts research, development and demonstration (RD&D) provisions pursuant to subrule 113.4(10). An MSWLF permit with RD&D provisions pursuant to subrule 113.4(10) shall be issued and may be renewed for a period no longer than three years.

b. Closure permits. An MSWLF closure permit shall be issued only after a facility no longer accepts solid waste. A closure permit shall initially be issued for a period of 30 years. If the department extends the postclosure period beyond 30 years, then the duration of the subsequent closure permit will be determined on a site-specific basis. An MSWLF requires a closure permit until the department determines that postclosure operations are no longer necessary.

113.4(8) Request for permit renewal.

a. Operating permits. A request for an operating permit renewal shall be in writing and filed at least 90 days before the expiration of the current permit. If the applicant is found not to be in compliance with this chapter or the permit requirements, then the applicant shall achieve compliance or be placed on a compliance schedule approved by the department before the permit may be renewed.

b. Closure permits. A request for a closure permit renewal or termination shall be filed at least 180 days before the expiration of the current permit. If the department finds that an MSWLF has completed all required postclosure activities and no longer presents a significant risk to human health or the environment, then the department shall issue

written notification that a closure permit is no longer required for the facility.

113.4(9) Request for permit amendment. Requests for permit amendments must be submitted in writing to the department with supporting documentation and justification.

113.4(10) RD&D permits. The department may issue an RD&D permit as follows. The department may issue an RD&D permit that overrides the applicable portions of this chapter, as listed below, without issuing a variance. A permit amendment from the department for leachate recirculation only does not require an RD&D permit.

a. The department may issue an RD&D permit for a new MSWLF unit, existing MSWLF unit, or lateral expansion, for which the owner or operator proposes to utilize innovative and new methods which vary from either or both of the following criteria, provided that the MSWLF unit has a leachate collection system designed and constructed to maintain less than a 30-cm (i.e., 12-inch) depth of leachate on the liner:

(1) The run-on control systems in subrule 113.7(8); and

(2) The liquids restrictions in subparagraph 113.8(1) "b"(3).

b. The department may issue a permit for a new MSWLF unit, existing MSWLF unit, or lateral expansion, for which the owner or operator proposes to utilize innovative and new methods which vary from the final cover criteria of subrules 113.12(1) and 113.12(2), provided that the MSWLF unit owner or operator demonstrates that the infiltration of liquid through the alternative cover system will not cause contamination of groundwater or surface water, or cause leachate depth on the liner to exceed 30 cm (i.e., 12 inches).

c. Any permit issued under subrule 113.4(10) must include such terms and conditions at least as protective as the criteria for MSWLFs to ensure protection of human health and the environment. Such permits shall:

(1) Provide for the construction and operation of such facilities as necessary, for not longer than three years, unless renewed as provided in paragraph 113.4(10)"e";

(2) Provide that the MSWLF unit must receive only those types and quantities of municipal solid waste and nonhazardous wastes which the department deems appropriate for the purposes of determining the efficacy and performance capabilities of the technology or process;

(3) Include such requirements as necessary to protect human health and the environment, including such requirements as necessary for testing and providing information to the department with respect to the operation of the facility;

(4) Require the owner or operator of an MSWLF unit permitted under subrule 113.4(10) to submit an annual report to the department showing whether and to what extent the site is progressing in attaining project goals. The report shall also include a summary of all monitoring and testing results, as well as any other operating information specified by the department in the permit; and

(5) Require compliance with all criteria in this chapter, except as permitted under subrule 113.4(10).

d. The department may order an immediate termination of all operations at the facility allowed under subrule 113.4(10) or other corrective measures at any time the department determines that the overall goals of the project are not being attained, including protection of human health or the environment.

e. Any permit issued under subrule 113.4(10) shall not exceed three years, and each renewal of a permit may not exceed three years.

(1) The total term for a permit for a project including renewals may not exceed twelve years; and

(2) During permit renewal, the applicant shall provide a detailed assessment of the project showing the status with respect to achieving project goals, a list of problems and status with respect to problem resolutions, and any other requirements that the department determines necessary for permit renewal.

113.4(11) Factors in permit issuance decisions. The department may request that additional information be submitted for review to make a permit issuance decision. The department may review and inspect the facility, its agents and operators, and compliance history. The department may consider compliance with related requirements, such as financial assurance and comprehensive planning. The department may review whether or not a good-faith effort to maintain compliance and protect human health and the environment is being made, and whether a compliance schedule is being followed. The department may issue a permit on a trial basis.

113.4(12) Notice and public participation in the MSWLF permit issuance and postpermit actions process.

a. The department shall make a tentative determination to approve or deny an MSWLF permit issuance or postpermit action (i.e., permit renewal or amendment to the existing permit) described in the application or amendment request in advance of the circulation of the public notice. If the tentative determination is to approve the new or renewed permit or the amendment request, the department shall prepare a draft permit or numbered permit amendment. The draft permit or numbered permit amendment shall include the following:

(1) Draft cover letter from the department to the MSWLF owner or operator approving the permit issuance or amendment request;

(2) Draft copy of the permit provisions or numbered permit amendment; and

(3) Draft certificate for issuance of a permit.

b. Prior to the issuance of an MSWLF permit or approval of an amendment, public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed determination to approve or deny a permit or amendment request. Procedures for the circulation of public notice shall include at least the procedures of subparagraphs 113.4(12)"b"(1) to (3).

(1) The public notice shall be circulated by the applicant within the geographical areas of the MSWLF by posting the public notice in the post office and public places of the city nearest the MSWLF; by posting the public notice near the entrance to the MSWLF and in nearby places; and by publishing the public notice in local newspapers and periodicals or, if appropriate, in a newspaper of general circulation.

(2) The public notice shall be mailed by the department to any person upon request.

(3) Upon request, the department shall add the name of any person or group to the mailing list, described in rule 567—4.2(455B), to receive copies of all public notices concerning proposed MSWLF permits and postpermit actions within the state or within a certain geographical area and shall mail a copy of all public notices to such persons.

c. The department shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the MWSLF permit application or amendment request. All written comments submitted during the 30-day comment period shall be retained by the department and considered by the department in the formulation of the department's final determinations with

respect to the application or amendment request. The period for comment may be extended at the discretion of the department.

d. The contents of the public notice of a proposed MSWLF permit or amendment shall include at least the following:

(1) The name, address, and telephone number of the department.

(2) The name and address of each applicant.

(3) A brief description of each applicant's activities or operations which result in the submittal of the permit application or the request for amendment.

(4) A statement of the department's tentative determination to approve or deny an MSWLF permit issuance or amendment for the actions described in the permit application or amendment request.

(5) A brief description of the procedures for the formulation of final determinations, including the 30-day comment period required by paragraph 113.4(12)"c" and any other means by which interested persons may influence or comment upon those determinations.

(6) A statement that any person may submit written and signed comments, or may request a public hearing, or both, on the proposed permit or amendment. A statement of procedures to request a public hearing pursuant to paragraph 113.4(12)"f" shall be included.

(7) Locations where copies of the permit application or amendment request and the proposed permit or amendment may be reviewed, including the closest department office, and the times at which the copies shall be available for public inspection.

e. Prior to the issuance of an MSWLF permit or amendment, the department shall notify other appropriate government agencies of each complete application for a permit or request for permit amendment and shall provide such agencies an opportunity to submit their written views and recommendations. Procedures for such notification shall include the following:

(1) At the time of issuance of public notice, the department shall mail the public notice to any federal, state, or local agency that may be affected by the issuance of the permit or amendment.

(2) Upon request, the department shall provide such agency with a copy of the permit application or amendment request and a copy of the proposed permit prepared pursuant to paragraph 113.4(12)"a."

(3) Each affected agency shall be afforded an opportunity to submit written recommendations to the department, which the department may incorporate into the permit if issued.

(4) Should the department fail to incorporate any written recommendation thus received, the department shall provide to the affected agency a written explanation of the reasons for failing to accept any written recommendation.

f. The applicant, any interested agency, person or group of persons may request or petition for a public hearing with respect to an MSWLF permit application or amendment request. Any such request shall clearly state issues and topics to be addressed at the hearing. Any such request or petition for public hearing must be filed with the department within the 30-day period prescribed in paragraph 113.4(12)"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 requests for hearing may be denied by the department. Instances of doubt should be resolved in favor of holding the hearing. Any hearing requested pursuant to this subrule shall be held in the geographical area of the MSWLF, or other appropriate area in the discretion of the department.

g. Public notice of any hearing held pursuant to paragraph 113.4(12)"e" shall be circulated at least as widely as was the notice of the permit application or amendment request.

(1) Notice shall be published in at least one newspaper of general circulation within the geographical area of the MSWLF;

(2) Notice shall be sent to all persons and government agencies which received a copy of the notice for the MSWLF permit application or amendment request;

(3) Notice shall be mailed to any person or group upon request; and

(4) Notice pursuant to subparagraphs 113.4(12)"g"(1) and (2) shall be made at least 30 days in advance of the hearing.

h. The contents of public notice of any hearing held pursuant to paragraph 113.4(12)"f" 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 issued for each permit application and amendment request, including permit or amendment 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) Locations where copies of the permit application or amendment request and the proposed permit or amendment may be reviewed, including the closest department office, and the times at which the copies shall be available for public inspection; and

(8) A brief description of the nature of the hearing, including the rules and procedures to be followed.

i. The department shall keep a record of the commenters and of the issues raised during the public participation process and shall prepare written responses to all comments received. At the time a final decision is made, the record and copies of the department's responses shall be made available to the public.

567—113.5(455B) Permit application requirements.

113.5(1) Unless otherwise authorized by the department, an MSWLF permit applicant shall submit, at a minimum, the following permit application information to the department:

a. The name, address and telephone number of:

(1) Owner of the site where the facility will be located.

(2) Permit applicant.

(3) Official responsible for the facility.

(4) Certified operator (i.e., "operator") responsible for operation of the facility.

(5) Professional engineer(s) (P.E.) licensed in the state of Iowa and retained for the design of the facility.

(6) Agency to be served by the facility, if any.

(7) Responsible official of agency to be served, if any.

b. An organizational chart.

c. A site exploration and characterization report for the facility that complies with the requirements of subrule 113.6(4).

d. Plans and specifications for the facility, and quality control and assurance (QC&A) plans, that comply with the requirements of subrule 113.7(6).

e. A development and operations (DOPs) plan for the facility, an emergency response and remedial action plan (ERRAP), and proof of MSWLF operator certification that comply with the requirements of rule 113.8(455B).

f. An environmental monitoring plan that complies with the requirements of rules 113.9(455B) and 113.10(455B).

g. The project goals and time lines, and other documentation as necessary to comply with subrule 113.4(10) and other requirements of the department if an RD&D permit is being requested or renewed.

h. Proof of financial assurance in compliance with rule 113.14(455B).

i. A closure and postclosure plan that complies with the requirements of rules 113.12(455B) and 113.13(455B).

113.5(2) Incomplete permit applications. If the department finds the permit application information to be incomplete, the department shall notify the applicant of that fact and of the specific deficiencies. If the applicant fails to correct the noted deficiencies within 30 days, the department may reject the application and return the application materials to the applicant. The applicant may reapply without prejudice.

567—113.6(455B) Siting and location requirements for MSWLFs. Information required to document compliance with the requirements of rule 113.6(455B) shall be consolidated and maintained in a site exploration and characterization report pursuant to subrule 113.6(4).

113.6(1) Local siting approval. The department will not consider a permit application for a new MSWLF unless local siting approval pursuant to Iowa Code section 455B.305A, if applicable, has been obtained.

113.6(2) Location restrictions. All MSWLFs shall comply with the following location restrictions.

a. Airports. For purposes of this chapter:

"Airport" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

"Bird hazard" means an increase in the likelihood of bird-aircraft collisions that may cause damage to the aircraft or injury to its occupants.

(1) A prohibition on locating a new MSWLF near certain airports was enacted in Section 503 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Ford Act), Pub. L. 106-181 (49 U.S.C. 44718 note). Section 503 prohibits the "construction or establishment" of new MSWLFs after April 5, 2000, within six miles of certain smaller public airports. The Federal Aviation Administration (FAA) administers the Ford Act and has issued guidance in FAA Advisory Circular 150/5200-34, dated August 26, 2000.

(2) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions that are located within 10,000 feet (3,048 meters) of any airport runway end used by turbojet aircraft or within 5,000 feet (1,524 meters) of any airport runway end used by piston-type aircraft only must demonstrate to the FAA that the units are designed and operated so that the MSWLF unit does not pose a bird hazard to aircraft. The owner or operator must place the demonstration of this requirement in the operating record and submit to the department a copy of the demonstration approved by the FAA.

(3) Owners or operators proposing to site new MSWLF units and lateral expansions within a five-mile radius of any airport runway end used by turbojet or piston-type aircraft must notify the affected airport and the FAA. A copy of these notifications shall be submitted to the department.

b. Floodplains. For purposes of this chapter:

"Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands that may be inundated by the 100-year flood.

"100-year flood" means a flood that has a 1 percent or greater chance of recurring in any given year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

"Washout" means the carrying away of solid waste by waters of the base flood.

Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions located in 100-year floodplains must demonstrate to the department that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment. The owner or operator must place the demonstration in the operating record and submit a copy of the demonstration to the department.

c. Wetlands. For purposes of this chapter:

"Wetlands" means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

New MSWLF units and lateral expansions shall not be located in wetlands, unless the owner or operator can make the following demonstrations to the department:

(1) Where applicable under Section 404 of the Clean Water Act or applicable state wetlands laws, the presumption that a practicable alternative to the proposed landfill is available which does not involve wetlands is clearly rebutted;

(2) The construction and operation of the MSWLF unit will not:

1. Cause or contribute to violations of any applicable state water quality standard;

2. Violate any applicable toxic effluent standard or prohibition under Section 307 of the Clean Water Act;

3. Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat protected under the Endangered Species Act of 1973; and

4. Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary;

(3) The MSWLF unit will not cause or contribute to significant degradation of wetlands. The owner or operator must demonstrate the integrity of the MSWLF unit and its ability to protect ecological resources by addressing the following factors:

1. Erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the MSWLF unit;

2. Erosion, stability, and migration potential of dredged and fill materials used to support the MSWLF unit;

3. The volume and chemical nature of the waste managed in the MSWLF unit;

4. Impacts on fish, wildlife, and other aquatic resources and their habitats from release of the solid waste;

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

5. The potential effects of catastrophic release of waste to wetlands and the resulting impacts on the environment; and

6. Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected;

(4) To the extent required under Section 404 of the Clean Water Act or applicable state wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent practicable as required by subparagraph 113.6(2)"c"(1), then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of human-made wetlands); and

(5) Sufficient information is available to make a reasonable determination with respect to these demonstrations.

d. Fault areas. For the purposes of this chapter:

"Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

"Displacement" means the relative movement of any two sides of a fault measured in any direction.

"Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present.

New MSWLF units and lateral expansions shall not be located within 200 feet (60 meters) of a fault that has had displacement in Holocene time unless the owner or operator demonstrates to the department that an alternative setback distance of less than 200 feet (60 meters) will prevent damage to the structural integrity of the MSWLF unit and will be protective of human health and the environment.

e. Seismic impact zones. For the purposes of this chapter:

"Seismic impact zone" means an area with a 10 percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in 250 years.

"Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90 percent or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

"Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. "Lithified earth material" does not include human-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth's surface.

New MSWLF units and lateral expansions shall not be located in seismic impact zones, unless the owner or operator demonstrates to the department that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site. The owner or operator must place the demonstration in the operating record and submit a copy of the demonstration to the department.

f. Unstable areas. For purposes of this chapter:

"Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas may include poor foundation conditions, areas susceptible to mass movements, and Karst terranes.

"Structural components" means liners, leachate collection systems, final covers, run-on systems, runoff systems, and any other component used in the construction and operation of the MSWLF that is necessary for protection of human health and the environment.

"Poor foundation conditions" means those areas where features exist which indicate that a natural or human-induced event may result in inadequate foundation support for the structural components of an MSWLF unit.

"Areas susceptible to mass movement" means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the MSWLF unit, because of natural or human-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock fall.

"Karst terranes" means areas where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions located in an unstable area must demonstrate to the department that engineering measures have been incorporated into the MSWLF unit's design to ensure that the integrity of the structural components of the MSWLF unit will not be disrupted. The owner or operator must place the demonstration in the operating record and submit a copy of the demonstration to the department. The owner or operator must consider the following factors, at a minimum, when determining whether an area is unstable:

(1) On-site or local soil conditions that may result in significant differential settling;

(2) On-site or local geologic or geomorphologic features; and

(3) On-site or local human-made features or human-induced events (both surface and subsurface).

g. Threatened or endangered flora and fauna.

(1) All MSWLFs and lateral expansions shall prepare a comprehensive listing of plant and animal species. In preparing the listing, the permit applicant shall contact the department's Iowa Natural Areas Inventory with a request to search its records to determine the presence of, or habitat for, any threatened or endangered species or communities of flora or fauna on the proposed site. In the event that the department's Iowa Natural Areas Inventory does not contain records of threatened or endangered species or communities but their presence is suspected, then the permit applicant shall conduct a site survey.

(2) Should any threatened or endangered species be identified pursuant to subparagraph 113.6(2)"g"(1), the permit applicant shall demonstrate to the department that the MSWLF unit will not cause or contribute to significant degradation of the threatened or endangered species or communities.

h. Cultural resources.

(1) All MSWLFs and lateral expansions shall prepare a comprehensive listing of, and assessment of the impact on, any archaeologically, historically, or architecturally significant properties on the proposed site. To assess the impact, the permit applicant shall consult with the historic preservation bureau of the state historical society of Iowa.

(2) Should any significant cultural resources be identified pursuant to subparagraph 113.6(2)"h"(1), the permit applicant shall demonstrate to the department that the MSWLF unit will not cause or contribute to significant degradation of those cultural resources.

i. Separation from groundwater. The base of an MSWLF unit shall be situated so that the base of the proposed unit is at least 5 feet above the high water table unless a greater separation is required to ensure that there will be no significant adverse effect on groundwater or surface waters or a lesser separation is unlikely to have a significant adverse effect on groundwater or surface waters. Artificial means of lowering the high water table are acceptable. The separation of the base of an MSWLF unit from the high water table shall be measured and maintained in a manner acceptable to the department.

j. Wells and community water systems. An MSWLF unit shall not be within 1,000 feet of any well or community water system in existence at the time of receipt of the original permit application for the facility that is being used or could be used for human or livestock consumption. An MSWLF unit shall not be constructed if the projected plume modeled pursuant to subparagraph 113.6(3)"e"(6) is within 1,000 feet of any downgradient well or community water system. Groundwater monitoring wells are exempt from this requirement. The department may also exempt extraction wells utilized as part of a remediation system from this requirement. A new MSWLF unit shall not be within 1,000 feet of a downgradient agricultural drainage well.

k. Property line setback. An MSWLF unit shall be at least 50 feet from the adjacent property line.

l. Housing and sensitive populations. An MSWLF unit shall not be within 500 feet of an occupied residence, recreational area, child care facility, educational facility, or health care facility in existence at the time of receipt of the permit application, unless there is a written agreement between the MSWLF owner and such facility. The written agreement shall be filed with the county recorder for abstract of title purposes, and a copy submitted to the department.

113.6(3) Soil and hydrogeologic investigations. An MSWLF shall have a qualified groundwater scientist, as defined in paragraph 113.10(1)"d," develop and submit a work plan for department approval to conduct a soil and hydrogeologic investigation in accordance with this subrule. The purpose of this investigation is to obtain data to determine potential routes of contaminant migration via groundwater. Such information is vital for completion of the site exploration and characterization report, and the hydrologic monitoring system plan and design. This subrule sets forth the minimum requirements for soil and hydrogeologic investigations. The MSWLF shall comply with this subrule unless the department issues written approval due to specific site conditions.

a. Number of borings.

(1) A sufficient number of borings shall be made to accurately identify the stratigraphic and hydrogeologic conditions at the site.

(2) Excluding existing MSWLF unit areas, a minimum of one boring per acre is required for new MSWLF units.

(3) The department may issue written permission for fewer borings at an existing facility, or portion thereof, if justified by previous borings and analysis.

(4) The department may require a greater number of borings at a site, or portion thereof, due to complex hydrogeology or potential movement of contaminants.

b. Depth of borings. Unless otherwise approved by the department in writing, the following requirements shall apply to the depth of borings.

(1) All borings shall be a minimum of 25 feet deep and at least 10 feet below the water table.

(2) At a minimum, half of all borings shall extend 20 feet into the uppermost aquifer, 50 feet below the water table, or 10 feet into bedrock.

(3) At a minimum, one boring shall extend 10 feet into bedrock or 100 feet below the lowest ground surface elevation.

(4) All borings shall be of sufficient depth to correlate stratum between borings.

c. Boring method and soil samples.

(1) Continuous samples shall be collected for all borings, unless otherwise approved by the department in writing.

(2) Boring logs shall be as detailed as possible in describing each stratum.

(3) Samples shall be clearly marked, preserved and transported in accordance with laboratory procedures.

(4) The permit applicant shall keep and preserve samples until at least 30 days after the permit is issued.

(5) Soil samples from each stratum shall be tested for falling-head permeability and grain size distribution.

d. Conversion of or plugging borings.

(1) Borings may be converted to piezometers or monitoring wells. However, the conversion of such borings does not guarantee that more piezometers or monitoring wells will not be required in the department-approved hydrologic monitoring system plan and design.

(2) Borings not converted to piezometers or monitoring wells shall be plugged and properly sealed so as not to create pathways for subsurface or surface pollution migration. Borings converted to piezometers or monitoring wells may still need to be partially plugged depending on the depth of the boring. Plugging shall be performed pursuant to paragraph 113.10(2)"d."

e. Soil and hydrogeologic investigation description and analysis. A soil and hydrogeologic investigation description and analysis shall be completed and maintained and, at a minimum, shall contain the following:

(1) The boring logs pursuant to subparagraph 113.6(3)"c"(2).

(2) A description of the properties of each soil and bedrock stratum as appropriate, including:

1. Soil texture and classification.
2. Particle size distribution.
3. Mineral composition, cementation, and soil structure.
4. Permeability, including horizontal and vertical permeability, and porosity.
5. Geologic structure, including strike, dip, folding, faulting and jointing.
6. Previous activities and infrastructure at the site that could affect geology and hydrogeology, such as but not limited to mining, quarry operations, borrow pits, waste disposal, storage tanks, pipelines, utilities and tile lines.
7. Lenses and other discontinuous units, voids, solution openings, layering, fractures, other heterogeneity, and the scale or frequency of the heterogeneity.

8. Correlation and continuity of stratum between borings.

(3) Descriptions of the hydrogeologic units within the saturated zone, including:

1. Thickness.

2. Hydraulic properties, including as appropriate, conductivity, transmissivity, storativity, and effective porosity.

3. Concentrations of chemical constituents listed in Appendix I present in the groundwater of hydrologic units and the source of those constituents, if known.

4. Role and effect of each hydrogeologic unit as an aquifer, aquitard, or perched saturated zone.

5. The actual or potential use of the aquifers as water supplies.

(4) Plan view maps, and a series of cross sections with two oriented perpendicular and two oriented parallel to the predominant directions of groundwater flow through the MSWLF unit, showing:

1. The extent of soil and bedrock strata.

2. The position of the water table.

3. The position of the uppermost aquifer.

4. Measured values of hydraulic head.

5. Equipotential lines and inferred groundwater streamlines of the water table, and the uppermost aquifer if different from the water table.

6. Location of soil and bedrock borings.

7. Location of piezometers and monitoring points, if any.

(5) A description and evaluation of horizontal and vertical groundwater flow which specifically addresses the following and their significance to the movement of pollutants carried by groundwater:

1. Local, intermediate and regional groundwater systems.

2. Groundwater recharge and discharge areas within and immediately surrounding the facility, including interactions with perennial and intermittent surface waters and how the facility affects recharge rates.

3. Existing and proposed groundwater and surface water withdrawals.

4. The effects of heterogeneity, fractures or directional differences in permeability on groundwater movement.

5. Directions of groundwater movement, including vertical components of flow, specific discharge rates and average linear velocities within the hydrologic strata.

6. Seasonal or other temporal fluctuations in hydraulic head.

7. The effect of existing and proposed MSWLF units.

(6) An analysis of potential impacts on groundwater and surface water quality, and water users, in the event of a theoretical release at the most downgradient portion of each MSWLF unit. The analysis shall at a minimum utilize contaminants and indicator parameters with high mobility in groundwater (e.g., chlorides, organic solvents). This analysis shall include:

1. Assumptions and approximations utilized, and why they were utilized.

2. If a model is utilized, a thorough description of models used and each model's capabilities and limitations, including the reliability and accuracy of the models in actual field tests.

3. Projected paths and rates of movement of contaminants found in leachate.

(7) Recommendations for the location of the proposed MSWLF unit and conceptual design based on hydrogeologic information.

113.6(4) Site exploration and characterization report. An MSWLF shall maintain a site exploration and characterization report. At a minimum, the site exploration and characterization report shall detail compliance with the requirements of rule 113.6(455B) and shall contain the following components.

a. A title page and index.

b. A legal description of the site.

c. Proof of the applicant's ownership of the site and legal entitlement to use the site as an MSWLF. If the applicant does not own the site, then proof of legal entitlement to the site, such as but not limited to a lease, must be submitted. Such legal entitlement must include the following:

(1) Provisions that allow continued disposal operations until closure of the facility.

(2) Provisions for the performance of facility closure operations.

(3) Provisions for postclosure care for at least a 30-year period after facility closure.

d. Proof of the applicant's local siting approval pursuant to Iowa Code section 455B.305A, if applicable.

e. Scaled maps or aerial photographs locating the boundaries of the facility and identifying:

(1) North and other principal compass points.

(2) Section lines and other legal boundaries.

(3) Zoning and land use within 0.5 miles.

(4) Haul routes to and from the facility, including load limits or other restrictions on those routes.

(5) Topography within 0.5 miles.

(6) Applicable setback distances and location requirements pursuant to rule 113.6(455B), including:

1. Airports within 6 miles of existing, new and planned MSWLF units.

2. Floodplains within or adjacent to the facility.

3. Wetlands within or adjacent to the facility.

4. Fault areas within 200 feet of existing, new and planned MSWLF units.

5. Seismic impact zones within or adjacent to the facility.

6. Unstable areas within or adjacent to the facility.

7. Location of threatened or endangered species within or adjacent to the facility.

8. Location of cultural resources within or adjacent to the facility.

9. Wells within 1,000 feet of upgradient existing, new and planned MSWLF units.

10. Community water systems within 1 mile of upgradient existing, new and planned MSWLF units.

11. Boundaries of the existing, new and planned MSWLF units and the facility property line.

12. Housing and sensitive populations within 500 feet of existing, new and planned MSWLF units.

f. The bird-aircraft hazard demonstration pursuant to paragraph 113.6(2)"a," if applicable.

g. The floodplain demonstration pursuant to paragraph 113.6(2)"b," if applicable.

h. The wetlands demonstration pursuant to paragraph 113.6(2)"c," if applicable.

i. The fault area demonstration pursuant to paragraph 113.6(2)"d," if applicable.

j. The seismic impact zone demonstration pursuant to paragraph 113.6(2)"e," if applicable.

k. The unstable area demonstration pursuant to paragraph 113.6(2)"f," if applicable.

l. The threatened or endangered flora and fauna demonstration pursuant to paragraph 113.6(2)"g," if applicable.

m. The cultural resources demonstration pursuant to paragraph 113.6(2)"h," if applicable.

n. Copies of written agreements with surrounding property owners pursuant to paragraph 113.6(2)"l," if applicable.

o. The soil and hydrogeologic investigation description and analysis pursuant to paragraph 113.6(3)"e."

567—113.7(455B) MSWLF unit design and construction standards. All MSWLF units shall be designed and constructed in accordance with this rule.

113.7(1) Predesign meeting with the department. A potential applicant for a new MSWLF unit may schedule a predesign meeting with the department's landfill permitting staff prior to beginning work on the plans and specifications of a modified or new MSWLF. The purpose of this meeting is to help minimize the need for revisions upon submittal of the official designs and specifications.

113.7(2) Plans and specifications.

a. Unless otherwise requested by the department, one copy of plans, specifications and supporting documents shall be sent to the department for review. Upon written department approval, the documents shall be submitted in triplicate to the department for proper distribution.

b. All new MSWLF units shall be constructed in compliance with the rules and regulations in effect at the time of construction. Previous department approvals of plans and specifications shall be superseded by the promulgation of new rules and regulations, and plans and specifications shall be submitted to the department again for approval prior to construction and operation.

113.7(3) General site design and construction requirements. An MSWLF shall have the following:

a. All-weather access roads to the facility.

b. A perimeter fence with a lockable gate(s) to help prevent unauthorized access.

c. A sign at the entrance to the facility specifying:

(1) Name and permit number of the facility.

(2) Days and hours that the facility is open to the public or a statement that the facility is not open to the public.

(3) A general list of materials that are not accepted.

(4) Telephone number of the official responsible for operation of the facility and the emergency contact person(s).

d. All-weather access roads within the facility.

e. Signs or pavement markings clearly indicating safe and proper on-site traffic patterns.

f. Adequate queuing distance for vehicles entering and exiting the property.

g. A scale certified by the Iowa department of agriculture and land stewardship.

113.7(4) MSWLF unit subgrade. The subgrade for a new MSWLF unit shall be constructed as follows:

a. All trees, stumps, roots, boulders, debris, and other material capable of deteriorating in situ material strength or creating a preferential pathway for contaminants shall be completely removed or sealed off prior to construction of the MSWLF unit.

b. The material beneath the MSWLF unit shall have sufficient strength to support the weight of the unit during all phases of construction and operation. The loads and loading rate shall not cause or contribute to failure of the liner and leachate collection system.

c. The total settlement or swell of the MSWLF unit's subgrade shall not cause or contribute to failure of the liner and leachate collection system.

d. If the in situ material of the MSWLF unit's subgrade cannot meet the requirements of paragraphs 113.7(4)"b" and 113.7(4)"c," then such material shall be removed and replaced with material capable of compliance.

e. The subgrade of an MSWLF unit shall be constructed and graded to provide a smooth working surface on which to construct the liner.

f. The subgrade of an MSWLF unit shall not be constructed in or with frozen soil.

113.7(5) MSWLF unit liners and leachate collection systems. The liner and leachate collection system for a new MSWLF unit shall be constructed in accordance with the requirements of this subrule. All active portions must have a composite liner or an alternative liner approved by the department. An MSWLF unit must have a functioning leachate collection system during its active life.

a. Liner systems. An MSWLF unit shall have a liner system that complies with either the composite liner requirements of subparagraph 113.7(5)"a"(1) or an alternative liner system that complies with the requirements of subparagraph 113.7(5)"a"(2). Liners utilizing compacted soil must place the compacted soil in lifts no thicker than 8 inches after compaction.

(1) Composite liner systems.

1. A composite liner consists of two components, an upper flexible membrane liner (FML) and a lower compacted soil liner.

2. The upper component must consist of a minimum 30-mil flexible membrane liner (FML). FML components consisting of high-density polyethylene (HDPE) shall be at least 60 mil thick. The FML component must be installed in direct and uniform contact with the lower compacted soil component.

3. The lower component must consist of at least a 2-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} centimeters per second (cm/sec). The compacted soil must be placed in lifts no thicker than 8 inches after compaction.

4. The composite liner must slope toward the leachate collection pipes at a slope greater than or equal to 2 percent. The side slopes of the composite liner shall not exceed a slope of 33 percent.

(2) Alternative liner systems.

1. The design must ensure that the concentration values listed in Table I of rule 113.7(455B) will not be exceeded in the uppermost aquifer at the relevant point of compliance, as specified pursuant to numbered paragraph 113.7(5)"a"(2)"2." Alternative liners utilizing compacted soil must place the compacted soil in lifts no thicker than 8 inches.

2. The relevant point of compliance specified by the department must be within 50 feet of the planned liner or waste boundary, unless site conditions dictate otherwise, and downgradient of the facility with respect to the hydrologic unit being monitored in accordance with subparagraph 113.10(2)"a"(2) and shall be located on land owned by the owner of the MSWLF unit. The relevant point of compliance specified by the department shall be at least 50 feet from the property line of the facility.

3. When approving an alternative liner design, the department shall consider at least the following factors:

- The hydrogeologic characteristics of the facility and surrounding land.
- The climatic factors of the area.
- The volume and physical and chemical characteristics of the leachate.
- The sensitivities and limitations of the modeling demonstrating the applicable point of compliance.
- Practicable capability of the owner or operator.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

4. The alternative liner must slope toward the leachate collection pipes at a slope greater than or equal to 2 percent. The side slopes of the alternative liner shall not exceed a slope of 33 percent.

Table I

Chemical	MCL (mg/l)
Arsenic	0.01
Barium	1.0
Benzene	0.005
Cadmium	0.01
Carbon tetrachloride	0.005
Chromium (hexavalent)	0.05
2,4-Dichlorophenoxy acetic acid	0.1
1,4-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
Endrin	0.0002
Fluoride	4
Lindane	0.004
Lead	0.05
Mercury	0.002
Methoxychlor	0.1
Nitrate	10
Selenium	0.01
Silver	0.05
Toxaphene	0.005
1,1,1-Trichloromethane	0.2
Trichloroethylene	0.005
2,4,5-Trichlorophenoxy acetic acid	0.01
Vinyl chloride	0.002

b. Leachate collection system. Unless otherwise approved by the department, all MSWLF units shall have a leachate collection system that complies with the following requirements.

(1) The leachate collection system shall be designed and constructed to function for the entire active life of the facility and the postclosure period.

(2) The leachate collection system shall be of a structural strength capable of supporting waste and equipment loads throughout the active life of the facility and the postclosure period.

(3) The leachate collection system shall be designed and constructed to minimize leachate head over the liner at all times. An MSWLF unit shall have a leachate collection system that maintains less than a 30-centimeter (i.e., 12-inch) depth of leachate over the liner. The leachate collection system shall have a method for accurately measuring the leachate head on the liner at the system's lowest point(s) within the MSWLF unit (e.g., sumps). Furthermore, an additional measuring device shall be installed to measure leachate directly on the liner but not in the sump or within the collection trench. Leachate head measurements from cleanout lines or manholes are not acceptable for the second measurement. All such measurement devices shall be in place before waste is placed in the MSWLF unit.

(4) If the leachate collection system is not designed and constructed factoring in leachate recirculation or bioreactor operations, the department may prohibit such activities within the MSWLF unit.

(5) The collection pipes shall be of a length and cross-sectional area that allow for cleaning and inspection through the entire length of all collection pipes at least once every three years. The collection pipes shall not be designed or constructed with sharp bends that prevent cleaning or inspection along any section of the collection pipe or that may cause the collection pipe to be damaged during cleaning or inspection.

(6) Leachate collection system designs shall attempt to minimize the potential for clogging due to mass loading.

(7) No component of the leachate collection system shall have a hydraulic conductivity of less than 1×10^{-2} cm/sec. Components of the leachate collection system shall have a minimal carbonate content. The leachate collection system shall be at least 6 inches thick over the liner and designed and constructed as follows:

1. A geotextile cushion over the flexible membrane liner (FML), if the liner utilizes an FML. The geotextile's mass shall be determined based on the allowable pressure on the geomembrane.

2. Collection pipe(s) at least 4 inches in diameter at the base of the liner slope(s), surrounded by the high hydraulic-conductivity material listed in numbered paragraph 113.7(5)"b"(7)"3" below. The collection pipe shall have slots or holes large enough to minimize the potential for clogging from fines conveyed by incoming leachate.

3. One of the following high hydraulic-conductivity materials:

- High hydraulic-conductivity material (e.g., gravel) of uniform size and free of fines. The high hydraulic-conductivity material shall be at least 6 inches in depth and provide at least 2 inches of cover over the top of the collection pipes. The high hydraulic-conductivity material shall be surrounded by a geotextile listed in numbered paragraph 113.7(5)"b"(7)"4"; or
- A geosynthetic drainage media (e.g., geonet) with a minimum thickness of 300 mil or greater sized in accordance with appropriate design calculations. The geonet shall be covered on both sides with the geotextiles specified in numbered paragraphs 113.7(5)"b"(7)"1" and "4."

4. Geotextile designed to prevent the coarse granular material listed in numbered paragraph 113.7(5)"b"(7)"5" below from filtering into the high hydraulic-conductivity material. However, the geotextile shall not filter out fines being transmitted through the coarse granular material.

5. Coarse granular (e.g., coarse sand) top layer at least 6 inches thick to separate waste from the geotextile listed in numbered paragraph 113.7(5)"b"(7)"4." The coarse granular layer shall have a fines content of less than 1 percent passing a #200 sieve. The coarse granular layer shall separate the waste from the liner and the rest of the leachate collection system while readily transmitting leachate.

(8) Manholes within the MSWLF unit shall be designed to minimize the potential for stressing or penetrating the liner due to friction on the manhole exterior from waste settlement.

(9) The leachate drainage and collection system within the MSWLF unit shall not be used for the purpose of storing leachate. If leachate is to be stored, it shall be stored in designated storage structures outside of the MSWLF unit.

(10) All of the facility's leachate storage and management structures outside of the MSWLF unit (e.g., tanks, holding ponds, pipes, sumps, manholes, lift stations) and operations shall have containment structures or countermeasures adequate to prevent seepage to groundwater or surface water. The containment structures and countermeasures for leachate storage shall be at least as protective of groundwater at the liner of the MSWLF unit on a performance basis.

(11) The leachate storage structures shall be able to store at least 7 days of accumulated leachate at the maximum generation rate used in designing the leachate collection system.

Such minimum storage capacity may be constructed in phases over time so long as the 7-day accumulation capacity is maintained. The storage facility shall also have the ability to load tanker trucks in case sanitary sewer service is unavailable for longer than 7 days.

(12) The leachate collection system shall be equipped with valves or devices similar in effectiveness so that leachate can be controlled during maintenance.

(13) The leachate collection system shall be accessible for maintenance at all times and under all weather conditions.

(14) The permit holder shall annually submit a Leachate Control System Performance Evaluation (LCSPE) Report as a supplement to the facility Annual Water Quality Report, as defined in subrule 113.10(10). The report shall include an evaluation of the effectiveness of the system in controlling the leachate, leachate head levels and elevations, the volume of leachate collected and transported to the treatment works or discharged under any NPDES permits, records of leachate contaminants testing required by the treatment works, proposed additional leachate control measures, and an implementation schedule in the event that the constructed system is not performing effectively.

113.7(6) Quality control and assurance programs. All MSWLF units shall be constructed under the supervision of a strict quality control and assurance (QC&A) program to ensure that MSWLF units are constructed as well or better than the requirements of rule 113.7(455B) and the approved plans and specifications. At a minimum, such a QC&A program shall consist of the following.

a. The owner or operator shall designate a quality control and assurance (QC&A) officer. The QC&A officer shall be a professional engineer (P.E.) registered in Iowa. The QC&A officer shall not be an employee of the facility, the construction company or construction contractor. The owner or operator shall notify the department of the designated QC&A officer and provide the department with that person's contact information. The QC&A officer may delegate another person or persons who are not employees of the facility to supervise or implement an aspect of the QC&A program.

b. The QC&A officer shall document compliance with rule 113.7(455B), and the approved plans and specifications, for the following aspects of construction:

(1) The MSWLF unit's subgrade.

(2) The liner system, as applicable, below:

1. For composite liners, the lower compacted soil liner and each 8-inch lift thereof, and the flexible membrane liner (FML). For the compacted soil portion, a minimum of one field density test per 8-inch lift per acre shall be performed to verify that the correct density, as correlated to permeability by a laboratory analysis, has been achieved. A double-ring infiltrometer test shall be utilized as a final QC&A test of the compacted soil portion. Electrical resistivity testing is required for the FML. Destructive testing of the FML shall be kept to side slopes when continuous seams are utilized. Patches over FML destructive testing areas shall be checked with electrical resistivity testing.

2. For alternative liners, each component of the liner system as determined by the department. For the compacted soil portion, a minimum of one field density test per 8-inch lift per acre shall be performed to verify that the correct density, as correlated to permeability by a laboratory analysis, has been achieved. A double-ring infiltrometer test for the compacted soil portion shall be utilized as a final QC&A test of that component and may be performed on a separate test pad.

(3) The leachate collection, conveyance and storage systems.

(4) Any other aspect of construction as required by the department.

c. A sampling and testing program shall be designed and implemented by the QC&A officer as part of the QC&A program. The sampling and testing program shall:

(1) Verify full compliance with the requirements of rule 113.7(455B), and the approved plans and specifications.

(2) Be designed by the QC&A officer and approved by the department prior to construction of the MSWLF unit.

(3) Detail how each stage of construction will be verified for full compliance with the requirements of rule 113.7(455B), and the approved plans and specifications.

(4) Be based on statistically significant sampling techniques and establish criteria for the acceptance or rejection of materials and constructed components of the MSWLF unit.

(5) Detail what actions will take place to remedy and verify any material or constructed component that is not in compliance with the requirements of rule 113.7(455B), and the approved plans and specifications.

d. The QC&A officer shall document the QC&A program. Upon completion of the MSWLF unit construction, the QC&A officer shall submit a final report to the department that verifies compliance with the requirements of rule 113.7(455B), and the approved plans and specifications. A copy of the final report shall also be maintained by the facility in the operating record. At a minimum, the final report shall include the following.

(1) A title page and index.

(2) The name and permit number of the facility.

(3) Contact information for the QC&A officer and persons delegated by the QC&A officer to supervise or implement an aspect of the QC&A program.

(4) Contact information for all construction contractors.

(5) Copies of daily reports containing the following information.

1. The date.

2. Summary of weather conditions.

3. Summary of locations on the facility where construction was occurring.

4. Summary of equipment, materials and personnel utilized in construction.

5. Summary of meetings held regarding the construction of the MSWLF unit.

6. Summary of construction progress.

7. Photographs of the construction progress, with descriptions of the time, subject matter and location of each photograph.

8. Details of sampling and testing program for that day. At a minimum, this report shall include details of where sampling and testing occurred, the methods utilized, personnel involved and test results.

9. Details of how any material or constructed component that was found not to be in compliance via the sampling and testing program was remedied.

(6) A copy of detailed as-built drawings with supporting documentation and photographic evidence. This copy shall also include a narrative explanation of changes from the original department-approved plans and specifications.

(7) A signed and sealed certification statement by the QC&A officer that the MSWLF unit was constructed as well or better than the requirements of rule 113.7(455B), and the approved plans and specifications.

113.7(7) Vertical and horizontal expansions of MSWLF units. All vertical and horizontal expansions of disposal airspace over existing and new MSWLF units shall comply with the following requirements.

a. Horizontal expansions shall, at a minimum, comply with the following requirements:

(1) Horizontal expansions are new MSWLF units and, at a minimum, shall be designed and constructed in accordance with subrules 113.7(4), 113.7(5) and 113.7(6).

(2) If a horizontal expansion abuts an MSWLF unit that does not comply with subrules 113.7(4), 113.7(5) and 113.7(6), then the abutment of the two MSWLF units shall be designed and constructed such that leachate from the expansion drains to the new MSWLF unit that complies with subrules 113.7(4), 113.7(5) and 113.7(6). Such a horizontal expansion must also comply with the following:

1. The abutment shall have a 20 percent minimum slope and comply with subrules 113.7(4), 113.7(5) and 113.7(6).

2. The liner must extend from the basal liner to the top of the abutment.

(3) The slope stability of the horizontal expansion between the existing unit and new MSWLF unit shall be analyzed. The interface between two MSWLF units shall not cause a slope failure of either of the MSWLF units.

(4) A horizontal expansion may include a vertical elevation increase of an existing MSWLF unit, pursuant to paragraph 113.7(7)"b," if approved by the department.

b. Vertical expansions shall, at a minimum, comply with the following requirements:

(1) A vertical expansion of an MSWLF unit shall not be allowed if the MSWLF unit does not comply with subrules 113.7(4), 113.7(5) and 113.7(6).

(2) An analysis of the structural impacts of the proposed vertical expansion on the liner and leachate collection system shall be completed. The vertical expansion shall not contribute to the structural failure of the liner and leachate collection system.

(3) An analysis of the impact of the proposed vertical expansion on leachate generation shall be completed. The vertical expansion shall not overload the leachate collection system or contribute to excess head on the liner.

(4) An analysis of the effect of the proposed vertical expansion on run-on, runoff and discharges into waters of the state shall be completed. The vertical expansion shall not cause a violation of subrule 113.7(8).

(5) The proposed vertical expansion shall be in compliance with the final slopes required at closure pursuant to paragraph 113.12(1)"e."

(6) An analysis of the potential impact of the proposed vertical expansion on litter generation shall be completed. Landfill management strategies may need to be amended to help prevent increased litter.

(7) An analysis of the impact of the proposed vertical expansion on lines-of-sight and any visual buffering utilized by the landfill shall be completed.

113.7(8) Run-on and runoff control systems.

a. Owners or operators of all MSWLF units must design, construct, and maintain the following:

(1) A run-on control system to prevent flow onto the active portion of the landfill during the peak discharge from a 25-year storm;

(2) A runoff control system from the active portion of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

b. Runoff from the active portion of the MSWLF unit must be handled in accordance with paragraph 113.10(1)"a."

567—113.8(455B) Operating requirements. The requirements of this rule shall be consolidated in a development and operations plan (DOPs) pursuant to subrule 113.8(4) and the emergency response and remedial action plan (ERRAP) pursuant to subrule 113.8(5), as applicable.

113.8(1) Prohibited operations and activities. For the purposes of this subrule, "regulated hazardous waste" means a solid waste that is a hazardous waste, as defined in 40 CFR 261.3, or that is not excluded from federal regulation as a hazardous waste under 40 CFR 261.4(b).

a. Waste screening for prohibited materials. Owners or operators of all MSWLF units must implement a program at the facility for detecting and preventing the disposal of regulated hazardous wastes, polychlorinated biphenyls (PCB) wastes and other prohibited wastes listed in paragraph 113.8(1)"b." This program must include, at a minimum:

(1) Random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain regulated hazardous wastes, PCB wastes or other prohibited wastes listed in paragraph 113.8(1)"b";

(2) Records of any inspections;

(3) Training of facility personnel to recognize regulated hazardous wastes, PCB wastes and other prohibited wastes listed in paragraph 113.8(1)"b"; and

(4) Notification of the EPA regional administrator if a regulated hazardous wastes or PCB wastes is discovered at the facility.

b. Materials prohibited from disposal. The following wastes shall not be accepted for disposal by an MSWLF. Some wastes may be banned from disposal via the multiple categories listed below.

(1) Hazardous waste, whether it is a chemical compound specifically listed by EPA as a regulated hazardous waste or a characteristic hazardous waste pursuant to the characteristics below, unless generated by a household:

1. Ignitable in that the waste has a flash point (i.e., it will ignite) at a temperature of less than 140 degrees Fahrenheit.

2. Corrosive in that the waste has a pH less than 2 or greater than 12.5.

3. Reactive in that the waste is normally unstable; reacts violently with water; forms an explosive mixture with water; contains quantities of cyanide or sulfur that could be released into the air in sufficient quantity to be a danger to human health; or can easily be detonated or exploded.

4. Toxicity characteristic leaching procedure (TCLP) (EPA Method 1311) toxic, in that a TCLP listed chemical constituent exceeds the EPA assigned concentration standard in 40 CFR Part 261 or the department assigned concentration standard in Table I of rule 113.7(455B). Waste from a residential building that is contaminated by lead-based paint (i.e., the waste fails the TCLP test for lead only) may be disposed of in an MSWLF unit. The purpose of this exclusion is to help prevent the exposure of children to lead-based paint. Therefore, the meaning of "residential building" in regard to this TCLP exclusion shall be interpreted broadly and include any building which children or parents may utilize as a residence (temporarily or permanently). Such residential buildings include, but are not limited to, single family homes, apartment buildings, townhomes, condominiums, public housing, military barracks, nursing homes, hotels, motels, bunkhouses, and campground cabins.

(2) Polychlorinated biphenyl (PCB) wastes with a concentration equal to or greater than 50 parts per million (ppm).

(3) Free liquids, liquid waste and containerized liquids. For purposes of this subparagraph, "liquid waste" means any waste material that is determined to contain "free liquids" as defined by Method 9095B (Paint Filter Liquids Test), as described in Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods (EPA Pub. No. SW-846). For

the purposes of this subparagraph, "gas condensate" means the liquid generated as a result of the gas recovery process(es) at the MSWLF unit. However, free liquids and containerized liquids may be placed in MSWLF units if:

1. The containerized liquid is household waste other than septic waste. The container must be a small container similar in size to that normally found in household waste;

2. The waste is leachate or gas condensate derived from the MSWLF unit, whether it is a new or existing MSWLF unit or lateral expansion, and is designed with a composite liner and leachate collection system as described in paragraph 113.7(5)"a." The owner or operator must demonstrate compliance with this subparagraph and place the demonstration in the operating record; or

3. The MSWLF unit is a research, development and demonstration (RD&D) project in which the department has authorized the addition of liquids and meets the applicable requirements of subrule 113.4(10).

(4) Septage, which is the raw material, liquids and pumpings from a septic system, unless treated pursuant to 567—Chapter 68.

(5) Appliances as defined pursuant to 567—Chapter 118, unless there is documentation that the appliance has been demanufactured pursuant to 567—Chapter 118.

(6) Radioactive waste, excluding luminous timepieces and other items using very small amounts of tritium.

(7) Infectious waste, unless managed and disposed of pursuant to 567—Chapter 109.

(8) Hot loads, meaning solid waste that is smoking, smoldering, emitting flames or hot gases, or otherwise indicating that the solid waste is in the process of combustion or close to igniting. Ash that has not been fully quenched or cooled is considered a hot load. Such wastes may be accepted at the gate, but shall be segregated and completely extinguished and cooled in a manner as safe and responsible as practical before disposal.

(9) Asbestos-containing material (ACM) waste with greater than 1 percent asbestos, unless managed and disposed of pursuant to 567—Chapter 109.

(10) Petroleum-contaminated soil, unless managed and remediated pursuant to 567—Chapter 120.

(11) Grit and bar screenings, and grease skimmings, unless managed and disposed of pursuant to 567—Chapter 109.

(12) Waste tires, unless each tire is processed into pieces no longer than 18 inches on any side. The department encourages the recycling of all waste tires, even if processed to disposal standards.

(13) Yard waste.

(14) Lead-acid batteries.

(15) Waste oil and materials containing free-flowing waste oil. Materials contaminated with waste oil may be disposed of if no free-flowing oil is retained in the material, and the material is not a hazardous waste.

(16) Baled solid waste, unless the waste is baled on site after the waste has been visually inspected for prohibited materials.

c. Open burning and fire hazards. No open burning of any type shall be allowed within the permitted boundary of an MSWLF facility. The fueling of vehicles and equipment, and any other activity that may produce sparks or flame, shall be conducted at least 50 feet away from the working face.

d. Scavenging and salvaging. Scavenging shall not be allowed at the MSWLF facility. However, salvaging by MSWLF operators may be allowed.

e. Animal feeding and grazing. Feeding animals MSW shall not be allowed at an MSWLF facility. The grazing of domestic animals on fully vegetated areas of the MSWLF facility not used for disposal, including closed MSWLF units, may be allowed by the department so long as the animals do not cause damage or interfere with operations, inspections, environmental monitoring and other required activities. Large, hoofed animals (including but not limited to buffalo, cattle, llamas, pigs, and horses) shall not be allowed on closed MSWLF units.

113.8(2) Disposal operations and activities. All MSWLFs shall comply with the following requirements.

a. Survey controls and monuments. Survey controls and monuments shall be maintained as follows.

(1) The property boundary, the permitted boundary and the boundaries of all MSWLF units shall be surveyed and marked by a professional land surveyor at least once prior to closure.

(2) Prior to waste placement, all new MSWLF unit boundaries shall be surveyed and marked by a professional engineer.

(3) Survey monuments shall be established to check vertical elevations and the progression of fill sequencing. The survey monuments shall be established and maintained by a professional land surveyor.

(4) All survey stakes and monuments shall be clearly marked.

(5) A professional engineer shall biennially inspect all survey monuments and replace missing or damaged survey monuments.

b. First lift. The first lift and initial placement of MSW over a new MSWLF unit liner and leachate collection system shall comply with the following requirements.

(1) Waste shall not be placed in the new MSWLF unit until the QC&A officer has submitted a signed and sealed final report to the department pursuant to paragraph 113.7(6)"d" and that report has been approved by the department.

(2) Construction and earth moving equipment shall not operate directly on the liner and leachate management system. Waste disposal operations shall begin at the edge of the new MSWLF unit by pushing MSW out over the liner and leachate collection system. Compactors and other similarly heavy equipment shall not operate directly on the leachate collection system until a minimum of 4 feet of waste has been mounded over the top of the leachate collection system.

(3) Construction and demolition debris and materials clearly capable of spearing through the leachate collection system and liner shall not be placed in the first 4 feet of waste over the top of the leachate collection system. The first 4 feet of waste shall consist of select waste that is unlikely to damage the liner and performance of the leachate collection system.

(4) At least 4 feet of waste, cover material, or alternative cover material, approved pursuant to 567—Chapter 108, shall be placed over the top of the leachate collection system in the bottom of the MSWLF unit before December 31 of the year in which construction of the new MSWLF unit begins. The waste depth shall be verified by surveying the top of the leachate collection system and the top of the cover material over the waste in the new MSWLF unit. The owner or operator must place documentation of these measurements in the operating record and submit a copy to the department.

c. Fill sequencing. The rate and phasing of disposal operations shall comply with the following requirements.

(1) The fill sequencing shall be planned and conducted in a manner and at a rate that do not cause a slope failure, lead to extreme differential settlement, or damage the liner and leachate collection system.

(2) The fill sequencing shall be planned and conducted in a manner compliant with the run-on and runoff requirements of subrule 113.7(8) and surface water requirements of rule 113.10(455B).

d. Working face. The working face shall comply with the following requirements.

(1) The working face shall be no larger than necessary to accommodate the rate of disposal in a safe and efficient manner.

(2) The working face shall not be so steep as to cause heavy equipment and solid waste collection vehicles to roll over or otherwise lose control.

(3) Litter control devices of sufficient size to help prevent blowing litter shall be utilized at the working face. The operation of the working face shall attempt to minimize blowing litter.

(4) The operation of the working face shall prevent the harborage of vectors and attempt to minimize the attraction of vectors.

(5) Employees at the working face shall be trained to visually recognize universal symbols, markings and indications of prohibited wastes pursuant to paragraph 113.8(1)"b."

e. Special wastes. Special wastes shall be managed and disposed of pursuant to 567—Chapter 109.

f. Cover material and alternative cover material. Pursuant to 567—Chapter 108, alternative cover material of an alternative thickness (e.g., tarps, spray covers) may be authorized if the owner or operator demonstrates to the approval of the department that the alternative material and thickness control vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment. Cover material or alternative cover material shall be available for use during all seasons in all types of weather. Cover material and alternative cover material shall be utilized as follows unless otherwise approved by the department pursuant to 567—Chapter 108:

(1) Daily cover. Six inches of cover material or alternative cover material shall be placed and maintained over waste in the active portion at the end of each operating day, or at more frequent intervals if necessary, to control vectors, fires, odors, blowing litter, and scavenging.

(2) Intermediate cover. At least 1 foot of compacted cover material or alternative cover material shall be placed and maintained over waste in the active portion that has not or will not receive more waste for at least 30 days. At least 2 feet of compacted cover material or alternative cover material shall be placed and maintained over waste in the active portion that has not or will not receive waste for at least 180 days. Such active portions shall be graded to manage run-on and runoff pursuant to subrule 113.7(8). Such active portions shall be seeded if they will not receive waste for a full growing season.

(3) Scarification of cover. To help prevent leachate seeps by aiding the downward flow of leachate, cover material or alternative cover material, which prevents the downward flow of leachate and is at least 5 feet from the outer edge of the MSWLF unit, shall be scarified prior to use of that area as a working face. Cover material or alternative cover material that does not impede the downward flow of leachate, as approved by the department, does not require scarification. Scarification may be as simple as the spearing or breaking up of a small area of the cover. Areas of intermediate cover may require removal of some of the cover material or alternative cover material to aid the downward flow of leachate.

(4) Final cover. Final cover over an MSWLF unit that is to be closed shall be constructed and maintained according to the closure and postclosure requirements of rules 113.12(455B) and 113.13(455B).

g. Leachate seeps. Leachate seeps shall be contained and plugged immediately. Leachate seeps shall not be allowed to reach waters of the state. Soils outside of the MSWLF unit that are contaminated by a leachate seep shall be excavated and then disposed of within the MSWLF unit. Such soils may be used for daily cover material.

h. Leachate recirculation. The department must approve an MSWLF unit for leachate recirculation. The primary goal of the leachate recirculation system is to help stabilize the waste in a more rapid, but controlled, manner. The leachate recirculation system shall not contaminate waters of the state, contribute to erosion, damage cover material, harm vegetation, or spray persons at the MSWLF facility.

i. Differential settlement. Areas of differential settlement sufficient to interfere with runoff and run-on shall be brought back up to the contours of the surrounding active portion. Differential settlement shall not be allowed to cause ponding of water on the active portion.

113.8(3) Facility operations and activities. All MSWLFs shall comply with the following requirements.

a. Controlled access. Owners or operators of all MSWLF units must control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes by using artificial barriers, natural barriers, or both, as appropriate to protect human health and the environment.

b. Scales and weights. A scale certified by the Iowa department of agriculture and land stewardship shall weigh all solid waste collection vehicles and solid waste transport vehicles. The owner or operator shall maintain a record of the weight of waste disposed of.

c. All-weather access to disposal. A disposal area shall be accessible during all weather conditions.

d. Salvaged and processed materials. Salvaged and processed materials (e.g., scrap metal, compost, mulch, aggregate, tire chips) shall be managed and stored in an orderly manner that does not create a nuisance or encourage the attraction or harborage of vectors.

e. Vector control. Owners or operators of all MSWLF units must prevent or control the on-site populations of vectors using techniques appropriate for the protection of human health and the environment.

f. Litter control. The operator shall take steps to minimize the production of litter and the release of litter off site of the facility. All litter off site of the facility shall be collected by the end of each operating day unless prevented by unsafe working conditions. On-site litter shall be collected daily unless prevented by unsafe working conditions. A dated record of unsafe conditions that prevented litter collection activities shall be maintained by the facility.

g. Dust. The operator shall take steps to minimize the production of dust so that unsafe or nuisance conditions are prevented. Leachate shall not be used for dust control purposes.

h. Mud. The operator shall take steps to minimize the tracking of mud by vehicles exiting the facility so that slick or unsafe conditions are prevented.

i. Leachate and wastewater treatment. The leachate management system shall be managed and maintained pursuant to the requirements of paragraph 113.7(5)"b." Leachate collection pipes shall be cleaned and inspected as necessary, but not less than once every three years. Leachate and wastewater shall be treated as necessary to meet the pretreat-

ment limits, if any, imposed by an agreement between the MSWLF and a publicly owned wastewater treatment works (POTW) or by the effluent discharge limits established by an NPDES permit. Documentation of the POTW agreement or NPDES permit must be submitted to the department. All leachate and wastewater treatment systems shall conform to department wastewater design standards.

j. Financial assurance. Financial assurance shall be maintained pursuant to rule 113.14(455B).

113.8(4) Development and operations plan (DOPs). An MSWLF unit shall maintain a development and operations plan (DOPs). At a minimum, the DOPs shall detail how the facility will operate and how compliance with the requirements of rule 113.8(455B) will be maintained. The DOPs shall contain at least the following components.

a. A title page and table of contents.

b. Telephone number of the official responsible for the operation of the facility and an emergency contact person if different.

c. Service area of the facility and political jurisdictions included in that area.

d. Days and hours of operation of the facility.

e. Details of how the site will comply with the prohibited operations and activity requirements of subrule 113.8(1) and any related permit conditions.

f. Details of how the site will comply with the disposal operation and activity requirements of subrule 113.8(2) and any related permit conditions.

g. Details of how the site will comply with the facility operations and activity requirements of subrule 113.8(3), any related permit conditions, and any leachate and wastewater treatment requirements.

113.8(5) Emergency response and remedial action plan (ERRAP). All MSWLFs shall develop, submit to the department for approval, and maintain on site an ERRAP.

a. ERRAP submittal requirements. An updated ERRAP shall be submitted to the department with any permit modification or renewal request that incorporates facility changes that impact the ERRAP.

b. Content. The ERRAP is intended to be a quick reference during an emergency. The content of the ERRAP shall be concise and readily usable as a reference manual by facility managers and operators during emergency conditions. The ERRAP shall contain and address at least the following components, unless facility conditions render the specific issue as not applicable. To facilitate department review, the rationale for exclusion of any issues that are not applicable must be provided either in the body of the plan or as a supplement. Additional ERRAP requirements unique to the facility shall be addressed as applicable.

(1) Facility information.

1. Permitted agency.
2. DNR permit number.
3. Responsible official and contact information.
4. Certified operator and contact information.
5. Facility description.
6. Site and environs map.

(2) Regulatory requirements.

1. Iowa Code section 455B.306(6)"d" criteria citation.
2. Reference to provisions of the permit.

(3) Emergency conditions, response activities and remedial action.

1. Failure of utilities.
- Short-term (48 hours or less).
- Long-term (over 48 hours).

2. Evacuation procedures during emergency conditions.

3. Weather-related events.
- Tornado and wind events.
- Snow and ice.
- Intense rainstorms, mud, and erosion.
- Lightning strikes.
- Flooding.
- Event and postevent conditions.

4. Fire and explosions.
- Waste materials.
- Buildings and site.
- Equipment.
- Fuels.
- Utilities.
- Facilities.
- Working area.
- Hot loads.
- Waste gases.
- Explosive devices.

5. Regulated waste spills and releases.
- Waste materials.
- Leachate.
- Waste gases.
- Waste stockpiles and storage facilities.
- Waste transport systems.
- Litter and airborne particulate.
- Site drainage system.
- Off-site releases.

6. Hazardous material spills and releases.
- Load-check control points.
- Mixed waste deliveries.
- Fuels.
- Waste gases.
- Site drainage systems.
- Off-site releases.

7. Mass movement of land and waste.
- Earthquakes.
- Slope failure.
- Waste shifts.
- Waste subsidence.

8. Emergency and release notification and reporting.
- Federal agencies.
- State agencies.
- County and city agencies including emergency management services.
- News media.
- Public and private facilities with special populations within five miles.
- Reporting requirements and forms.

9. Emergency waste management procedures.
- Communications.
- Temporary discontinuation of services—short-term and long-term.
- Facilities access and rerouting.
- Waste acceptance.
- Wastes in process.

10. Primary emergency equipment inventory.
- Major equipment.
- Fire hydrants and water sources.
- Off-site equipment resources.

11. Emergency aid.
- Responder contacts.
- Medical services.
- Contracts and agreements.

12. ERRAP training requirements.
- Training providers.

- Employee orientation.
- Annual training updates.
- Training completion and record keeping.

13. Reference tables, figures and maps.

113.8(6) MSWLF operator certification. Sanitary landfill operators shall be trained, tested, and certified by a department-approved certification program.

a. A sanitary landfill operator shall be on duty during all hours of operation of a sanitary landfill, consistent with the respective certification.

b. To become a certified operator, an individual shall complete a basic operator training course that has been approved by the department or an alternative, equivalent training approved by the department and shall pass a departmental examination as specified by this subrule. An operator certified by another state may have reciprocity subject to approval by the department.

c. A sanitary landfill operator certification is valid until June 30 of the following even-numbered year.

d. The required basic operator training course for a certified sanitary landfill operator shall have at least 25 contact hours and shall address the following areas, at a minimum:

(1) Description of types of wastes.
(2) Interpreting and using engineering plans.
(3) Construction surveying techniques.
(4) Waste decomposition processes.
(5) Geology and hydrology.
(6) Landfill design.
(7) Landfill operation.
(8) Environmental monitoring.
(9) Applicable laws and regulations.
(10) Permitting processes.
(11) Leachate control and treatment.

e. Alternate basic operator training must be approved by the department. The applicant shall be responsible for submitting any documentation the department may require to evaluate the equivalency of alternate training.

f. Fees.

(1) The examination fee for each examination shall be $20.

(2) The initial certification fee shall be $8 for each one-half year of a two-year period from the date of issuance to June 30 of the next even-numbered year.

(3) The certification renewal shall be $24.

(4) The penalty fee shall be $12.

g. Examinations.

(1) The operator certification examinations shall be based on the basic operator training course curriculum.

(2) All individuals wishing to take the examination required to become a certified operator of a sanitary landfill shall complete the Operator Certification Examination Application, Form 542-1354. A listing of dates and locations of examinations is available from the department upon request. The application form requires the applicant to indicate the basic operator training course taken. Evidence of training course completion must be submitted with the application for certification. The completed application and the application fee shall be sent to the department and addressed to the central office in Des Moines. Application for examination must be received by the department at least 30 days prior to the date of examination.

(3) A properly completed application for examination shall be valid for one year from the date the application is approved by the department.

(4) Upon failure of the first examination, the applicant may be reexamined at the next scheduled examination. Upon failure of the second examination, the applicant shall be required to wait a period of 180 days between each subsequent examination.

(5) Upon each reexamination when a valid application is on file, the applicant shall submit to the department the examination fee at least ten days prior to the date of examination.

(6) Failure to successfully complete the examination within one year from the date of approval of the application shall invalidate the application.

(7) Completed examinations will be retained by the department for a period of one year after which they will be destroyed.

(8) Oral examinations may be given at the discretion of the department.

h. Certification.

(1) All operators who passed the operator certification examination by July 1, 1991, are exempt from taking the required operator training course. Beginning July 1, 1991, all operators will be required to take the basic operator training course and pass the examination in order to become certified.

(2) Application for certification must be received by the department within 30 days of the date the applicant receives notification of successful completion of the examination. All applications for certification shall be made on a form provided by the department and shall be accompanied by the certification fee.

(3) Applications for certification by examination which are received more than 30 days but less than 60 days after notification of successful completion of the examination shall be accompanied by the certification fee and the penalty fee. Applicants who do not apply for certification within 60 days of notice of successful completion of the examination will not be certified on the basis of that examination.

(4) For applicants who have been certified under other state mandatory certification programs, the equivalency of which has been previously reviewed and accepted by the department, certification without examination will be recommended.

(5) For applicants who have been certified under voluntary certification programs in other states, certification will be considered. The applicant must have successfully completed a basic operator training course and an examination generally equivalent to the Iowa examination. The department may require the applicant to successfully complete the Iowa examination.

(6) Applicants who seek Iowa certification pursuant to subparagraphs 113.8(6)"h"(4) and (5) shall submit an application for examination accompanied by a letter requesting certification pursuant to those subparagraphs. Application for certification pursuant to those subparagraphs shall be received by the department in accordance with subparagraphs 113.8(6)"h"(2) and (3).

i. Renewals. All certificates shall expire every two years, on even-numbered years, and must be renewed every two years to maintain certification. Application and fee are due prior to expiration of certification.

(1) Late application for renewal of a certificate may be made, provided that such late application shall be received by the department or postmarked within 30 days of the expiration of the certificate. Such late application shall be on forms provided by the department and accompanied by the penalty fee and the certification renewal fee.

(2) If a certificate holder fails to apply for renewal within 30 days following expiration of the certificate, the right to renew the certificate automatically terminates. Certification

may be allowed at any time following such termination, provided that the applicant successfully completes an examination. The applicant must then apply for certification in accordance with paragraph 113.8(6)"h."

(3) An operator shall not continue to operate a sanitary landfill after expiration of a certificate without renewal thereof.

(4) Continuing education must be earned during the two-year certification period. All certified operators must earn ten contact hours per certificate during each two-year period. The two-year period will begin upon issuance of certification.

(5) Only those operators fulfilling the continuing education requirements before the end of each two-year period will be allowed to renew their certificates. The certificates of operators not fulfilling the continuing education requirements shall be void upon expiration, unless an extension is granted.

(6) All activities for which continuing education credit will be granted must be related to the subject matter of the particular certificate to which the credit is being applied.

(7) The department may, in individual cases involving hardship or extenuating circumstances, grant an extension of time of up to three months within which the applicant may fulfill the minimum continuing education requirements. Hardship or extenuating circumstances include documented health-related confinement or other circumstances beyond the control of the certified operator which prevent attendance at the required activities. All requests for extensions must be made 60 days prior to expiration of certification.

(8) The certified operator is responsible for notifying the department of the continuing education credits earned during the period. The continuing education credits earned during the period shall be shown on the application for renewal.

(9) A certified operator shall be deemed to have complied with the continuing education requirements of this subrule during periods that the operator serves honorably on active duty in the military service; or for periods that the operator is a resident of another state or district having a continuing education requirement for operators and meets all the requirements of that state or district for practice there; or for periods that the person is a government employee working as an operator and is assigned to duty outside the United States; or for other periods of active practice and absence from the state approved by the department.

j. Discipline of certified operators.

(1) Disciplinary action may be taken on any of the following grounds:

1. Failure to use reasonable care or judgment or to apply knowledge or ability in performing the duties of a certified operator. Duties of certified operators include compliance with rules and permit conditions applicable to landfill operation.

2. Failure to submit required records of operation or other reports required under applicable permits or rules of the department, including failure to submit complete records or reports.

3. Knowingly making any false statement, representation, or certification on any application, record, report or document required to be maintained or submitted under any applicable permit or rule of the department.

(2) Disciplinary sanctions allowable are:

1. Revocation of a certificate.

2. Probation under specified conditions relevant to the specific grounds for disciplinary action. Additional education or training or reexamination may be required as a condition of probation.

(3) The procedure for discipline is as follows:

1. The department shall initiate disciplinary action. The commission may direct that the department investigate any alleged factual situation that may be grounds for disciplinary action under subparagraph 113.8(6)"j"(1) and report the results of the investigation to the commission.

2. A disciplinary action may be prosecuted by the department.

3. Written notice shall be given to an operator against whom disciplinary action is being considered. The notice shall state the informal and formal procedures available for determining the matter. The operator shall be given 20 days to present any relevant facts and indicate the operator's position in the matter and to indicate whether informal resolution of the matter may be reached.

4. An operator who receives notice shall communicate verbally, in writing, or in person with the department, and efforts shall be made to clarify the respective positions of the operator and department.

5. The applicant's failure to communicate facts and positions relevant to the matter by the required date may be considered when determining appropriate disciplinary action.

6. If agreement as to appropriate disciplinary sanction, if any, can be reached with the operator and the commission concurs, a written stipulation and settlement between the department and the operator shall be entered into. The stipulation and settlement shall recite the basic facts and violations alleged, any facts brought forth by the operator, and the reasons for the particular sanctions imposed.

7. If an agreement as to appropriate disciplinary action, if any, cannot be reached, the department may initiate formal hearing procedures. Notice and formal hearing shall be in accordance with 567—Chapter 7 related to contested and certain other cases pertaining to license discipline.

k. Revocation of certificates. Upon revocation of a certificate, application for certification may be allowed after two years from the date of revocation. Any such applicant must successfully complete an examination and be certified in the same manner as a new applicant.

l. Temporary certification. A temporary operator of a sanitary landfill may be designated for a period of six months when an existing certified operator is no longer available to the facility. The facility must make application to the department, explain why a temporary certification is needed, identify the temporary operator, and identify the efforts which will be made to obtain a certified operator. A temporary operator designation shall not be approved for greater than a six-month period except for extenuating circumstances. In any event, not more than one six-month extension to the temporary operator designation may be granted. Approval of a temporary operator designation may be rescinded for cause as set forth in paragraph 113.8(6)"k." All MSWLFs shall have at least one MSWLF operator trained, tested and certified by a department-approved program.

567—113.9(455B) Environmental monitoring and corrective action requirements for air quality and landfill gas. All MSWLFs shall comply with the following environmental monitoring and corrective action requirements for air quality and landfill gas.

113.9(1) Air criteria. Owners or operators of all MSWLFs must ensure that the units do not violate any applicable requirements developed under a state implementation plan (SIP) approved or promulgated by the department pursuant to Section 110 of the Clean Air Act.

113.9(2) Landfill gas. All MSWLFs shall comply with the following requirements for landfill gas. For purposes of

this subrule, "lower explosive limit" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25°C and atmospheric pressure.

a. Owners or operators of all MSWLF units must ensure that:

(1) The concentration of methane gas generated by the facility does not exceed 25 percent of the lower explosive limit for methane in facility structures (excluding gas pipeline, control or recovery system components);

(2) The concentration of methane gas does not exceed the lower explosive limit for methane at the facility property boundary; and

(3) Subsurface migration of methane gas does not occur beyond the property boundary of the facility.

b. Owners or operators of all MSWLF units must implement a routine methane-monitoring program to ensure that the standards of paragraph 113.9(2)"a" are met. Such a program shall include routine subsurface methane monitoring (e.g., at select groundwater wells, at gas monitoring wells).

(1) The type and frequency of monitoring must be determined based on the following factors:

1. Soil conditions;

2. The hydrogeologic conditions surrounding the facility;

3. The hydraulic conditions surrounding the facility;

4. The location of facility structures (including potential subsurface preferential pathways such as, but not limited to, pipes, utility conduits, drain tiles and sewers) and property boundaries; and

5. The locations of structures near the outside of the facility to, or along, which subsurface migration of methane gas may occur. Examples of such structures include, but are not limited to, houses, buildings, basements, crawl spaces, pipes, utility conduits, drain tiles and sewers.

(2) The minimum frequency of monitoring shall be quarterly.

c. If methane gas levels exceeding the limits specified in paragraph 113.9(2)"a" are detected, the owner or operator must:

(1) Immediately take all necessary steps to ensure protection of human health and notify the department and department field office with jurisdiction over the MSWLF;

(2) Within 7 days of detection, place in the operating record and notify the department and department field office with jurisdiction over the MSWLF of the methane gas levels detected and a description of the steps taken to protect human health; and

(3) Within 60 days of detection, implement a remediation plan for the methane gas releases, place a copy of the plan in the operating record, and notify the department and department field office with jurisdiction over the MSWLF that the plan has been implemented. The plan shall describe the nature and extent of the problem and the proposed remedy.

d. The owner or operator shall submit an annual report to the department detailing the gas monitoring sampling locations and results, any action taken, and the results of steps taken to address gas levels exceeding the limits of paragraph 113.9(2)"a" during the previous year. This report shall include a site map that delineates all structures, perimeter boundary locations, and other monitoring points where gas readings were taken. The site map shall also delineate areas of landfill gas migration outside the MSWLF units, if any. The report shall contain a narrative explaining and interpreting all of the data collected during the previous year. The report shall be due each year at a date specified by the department in the facility's permit.

567—113.10(455B) Environmental monitoring and corrective action requirements for groundwater and surface water. All MSWLFs shall comply with the following environmental monitoring and corrective action requirements for groundwater and surface water.

113.10(1) General requirements for environmental monitoring and corrective action for groundwater and surface water. The following general requirements apply to all provisions of this rule.

a. Surface water requirements. MSWLF units shall not:

(1) Cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act, including, but not limited to, the National Pollutant Discharge Elimination System (NPDES) requirements, pursuant to Section 402 of the Clean Water Act.

(2) Cause the discharge of a nonpoint source of pollution into waters of the United States, including wetlands, that violates any requirement of an areawide or statewide water quality management plan that has been approved under Section 208 or 319 of the Clean Water Act.

b. A new MSWLF unit must be in compliance with the groundwater monitoring requirements specified in subrules 113.10(2), 113.10(4), 113.10(5) and 113.10(6) before waste can be placed in the unit.

c. Once established at an MSWLF unit, groundwater monitoring shall be conducted throughout the active life and postclosure care period of that MSWLF unit as specified in rule 113.13(455B).

d. For the purposes of this rule, a "qualified groundwater scientist" means a scientist or an engineer who has received a baccalaureate or postgraduate degree in the natural sciences or engineering and has sufficient training and experience in groundwater hydrology and related fields demonstrated by state registration, professional certifications, or completion of accredited university programs that enable that individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action.

e. The department may establish alternative schedules for demonstrating compliance with:

(1) Subparagraph 113.10(2)"e"(3), pertaining to notification of placement of certification in operating record;

(2) Subparagraph 113.10(5)"c"(1), pertaining to notification that statistically significant increase (SSI) notice is in operating record;

(3) Subparagraphs 113.10(5)"c"(2) and (3), pertaining to an assessment monitoring program;

(4) Paragraph 113.10(6)"b," pertaining to sampling and analyzing Appendix II constituents;

(5) Subparagraph 113.10(6)"d"(1), pertaining to placement of notice (Appendix II constituents detected) in record and notification of placement of notice in record;

(6) Subparagraph 113.10(6)"d"(2), pertaining to sampling for Appendices I and II;

(7) Paragraph 113.10(6)"g," pertaining to notification (and placement of notice in record) of SSI above groundwater protection standard;

(8) Numbered paragraph 113.10(6)"g"(1)"4" and paragraph 113.10(7)"a," pertaining to assessment of corrective measures;

(9) Paragraph 113.10(8)"a," pertaining to selection of remedy and notification of placement in record;

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

(10) Paragraph 113.10(9)"f," pertaining to notification of placement in record (certification of remedy completed).

113.10(2) Groundwater monitoring systems. All MSWLFs shall have a groundwater monitoring system that complies with the following requirements:

a. A groundwater monitoring system must be installed that meets the following objectives:

(1) Yields groundwater samples from the uppermost aquifer that represent the quality of background groundwater that has not been affected by leakage from a unit. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where either:

1. Hydrogeologic conditions do not allow the owner or operator to determine which wells are hydraulically upgradient; or

2. Sampling at other wells will provide an indication of background groundwater quality that is as representative as or more representative than that provided by the upgradient wells.

(2) Yields groundwater samples from the uppermost aquifer that represent the quality of groundwater passing the relevant point of compliance specified by the department under numbered paragraph 113.7(5)"a"(2)"2." The downgradient monitoring system must be installed at the relevant point of compliance specified by the department under numbered paragraph 113.7(5)"a"(2)"2" that ensures detection of groundwater contamination in the uppermost aquifer. When physical obstacles preclude installation of groundwater monitoring wells at the relevant point of compliance at existing units, the downgradient monitoring system may be installed at the closest practicable distance, hydraulically downgradient from the relevant point of compliance specified by the department under numbered paragraph 113.7(5)"a"(2)"2," that ensures detection of groundwater contamination in the uppermost aquifer.

(3) Provides a high level of certainty that releases of contaminants from the site can be promptly detected. Downgradient monitoring wells shall be placed along the site perimeter, within 50 feet of the planned liner or waste boundary unless site conditions dictate otherwise, downgradient of the facility with respect to the hydrologic unit being monitored. Each groundwater underdrain system that discharges to surface water shall be included in the groundwater monitoring system, and the maximum drainage area routed through each outfall shall not exceed 10 acres unless approved by the department.

(4) Be designed and constructed with the theoretical release evaluation pursuant to subparagraph 113.6(3)"e"(6) taken into consideration.

b. For those facilities which are long-term, multiphase operations, the department may establish temporary waste boundaries in order to define locations for monitoring wells. The convergence of groundwater paths to minimize the overall length of the downgradient dimension may be taken into consideration in the placement of downgradient monitoring wells provided that the multiphase unit groundwater monitoring system meets the requirements of paragraphs 113.10(2)"a," 113.10(2)"c," 113.10(2)"d" and 113.10(2)"e" and will be as protective of human health and the environment as the individual monitoring systems for each MSWLF unit, based on the following factors:

(1) Number, spacing, and orientation of the MSWLF units;

(2) Hydrogeologic setting;

(3) Site history;

(4) Engineering design of the MSWLF units; and

(5) Type of waste accepted at the MSWLF units.

c. Monitoring wells must be constructed and cased by a well contractor certified pursuant to 567—Chapter 82 in a manner that maintains the integrity of the monitoring well borehole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of groundwater samples. The annular space (i.e., the space between the borehole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the groundwater. See Figure 1 for a general diagram of a properly constructed monitoring well.

(1) The owner or operator must notify the department that the design, installation, development, and decommission of any monitoring wells, piezometers and other measurement, sampling, and analytical devices documentation has been placed in the operating record.

(2) The monitoring wells, piezometers, and other measurement, sampling, and analytical devices must be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

(3) Each groundwater monitoring point must have a unique and permanent number, and that number must never change or be used again at the MSWLF. The types of groundwater monitoring points shall be identified as follows:

1. Monitoring wells by "MW# (Insert unique and permanent number)".

2. Piezometers by "PZ# (Insert unique and permanent number)".

3. Groundwater underdrain systems by "GU# (Insert unique and permanent number)".

(4) Monitoring well construction shall be performed by a certified well contractor (pursuant to 567—Chapter 82) and shall comply with the following requirements:

1. In all phases of drilling, well installation and completion, the methods and materials used shall not introduce substances or contaminants that may alter the results of water quality analyses.

2. Drilling equipment that comes into contact with contaminants in the borehole or aboveground shall be thoroughly cleaned to avoid spreading contamination to other depths or locations. Contaminated materials or leachate from wells must not be discharged onto the ground surface or into waters of the state so as to cause harm in the process of drilling or well development.

3. The owner or operator must ensure that, at a minimum, the well design and construction log information is maintained in the facility's permanent record using DNR Form 542-1277 and that a copy is sent to the department.

(5) Monitoring well casings shall comply with the following requirements:

1. The diameter of the inner well casing (see Figure 1) of a monitoring well shall be at least 2 inches.

2. Plastic-cased wells shall be constructed of materials with threaded and nonglued joints that do not allow water infiltration under the local subsurface pressure conditions and when the well is evacuated for sampling.

3. Well casing shall provide sufficient structural stability so that a borehole or well collapse does not occur. Flush joint casing is required for small diameter wells installed through hollow stem augers.

(6) Monitoring well screens shall comply with the following requirements:

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

1. Slot size shall be based on sieve analysis of the sand and gravel stratum or filter pack. The slot size must keep out at least 90 percent of the filter pack.

2. Slot configuration and open area must permit effective development of the well.

3. The screen shall be no longer than 10 feet in length, except for water table wells, in which case the screen shall be of sufficient length to accommodate normal seasonal fluctuations of the water table. The screen shall be placed 5 feet above and below the observed water table, unless local conditions are known to produce greater fluctuations. Screen length for piezometers shall be 2 feet or less. Multiple-screened, single-cased wells are prohibited.

(7) Monitoring well filter packs shall comply with the following requirements:

1. The filter pack shall extend at least 18 inches above and 12 inches below the well screen.

2. The size of the filter pack material shall be based on sieve analysis when sand and gravel are screened. The filter pack material must be 2.5 to 3 times larger than the 50 percent grain size of the zone being monitored.

3. In stratum that is neither sand nor gravel, the size of the filter pack material shall be selected based on the particle size of the zone being monitored.

(8) Monitoring well annular space shall comply with the following requirements:

1. Grouting materials must be installed from the top of the filter pack up in one continuous operation with a tremie tube.

2. The annular space between the filter pack and the frostline must be backfilled with bentonite grout.

3. The remaining annular space between the protective casing and the monitoring well casing must be sealed with bentonite grout from the frostline to the ground surface.

(9) Monitoring well heads shall be protected as follows:

1. Monitoring wells shall have a protective metal casing installed around the upper portion of the monitoring well casing as follows:

- The inside diameter of the protective metal casing shall be at least 2 inches larger than the outer diameter of the monitoring well casing.
- The protective metal casing shall extend from a minimum of 1 foot below the frostline to slightly above the well casing top; however, the protective casing shall be shortened if such a depth would cover a portion of the well screen.
- The protective casing shall be sealed and immobilized with a concrete plug around the outside. The bottom of the concrete plug must extend at least 1 foot below the frostline; however, the concrete plug shall be shortened if such a depth would cover a portion of the well screen. The top of the concrete plug shall extend at least 3 inches above the ground surface and slope away from the well. Soil may be placed above the plug and shall be at least 6 inches below the cap to improve runoff.
- The inside of the protective casing shall be sealed with bentonite grout from the frostline to the ground surface.
- A vented cap shall be placed on the monitoring well casing.
- A vented, locking cap shall be placed on the protective metal casing. The cap must be kept locked when the well is not being sampled.

2. All monitoring wells shall have a ring of brightly colored protective posts or other protective barriers to help prevent accidental damage.

3. All monitoring wells shall have a sign or permanent marking clearly identifying the permanent monitoring well number (MW#).

4. Run-on shall be directed away from all monitoring wells.

(10) Well development is required prior to the use of the monitoring well for water quality monitoring purposes. Well development must loosen and remove fines from the well screen and gravel pack. Any water utilized to stimulate well development must be of sufficient quality that future samples are not contaminated. Any gases utilized in well development must be inert gases that will not contaminate future samples. Following development, the well shall be pumped until the water does not contain significant amounts of suspended solids.

d. Groundwater monitoring points that are no longer functional must be sealed. Groundwater monitoring points that are to be sealed and are in a future waste disposal area shall be reviewed to determine if the method utilized to seal the monitoring point needs to be more protective than the following requirements. All abandoned groundwater-monitoring points (e.g., boreholes, monitoring wells, and piezometers) shall be sealed by a well contractor certified pursuant to 567—Chapter 82 and in accordance with the following requirements.

(1) The following information shall be placed in the operating record and a copy sent to the department:

1. The unique, permanent monitoring point number.

2. The reasons for abandoning the monitoring point.

3. The date and time the monitoring point was sealed.

4. The method utilized to remove monitoring point materials.

5. The method utilized to seal the monitoring point.

6. Department Form 542-1226 for Water Well Abandonment Plugging Record.

(2) The monitoring point materials (e.g., protective casing, casing, screen) shall be removed. If drilling is utilized to remove the materials, then the drilling shall be to the maximum depth of the previously drilled monitoring point. All drilling debris shall be cleaned from the interior of the borehole.

(3) The cleared borehole shall be sealed with impermeable bentonite via a tremie tube. The end of the tremie tube shall be submerged in the grout while filling from the bottom of the borehole to the top of the ground surface. Uncontaminated water shall be added from the surface as needed to aid grout expansion.

(4) After 24 hours, the bentonite shall be retopped if the bentonite has settled below the ground surface.

e. Hydrologic monitoring system plan (HMSP). Unless otherwise approved by the department in writing, the number, spacing, and depth of groundwater monitoring points shall be:

(1) Determined based upon site-specific technical information, including but not limited to the soil and hydrogeologic investigation pursuant to subrule 113.6(3) and the site exploration and characterization report pursuant to subrule 113.6(4), that must include thorough characterization of:

1. Aquifer thickness, groundwater flow rate, and groundwater flow direction including seasonal and temporal fluctuations in groundwater flow; and

2. Saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the uppermost aqui-

fer, including, but not limited to: thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities and effective porosities; and

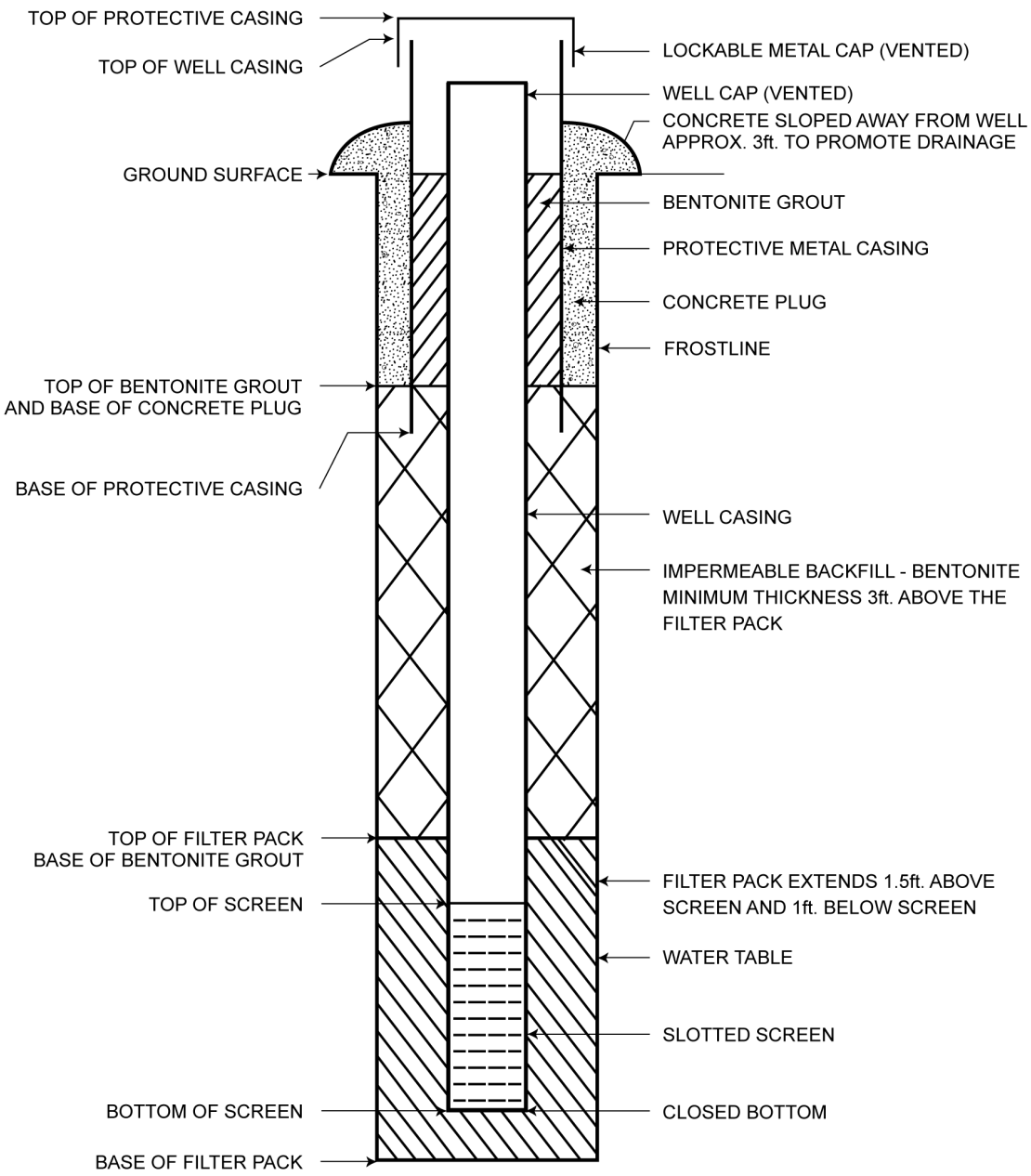
3. Projected paths and rates of movement of contaminants found in leachate pursuant to subparagraph 113.6(3)"e"(6).

(2) Designed and constructed with a maximum of 300 feet between downgradient groundwater monitoring wells.

(3) Certified by a qualified groundwater scientist, as defined in paragraph 113.10(1)"d," and approved by the department. Within 14 days of this certification and approval by the department, the owner or operator must notify the department that the certification has been placed in the operating record.

Figure 1

Typical Monitoring Well Cross Section



-- NOT TO SCALE --

f. Monitoring well maintenance and performance reevaluation plan. A monitoring well maintenance and performance reevaluation plan shall be included as part of the hydrologic monitoring system plan. The plan shall ensure that all monitoring points remain reliable. The plan shall provide for the following:

(1) A biennial examination of high and low water levels accompanied by a discussion of the acceptability of well location (vertically and horizontally) and exposure of the screened interval to the atmosphere.

(2) A biennial evaluation of water level conditions in the monitoring wells to ensure that the effects of waste disposal or well operation have not resulted in changes in the hydrologic setting and resultant flow paths.

(3) Annual measurements of well depths to ensure that wells are physically intact and not filling with sediment.

(4) Completion every five years of in-situ permeability tests on monitoring wells to compare test data with those collected originally to determine if well deterioration is occurring.

113.10(3) Surface water monitoring systems. The department may require an MSWLF facility to implement a surface water monitoring program as part of the groundwater monitoring system if there is reason to believe that a surface water of the state has been impacted as a result of facility operations (i.e., leachate seeps, sediment pond discharge) or a groundwater SSI over background has occurred. The surface water monitoring program shall contain provisions consistent with those of the groundwater monitoring system pursuant to subrules 113.10(4) through 113.10(9).

a. A surface water monitoring program must be developed that consists of a sufficient number of monitoring points, designated at appropriate locations, to yield surface water samples that:

(1) Provide a representative sample of the upstream quality of a surface water of the state if the surface water being monitored is a flowing body of water.

(2) Provide a representative sample of the downstream quality of a surface water of the state if the surface water being monitored is a flowing body of water.

b. Surface water levels must be measured monthly for the first year, and thereafter at a frequency specified in the facility's permit, within 1/10 of a foot at each surface water monitoring point immediately prior to sampling, each time surface water is sampled. The owner or operator must determine the rate and direction of surface water flow, if any, each time surface water is sampled. Surface water level and flow measurements for the same surface water of the state must be measured on the same day to avoid temporal variations that could preclude accurate determination of surface water flow and direction.

c. The owner or operator must notify and receive approval from the department for the designation or decommission of any surface water monitoring point, and must place that approval in the operating record.

d. The surface water monitoring points shall be designated to maintain sampling at that monitoring point throughout the life of the surface water monitoring program.

e. Each surface water monitoring point must have a unique and permanent number, and that number must never change or be used again at the MSWLF. Surface water monitoring points shall be identified by "SW# (Insert unique and permanent number)".

f. The number, spacing, and location of the surface water monitoring points shall be determined based upon site-specific technical information, including but not limited to the site exploration and characterization report pursuant to subrule 113.6(4), that must include thorough characterization of:

(1) Water level, including seasonal and temporal fluctuations in water level; and

(2) Flow rate and flow direction, including seasonal and temporal fluctuations in flow.

g. The surface water monitoring program shall be certified by a qualified groundwater scientist and approved by the department. Within 14 days of this certification, the owner or operator must notify the department that the certification has been placed in the operating record.

113.10(4) Groundwater sampling and analysis requirements.

a. The groundwater monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of groundwater quality at the background and downgradient wells installed in compliance with subrule 113.10(2). The groundwater monitoring program shall utilize a laboratory certified by the department. The owner or operator must notify the department that the sampling and analysis program documentation has been placed in the operating record, and the program must include procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures;

(4) Chain of custody control; and

(5) Quality assurance and quality control.

b. The groundwater monitoring programs must include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure hazardous constituents and other monitoring parameters in groundwater samples. Groundwater samples shall not be field-filtered prior to laboratory analysis.

c. The sampling procedures and frequency must be protective of human health and the environment, and consistent with subrule 113.10(5).

d. Groundwater elevations must be measured monthly for the first year, and thereafter at a frequency specified in the facility's permit, within 1/100 of a foot in each well immediately prior to purging, each time groundwater is sampled. The owner or operator must determine the rate and direction of groundwater flow each time ground water is sampled. Groundwater elevations in wells which monitor the same waste management area must be measured within a period of time short enough to avoid temporal variations in groundwater flow which could preclude accurate determination of groundwater flow rate and direction.

e. The owner or operator must establish background groundwater quality in a hydraulically upgradient or background well(s) for each of the monitoring parameters or constituents required in the particular groundwater monitoring program that applies to the MSWLF unit, as determined under paragraph 113.10(5)"a" or 113.10(6)"a." Background groundwater quality may be established at wells that are not located hydraulically upgradient from the MSWLF unit if the wells meet the requirements of subparagraph 113.10(2)"a"(1).

f. The number of samples collected to establish groundwater quality data must be consistent with the appropriate statistical procedures determined pursuant to paragraph 113.10(4)"g." The sampling procedures shall be those specified under paragraphs 113.10(5)"b" for detection monitoring, 113.10(6)"b" and 113.10(6)"d" for assessment monitoring, and 113.10(7)"b" for corrective action.

g. The owner or operator must specify in the operating record one of the following statistical methods to be used in evaluating groundwater monitoring data for each hazardous

constituent. The statistical test chosen shall be conducted separately for each hazardous constituent in each well.

(1) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(2) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(3) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

(4) A control chart approach that gives control limits for each constituent.

(5) Another statistical test method that meets the performance standards of paragraph 113.10(4)"h." The owner or operator must place a justification for this alternative in the operating record and notify the department of the use of this alternative test. The justification must demonstrate that the alternative method meets the performance standards of paragraph 113.10(4)"h."

h. The statistical method required pursuant to paragraph 113.10(4)"g" shall comply with the following performance standards:

(1) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data shall be transformed or a distribution-free theory test shall be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level not less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experimentwise error rate for each testing period shall be not less than 0.05; however, the Type I error of not less than 0.01 for individual well comparisons must be maintained.

(3) The statistical method shall account for data below the limit of detection (LD) by recording such data at one-half the limit of detection (i.e., LD/2). Any practical quantitation limit (pql) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(4) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

i. The owner or operator must determine whether or not there is an SSI over background values for each parameter or constituent required in the particular groundwater monitoring program that applies to the MSWLF unit, as determined under paragraph 113.10(5)"a" or 113.10(6)"a."

(1) In determining whether an SSI has occurred, the owner or operator must compare the groundwater quality of each parameter or constituent at each monitoring well designated pursuant to subrule 113.10(2) to the background value of that constituent, according to the statistical procedures and performance standards specified under paragraphs 113.10(4)"g" and 113.10(4)"h."

(2) Within 45 days after completing sampling and analysis, the owner or operator must determine whether there has been an SSI over background at each monitoring well.

113.10(5) Detection monitoring program.

a. Detection monitoring is required at MSWLF units at all groundwater monitoring wells defined under subrule 113.10(2). At a minimum, a detection monitoring program must include the monitoring for the constituents listed in Appendix I, any additional parameters required by the department on a site-specific basis, as well as the following indicator parameters:

(1) Indicator parameters to be measured in the field:

1. Temperature.
2. pH.
3. Conductivity.

(2) Indicator parameters to be analyzed in a laboratory:

1. Chloride.
2. Chemical oxygen demand (COD).

b. The monitoring frequency for all constituents listed in Appendix I and indicator parameters listed in paragraph 113.10(5)"a" shall be at least semiannual (i.e., every six months) during the active life of the facility (including closure) and the postclosure period. A minimum of four independent samples from each well (background and downgradient) must be collected and analyzed for the Appendix I constituents and indicator parameters listed in paragraph 113.10(5)"a" during the first semiannual sampling event. At least one sample from each well (background and downgradient) must be collected and analyzed during subsequent semiannual sampling events. The department may specify an appropriate alternative frequency for repeated sampling and analysis for Appendix I constituents and indicator parameters listed in paragraph 113.10(5)"a" during the active life (including closure) and the postclosure care period. The alternative frequency during the active life (including closure) shall be not less than annually. The alternative frequency shall be based on consideration of the following factors:

(1) Lithology of the aquifer and unsaturated zone;

(2) Hydraulic conductivity of the aquifer and unsaturated zone;

(3) Groundwater flow rates;

(4) Minimum distance between upgradient edge of the MSWLF unit and downgradient monitoring well screen (minimum distance of travel); and

(5) Resource value of the aquifer.

c. If the owner or operator determines, pursuant to paragraph 113.10(4)"i," that there is an SSI over background for one or more of the constituents listed in Appendix I or indicator parameters listed under paragraph 113.10(5)"a" at any monitoring well specified under subrule 113.10(2), then the owner or operator:

(1) Must, within 14 days of this finding, place a notice in the operating record indicating which constituents have shown statistically significant changes from background levels, and notify the department that this notice was placed in the operating record.

(2) Must establish within 90 days an assessment monitoring program meeting the requirements of subrule 113.10(6) except as provided in subparagraph 113.10(5)"c"(3).

(3) The owner or operator may demonstrate that a source other than an MSWLF unit caused the contamination or that the SSI resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. A report documenting this demonstration must be certified by a qualified groundwater scientist, approved by the department, and placed in the operating record. If a successful demonstration to the department is made and documented, the owner or operator may continue detection monitoring as specified in subrule 113.10(5). If, after 90 days, a successful demonstration is not made, the owner or operator must initiate an assessment monitoring program as required in subrule 113.10(6).

113.10(6) Assessment monitoring program.

a. Assessment monitoring is required whenever an SSI over background has been detected for one or more of the constituents listed in Appendix I.

b. Within 90 days of triggering an assessment monitoring program, and annually thereafter, the owner or operator must sample and analyze the groundwater for all constituents identified in Appendix II. A minimum of one sample from each downgradient well shall be collected and analyzed during each sampling event. For any constituent detected in the downgradient wells as a result of the complete Appendix II analysis, a minimum of four independent samples from each well (background and downgradient) must be collected and analyzed to establish background for the constituents. The department may specify an appropriate subset of wells to be sampled and analyzed for Appendix II constituents during assessment monitoring. The department may delete any of the Appendix II monitoring parameters for an MSWLF unit if it can be shown that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit.

c. The department may specify an appropriate alternate frequency for repeated sampling and analysis for the full set of Appendix II constituents required by paragraph 113.10(6)"b" during the active life (including closure) and postclosure care period of the unit. The following factors shall be considered:

(1) Lithology of the aquifer and unsaturated zone;

(2) Hydraulic conductivity of the aquifer and unsaturated zone;

(3) Groundwater flow rates;

(4) Minimum distance between upgradient edge of the MSWLF unit and downgradient monitoring well screen (minimum distance of travel);

(5) Resource value of the aquifer; and

(6) Nature (fate and transport) of any constituents detected in response to this paragraph.

d. After obtaining the results from the initial or subsequent sampling events required in paragraph 113.10(6)"b," the owner or operator must:

(1) Within 14 days, place a notice in the operating record identifying the Appendix II constituents that have been detected and notify the department that this notice has been placed in the operating record;

(2) Within 90 days, and on at least a semiannual basis thereafter, resample all wells specified by subrule 113.10(2) and conduct analyses for all constituents in Appendix I, the indicator parameters listed in paragraph 113.10(5)"a," and for those constituents in Appendix II that are detected in response to the requirements of paragraph 113.10(6)"b." Concentrations shall be recorded in the facility operating record. At least one sample from each well (background and downgradient) must be collected and analyzed during these sampling events. The department may specify an alternative monitoring frequency during the active life (including closure) and the postclosure period for the constituents referred to in this subparagraph. The alternative frequency for Appendix I constituents, and indicator parameters listed in paragraph 113.10(5)"a" during the active life (including closure) shall be no less than annual. The alternative frequency during the active life (including closure) may be more frequent than semiannual depending on risk factors and data analysis. The alternative frequency shall be based on consideration of the factors specified in paragraph 113.10(6)"c";

(3) Establish background concentrations for any constituents detected pursuant to paragraph 113.10(6)"b" or subparagraph 113.10(6)"d"(2); and

(4) Establish groundwater protection standards for all constituents detected pursuant to paragraph 113.10(6)"b" or 113.10(6)"d." The groundwater protection standards shall be established in accordance with paragraph 113.10(6)"h" or 113.10(6)"i."

e. If the concentrations of all Appendix II constituents are shown to be at or below background values, using the statistical procedures in paragraph 113.10(4)"g" for two consecutive sampling events, the owner or operator must notify the department of this finding and may return to detection monitoring.

f. If the concentrations of any Appendix II constituents are above background values, but all concentrations are below the groundwater protection standard established under paragraph 113.10(6)"h" or 113.10(6)"i," using the statistical procedures in paragraph 113.10(4)"g," the owner or operator must continue assessment monitoring in accordance with this subrule.

g. If one or more Appendix II constituents are detected at statistically significant levels above the groundwater protection standard established under paragraph 113.10(6)"h" or 113.10(6)"i" in any sampling event, the owner or operator must, within 14 days of this finding, place a notice in the operating record identifying the Appendix II constituents that have exceeded the groundwater protection standard and notify the department and all other appropriate local government officials that the notice has been placed in the operating record. The owner or operator also:

(1) Must comply with the following requirements or the requirements in subparagraph 113.10(6)"g"(2):

1. Characterize the nature and extent of the release by installing additional monitoring wells as necessary until the horizontal and vertical dimensions of the plume have been defined to background concentrations;

2. Install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with subparagraph 113.10(6)"g"(2);

3. Notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off site when indicated by sampling of wells in accordance with subparagraph 113.10(6)"g"(1); and

4. Initiate within 90 days an assessment of corrective measures as required by subrule 113.10(7).

(2) May demonstrate that a source other than an MSWLF unit caused the contamination, or that the SSI resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. A report documenting this demonstration must be certified by a qualified groundwater scientist, approved by the department, and placed in the operating record. If a successful demonstration is made, the own-

er or operator must continue monitoring in accordance with the assessment monitoring program pursuant to subrule 113.10(6), and may return to detection monitoring if the Appendix II constituents are at or below background as specified in paragraph 113.10(6)"e." Until a successful demonstration is made, the owner or operator must comply with paragraph 113.10(6)"g" including initiating an assessment of corrective measures.

h. The owner or operator must establish a groundwater protection standard for each Appendix II constituent detected in the groundwater. The groundwater protection standard shall be:

(1) For constituents for which a maximum contaminant level (MCL) has been promulgated under Section 1412 of the Safe Drinking Water Act (codified) under 40 CFR Part 141, the MCL for that constituent;

(2) For constituents for which MCLs have not been promulgated, the background concentration for the constituent established from wells in accordance with subrule 113.10(2); or

(3) For constituents for which the background concentration is higher than the MCL identified under subparagraph 113.10(6)"h"(1) or health-based concentrations identified under paragraph 113.10(6)"i," the background concentration.

i. The department may establish an alternative groundwater protection standard for constituents for which MCLs have not been established. These groundwater protection standards shall be appropriate health-based concentrations that comply with the statewide standards for groundwater established pursuant to 567—Chapter 137.

j. In establishing groundwater protection standards under paragraph 113.10(6)"i," the department may consider the following:

(1) The policies set forth by the Groundwater Protection Act;

(2) Multiple contaminants in the groundwater with the assumption that the effects are additive regarding detrimental effects to human health and the environment;

(3) Exposure threats to sensitive environmental receptors; and

(4) Other site-specific exposure or potential exposure to groundwater.

113.10(7) Assessment of corrective measures.

a. Within 90 days of finding that any of the constituents listed in Appendix II have been detected at a statistically significant level exceeding the groundwater protection standards defined under paragraph 113.10(6)"h" or 113.10(6)"i," the owner or operator must initiate an assessment of corrective measures. Such an assessment must be completed and submitted to the department for review and approval within 90 days unless otherwise authorized or required by the department.

b. The owner or operator must continue to monitor in accordance with the assessment monitoring program as specified in subrule 113.10(6).

c. The assessment shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under subrule 113.10(8), addressing at least the following:

(1) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(2) The time required to begin and complete the remedy;

(3) The costs of remedy implementation; and

(4) The institutional requirements such as state or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy(ies).

d. The owner or operator must discuss the results of the corrective measures assessment, prior to the selection of a remedy, in a public meeting with interested and affected parties. Notice of public meeting shall be sent to all owners and occupiers of property adjacent to the permitted boundary of the facility, the department, and the department field office with jurisdiction over the facility. A copy of the minutes of this public meeting and the list of community concerns must be placed in the operating record and submitted to the department.

113.10(8) Selection of remedy.

a. Based on the results of the corrective measures assessment conducted under subrule 113.10(7), the owner or operator must select a remedy that, at a minimum, meets the standards listed in paragraph 113.10(8)"b." The owner or operator must submit a report to the department, within 14 days of selecting a remedy, describing the selected remedy, stating that the report has been placed in the operating record, and explaining how the selected remedy meets the standards in paragraph 113.10(8)"b."

b. Remedies must:

(1) Be protective of human health and the environment;

(2) Attain the groundwater protection standards specified pursuant to paragraph 113.10(6)"h" or 113.10(6)"i";

(3) Control the source(s) of releases so as to reduce or eliminate, to the maximum extent practicable, further releases of Appendix II constituents into the environment that may pose a threat to human health or the environment; and

(4) Comply with standards for management of wastes as specified in paragraph 113.10(9)"d."

c. In selecting a remedy that meets the standards of paragraph 113.10(8)"b," the owner or operator shall consider the following evaluation factors:

(1) The long-term and short-term effectiveness and protectiveness of the potential remedy(ies), along with the degree of certainty that the remedy will prove successful based on consideration of the following:

1. Magnitude of reduction of existing risks;

2. Magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation of a remedy;

3. The type and degree of long-term management required, including monitoring, operation, and maintenance;

4. Short-term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and redisposal of containment;

5. Time period until full protection is achieved;

6. Potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, redisposal, or containment;

7. Long-term reliability of the engineering and institutional controls; and

8. Potential need for replacement of the remedy.

(2) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:

1. The extent to which containment practices will reduce further releases; and

2. The extent to which treatment technologies may be used.

(3) The ease or difficulty of implementing a potential remedy(ies) based on consideration of the following factors:

1. Degree of difficulty associated with constructing the technology;

2. Expected operational reliability of the technology;

3. Need to coordinate with and obtain necessary approvals and permits from other agencies;

4. Availability of necessary equipment and specialists; and

5. Available capacity and location of needed treatment, storage, and disposal services.

(4) Practicable capability of the owner or operator, including a consideration of technical and economic capabilities.

(5) The degree to which community concerns, including but not limited to the concerns identified at the public meeting required pursuant to paragraph 113.10(7)"d," are addressed by a potential remedy(ies).

d. The owner or operator shall specify as part of the selected remedy a schedule(s) for initiating and completing remedial activities. Such a schedule must require the initiation of remedial activities within a reasonable period of time taking into consideration the factors set forth in subparagraphs 113.10(8)"d"(1) to (8). The owner or operator must consider the following factors in determining the schedule of remedial activities:

(1) Extent and nature of contamination;

(2) Practical capabilities of remedial technologies in achieving compliance with groundwater protection standards established under paragraph 113.10(6)"h" or 113.10(6)"i" and other objectives of the remedy;

(3) Availability of treatment or disposal capacity for wastes managed during implementation of the remedy;

(4) Desirability of utilizing alternative or experimental technologies that are not widely available, but which may offer significant advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;

(5) Potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;

(6) Resource value of the aquifer including:

1. Current and future uses;

2. Proximity and withdrawal rate of users;

3. Groundwater quantity and quality;

4. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

5. The hydrogeologic characteristic of the facility and surrounding land;

6. Groundwater removal and treatment costs; and

7. The cost and availability of alternative water supplies;

(7) Practicable capability of the owner or operator; and

(8) Other relevant factors.

113.10(9) Implementation of the corrective action plan.

a. Based on the schedule established under paragraph 113.10(8)"d" for initiation and completion of remedial activities, the owner or operator must:

(1) Establish and implement a corrective action groundwater monitoring program that:

1. At a minimum, meets the requirements of an assessment monitoring program under subrule 113.10(6);

2. Indicates the effectiveness of the corrective action remedy; and

3. Demonstrates compliance with groundwater protection standards pursuant to paragraph 113.10(9)"e";

(2) Implement the corrective action remedy selected under subrule 113.10(8); and

(3) Take any interim measures necessary to ensure the protection of human health and the environment. Interim measures should, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to subrule 113.10(8). The following factors must be considered by an owner or operator in determining whether interim measures are necessary:

1. Time period required to develop and implement a final remedy;

2. Actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;

3. Actual or potential contamination of drinking water supplies or sensitive ecosystems;

4. Further degradation of the groundwater that may occur if remedial action is not initiated expeditiously;

5. Weather conditions that may cause hazardous constituents to migrate or be released;

6. Risk of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or the failure of a container or handling system; and

7. Other factors that may pose threats to human health and the environment.

b. An owner or operator may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with the requirements of paragraph 113.10(8)"b" is not being achieved through the remedy selected. In such cases, the owner or operator must notify the department and implement other methods or techniques that could practicably achieve compliance with the requirements, unless the owner or operator makes the determination under paragraph 113.10(9)"c."

c. If the owner or operator determines that compliance with requirements under paragraph 113.10(8)"b" cannot be practicably achieved with any currently available methods, the owner or operator must:

(1) Obtain certification of a qualified groundwater scientist and approval by the department that compliance with requirements under paragraph 113.10(8)"b" cannot be practicably achieved with any currently available methods;

(2) Implement alternate measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment;

(3) Implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are:

1. Technically practicable; and

2. Consistent with the overall objective of the remedy; and

(4) Notify the department within 14 days that a report justifying the alternate measures prior to implementation has been placed in the operating record.

d. All solid wastes that are managed pursuant to a remedy required under subrule 113.10(8), or an interim measure required under subparagraph 113.10(9)"a"(3), shall be managed in a manner:

(1) That is protective of human health and the environment; and

(2) That complies with applicable RCRA, state and local requirements.

e. Remedies selected pursuant to subrule 113.10(8) shall be considered complete when:

(1) The owner or operator complies with the groundwater protection standards established under paragraph 113.10(6)"h" or 113.10(6)"i" at all points within the plume of contamination that lie beyond the groundwater monitoring well system established under subrule 113.10(2).

(2) Compliance with the groundwater protection standards established under paragraph 113.10(6)"h" or 113.10(6)"i" has been achieved by demonstrating that concentrations of Appendix II constituents have not exceeded the groundwater protection standard(s), for a period of three consecutive years using the statistical procedures and performance standards in paragraphs 113.10(4)"g" and 113.10(4)"h." The department may specify an alternative length of time during which the owner or operator must demonstrate that concentrations of Appendix II constituents have not exceeded the groundwater protection standard(s), taking into consideration:

1. The extent and concentration of the release(s);
2. The behavior characteristics of the hazardous constituents in the groundwater;
3. The accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variables that may affect accuracy; and
4. The characteristics of the groundwater.

(3) All actions required by the department to complete the remedy have been satisfied.

f. Upon completion of the remedy, the owner or operator must notify the department within 14 days that a certification has been placed in the operating record verifying that the remedy has been completed in compliance with the requirements of paragraph 113.10(9)"e." The certification must be signed by the owner or operator and by a qualified groundwater scientist and approved by the department.

g. When, upon completion of the certification, the owner or operator determines that the corrective action remedy has been completed in accordance with the requirements under paragraph 113.10(9)"e," the owner or operator shall be released from the requirements for financial assurance for corrective action pursuant to subrule 113.14(5).

113.10(10) Annual water quality reports. The owner or operator shall submit an annual report to the department detailing the water quality monitoring sampling locations and results, assessments, selection of remedies, implementation of corrective action, and the results of corrective action remedies to address SSIs, if any, during the previous year. This report shall include a site map that delineates all monitoring points where water quality samples were taken, and plumes of contamination, if any. The report shall contain a narrative explaining and interpreting all of the data collected during the previous year. The report shall be due each year on a date set by the department in the facility's permit.

567—113.11(455B,455D) Record-keeping and reporting requirements. The primary purpose of the record-keeping and reporting activities is to verify compliance with this chapter and to document the construction and operations of the facility. The department can set alternative schedules for record-keeping and notification requirements as specified in subrules 113.11(1) and 113.11(2), except for the notification requirements in paragraph 113.6(2)"a" and numbered paragraph 113.10(6)"g"(1)"3." All MSWLFs shall comply with the following record-keeping and reporting requirements.

113.11(1) Record keeping. The owner or operator of an MSWLF unit must record and retain near the facility in an operating record or in an alternative location approved by the department the following information as it becomes available:

a. Permit application, permit renewal and permit modification application materials pursuant to rule 113.5(455B);

b. The site exploration and characterization reports pursuant to subrule 113.6(4);

c. Design and construction plans and specifications, and related analyses and documents, pursuant to rule 113.7(455B). The QC&A final reports, and related analyses and documents, pursuant to paragraph 113.7(6)"d";

d. Inspection records, training procedures, and notification procedures required in rule 113.8(455B);

e. Any MSWLF unit design documentation for placement of leachate or gas condensate in an MSWLF unit as required under numbered paragraphs 113.8(1)"b"(3)"2" and 113.8(1)"b"(3)"3";

f. Gas monitoring results from monitoring and any remediation plans required by rule 113.9(455B);

g. Any demonstration, certification, finding, monitoring, testing, or analytical data required by rule 113.10(455B);

h. Closure and postclosure care plans and any monitoring, testing, or analytical data as required by rules 113.12(455B) and 113.13(455B); and

i. Any cost estimates and financial assurance documentation required by this chapter.

113.11(2) Reporting requirements. The owner or operator must notify the department when the documents required in subrule 113.11(1) have been placed in the operating record. All information contained in the operating record must be furnished upon request to the department and be made available at all reasonable times for inspection by the department.

567—113.12(455B) Closure criteria. All MSWLFs shall comply with the following closure requirements.

113.12(1) Owners or operators of all MSWLF units must install a final cover system that is designed to minimize infiltration and erosion. The final cover system must be designed and constructed to:

a. Have a permeability less than or equal to the permeability of any bottom liner system (for MSWLFs with some type of liner) or have natural subsoils present (for unlined MSWLFs), or have a permeability no greater than 1×10^{-7} cm/sec (for all lined and unlined MSWLFs), whichever is less;

b. Minimize infiltration through the closed MSWLF by the use of an infiltration layer that contains a minimum of 24 inches of compacted earthen material;

c. Minimize erosion of the final cover by the use of an erosion layer that contains a minimum of 24 inches of earthen material that is capable of sustaining native plant growth;

d. Have an infiltration layer and erosion layer that are a combined minimum of 48 inches of earthen material at all locations over the closed MSWLF unit; and

e. Have a slope between 5 percent and 25 percent.

113.12(2) The department may approve an alternative final cover design that includes:

a. An infiltration layer that achieves reduction in infiltration equivalent to the infiltration layer specified in paragraphs 113.12(1)"a" and 113.12(1)"b"; and

b. An erosion layer that provides protection from wind and water erosion equivalent to the erosion layer specified in paragraphs 113.12(1)"c" and 113.12(1)"d."

113.12(3) The owner or operator must prepare a written closure plan that describes the steps necessary to close all MSWLF units at any point during their active life in accordance with the cover design requirements in subrule 113.12(1) or 113.12(2), as applicable. The closure plan, at a minimum, must include the following information:

a. A description of the final cover including source, volume, and characteristics of cover material, designed in accordance with subrule 113.12(1) or 113.12(2) and the methods and procedures to be used to install the cover;

b. An estimate of the largest area of the MSWLF unit requiring a final cover, as required under subrule 113.12(1) or 113.12(2), at any time during the active life;

c. An estimate of the maximum inventory of wastes on site over the active life of the landfill facility; and

d. A schedule for completing all activities necessary to satisfy the closure criteria in rule 113.12(455B).

113.12(4) The owner or operator must notify the department that the closure plan has been placed in the operating record no later than the initial receipt of waste in a new MSWLF unit.

113.12(5) At least 180 days prior to beginning closure of each MSWLF unit as specified in subrule 113.12(6), an owner or operator must notify the department of the intent to close the MSWLF unit, and that a notice of the intent to close the unit has been placed in the operating record. If the MSWLF facility will no longer be accepting MSW for disposal, then the owner or operator must also notify all local governments utilizing the facility and post a public notice of the intent to close and no longer to accept MSW.

113.12(6) The owner or operator must begin closure activities of each MSWLF unit:

a. No later than 30 days after the date on which the MSWLF unit receives the known final receipt of wastes; or

b. If the MSWLF unit has remaining capacity and there is a reasonable likelihood that the MSWLF unit will receive additional wastes, no later than one year after the most recent receipt of wastes. Extensions beyond the one-year deadline for beginning closure may be granted by the department if the owner or operator demonstrates that the MSWLF unit has the capacity to receive additional wastes and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed MSWLF unit.

113.12(7) The owner or operator of all MSWLF units must complete closure activities of each MSWLF unit in accordance with the closure plan within 180 days following the beginning of closure as specified in subrule 113.12(6). Extensions of the closure period may be granted by the department if the owner or operator demonstrates that closure will, of necessity, take longer than 180 days and that the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed MSWLF unit.

113.12(8) Following closure of each MSWLF unit, the owner or operator must submit to the department certification, signed by an independent professional engineer (P.E.) registered in Iowa, verifying that closure has been completed in accordance with the closure plan. Upon approval by the department, the certification shall be placed in the operating record.

113.12(9) Following closure of all MSWLF units, the owner or operator must record a notation on the deed to the landfill facility property, or some other instrument that is normally examined during title search in lieu of a deed notification, and notify the department that the notation has been recorded and a copy has been placed in the operating record. The notation on the deed must in perpetuity notify any potential purchaser of the property that:

a. The land has been used as a landfill facility; and

b. Its use is restricted under paragraph 113.13(3)"c."

113.12(10) The owner or operator may request permission from the department to remove the notation from the deed if all wastes are removed from the facility.

567—113.13(455B) Postclosure care requirements. All MSWLFs shall comply with the following postclosure care requirements.

113.13(1) Following closure of each MSWLF unit, the owner or operator must conduct postclosure care. Postclosure care must be conducted for 30 years, except as provided under subrule 113.13(2), and consist of at least the following:

a. Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and runoff from eroding or otherwise damaging the final cover;

b. Maintaining and operating the leachate collection system in accordance with the requirements in paragraph 113.7(5)"b," if applicable. The department may allow the owner or operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment;

c. Monitoring the groundwater in accordance with the requirements of rule 113.10(455B) and maintaining the groundwater monitoring system; and

d. Maintaining and operating the gas monitoring system in accordance with the requirements of rule 113.9(455B).

113.13(2) The length of the postclosure care period may be:

a. Decreased by the department if the owner or operator demonstrates that the reduced period is sufficient to protect human health and the environment and this demonstration is approved by the department; or

b. Increased by the department if the department determines that the lengthened period is necessary to protect human health and the environment.

113.13(3) The owner or operator of all MSWLF units must prepare a written postclosure plan that includes, at a minimum, the following information:

a. A description of the monitoring and maintenance activities required in subrule 113.13(1) for each MSWLF unit, and the frequency at which these activities will be performed;

b. Name, address, and telephone number of the person or office to contact about the facility during the postclosure period; and

c. A description of the planned uses of the property during the postclosure period. Postclosure use of the property shall not disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in this chapter. The department may approve any other disturbance if the owner or operator demonstrates that disturbance of the final cover, liner or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

113.13(4) The owner or operator must notify the department that a postclosure plan has been prepared and placed in the operating record by the date of initial receipt of waste.

113.13(5) Following completion of the postclosure care period for each MSWLF unit, the owner or operator must submit to the department a certification, signed by an independent professional engineer (P.E.) registered in Iowa, verifying that postclosure care has been completed in accordance with the postclosure plan. Upon department approval, the certification shall be placed in the operating record.

567—113.14(455B) Municipal solid waste landfill financial assurance.

113.14(1) Purpose. The purpose of this rule is to implement Iowa Code sections 455B.304(8) and 455B.306(8) by providing the criteria for establishing financial assurance for closure, postclosure care and corrective action at MSWLFs.

113.14(2) Applicability. The requirements of this rule apply to all owners and operators of MSWLFs except owners or operators that are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.

113.14(3) Financial assurance for closure. The owner or operator of an MSWLF must establish financial assurance for closure in accordance with the criteria in this rule. The owner or operator must provide continuous coverage for closure until released from this requirement by demonstrating compliance with rule 113.12(455B). Proof of compliance pursuant to paragraphs 113.14(3)"a" through 113.14(3)"e" must be submitted by the owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit the current version of department Form 542-8090, Municipal Solid Waste Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code sections 455B.306(8)"e" and 455B.306(6)"c," and the current balances of the closure and postclosure accounts at the time of submittal as required by Iowa Code section 455B.306(8)"b."

b. The owner or operator shall submit a copy of the financial assurance instruments or the documents establishing the financial assurance instruments in an amount equal to or greater than the amount specified in subrule 113.14(9). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 113.14(6)"a" to 113.14(6)"i."

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to close the MSWLF in accordance with the closure plan as required by paragraph 103.5(1)"i" and rule 113.12(455B). Such estimate must be available at any time during the active life of the landfill.

(1) The cost estimate must equal the cost of closing the MSWLF at any time during the permitted life of the facility when the extent and manner of its operation would make closure the most expensive.

(2) The costs contained in the third-party estimate for closure must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the MSWLF, the owner or operator must annually adjust the closure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases closure costs, whichever occurs first, increase the closure cost estimate and the amount of financial assurance provided if changes to the closure plan or MSWLF conditions increase the maximum cost of closure at any time during the remaining active life of the facility.

(5) The owner or operator may reduce the amount of financial assurance for closure if the most recent estimate of the maximum cost of closure at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the closure cost estimate and the updated documentation required by paragraphs 113.14(3)"a" through 113.14(3)"e" and receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third-party estimate submitted to the department must include the site area subject to closure and account for at least the following factors determined by the department to be minimal necessary costs for closure:

1. Closure and postclosure plan document revisions;
2. Site preparation, earthwork and final grading;
3. Drainage control culverts, piping and structures;
4. Erosion control structures, sediment ponds and terraces;
5. Final cap construction;
6. Cap vegetation soil placement;
7. Cap seeding, mulching and fertilizing;
8. Monitoring well, piezometer and gas control modifications;
9. Leachate system cleanout and extraction well modifications;
10. Monitoring well installations and abandonments;
11. Facility modifications to effect closed status;
12. Engineering and technical services;
13. Legal, financial and administrative services; and
14. Closure compliance certifications and documentation.

d. For publicly owned MSWLFs, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

e. Privately held MSWLFs shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this chapter. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

113.14(4) Financial assurance for postclosure care. The owner or operator of an MSWLF must establish financial assurance for the costs of postclosure care in accordance with the criteria in this chapter. The owner or operator must provide continuous coverage for postclosure care until released from this requirement by demonstrating compliance with the postclosure plan and the closure permit. Proof of compliance pursuant to paragraphs 113.14(4)"a" through 113.14(4)"e" must be submitted by the owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit the current version of department Form 542-8090, Municipal Solid Waste Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code sections 455B.306(8)"e" and 455B.306(6)"c," and the current balances of the closure and postclosure accounts required by Iowa Code section 455B.306(8)"b."

b. The owner or operator shall submit a copy of the documents establishing a financial assurance instrument in an amount equal to or greater than the amount specified in subrule 113.14(9). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 113.14(6)"a" to 113.14(6)"i."

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to conduct postclosure care for the MSWLF in compliance with the postclosure plan developed pursuant to paragraph 113.5(1)"i" and rule 113.13(455B). The cost estimate must account for the total cost of conducting postclosure care, as described in the plan, for the entire postclosure care period.

(1) The cost estimate for postclosure care must be based on the most expensive costs of that care during the entire postclosure care period.

(2) The costs contained in the third-party estimate for postclosure care must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the MSWLF and during the postclosure care period, the owner or operator must annually adjust the postclosure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases postclosure costs, whichever occurs first, increase the estimate and the amount of financial assurance provided if changes in the postclosure plan or MSWLF conditions increase the maximum cost of postclosure care.

(5) The owner or operator may reduce the amount of financial assurance for postclosure care if the most recent estimate of the maximum cost of postclosure care beginning at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the postclosure cost estimate and the updated documentation required by paragraphs 113.14(4)"a" through 113.14(4)"e" and must receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third-party estimate submitted to the department must include the site area subject to postclosure care and account for at least the following factors determined by the department to be minimal necessary costs for postclosure care:

1. General site facilities, access roads and fencing maintenance;
2. Cap and vegetative cover maintenance;
3. Drainage and erosion control systems maintenance;
4. Groundwater to waste separation systems maintenance;
5. Gas control systems maintenance;
6. Gas control systems monitoring and reports;
7. Groundwater and surface water monitoring systems maintenance;
8. Groundwater and surface water quality monitoring and reports;
9. Groundwater monitoring systems performance evaluations and reports;
10. Leachate control systems maintenance;
11. Leachate management, transportation and disposal;
12. Leachate control systems performance evaluations and reports;
13. Facility inspections and reports;
14. Engineering and technical services;
15. Legal, financial and administrative services; and
16. Financial assurance, accounting, audits and reports.

d. For publicly owned MSWLFs, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

e. Privately held MSWLFs shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this chapter. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

113.14(5) Financial assurance for corrective action.

a. An owner or operator required to undertake corrective action pursuant to rules 113.9(455B) and 113.10(455B) must have a detailed written estimate, in current dollars, prepared by an Iowa licensed professional engineer of the cost of hiring a third party to perform the required corrective action. The estimate must account for the total costs of the activities described in the approved corrective action plan for the entire corrective action period. The owner or operator must submit to the department the estimate and financial assurance documentation within 30 days of department approval of the corrective action plan.

(1) The owner or operator must annually adjust the estimate for inflation until the corrective action plan is completed.

(2) The owner or operator must increase the cost estimate and the amount of financial assurance provided if changes in the corrective action plan or MSWLF conditions increase the maximum cost of corrective action.

(3) The owner or operator may reduce the amount of the cost estimate and the amount of financial assurance provided if the estimate exceeds the maximum remaining costs of the remaining corrective action. The owner or operator must submit to the department the justification for the reduction of the cost estimate and documentation of financial assurance.

b. The owner or operator of an MSWLF required to undertake a corrective action plan must establish financial assurance for the most recent corrective action plan by one of the mechanisms prescribed in subrule 113.14(6). The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements by demonstrating compliance with the following:

(1) Upon completion of the remedy, the owner or operator must submit to the department a certification of compliance with the approved corrective action plan. The certification must be signed by the owner or operator and by an Iowa-licensed professional engineer.

(2) Upon department approval of completion of the corrective action remedy, the owner or operator shall be released from the requirements for financial assurance for corrective action.

113.14(6) Allowable financial assurance mechanisms. The mechanisms used to demonstrate financial assurance as required by Iowa Code section 455B.306(8)"a" must ensure that the funds necessary to meet the costs of closure, postclosure care, and corrective action for known releases will be available whenever the funds are needed. Owners or operators must choose from options in paragraphs 113.14(6)"a" to 113.14(6)"i."

a. Trust fund.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, and corrective action, whichever is applicable, by establishing a trust fund which conforms to the requirements of this subrule. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement must

be submitted pursuant to subrules 113.14(3) and 113.14(4) and placed in the facility's official files.

(2) Payments into the trust fund must be made annually by the owner or operator over ten years or over the remaining life of the MSWLF, whichever is shorter, in the case of a trust fund for closure or postclosure care; or over one-half of the estimated length of the corrective action plan in the case of response to a known release. This period is referred to as the pay-in period.

(3) For a trust fund used to demonstrate financial assurance for closure and postclosure care, the first payment into the fund must be at least equal to the amount specified in subrule 113.14(9) for closure or postclosure care divided by the number of years in the pay-in period as defined in subparagraph 113.14(6)"a"(2).

The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{CE - CB}{Y}$$

where CE is the amount specified in 113.14(9) for closure or postclosure care (updated for inflation or other changes), CB is the current balance of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half of the current cost estimate for corrective action divided by the number of years in the corrective action pay-in period as defined in subparagraph 113.14(6)"a"(2). The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{RB - CV}{Y}$$

where RB is the most recent estimate of the required trust fund balance for corrective action, which is the total cost that will be incurred during the second half of the corrective action period, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(5) The initial payment into the trust fund must be made before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure care; or no later than 120 days after the corrective action remedy has been approved by the department.

(6) The owner or operator, or other person authorized to conduct closure, postclosure care, or corrective action activities may request reimbursement from the trustee for these expenditures, including partial closure, as they are incurred. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, postclosure care, or corrective action and if justification and documentation of the costs are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that reimbursement has been received.

(7) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternative financial assurance as specified in this rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this chapter.

(8) After the pay-in period has been completed, the trust fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimates and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

b. Surety bond guaranteeing payment or performance.

(1) An owner or operator may demonstrate financial assurance for closure or postclosure care by obtaining a payment or performance surety bond which conforms to the requirements of this subrule. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this subrule. The bond must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure care; or no later than 120 days after the corrective action remedy has been approved by the department. The owner or operator must submit a copy of the bond to the department and keep a copy in the facility's official files. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury. The state shall not be considered a party to the surety bond.

(2) The penal sum of the bond must be in an amount at least equal to the amount specified in subrule 113.14(9) for closure and postclosure or corrective action, whichever is applicable.

(3) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond and also upon notice from the department pursuant to subparagraph 113.14(6)"b"(6).

(4) The owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of paragraph 113.14(6)"a" except the requirements for initial payment and subsequent annual payments specified in subparagraphs 113.14(6)"a"(2) through (5).

(5) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the trustee and the department.

(6) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner and operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice from the surety of withdrawal of the cancellation, or proof of a deposit into the standby trust of a sum equal to the amount of the bond. If the owner or operator has not complied with this subparagraph within the 60-day time period, this shall constitute a failure to perform and the department shall notify the surety, prior to the expiration of the 120-day notice period, that such a failure has occurred.

(7) The bond must be conditioned upon faithful performance by the owner or operator of all closure, postclosure, or corrective action requirements of the Code of Iowa and this chapter. A failure to comply with subparagraph 113.14(6)"b"(6) shall also constitute a failure to perform under the terms of the bond.

(8) Liability under the bond shall be for the duration of the operation, closure, and postclosure period.

(9) The owner or operator may cancel the bond only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this chapter.

c. Letter of credit.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure care, or corrective action, whichever is applicable, by obtaining an irrevocable standby

letter of credit which conforms to the requirements of this subrule. The letter of credit must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure care; or no later than 120 days after the corrective action plan is approved by the department. The owner or operator must submit to the department a copy of the letter of credit and place a copy in the facility's official files. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility, and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility's files.

(3) The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the amount specified in subrule 113.14(9) for closure, postclosure care or corrective action, whichever is applicable. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into the closure and postclosure accounts established pursuant to Iowa Code section 455B.306(8)"b." If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the closure and postclosure accounts established by the owner or operator pursuant to Iowa Code section 455B.306(8)"b." The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

(4) The owner or operator may cancel the letter of credit only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this chapter.

d. Insurance.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure care, or corrective action by obtaining insurance which conforms to the requirements of this subrule. The insurance must be effective before the initial receipt of waste or prior to cancellation of an alternative financial assurance, in the case of closure and postclosure care; or no later than 120 days after the corrective action plan has been approved by the department. At a minimum, the insurer must be licensed to transact the business of insurance, or be eligible to provide insurance as an excess or surplus lines insurer, in one or more states. The owner or operator must submit to the department a copy of the insurance policy and retain a copy in the facility's official files.

(2) The closure or postclosure care insurance policy must guarantee that funds will be available to close the MSWLF unit whenever final closure occurs or to provide postclosure care for the MSWLF unit whenever the postclosure care period begins, whichever is applicable. The policy must also guarantee that once closure or postclosure care begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or postclosure care, up to an amount equal to the face amount of the policy.

(3) The insurance policy must be issued for a face amount at least equal to the amount specified in subrule 113.14(9) for closure, postclosure care, or corrective action, whichever is applicable. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) An owner or operator, or any other person authorized to conduct closure or postclosure care, may receive reimbursements for closure or postclosure expenditures, including partial closure, whichever is applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or postclosure care, and if justification and documentation of the cost are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that the reimbursement has been received.

(5) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(6) The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner and operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice from the insurer of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the insurance coverage into the closure and postclosure accounts established pursuant to Iowa Code section 455B.306(8)"b." If the owner or operator has not complied with this subrule within the 60-day time period, this shall constitute a failure to perform and shall be a covered event pursuant to the terms of the insurance policy. A failure by the owner or operator to comply with this subrule within the 60-day period shall make the insurer liable for the closure and postclosure care of the covered facility up to the amount of the policy limits, which shall be equal to the most recently submitted cost estimates.

(7) For insurance policies providing coverage for postclosure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week treasury securities.

(8) The owner or operator may cancel the insurance only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

demonstrate financial responsibility in accordance with this rule.

e. Corporate financial test. An owner or operator that satisfies the requirements of this subrule may demonstrate financial assurance up to the amount specified below:

(1) Financial component. The owner or operator must satisfy the requirements of numbered paragraphs 113.14(6)"e"(1)"1," 113.14(6)"e"(1)"2" and 113.14(6)"e"(1)"3" to meet the financial component of the corporate financial test.

1. The owner or operator must satisfy one of the following three conditions:

- A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A or Baa as issued by Moody's; or
- A ratio of less than 1.5 comparing total liabilities to net worth (net worth calculations may not include future permitted capacity of the subject landfill as an asset); or
- A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities;

2. The tangible net worth, excluding future permitted capacity of the subject landfill, of the owner or operator must be greater than:

- The sum of the current closure, postclosure care, and corrective action cost estimates and any other environmental obligations, including guarantees, covered by this financial test plus $10 million except as provided in the second bulleted paragraph of numbered paragraph 113.14(6)"e"(2)"2"; or
- Net worth of $10 million, excluding future permitted capacity of the subject landfill, plus the amount of any guarantees that have not been recognized as liabilities on the financial statements, provided that all of the current closure, postclosure care, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and are subject to the approval of the department; and

3. The owner or operator must have, located in the United States, assets, excluding future permitted capacity of the subject landfill, amounting to at least the sum of current closure, postclosure care, and corrective action cost estimates and any other environmental obligations covered by a financial test as described in subparagraph 113.14(6)"e"(5).

(2) Record-keeping and reporting requirements. The owner or operator must submit the following records to the department and place a copy in the facility's official files prior to the initial receipt of solid waste or cancellation of an alternative financial assurance instrument, in the case of closure and postclosure care; or no later than 120 days after the corrective action plan has been approved by the department:

1. A letter signed by a certified public accountant and based upon a certified audit that:

- Lists all the current cost estimates covered by a financial test including, but not limited to, cost estimates required by subrules 113.14(3) to 113.14(5); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and
- Provides evidence demonstrating that the owner or operator meets the conditions of subparagraph 113.14(6)"e"(1).

2. A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this mechanism. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate financial test, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

3. If the certified public accountant's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies subparagraph 113.14(6)"e"(1) that differs from data in the audited financial statements referred to in numbered paragraph 113.14(6)"e"(2)"2," then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed-upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the certified public accountant's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

4. If the certified public accountant's letter provides a demonstration that the owner or operator has assured for environmental obligations as provided in the second bulleted paragraph of numbered paragraph 113.14(6)"e"(2)"2," then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements and that documents how these obligations have been measured and reported, and verifies that the tangible net worth of the owner or operator is at least $10 million plus the amount of any guarantees provided.

(3) The owner or operator may cease the submission of the information required by paragraph 113.14(6)"e" only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this chapter.

(4) The department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subparagraph 113.14(6)"e"(1), require the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in subparagraph 113.14(6)"e"(2). If the department finds that the owner or operator no longer meets the requirements of subparagraph 113.14(6)"e"(1), the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

(5) Calculation of costs to be assured. When calculating the current cost estimates for closure, postclosure care, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in paragraph 113.14(6)"e," the owner or operator must include cost estimates required for subrules 113.14(3) to 113.14(5); cost estimates for municipal

solid waste management facilities pursuant to 40 CFR Section 258.74; and cost estimates required for the following environmental obligations, if the owner or operator assures those environmental obligations through a financial test: obligations associated with UIC facilities under 40 CFR Part 144, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265.

f. Local government financial test. An owner or operator that satisfies the requirements of this subrule may demonstrate financial assurance up to the amount specified below:

(1) Financial component.

1. The owner or operator must satisfy one of the following requirements:

- If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the owner or operator must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's on all such general obligation bonds; or
- The owner or operator must satisfy both of the following financial ratios based on the owner's or operator's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

2. The owner or operator must prepare its financial statements in conformity with Generally Accepted Accounting Principles or Other Comprehensive Bases of Accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

3. A local government is not eligible to assure its obligations in paragraph 113.14(6)"f" if it:

- Is currently in default on any outstanding general obligation bonds; or
- Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or
- Operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or
- Receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement as required under numbered paragraph 113.14(6)"f"(1)"2." A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism.

4. The following terms used in this paragraph are defined as follows:

- "Cash plus marketable securities" means all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.
- "Debt service" means the amount of principal and interest due on a loan in a given time period, typically the current year.
- "Deficit" means total annual revenues minus total annual expenditures.
- "Total expenditures" means all expenditures, excluding capital outlays and debt repayment.
- "Total revenues" means revenues from all taxes and fees, excluding revenue from funds managed by local government on behalf of a specific third party, and does not include the proceeds from borrowing or asset sales.

(2) Public notice component. The local government owner or operator must include disclosure of the closure and postclosure care costs assured through the financial test in its next annual audit report prior to the initial receipt of waste at the facility or prior to cancellation of an alternative financial assurance mechanism, whichever is later. A reference to corrective action costs must be placed in the next annual audit report after the corrective action plan is approved by the department. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the facility's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure and postclosure costs, conformance with Government Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(3) Record-keeping and reporting requirements.

1. The local government owner or operator must submit to the department the following items:

- A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by a financial test, as described in subparagraph 113.14(6)"f"(4); provides evidence and certifies that the local government meets the conditions of numbered paragraphs 113.14(6)"f"(1)"1," "2," and "3"; and certifies that the local government meets the conditions of subparagraphs 113.14(6)"f"(2) and (4); and
- The local government's annual financial report indicating compliance with the financial ratios required by numbered paragraph 113.14(6)"f"(1)"1," second bulleted paragraph, if applicable; and the requirements of numbered paragraph 113.14(6)"f"(1)"2" and the third and fourth bulleted paragraphs of numbered paragraph 113.14(6)"f"(1)"3"; and also indicating that the requirements of Governmental Accounting Standards Board Statement 18 have been met.

2. The items required in numbered paragraph 113.14(6)"f"(3)"1" must be submitted to the department and placed in the facility's official files prior to the receipt of waste or prior to the cancellation of an alternative financial mechanism, in the case of closure and postclosure care; or, in the case of corrective action, not later than 120 days after the corrective action plan is approved by the department.

3. After the initial submission of the required items and their placement in the facility's official files, the local government owner or operator must update the information and place the updated information in the facility's official files within 180 days following the close of the owner or operator's fiscal year.

4. The owner or operator may cease the submission of the information required by paragraph 113.14(6)"f" only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

5. A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test, the local government must, within 180 days following the close of the owner's or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this rule, place the required submissions for that assurance in the operating record, and notify the department that the owner or operator no

longer meets the criteria of the financial test and that alternative financial assurance has been obtained.

6. The department, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial conditions from the local government at any time. If the department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government must provide alternative financial assurance in accordance with this rule.

(4) Calculation of costs to be assured. The portion of the closure, postclosure care, and corrective action costs which an owner or operator may assure under this subrule is determined as follows:

1. If the local government owner or operator does not assure other environmental obligations through a financial test, the owner or operator may assure closure, postclosure care, and corrective action costs that equal up to 43 percent of the local government's total annual revenue.

2. If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR Section 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, the owner or operator must add those costs to the closure, postclosure care, and corrective action costs it seeks to assure under this subparagraph. The total that may be assured must not exceed 43 percent of the local government's total annual revenue.

3. The owner or operator must obtain an alternative financial assurance instrument for those costs that exceed the limits set in numbered paragraphs 113.14(6)"f"(4)"1" and "2."

g. Corporate guarantee.

(1) An owner or operator may meet the requirements of this paragraph by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship'' with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraph 113.14(6)"g" and must comply with the terms of the guarantee. A certified copy of the guarantee must be placed in the facility's operating record along with copies of the letter from a certified public accountant and the accountant's opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the certified public accountant must describe the value received in consideration of the guarantee. If the guarantor is an owner or operator with a ''substantial business relationship'' with the owner or operator, this letter must describe this "substantial business relationship'' and the value received in consideration of the guarantee.

(2) The guarantee must be effective and all required submissions made to the department prior to the initial receipt of waste or before cancellation of an alternative financial mechanism, in the case of closure and postclosure care; or, in the case of corrective action, no later than 120 days after the corrective action plan has been approved by the department.

(3) The terms of the guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure care, or corrective action of a facility covered by the guarantee, or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 113.14(6)"g"(3)"2" and "3," the guarantor will:

- Perform, or pay a third party to perform, closure, postclosure care, or corrective action as required (performance guarantee);
- Establish a fully funded trust fund as specified in paragraph 113.14(6)"a" in the name of the owner or operator (payment guarantee); or
- Obtain alternative financial assurance as required by numbered paragraph 113.14(6)"g"(3)"3."

2. The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this rule unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to paragraph 113.14(6)"a." If the owner or operator fails to comply with the provisions of this paragraph within the 90-day period, the guarantor must provide that alternative financial assurance prior to cancellation of the corporate guarantee.

(4) If a corporate guarantor no longer meets the requirements of paragraph 113.14(6)"e," the owner or operator must, within 90 days, obtain alternative financial assurance and submit proof of alternative financial assurance to the department. If the owner or operator fails to provide alternative financial assurance within the 90-day period, the guarantor must provide that alternative financial assurance within the next 30 days.

(5) The owner or operator is no longer required to meet the requirements of paragraph 113.14(6)"g" upon the submission to the department of proof of the substitution of alternative financial assurance or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this chapter.

h. Local government guarantee. An owner or operator may demonstrate financial assurance for closure, postclosure care, or corrective action by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E. The guarantor must meet the requirements of the local government financial test in paragraph 113.14(6)"f" and must comply with the terms of a written guarantee.

(1) Terms of the written guarantee. The guarantee must be effective before the initial receipt of waste or before the cancellation of alternative financial assurance, in the case of closure and postclosure care; or no later than 120 days after the corrective action plan is approved by the department. The guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure care, or corrective action of a facility covered by the guarantee or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 113.14(6)"h"(1)"2" and "3," the guarantor will:

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

- Perform, or pay a third party to perform, closure, postclosure care, or corrective action as required; or
- Establish a fully funded trust fund as specified in paragraph 113.14(6)"a" in the name of the owner or operator; or
- Obtain alternative financial assurance as required by numbered paragraph 113.14(6)"h"(1)"3."

2. The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to paragraph 113.14(6)"a." If the owner or operator fails to comply with the provisions of this paragraph within the 90-day period, the guarantor must provide that alternative financial assurance prior to cancellation of the guarantee.

(2) Record-keeping and reporting requirements.

1. The owner or operator must submit to the department a certified copy of the guarantee along with the items required under subparagraph 113.14(6)"f"(3) and place a copy in the facility's official files before the initial receipt of waste or before cancellation of alternative financial assurance, whichever is later, in the case of closure and postclosure care; or no later than 120 days after the corrective action plan has been approved by the department.

2. The owner or operator shall no longer be required to submit the items specified in numbered paragraph 113.14(6)"h"(2)"1" when proof of alternative financial assurance has been submitted to the department or the owner or operator is no longer required to provide financial assurance pursuant to this rule.

3. If a local government guarantor no longer meets the requirements of paragraph 113.14(6)"f," the owner or operator must, within 90 days, submit to the department proof of alternative financial assurance. If the owner or operator fails to obtain alternative financial assurance within the 90-day period, the guarantor must provide that alternative financial assurance within the next 30 days.

i. Local government dedicated fund. The owner or operator of a publicly owned MSWLF or local government serving as a guarantor may demonstrate financial assurance for closure, postclosure care, or corrective action, whichever is applicable, by establishing a dedicated fund or account that conforms to the requirements of this subrule. A dedicated fund will be considered eligible if it complies with subparagraph 113.14(6)"i"(1) or (2) below, and all other provisions of this paragraph, and documentation of this compliance has been submitted to the department.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order to pay for closure, postclosure care, or corrective action costs, whichever is applicable, arising from the operation of the MSWLF and shall be funded for the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(2) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order as a reserve fund and shall be funded for no less than the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(3) Payments into the dedicated fund must be made annually by the owner or operator for ten years or over the permitted life of the MSWLF, whichever is shorter, in the case of a dedicated fund for closure or postclosure care; or over one-half of the estimated length of an approved corrective action plan in the case of a response to a known release. This is referred to as the "pay-in period." The initial payment into the dedicated fund must be made before the initial receipt of waste in the case of closure and postclosure care or no later than 120 days after the corrective action plan has been approved by the department.

(4) For a dedicated fund used to demonstrate financial assurance for closure and postclosure care, the first payment into the dedicated fund must be at least equal to the amount specified in subrule 113.14(9), divided by the number of years in the pay-in period as defined in this subrule. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{CE - CB}{Y}$$

where CE is the total required financial assurance for the owner or operator, CB is the current balance of the fund, and Y is the number of years remaining in the pay-in period.

(5) For a dedicated fund used to demonstrate financial assurance for corrective action, the first payment into the dedicated fund must be at least one-half of the current cost estimate, divided by the number of years in the corrective action pay-in period as defined in this subrule. The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{RB - CF}{Y}$$

where RB is the most recent estimate of the required dedicated fund balance, which is the total cost that will be incurred during the second half of the corrective action period, CF is the current amount in the dedicated fund, and Y is the number of years remaining in the pay-in period.

(6) The initial payment into the dedicated fund must be made before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure care; or no later than 120 days after the corrective action remedy has been approved by the department.

(7) After the pay-in period has been completed, the dedicated fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimates and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

113.14(7) General requirements.

a. Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this subrule by establishing more than one financial mechanism per facility. The mechanisms must be a combination of those mechanisms outlined in this rule and must provide financial assurance for an amount at least equal to the current cost estimate for closure, postclosure care, or corrective action, whichever is applicable. The financial test and a guarantee provided by a corporate parent, sibling or grandparent may not be combined if the financial statements of the two entities are consolidated.

b. Use of one mechanism for multiple facilities. An owner or operator may satisfy the requirements of this sub-

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

rule for multiple MSWLFs by the use of one mechanism if the owner or operator ensures that the mechanism provides financial assurance for an amount at least equal to the current cost estimates for closure, postclosure care, or corrective action, whichever is applicable, for all MSWLFs covered.

c. Criteria. The language of the financial assurance mechanisms listed in this rule must ensure that the instruments satisfy the following criteria:

(1) The financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, postclosure care, or corrective action for known releases, whichever is applicable;

(2) The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

(3) The financial assurance mechanisms must be obtained by the owner or operator prior to the initial receipt of solid waste and no later than 120 days after the corrective action plan has been approved by the department until the owner or operator is released from the financial assurance requirements; and

(4) The financial assurance mechanisms must be legally valid, binding, and enforceable under Iowa law.

d. No permit shall be issued by the department pursuant to Iowa Code section 455B.305 unless the applicant has demonstrated compliance with rule 113.14(455B).

113.14(8) Closure and postclosure accounts. The holder of a permit for an MSWLF shall maintain a separate account for closure and postclosure care as required by Iowa Code section 455B.306(8)"b." The account shall be specific to a particular facility.

a. Definitions. For the purpose of this subrule, the following definitions shall apply:

"Account" means a formal, separate set of records.

"Current balance" means cash in an account established pursuant to this rule plus the current value of investments of moneys collected pursuant to subrule 113.14(8) and used to purchase one or more of the investments listed in Iowa Code section 12B.10(5).

"Current cost estimate" means the closure cost estimate prepared and submitted to the department pursuant to subrule 113.14(3) and the postclosure cost estimate prepared and submitted pursuant to subrule 113.14(4).

b. Moneys in the accounts shall not be assigned for the benefit of creditors except the state of Iowa.

c. Moneys in the accounts shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

d. Withdrawal of funds. Except as provided in paragraph 113.14(8)"e," moneys in the accounts may be withdrawn without departmental approval only for the purpose of funding closure, including partial closure, or postclosure activities that are in conformance with a closure/postclosure plan which has been submitted pursuant to paragraph 113.5(1)"i." Withdrawals for activities not in conformance with a closure/postclosure plan must receive prior written approval from the department. Permit holders using a trust fund established pursuant to paragraph 113.14(6)"a" to satisfy the requirements of this subrule must comply with the requirements of subparagraph 113.14(6)"a"(6) prior to withdrawal.

e. Excess funds. If the balance of a closure or postclosure account exceeds the current cost estimate for closure or postclosure at any time, the permit holder may withdraw the excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

f. Initial proof of establishment of account. A permit holder shall submit a statement of account, signed by the permit holder, to the department by April 1, 2003, that indicates that accounts have been established pursuant to this subrule. Permit holders for new MSWLFs permitted after April 1, 2003, shall submit to the department prior to the MSWLF's initial receipt of waste a statement of account, signed by the permit holder.

g. An account established pursuant to paragraph 113.14(6)"a" for trust funds or paragraph 113.14(6)"i" for local government dedicated funds also satisfies the requirements of this subrule, and the permit holder shall not be required to establish closure and postclosure accounts in addition to said financial assurance accounts.

Accounts established pursuant to paragraph 113.14(6)"a" or 113.14(6)"i," which are intended to satisfy the requirements of this subrule, must comply with Iowa Code section 455B.306(8)"b."

h. Yearly deposits. Deposits into the closure and postclosure accounts shall be made at least yearly in the amounts specified in this subrule beginning with the close of the facility's first fiscal year that begins after June 30, 2002. The deposits shall be made within 30 days of the close of each fiscal year. The minimum yearly deposit to the closure and postclosure accounts shall be determined using the following formula:

$$\frac{CE - CB}{RPC} \times TR = \text{yearly deposit to account}$$

Where:

"CE" means the current cost estimate of closure and postclosure costs.

"CB" means the current balance of the closure or postclosure accounts.

"RPC" means the remaining permitted capacity, in tons, of the MSWLF as of the start of the permit holder's fiscal year.

"TR" is the number of tons of solid waste disposed of at the facility in the prior year.

i. Closure and postclosure accounts may be commingled with other accounts so long as the amounts credited to each account balance are reported separately pursuant to paragraphs 113.14(3)"a" and 113.14(4)"a."

j. The department shall have full rights of access to all funds existing in a facility's closure or postclosure account, at the sole discretion of the department, if the permit holder fails to undertake closure or postclosure activities after being directed to do so by a final agency action of the department. These funds shall be used only for the purposes of funding closure and postclosure activities at the site.

113.14(9) Amount of required financial assurance. A financial assurance mechanism established pursuant to subrule 113.14(6) shall be in the amount of the third-party cost estimates required by subrules 113.14(3), 113.14(4), and 113.14(5) except that the amount of the financial assurance may be reduced by the sum of the cash balance in a trust fund or local government dedicated fund established to comply with subrule 113.14(8) plus the current value of investments held by said trust fund or local government dedicated fund if invested in one or more of the investments listed in Iowa Code section 12B.10(5).

567—113.15(455B,455D) Variances. A request for a variance to this chapter shall be submitted in writing pursuant to 561—Chapter 10. Some provisions of this chapter are minimum standards required by federal law (see 40 CFR 258), and variances to such provisions shall not be granted unless they are clearly more protective than the applicable minimum federal standards.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Appendix I
Constituents for Detection Monitoring[1]

Common name[2]	CAS RN[3]
Inorganic Constituents:	
(1) Antimony	(Total)
(2) Arsenic	(Total)
(3) Barium	(Total)
(4) Beryllium	(Total)
(5) Cadmium	(Total)
(6) Chromium	(Total)
(7) Cobalt	(Total)
(8) Copper	(Total)
(9) Lead	(Total)
(10) Nickel	(Total)
(11) Selenium	(Total)
(12) Silver	(Total)
(13) Thallium	(Total)
(14) Vanadium	(Total)
(15) Zinc	(Total)

Organic Constituents:	
(16) Acetone	67-64-1
(17) Acrylonitrile	107-13-1
(18) Benzene	71-43-2
(19) Bromochloromethane	74-97-5
(20) Bromodichloromethane	75-27-4
(21) Bromoform; Tribromomethane	75-25-2
(22) Carbon disulfide	75-15-0
(23) Carbon tetrachloride	56-23-5
(24) Chlorobenzene	108-90-7
(25) Chloroethane; Ethyl chloride	75-00-3
(26) Chloroform; Trichloromethane	67-66-3
(27) Dibromochloromethane; Chlorodibromomethane	124-48-1
(28) 1,2-Dibromo-3-chloropropane; DBCP	96-12-8
(29) 1,2-Dibromoethane; Ethylene dibromide; EDB	106-93-4
(30) o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1
(31) p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7
(32) trans-1,4-Dichloro-2-butene	110-57-6
(33) 1,1-Dichloroethane; Ethylidene chloride	75-34-3
(34) 1,2-Dichloroethane; Ethylene dichloride	107-06-2
(35) 1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75-35-4
(36) cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2
(37) trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene	156-60-5
(38) 1,2-Dichloropropane; Propylene dichloride	78-87-5
(39) cis-1,3-Dichloropropene	10061-01-5
(40) trans-1,3-Dichloropropene	10061-02-6
(41) Ethylbenzene	100-41-4
(42) 2-Hexanone; Methyl butyl ketone	591-78-6
(43) Methyl bromide; Bromomethane	74-83-9
(44) Methyl chloride; Chloromethane	74-87-3
(45) Methylene bromide; Dibromomethane	74-95-3
(46) Methylene chloride; Dichloromethane	75-09-2
(47) Methyl ethyl ketone; MEK; 2-Butanone	78-93-3
(48) Methyl iodide; Iodomethane	74-88-4
(49) 4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1
(50) Styrene	100-42-5

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Common name[2]	CAS RN[3]
(51) 1,1,1,2-Tetrachloroethane	630-20-6
(52) 1,1,2,2-Tetrachloroethane	79-34-5
(53) Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127-18-4
(54) Toluene	108-88-3
(55) 1,1,1-Trichloroethane; Methylchloroform	71-55-6
(56) 1,1,2-Trichloroethane	79-00-5
(57) Trichloroethylene; Trichloroethene	79-01-6
(58) Trichlorofluoromethane; CFC-11	75-69-4
(59) 1,2,3-Trichloropropane	96-18-4
(60) Vinyl acetate	108-05-4
(61) Vinyl chloride	75-01-4
(62) Xylenes	1330-20-7

Notes:

[1]This list contains 47 volatile organics for which possible analytical procedures provided in EPA Report SW-846 ''Test Methods for Evaluating Solid Waste,'' third edition, November 1986, as revised December 1987, includes Method 8260; and 15 metals for which SW-846 provides either Method 6010 or a method from the 7000 series of methods.

[2]Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

[3]Chemical Abstracts Service registry number. Where ''Total'' is entered, all species in the groundwater that contain this element are included.

Appendix II
List of Hazardous Inorganic and Organic Constituents[1]

Common Name[2]	CAS RN[3]	Chemical abstracts index name[4]	Suggested Method[5]	PQL (μg/L)[6]
Acenaphthene	83-32-9	Acenaphthylene, 1,2-dihydro-	8100 8270	200 10
Acenaphthylene	208-96-8	Acenaphthylene	8100 8270	200 10
Acetone	67-64-1	2-Propanone	8260	100
Acetonitrile; Methyl cyanide	75-05-8	Acetonitrile	8015	100
Acetophenone	98-86-2	Ethanone, 1-phenyl-	8270	10
2-Acetylaminofluorene; 2-AAF	53-96-3	Acetamide, N-9H-fluoren-2-yl-	8270	20
Acrolein	107-02-8	2-Propenal	8030 8260	5 100
Acrylonitrile	107-13-1	2-Propenenitrile	8030 8260	5 200
Aldrin	309-00-2	1,4:5,8-Dimethanonaphthlene,1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-(1α,4α,4aβ,5α,8α,8aβ)-	8080 8270	0.05 10
Allyl chloride	107-05-1	1-Propene, 3-chloro-	8010 8260	5 10
4-Aminobiphenyl	92-67-1	[1,1[1]-Biphenyl]-4-amine	8270	20

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Common Name[2]	CAS RN[3]	Chemical abstracts index name[4]	Suggested Method[5]	PQL (µg/L)[6]
Anthracene	120-12-7	Anthracene	8100 8270	200 10
Antimony	(Total)	Antimony	6010 7040 7041	300 2000 30
Arsenic	(Total)	Arsenic	6010 7060 7061	500 10 20
Barium	(Total)	Barium	6010 7080	20 1000
Benzene	71-43-2	Benzene	8020 8021 8260	2 0.1 5
Benzo[a]anthracene; Benzanthracene	56-55-3	Benz[a]anthracene	8100 8270	200 10
Benzo[b]fluoranthene	205-99-2	Benz[e]acephenanthrylene	8100 8270	200 10
Benzo[k]fluoranthene	207-08-9	Benzo[k]fluoranthene	8100 8270	200 10
Benzo[ghi]perylene	191-24-2	Benzo[ghi]perylene	8100 8270	200 10
Benzo[a]pyrene	50-32-8	Benzo[a]pyrene	8100 8270	200 10
Benzyl alcohol	100-51-6	Benzenemethanol	8270	20
Beryllium	(Total)	Beryllium	6010 7090 7091	3 50 2
alpha-BHC	319-84-6	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α,3β,4α,5β,6β)-	8080 8270	0.05 10
beta-BHC	319-85-7	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2β,3α,4β,5α,6β)-	8080 8270	0.05 20
delta-BHC	319-86-8	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α,3α,4β,5α,6β)-	8080 8270	0.1 20
gamma-BHC; Lindane	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α,3β,4α,5α,6β)-	8080 8270	0.05 20
Bis(2-chloroethoxy)methane	111-91-1	Ethane, 1,1[1]-[methylene bis(oxy)] bis[2-chloro-	8110 8270	5 10
Bis(2-chloroethyl) ether; Dichloroethyl ether	111-44-4	Ethane, 1,1[1]-oxybis[2-chloro-	8110 8270	3 10

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Common Name[2]	CAS RN[3]	Chemical abstracts index name[4]	Suggested Method[5]	PQL (µg/L)[6]
Bis-(2-chloro-1-methylethyl) ether; 2,2[1]-Dichlorodiisopropyl ether; DCIP, See Note 7	108-60-1	Propane, 2,2[1]-oxybis[1-chloro-	8110 8270	10 10
Bis(2-ethylhexyl) phthalate	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester	8060	20
Bromochloromethane; Chlorobromomethane	74-97-5	Methane, bromochloro-	8021 8260	0.1 5
Bromodichloromethane; Dibromochloromethane	75-27-4	Methane, bromodichloro-	8010 8021 8260	1 0.2 5
Bromoform; Tribromomethane	75-25-2	Methane, tribromo-	8010 8021 8260	2 15 5
4-Bromophenyl phenyl ether	101-55-3	Benzene, 1-bromo-4-phenoxy-	8110 8270	25 10
Butyl benzyl phthalate; Benzyl butyl phthalate	85-68-7	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester	8060 8270	5 10
Cadmium	(Total)	Cadmium	6010 7130 7131	40 50 1
Carbon disulfide	75-15-0	Carbon disulfide	8260	100
Carbon tetrachloride	56-23-5	Methane, tetrachloro-	8010 8021 8260	1 0.1 10
Chlordane	See Note 8	4,7-Methano-1H-indene,1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-	8080 8270	0.1 50
p-Chloroaniline	106-47-8	Benzenamine, 4-chloro-	8270	20
Chlorobenzene	108-90-7	Benzene, chloro-	8010 8020 8021 8260	2 2 0.1 5
Chlorobenzilate	510-15-6	Benzeneacetic acid, 4-chlor-α-(4-chlorophenyl)-α-hydroxy-, ethyl ester	8270	10
p-Chloro-m-cresol; 4-Chloro-3-methylphenol	59-50-7	Phenol, 4-chloro-3-methyl-	8040 8270	5 20
Chloroethane; Ethyl chloride	75-00-3	Ethane, chloro-	8010 8021 8260	5 1 10
Chloroform; Trichloromethane	67-66-3	Methane, trichloro-	8010 8021 8260	0.5 0.2 5

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Common Name[2]	CAS RN[3]	Chemical abstracts index name[4]	Suggested Method[5]	PQL (µg/L)[6]
2-Chloronaphthalene	91-58-7	Naphthalene, 2-chloro-	8120 8270	10 10
2-Chlorophenol	95-57-8	Phenol, 2-chloro-	8040 8270	5 10
4-Chlorophenyl phenyl ether	7005-72-3	Benzene, 1-chloro-4-phenoxy-	8110 8270	40 10
Chloroprene	126-99-8	1,3-Butadiene, 2-chloro-	8010 8260	50 20
Chromium	(Total)	Chromium	6010 7190 7191	70 500 10
Chrysene	218-01-9	Chrysene	8100 8270	200 10
Cobalt	(Total)	Cobalt	6010 7200 7201	70 500 10
Copper	(Total)	Copper	6010 7210 7211	60 200 10
m-Cresol; 3-methylphenol	108-39-4	Phenol, 3-methyl-	8270	10
o-Cresol; 2-methylphenol	95-48-7	Phenol, 2-methyl-	8270	10
p-Cresol; 4-methylphenol	106-44-5	Phenol, 4-methyl-	8270	10
Cyanide	57-12-5	Cyanide	9010	200
2,4-D; 2,4-Dichlorophenoxyacetic acid	94-75-7	Acetic acid, (2,4-dichlorophenoxy)-	8150	10
4,4[1]-DDD	72-54-8	Benzene 1,1[1]-(2,2-dichloroethyl-idene) bis[4-chloro-	8080 8270	0.1 10
4,4[1]-DDE	72-55-9	Benzene, 1,1[1]-(dichloroethyenyl-idene) bis[4-chloro-	8080 8270	0.05 10
4,4[1]-DDT	50-29-3	Benzene, 1,1[1]-(2,2,2-trichloroethylidene)bis[4-chloro-	8080 8270	0.1 10
Diallate	2303-16-4	Carbamothioic acid, bis(1-methyl-ethyl)-, S-(2,3-dichloro-2-propenyl) ester	8270	10
Dibenz[a,h]anthracene	53-70-3	Dibenz[a,h]anthracene	8100 8270	200 10
Dibenzofuran	132-64-9	Dibenzofuran	8270	10
Dibromochloromethane; Chlorodibromomethane	124-48-1	Methane, dibromochloro-	8010 8021 8260	1 0.3 5

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Common Name[2]	CAS RN[3]	Chemical abstracts index name[4]	Suggested Method[5]	PQL (µg/L)[6]
1,2-Dibromo-3-chloropropane; DBCP	96-12-8	Propane, 1,2-dibrome-3-chloro-	8011 8021 8260	0.1 30 25
1,2-Dibromoethane; Ethylene dibromide; EDB	106-93-4	Ethane, 1,2-dibromo-	8011 8021 8260	0.1 10 5
Di-n-butyl phthalate	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester	8060 8270	5 10
o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1	Benzene, 1,2-dichloro-	8010 8020 8021 8120 8260 8270	2 5 0.5 10 5 10
m-Dichlorobenzene; 1,3-Dichlorobenzene	541-73-1	Benzene, 1,3-Dichloro-	8010 8020 8021 8120 8260 8270	5 5 0.2 10 5 10
p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7	Benzene, 1,4-dichloro-	8010 8020 8021 8120 8260 8270	2 5 0.1 15 5 10
3,3[1]-Dichlorobenzidine	91-94-1	[1,1[1]-Biphenyl]-4,4[1]-diamine, 3,3[1]-dichloro-	8270	20
trans-1,4-Dichloro-2-butene	110-57-6	2-Butene, 1,4-dichloro-, (E)-	8260	100
Dichlorodifluoromethane; CFC 12	75-71-8	Methane, dichlorodifluoro-	8021 8260	0.5 5
1,1-Dichloroethane; Ethyldidene chloride	75-34-3	Ethane, 1,1-dichloro-	8010 8021 8260	1 0.5 5
1,2-Dichloroethane; Ethylene dichloride	107-06-2	Ethane, 1,1-dichloro-	8010 8021 8260	0.5 0.3 5
1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75-35-4	Ethene, 1,1-dichloro-	8010 8021 8260	1 0.5 5
cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2	Ethene, 1,2-dichloro-, (Z)-	8021 8260	0.2 5
trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene	156-60-5	Ethene, 1,2-dichloro-, (E)-	8010 8021 8260	1 0.5 5

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Common Name[2]	CAS RN[3]	Chemical abstracts index name[4]	Suggested Method[5]	PQL (µg/L)[6]
2,4-Dichlorophenol	120-83-2	Phenol, 2,4-dichloro-	8040 8270	5 10
2,6-Dichlorophenol	87-65-0	Phenol, 2,6-dichloro-	8270	10
1,2-Dichloropropane; Propylene dichloride	78-87-5	Propane, 1,2-dichloro-	8010 8021 8260	0.5 0.05 5
1,3-Dichloropropane; Trimethylene dichloride	142-28-9	Propane, 1,3-dichloro-	8021 8260	0.3 5
2,2-Dichloropropane; Isopropylidene chloride	594-20-7	Propane, 2,2-dichloro-	8021 8260	0.5 15
1,1-Dichloropropene	563-58-6	1-Propene, 1,1-dichloro-	8021 8260	0.2 5
cis-1,3-Dichloropropene	10061-01-5	1-Propene, 1,3-dichloro-, (Z)-	8010 8260	20 10
trans-1,3-Dichloropropene	10061-02-6	1-Propene, 1,3-dichloro-, (E)-	8010 8260	5 10
Dieldrin	60-57-1	2,7:3,6-Dimethanonaphth[2,3-b] oxirene, 3,4,5,6,9,9-hexa,chloro-1a, 2,2a,3,6,6a,7, 7a-octahydro-,(1aα, 2β,2aα,3β,6β,6aα,7β, 7aα)-	8080 8270	0.05 10
Diethyl phthalate	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester	8060 8270	5 10
0,0-Diethyl 0-2-pyrazinyl phosphorothioate; Thionazin	297-97-2	Phosphorothioic acid, 0,0-diethyl 0-pyrazinyl ester	8141 8270	5 20
Dimethoate	60-51-5	Phosphorodithioic acid, 0,0-dimethyl S- [2-(methylamino)-2-oxoethyl] ester	8141 8270	3 20
p-(Dimethylamino)azobenzene	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-	8270	10
7,12-Dimethylbenz[a]anthracene	57-97-6	Benz[a]anthracene, 7,12-dimethyl-	8270	10
3,3[1]-Dimethylbenzidine	119-93-7	[1,1[1]-Biphenyl]-4,4[1]-diamine, 3,3[1]-dimethyl-	8270	10
2,4-Dimethylphenol; m-Xylenol	105-67-9	Phenol, 2,4-dimethyl-	8040 8270	5 10
Dimethyl phthalate	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester	8060 8270	5 10
m-Dinitrobenzene	99-65-0	Benzene, 1,3-dinitro-	8270	20
4,6-Dinitro-o-cresol 4,6-Dinitro-2-methylphenol	534-52-1	Phenol, 2-methyl-4,6-dinitro-	8040 8270	150 50

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Common Name[2]	CAS RN[3]	Chemical abstracts index name[4]	Suggested Method[5]	PQL (µg/L)[6]
2,4-Dinitrophenol	51-28-5	Phenol, 2,4-dinitro-	8040 8270	150 50
2,4-Dinitrotoluene	121-14-2	Benzene, 1-methyl-2,4-dinitro-	8090 8270	0.2 10
2,6-Dinitrotoluene	606-20-2	Benzene, 2-methyl-1,3-dinitro-	8090 8270	0.1 10
Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-	8150 8270	1 20
Di-n-octyl phthalate	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester	8060 8270	30 10
Diphenylamine	122-39-4	Benzenamine, N-phenyl-	8270	10
Disulfoton	298-04-4	Phosphorodithioic acid, 0,0-diethyl S-[2-(ethylthio)ethyl] ester	8140 8141 8270	2 0.5 10
Endosulfan I	959-98-8	6,9-Methano-2,4,3-benzodioxa-thiepin, 6,7,8,9,10,10-hexa- chloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide	8080 8270	0.1 20
Endosulfan II	33213-65-9	6,9-Methano-2,4,3-benzodioxa-thiepin, 6,7,8,9,10,10-hexa- chloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide,(3α,5aα,6β,9β,9aα)-	8080 8270	0.05 20
Endosulfan sulfate	1031-07-8	6,9-Methano-2,4,3-benzodioxa-thiepin, 6,7,8,9,10,10-hexa- chloro-1,5,5a,6,9,9a-hexahydro-, 3-3-dioxide	8080 8270	0.5 10
Endrin	72-20-8	2,7:3,6-Dimethanonaphth[2,3-b] oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a, 7,7a-octahydro-, (1aα,2β,2aβ,3α,6α, 6aβ,7β,7aα)-	8080 8270	0.1 20
Endrin aldehyde	7421-93-4	1,2,4-Methenocyclopenta[cd]penta-lene- 5-carboxaldehyde,2,2a,3, 3,4,7-hexachlorodecahydro-,(1α,2β, 2aβ,4β,4aβ,5β,6aβ, 6bβ,7R*)-	8080 8270	0.2 10
Ethylbenzene	100-41-4	Benzene, ethyl-	8020 8221 8260	2 0.05 5
Ethyl methacrylate	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester	8015 8260 8270	5 10 10
Ethyl methanesulfonate	62-50-0	Methanesulfonic acid, ethyl ester	8270	20
Famphur	52-85-7	Phosphorothioic acid, 0-[4-[(dimethyl-amino) sulfonyl]phenyl] 0,0-dimethyl ester	8270	20
Fluoranthene	206-44-0	Fluoranthene	8100 8270	200 10

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Common Name[2]	CAS RN[3]	Chemical abstracts index name[4]	Suggested Method[5]	PQL (µg/L)[6]
Fluorene	86-73-7	9H-Fluorene	8100 8270	200 10
Heptachlor	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7, 8,8- heptachloro-3a,4,7, 7a-tetrahydro-	8080 8270	0.05 10
Heptachlor epoxide	1024-57-3	2,5-Methano-2H-indeno[1,2-b] oxirene, 2,3,4,5,6,7,7-heptachloro-1a,1b,5,5a,6,6a-hexahydro-, (1aα,1bβ, 2α, 5α,5aβ, 6β, 6aα)	8080 8270	1 10
Hexachlorobenzene	118-74-1	Benzene, hexachloro-	8120 8270	0.5 10
Hexachlorobutadiene	87-68-3	1,3-Butadiene, 1,1,2,3,4, 4-hexachloro-	8021 8120 8260 8270	0.5 5 10 10
Hexachlorocyclopentadiene	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	8120 8270	5 10
Hexachloroethane	67-72-1	Ethane, hexachloro-	8120 8260 8270	0.5 10 10
Hexachloropropene	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-	8270	10
2-Hexanone; Methyl butyl ketone	591-78-6	2-Hexanone	8260	50
Indeno(1,2,3-cd)pyrene	193-39-5	Indeno(1,2,3-cd)pyrene	8100 8270	200 10
Isobutyl alcohol	78-83-1	1-Propanol, 2-methyl-	8015 8240	50 100
Isodrin	465-73-6	1,4,5,8-Dimethanonaphthalene,1,2, 3,4, 10,10- hexachloro-1,4,4a,5,8,8a-hexahydro-(1α,4α,4aβ,5β,8β,8aβ)-	8270 8260	20 10
Isophorone	78-59-1	2-Cyclohexen-1-one, 3,5,5-trimethyl-	8090 8270	60 10
Isosafrole	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-	8270	10
Kepone	143-50-0	1,3,4-Metheno-2H-cyclobuta[cd] pentalen-2-one,1,1a,3,3a,4,5,5, 5a,5b,6-decachlorooctahydro-	8270	20
Lead	(Total)	Lead	6010 7420 7421	400 1000 10
Mercury	(Total)	Mercury	7470	2
Methacrylonitrile	126-98-7	2-Propenenitrile, 2-methyl-	8015 8260	5 100

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Common Name[2]	CAS RN[3]	Chemical abstracts index name[4]	Suggested Method[5]	PQL (µg/L)[6]
Methapyrilene	91-80-5	1,2-Ethanediamine, N.N-dimethyl-N[1]-2-pyridinyl-N1/2 -thienylmethyl)-	8270	100
Methoxychlor	72-43-5	Benzene,1,1[1]-(2,2,2, trichloroethylidene)bis[4-methoxy-	8080 8270	2 10
Methyl bromide; Bromomethane	74-83-9	Methane, bromo-	8010 8021	20 10
Methyl chloride; Chloromethane	74-87-3	Methane, chloro-	8010 8021	1 0.3
3-Methylcholanthrene	56-49-5	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	8270	10
Methyl ethyl ketone; MEK; 2-Butanone	78-93-3	2-Butanone	8015 8260	10 100
Methyl iodide; Iodomethane	74-88-4	Methane, iodo-	8010 8260	40 10
Methyl methacrylate	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester	8015 8260	2 30
Methyl methanesulfonate	66-27-3	Methanesulfonic acid, methyl ester	8270	10
2-Methylnaphthalene	91-57-6	Naphthalene, 2-methyl-	8270	10
Methyl parathion; Parathion methyl	298-00-0	Phosphorothioic acid, 0,0-dimethyl	8140 8141 8270	0.5 1 10
4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1	2-Pentanone, 4-methyl-	8015 8260	5 100
Methylene bromide; Dibromomethane	74-95-3	Methane, dibromo-	8010 8021 8260	15 20 10
Methylene chloride; Dichloromethane	75-09-2	Methane, dichloro-	8010 8021 8260	5 0.2 10
Naphthalene	91-20-3	Naphthalene	8021 8100 8260 8270	0.5 200 5 10
1,4-Naphthoquinone	130-15-4	1,4-Naphthalenedione	8270	10
1-Naphthylamine	134-32-7	1-Naphthalenamine	8270	10
2-Naphthylamine	91-59-8	2-Naphthalenamine	8270	10
Nickel	(Total)	Nickel	6010 7520	150 400
o-Nitroaniline; 2-Nitroaniline	88-74-4	Benzenamine, 2-nitro-	8270	50
m-Nitroaniline; 3-Nitroanile	99-09-2	Benzenamine, 3-nitro-	8270	50

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Common Name[2]	CAS RN[3]	Chemical abstracts index name[4]	Suggested Method[5]	PQL (µg/L)[6]
p-Nitroaniline; 4-Nitroaniline	100-01-6	Benzenamine, 4-nitro-	8270	20
Nitrobenzene	98-95-3	Benzene, nitro-	8090 8270	40 10
o-Nitrophenol; 2-Nitrophenol	88-75-5	Phenol, 2-nitro-	8040 8270	5 10
p-Nitrophenol; 4-Nitrophenol	100-02-7	Phenol, 4-nitro-	8040 8270	10 50
N-Nitrosodi-n-butylamine	924-16-3	1-Butanamine, N-butyl-N-nitroso-	8270	10
N-Nitrosodiethylamine	55-18-5	Ethanamine, N-ethyl-N-nitroso-	8270	20
N-Nitrosodimethylamine	62-75-9	Methanamine, N-methyl-N-nitroso-	8070	2
N-Nitrosodiphenylamine	86-30-6	Benzenamine, N-nitroso-N-phenyl-	8070	5
N-Nitrosodipropylamine; N-Nitroso-N-dipropylamine; Di-n-propylnitrosamine propyl-	621-64-7	1-Propanamine, N-nitroso-N-	8070	10
N-Nitrosomethylethalamine	10595-95-6	Ethanamine, N-methyl-N-nitroso-	8270	10
N-Nitrosopiperidine	100-75-4	Piperidine, 1-nitroso-	8270	20
N-Nitrosopyrrolidine	930-55-2	Pyrrolidine, 1-nitroso-	8270	40
5-Nitro-o-toluidine	99-55-8	Benzenamine, 2-methyl-5-nitro-	8270	10
Parathion	56-38-2	Phosphorothioic acid, 0,0-diethyl 0-(4-nitrophenyl) ester	8141 8270	0.5 10
Pentachlorobenzene	608-93-5	Benzene, pentachloro-	8270	10
Pentachloronitrobenzene	82-68-8	Benzene, pentachloronitro-	8270	20
Pentachlorophenol	87-86-5	Phenol, pentachloro-	8040 8270	5 50
Phenacetin	62-44-2	Acetamide, N-(4-ethoxyphenl)	8270	20
Phenanthrene	85-01-8	Phenanthrene	8100 8270	200 10
Phenol	108-95-2	Phenol	8040	1
p-Phenylenediamine	106-50-3	1,4-Benzenediamine	8270	10
Phorate	298-02-2	Phosphorodithioic acid, 0,0-diethyl S-[(ethylthio)methyl]ester	8140 8141 8270	2 0.5 10
Polychlorinated biphenyls; PCBs; Aroclors	See Note 9	1,1[prime]-Biphenyl, chloroderivatives	8080 8270	50 200
Pronamide	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-	8270	10

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Common Name[2]	CAS RN[3]	Chemical abstracts index name[4]	Suggested Method[5]	PQL (µg/L)[6]
Propionitrile; Ethyl cyanide	107-12-0	Propanenitrile	8015 8260	60 150
Pyrene	129-00-0	Pyrene	8100 8270	200 10
Safrole	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-	8270	10
Selenium	(Total)	Selenium	6010 7740 7741	750 20 20
Silver	(Total)	Silver	6010 7760 7761	70 100 10
Silvex; 2,4,5-TP	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-	8150	2
Styrene	100-42-5	Benzene, ethenyl-	8020 8021 8260	1 0.1 10
Sulfide	18496-25-8	Sulfide	9030	4000
2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-	8150	2
1,2,4,5-Tetrachlorobenzene	95-94-3	Benzene, 1,2,4,5-tetrachloro-	8270	10
1,1,1,2-Tetrachloroethane	630-20-6	Ethane, 1,1,1,2-tetrachloro-	8010 8021 8260	5 0.05 5
1,1,2,2-Tetrachloroethane	79-34-5	Ethane, 1,1,2,2-tetrachloro-	8010 8021 8260	0.5 0.1 5
Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127-18-4	Ethene, tetrachloro-	8010 8021 8260	0.5 0.5 5
2,3,4,6-Tetrachlorophenol	58-90-2	Phenol, 2,3,4,6-tetrachloro-	8270	10
Thallium	(Total)	Thallium	6010 7840 7841	400 1000 10
Tin	(Total)	Tin	6010	40
Toluene	108-88-3	Benzene, methyl-	8020 8021 8260	2 0.1 5
o-Toluidine	95-53-4	Benzenamine, 2-methyl-	8270	10
Toxaphene	See Note 10	Toxaphene	8080	2

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Common Name[2]	CAS RN[3]	Chemical abstracts index name[4]	Suggested Method[5]	PQL (µg/L)[6]
1,2,4-Trichlorobenzene	120-82-1	Benzene, 1,2,4-trichloro-	8021 8120 8260 8270	0.3 0.5 10 10
1,1,1-Trichloroethane; Methylchloroform	71-55-6	Ethane, 1,1,1-trichloro-	8010 8021 8260	0.3 0.3 5
1,1,2-Trichloroethane	79-00-5	Ethane, 1,1,2-trichloro-	8010 8260	0.2 5
Trichloroethylene; Trichloroethene	79-01-6	Ethene, trichloro-	8010 8021 8260	1 0.2 5
Trichlorofluoromethane; CFC-11	75-69-4	Methane, trichlorofluoro-	8010 8021 8260	10 0.3 5
2,4,5-Trichlorophenol	95-95-4	Phenol, 2,4,5-trichloro-	8270	10
2,4,6-Trichlorophenol	88-06-2	Phenol, 2,4,6-trichloro-	8040 8270	5 10
1,2,3-Trichloropropane	96-18-4	Propane, 1,2,3-trichloro-	8010 8021 8260	10 5 15
0,0,0-Triethyl phosphorothioate	126-68-1	Phosphorothioic acid, 0,0,0-triethyl ester	8270	10
sym-Trinitrobenzene	99-35-4	Benzene, 1,3,5-trinitro-	8270	10
Vanadium	(Total)	Vanadium	6010 7910 7911	80 2000 40
Vinyl acetate	108-05-4	Acetic acid, ethenyl ester	8260	50
Vinyl chloride; Chloroethene	75-01-4	Ethene, chloro-	8010 8021 8260	2 0.4 10
Xylene (total)	See Note 11	Benzene, dimethyl-	8020 8021 8260	5 0.2 5
Zinc	(Total)	Zinc	6010 7950 7951	20 50 0.5

Notes:

[1]The regulatory requirements pertain only to the list of substances; the right hand columns (Methods and PQL) are given for informational purposes only. See also footnotes 5 and 6.

[2]Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

[3]Chemical Abstracts Service registry number. Where "Total" is entered, all species in the groundwater that contain this element are included.

[4]CAS index are those used in the 9th Collective Index.

[5]Suggested Methods refer to analytical procedure numbers used in EPA Report SW-846 "Test Methods for Evaluating Solid Waste," third edition, November 1986, as revised, December 1987. Analytical details can be found in SW-846 and in documentation on file at the agency. CAUTION: The methods listed are representative SW-846 procedures and may not always be the most suitable method(s) for monitoring an analyte under the regulations.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

[6]Practical Quantitation Limits (PQLs) are the lowest concentrations of analytes in groundwaters that can be reliably determined within specified limits of precision and accuracy by the indicated methods under routine laboratory operating conditions. The PQLs listed are generally stated to one significant figure. PQLs are based on 5 mL samples for volatile organics and 1 L samples for semivolatile organics.
CAUTION: The PQL values in many cases are based only on a general estimate for the method and not on a determination for individual compounds; PQLs are not a part of the regulation.

[7]This substance is often called Bis(2-chloroisopropyl) ether, the name Chemical Abstracts Service applies to its noncommercial isomer, Propane, 2,2[sec]-oxybis[2-chloro- (CAS RN 39638-32-9).

[8]Chlordane: This entry includes alpha-chlordane (CAS RN 5103-71-9), beta-chlordane (CAS RN 5103-74-2), gamma-chlordane (CAS RN 5566-34-7), and constituents of chlordane (CAS RN 57-74-9 and CAS RN 12789-03-6). PQL shown is for technical chlordane. PQLs of specific isomers are about 20 µg/L by method 8270.

[9]Polychlorinated biphenyls (CAS RN 1336-36-3); this category contains congener chemicals, including constituents of Aroclor 1016 (CAS RN 12674-11-2), Aroclor 1221 (CAS RN 11104-28-2), Aroclor 1232 (CAS RN 11141-16-5), Aroclor 1242 (CAS RN 53469-21-9), Aroclor 1248 (CAS RN 12672-29-6), Aroclor 1254 (CAS RN 11097-69-1), and Aroclor 1260 (CAS RN 11096-82-5). The PQL shown is an average value for PCB congeners.

[10]Toxaphene: This entry includes congener chemicals contained in technical toxaphene (CAS RN 8001-35-2), i.e., chlorinated camphene.

[11]Xylene (total): This entry includes o-xylene (CAS RN 96-47-6), m-xylene (CAS RN 108-38-3), p-xylene (CAS RN 106-42-3), and unspecified xylenes (dimethylbenzenes) (CAS RN 1330-20-7). PQLs for method 8021 are 0.2 for o-xylene and 0.1 for m- or p-xylene. The PQL for m-xylene is 2.0 µg/L by method 8020 or 8260.

These rules are intended to implement Iowa Code section 455B.304.

ARC 5577B

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 83, "Medicaid Waiver Services," Iowa Administrative Code.

2006 Iowa Acts, House File 2734, included funding for a 3 percent increase in reimbursement for most Medicaid providers, including home- and community-based services waiver providers, which was effective July 1, 2006. The Medicaid AIDS/HIV waiver, brain injury waiver, children's mental health waiver, elderly waiver, ill and handicapped waiver, and physical disability waiver all have limits on the allowable monthly cost of waiver services, based on the consumer's level of care. These amendments increase the limits on maximum cost for services under these waivers by 3 percent.

For consumers whose service costs are at or near the limit, the implementation of the 3 percent rate increase may require a reduction of the authorized service level in order for the service costs to remain within the limit. The Department does not believe that it was the intent of the legislature for the rate increase to result in a decrease in services for waiver consumers, especially for those with the highest needs.

In addition, Executive Order 43, signed July 4, 2005, directs the Department to "meet and confer" with AFSCME, the union representing waiver consumer-directed attendant care providers. One of the terms of the agreement currently under negotiation is to increase the waiver caps by 3 percent to accommodate the 3 percent provider increase. This increase ensures that providers of consumer-directed attendant care are not prevented from receiving the increase because of the limit on waiver service costs. The agreement is expected to become effective as of December 1, 2006.

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

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 5578B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before December 27, 2006. Comments should be directed to Mary Ellen Imlau, 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.4.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

ARC 5580B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 217.6 and 234.6, the Department of Human Services proposes to amend Chapter 151, "Juvenile Court Services Directed Programs," Iowa Administrative Code.

These amendments modify the components of the graduated sanction service, "supervised community treatment." Supervised community treatment services are early intervention and follow-up services provided to youth who have been adjudicated delinquent, including registered sex offenders, and to youth who have been referred to juvenile court ser-

HUMAN SERVICES DEPARTMENT[441](cont'd)

vices for a delinquency violation or who have exhibited behaviors likely to result in a juvenile delinquency referral. The amendments:

- Give the chief juvenile court officers flexibility to eliminate components of the service as necessary to meet budgetary limitations; and
- Require that staff providing individual, group, or family therapy meet applicable state licensing standards. This change will enable the provider to bill the Medicaid program for services to Medicaid-eligible youth.
- Make a technical change to the implementation sentence for Division III, "Graduated Sanction Services."

The chief juvenile court officers have unanimously agreed to the rule changes. The loss of Medicaid funding for rehabilitative treatment services limits the funds available for graduated sanction services to the state funds that were previously used to match the federal Medicaid expenditures. The modifications to the service components allow the chief juvenile court officers flexibility to continue providing services to this population and to maximize the available funding. Communities and the public benefit from the involvement, oversight, and supervision provided to youth who present a threat to their communities and the public.

These amendments do not provide for waivers in specified situations. The rules allow flexibility to meet certain service needs as anticipated by chief juvenile court officers whose clients are under court orders. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 5581B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before December 27, 2006. Comments should be directed to Mary Ellen Imlau, 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 232.191.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

ARC 5594B

INSURANCE DIVISION[191]

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 505.8, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 1, "Organization of Division," Iowa Administrative Code.

The rules in Chapter 1 describe the bureaus of the Division and the public records functions of the Division. This amendment updates the Division's structure and implements the authority granted in 2006 Iowa Acts, Senate File 2364, to charge a fee for service of process as permitted by recent legislation. The Division intends that the rules will be effective March 7, 2007.

Any interested person may make written suggestions or comments on this proposed amendment on or before December 26, 2006. Such written materials should be directed to Rosanne Mead, Assistant Insurance Commissioner, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319; fax (515)281-3059.

Also, there will be a public hearing on December 26, 2006, at 1 p.m. at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319, 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 amendment.

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

This amendment is intended to implement Iowa Code section 505.8 and 2006 Iowa Acts, Senate File 2364, section 18 [2007 Iowa Code section 505.29].

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend **191—Chapter 1** as follows:

CHAPTER 1
ORGANIZATION OF DIVISION

191—1.1(502,505) Organization. The insurance division is headed by the commissioner of insurance who is assisted by a first ~~and second~~ deputy commissioner and other *deputy and* ~~assistants~~ *assistant commissioners*. The functions of the division are divided into ~~nine~~ *five* bureaus~~:~~.

1.1(1) ~~Administrative~~ *The administrative* bureau provides staff support to the commissioner and is responsible for legal services, budgetary and personnel services. General oversight of the division operations is provided through interaction with the public, the insurance industry, and other state and federal agencies.

1.1(2) ~~Financial regulation/examinations~~ *The company regulation* bureau is responsible for the ~~admission of all insurance companies operating in Iowa; this includes examination and regulation of companies as well as review of filed financial statements. The staff is statutorily required to examine Iowa insurance companies every five years. Increased emphasis has been placed on the creation of an analysis unit and the change in focus for financial examinations in recent years in order to obtain and preserve this agency's NAIC accreditation. This bureau also serves as a general insurance information resource (e.g., insurance company status, addresses, telephone numbers, certifications, financial statements, statutory construction, and guaranty fund calculations). Other services provided by this bureau include assumption reinsurance; approval of acquisitions and mergers; authorization and oversight of workers' compensation self-insurance; supervision, rehabilitation and liquidation of insurance companies; premium tax audit; supervision of statu-~~

INSURANCE DIVISION[191](cont'd)

~~tory deposits; and compilation of statistics based on financial reports made to the commissioner.~~ *following:*

a. Regulating of all domestic and foreign insurance companies licensed in Iowa through licensure, analysis and financial and market examinations.

b. Examining the financial condition of Iowa insurance companies not less than once every five years. Foreign companies are examined as deemed appropriate. The bureau ensures compliance with National Association of Insurance Commissioners accreditation mandates, and financial examination and analysis standards.

c. Serving as a general insurance information repository and resource for both insurers and consumers regarding, for example: insurance companies' status, addresses, telephone numbers, certifications, and financial statements; statutory construction; guaranty fund calculations; powers of attorney; compilation of statistics; and publication of annual governor's report.

d. Reviewing and approving filed company transactions including, but not limited to, approval of acquisitions and mergers of domestic insurers, intercompany contractual agreements and assumption reinsurance agreements.

e. Authorizing and overseeing individual and group workers' compensation self-insurance.

f. Authorizing, examining and analyzing benevolent associations.

g. Authorizing and reviewing multiple employer welfare arrangements.

h. Registering and verifying compliance for risk retention groups.

i. Supervising the rehabilitation and liquidation of insurance companies.

j. Auditing and monitoring premium tax remittances for admitted companies and supervising statutory deposits.

k. Reviewing and approving admission applications for foreign surplus lines insurers as well as conducting premium tax audits associated with the nonadmitted insurance industry.

1.1(3) ~~Property and casualty~~ *The market regulation* bureau *is responsible for the following:*

a. Ensuring fair treatment of consumers and preventing unfair or deceptive trade practices in the insurance and securities marketplaces. Inquiries from the public are answered and consumer complaints regarding insurance producers, insurers, broker-dealers, securities agents, investment advisers, and investment adviser representatives are received, reviewed, and investigated. Administrative actions are taken where appropriate, and criminal matters are referred to prosecutors for potential action.

b. Operating the senior health insurance information program (SHIIP), which provides training to senior volunteers throughout the state. These volunteers then provide free, confidential health insurance counseling to Iowa seniors. Issues addressed include Medicare, Medicare subscription drug coverage, Medicare supplement insurance, long-term care insurance, insurance claims, and all other health insurance policies. This program is primarily funded by a federal health care finance administration grant.

c. ~~is responsible for the review, approval/disapproval of~~ *Reviewing, approving or disapproving* property, ~~and~~ casualty ~~forms~~, *life and health forms* and, where provided by law, *premium* rates of certain types of insurance.

d. Performing actuarial analysis of life and health insurance plans funded by certain public bodies.

e. Licensing insurance producers and overseeing the continuing education that insurance producers are required to complete.

f. ~~This bureau monitors~~ *Monitoring* surplus lines placement, ~~and audits surplus lines companies' financial statements. This bureau is responsible for the registration of new~~ *registering* purchasing groups ~~and risk retention groups.~~, *and* ~~This bureau also oversees~~ *overseeing* the payment of premium taxes for surplus lines business including *that which is placed through* purchasing ~~group~~ *groups* and risk retention ~~group~~ *groups* ~~business~~.

g. ~~Other services include registration~~ *Registering* ~~of~~ managing general agents~~,~~ *and* legal expense~~,~~ *insurers.*

h. Registering and monitoring third-party administrators.

i. Registering and monitoring health maintenance organizations.

j. ~~and the licensing~~ *Licensing* ~~of~~ advisory organizations.

~~Life and health form and rates bureau is responsible for the review, approval/disapproval of life and health forms, and, where provided by law, rates of certain types of insurance. Actuarial analysis of public bodies that self-fund their life and health insurance plans is performed here.~~

~~Consumer and legal affairs bureau is responsible for ensuring fair treatment of consumers and preventing unfair or deceptive trade practices in the insurance marketplace. Consumer complaints and inquiries from the public are taken, agent/company investigations are conducted and, when necessary, offenders are prosecuted at administrative hearings.~~

~~Producers licensing bureau is responsible for licensing of insurance producers and oversight of required continuing education. Each individual insurance producer must be licensed and maintain yearly continuing education eligibility.~~

~~Senior health insurance information program (SHIIP) bureau provides training to senior volunteers located in 65 counties. These volunteers then provide free, confidential health insurance counseling to Iowa seniors. Issues addressed include Medicare, Medicare supplement insurance, long-term care insurance, insurance claims, and all other health insurance policies. This program is primarily funded by a federal health care finance administration grant.~~

1.1(4) ~~Fraud~~ *The fraud* bureau confronts the problem of insurance fraud by prevention, investigation, and prosecution of fraudulent insurance acts in an effort to reduce the amount of premium dollars used to pay fraudulent insurance claims, *as set forth in Iowa Code chapter 507E.*

1.1(5) ~~Securities~~ *The securities and regulated industries* bureau is responsible for administering and enforcing the Iowa uniform securities Act through enforcement, licensing, and securities registration to ensure investor protection and a positive climate for capital formation. ~~This bureau includes the regulated industries unit which~~ *The bureau also* is responsible for *protecting the public by* administering and enforcing *rules related to* motor vehicle service contracts, ~~funeral services and merchandise, sale of cemetery merchandise, perpetual care cemetery licensing, business opportunities,~~ residential service contracts, ~~and~~ retirement facilities ~~to ensure conformity and protection of the public.~~, *cemeteries, and preneed purchase agreements for cemetery merchandise, funeral merchandise and funeral services.*

191—1.2(502,505) Location *and contact information*. The ~~securities bureau of the insurance division is located at 340 East Maple in Des Moines, Polk County, Iowa. All other bureaus of the~~ insurance division ~~are~~ *is* located at 330 East Maple in Des Moines, Polk County, Iowa. *The general telephone number for the division is (515)281-5705 or 1-877-955-1212. The division's Web site is* www.iid.state.ia.us.

INSURANCE DIVISION[191](cont'd)

FAIR INFORMATION PRACTICES

The insurance division hereby adopts the rules on fair information practices of the Governor's Task Force on Uniform Rules of Agency Procedure to appear as subrules 1.3(1) to 1.3(8) with amendments. The uniform rules are printed in the first volume of the Iowa Administrative Code.

191—1.3(22,502,505) Public information and inspection of records.

1.3(1) No change.

1.3(3) Requests for access to records.

a. Location of record. A request for access to a record should be directed to the office of the bureau where the record is kept. If the location of the record is not known by the requester, the request shall be directed to the division's receptionist at (515)281-5705 *or toll-free at 1-877-955-1212*, or in writing to Iowa Insurance Division, 330 East Maple, Des Moines, Iowa 50319-0065. The division will forward the request to the appropriate person.

b. Office hours. Records shall be made available from 8 a.m. to 4 p.m. daily, excluding Saturdays, Sundays and legal holidays.

c. Telephone access. The general telephone number for the insurance division is (515)281-5705 *or toll-free at 1-877-955-1212*. ~~The telephone number of the division's automated phone system for producers licensing is (515)281-4037.~~

d. Internet access. The division's Internet *Web site* home page is ~~http://www.state.ia.us/government/com/ins/ins.htm~~ *www.iid.state.ia.us*. The page from which the division's bulletins are available is ~~http://www.state.ia.us/government/com/ins/bulletin/index.htm~~ *http://www.iid.state.ia.us/news_media/bulletins.asp*.

e. Request for access. Requests for access to open records may be made in writing, in person, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail or telephone requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

f. Response to requests. The division provides a public access room with photocopiers and work surfaces. Space is limited and advance reservations are requested. A location will be made available as soon as feasible. Subject to availability of the public access room or an alternative location in the division's offices, access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the division shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4), *or to permit the division time to redact personally identifiable information from the record*. 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. The division may deny access to the record by members of the public only on the grounds that such 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.

g. Fees. Copies of an open record may be made in the division's public access room. Price schedules for published materials and for photocopies of records shall be determined by the division and prominently posted in the public access room. The payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest. When the mailing of copies of records is requested, the actual costs of the mailing will be charged to the requester.

The following additional subrules also are adopted:

1.3(9) Data processing system. The agency ~~does not~~ currently ~~have a~~ *has certain* data processing ~~system~~ *systems* which ~~matches~~ *match*, ~~collates~~ *collate* or ~~permits~~ *permit* the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

1.3(10) Agency records routinely available for public inspection. The agency collects and maintains the following records that are open records, *some of which may contain personally identifiable information*:

a. to h. No change.

i. Various legal and technical publications related to insurance.

~~i~~ *j*. All other records that are not confidential records under subrule 1.3(11).

~~The records listed above may contain personally identifiable information.~~

~~Various legal and technical publications related to insurance are also open records.~~

1.3(11) Records which are confidential records. Confidential agency records are the following:

a. to e. No change.

f. Complaint files, investigation files, other investigative reports and other investigative information of the agency relating to discipline of licensed insurance agents, except as allowed under Iowa Code section 505.8(6), 505.17, 507A.10 ~~as amended by 2004 Iowa Acts, chapter 1110, section 19~~, or 507B.3 ~~as amended by 2004 Iowa Acts, chapter 1110, section 21~~.

g. to k. No change.

191—1.4(505) Service of process. *A party to a proceeding who requests that the commissioner provide service of process as allowed by law shall pay a fee to the Iowa insurance division of $50.*

These rules are intended to implement Iowa Code sections 505.1 and 22.11 *and 2006 Iowa Acts, Senate File 2364, section 18 [2007 Iowa Code section 505.29]*.

ARC 5596B

LABOR SERVICES DIVISION[875]

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 88.5, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 10, "General Industry Safety and Health Rules," and Chapter 26, "Construction Safety and Health Rules," Iowa Administrative Code.

The proposed amendments adopt by reference changes to federal occupational safety and health standards concerning

LABOR SERVICES DIVISION[875](cont'd)

respiratory protection that establish definitions and requirements for assigned protection factors and maximum use concentrations. The amendments also change respirator selection requirements in several different standards.

The proposed amendments also bring Iowa's hexavalent chromium standards into conformity with changes to the federal standards that resulted from settlement of a federal lawsuit. As a result of the lawsuit, the U.S. Department of Labor recently changed its standard concerning hexavalent chromium by adding an optional timetable and a set of requirements for businesses in the metal- and surface-finishing industry. The changes to the federal standard apply specifically to states in which the U.S. Department of Labor is responsible for occupational safety and health enforcement, thus excluding Iowa. Therefore, the Labor Commissioner has proposed a rule that is parallel to the federal standard changes, rather than proposing to adopt the federal standard changes.

The proposed changes in the respirator selection, assigned protection factors and maximum use concentrations enhance protections for workers who are exposed to airborne contaminants. The proposed changes relating to hexavalent chromium are not a significant departure from the existing standard but are designed to give a limited number of employers additional flexibility in complying with the standard.

The principal reasons for adoption of these amendments are to implement Iowa Code chapter 88, to protect the safety and health of Iowa workers, and to make Iowa's rules current and more consistent with federal regulations.

Written data, views, or arguments to be considered in adoption must be submitted no later than December 28, 2006, to the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iowa.gov.

A public hearing will be held on December 28, 2006, at 1:30 p.m. in the Stanley Room at Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa. The public will be given the opportunity to make oral statements and submit documents. The facility for oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should telephone (515)242-5869 in advance to arrange access or other needed services.

These amendments are intended to implement Iowa Code section 88.5.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Adopt **new** rule 875—10.4(88) as follows:

875—10.4(88) Exception for hexavalent chromium exposure in metal and surface finishing job shops. Prior to December 31, 2008, for employers that comply with the requirements of this rule, the labor commissioner shall enforce respiratory protection provisions only with respect to employees who fall into one of the six categories outlined in Paragraph 4, Appendix A, 29 CFR 1910.1026, except that the phrase "Exhibit B to this Agreement" shall refer to Exhibit B, Appendix A, 29 CFR 1910.1026. This exception is limited to the narrow circumstances outlined below and shall expire on May 31, 2010.

10.4(1) Eligibility. An employer's facility is eligible for this exception if the employer is a member of the Surface Finishing Industry Council or the facility is a surface-finishing or metal-finishing job shop that sells plating or anodizing services to other companies.

10.4(2) Participation. To be covered by this exception, eligible employers must complete and submit a Declaration of Participation via mail to the Labor Commissioner, 1000 East Grand Avenue, Des Moines, Iowa 50319 or via facsimile to (515)281-7995. Declarations of Participation must be postmarked or received on or before April 7, 2007. Each declaration shall apply only to one facility. Declaration of Participation forms are available at http://www.iowaworkforce.org/labor/iosh/index.html or by calling (515)242-5870.

10.4(3) Applicability. This exception applies only to surface- and metal-finishing operations within covered facilities.

10.4(4) Feasible engineering controls. Participating employers must implement feasible engineering controls necessary to reduce hexavalent chromium levels at their facilities to or below five micrograms per cubic meter of air calculated as an eight-hour, time-weighted average by December 31, 2008. In fulfilling this obligation, participating employers may select from the engineering and work practice controls listed in Exhibit A, Appendix A, 29 CFR 1910.1026, or may adopt other controls.

10.4(5) Employee training. Participating employers shall train their employees in accordance with the provisions of 29 CFR 1910.1026(l)(2). Using language the employees can understand, participating employers will also train their employees on the provisions of this exception no later than June 7, 2007.

10.4(6) Compliance and monitoring. Participating employers shall comply with the requirements set forth in Paragraphs 3 and 4, Appendix A, 29 CFR 1910.1026, except that as used in Appendix A:

a. The acronym "OSHA" shall refer to the labor commissioner;

b. The word "Company" shall refer to employers participating in this exception;

c. The word "Agreement" shall refer to this rule; and

d. The phrase "Exhibit B to this Agreement" shall refer to Exhibit B, Appendix A, 29 CFR 1910.1026.

ITEM 2. Amend rule **875—10.20(88)** by inserting the following at the end thereof:
71 Fed. Reg. 63242 (October 30, 2006)

ITEM 3. Amend rule **875—26.1(88)** by inserting the following at the end thereof:
71 Fed. Reg. 76985 (August 24, 2006)

ARC 5583B

LABOR SERVICES DIVISION[875]

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 91A.9(4), the Labor Commissioner hereby gives Notice of Intended Action to adopt Chapter 34, "Civil Penalties," Iowa Administrative Code.

LABOR SERVICES DIVISION[875](cont'd)

This chapter implements Iowa Code chapter 91A and details the procedures and the method of calculating penalties for violations of Iowa Code chapter 91A.

This chapter will not necessitate combined expenditures exceeding $100,000 by all political subdivisions or agencies and entities which contract with political subdivisions to provide services.

This chapter does not contain a waiver provision because there is a waiver provision in Iowa Administrative Code 875—1.101(17A,91).

If requested no later than December 26, 2006, by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having not less than 25 members, a public hearing will be held at 1:30 p.m. on December 27, 2006, at Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa, in the Stanley Room. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed rules. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)242-5869 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted no later than December 26, 2006, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to mitchell.mahan@iowa.gov.

These rules are intended to implement Iowa Code chapters 91A and 17A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following **new** chapter is proposed.

CHAPTER 34
CIVIL PENALTIES

875—34.1(91A) Civil penalties for Iowa Code chapter 91A violations. The commissioner may, upon report of an affected employee or based on other credible information, seek to recover civil money penalties for violation(s) of Iowa Code chapter 91A.

875—34.2(91A) Investigation.

34.2(1) Prior to initiating a contested case proceeding, the commissioner shall, in writing, request written information from the complaining employee(s). This request for written information may be omitted for good cause, including urgent circumstances or the possession of sufficient reliable evidence from another source(s).

34.2(2) Prior to initiating a contested case proceeding, the commissioner shall, in writing, inform the employer of the nature of the alleged violation(s) and request the employer to provide, within 14 days, a response with relevant information, including information necessary for the commissioner to assess penalties. This request for written information may be omitted for good cause, including urgent circumstances or the possession of sufficient reliable evidence from another source(s).

34.2(3) The commissioner may secure evidence or witnesses by administrative subpoena.

34.2(4) The commissioner may, in response to a written complaint, request a warrant to enter a place of employment to inspect records, ask questions, and investigate in relation to possible violations of Iowa Code chapter 91A.

875—34.3(91A) Calculation of penalty.

34.3(1) The commissioner shall assess the penalty with due consideration for the size of the employer's business, the gravity of the violation(s), the good faith of the employer, and the history of previous violations by granting appropriate penalty reductions.

34.3(2) The gross penalty for each distinguishable violation shall be $100. The following are examples of distinguishable violations:

a. If the act or omission occurs during 5 consecutive pay periods affecting a single employee, there are 5 distinguishable violations.

b. If the act or omission occurs during a single pay period affecting 50 employees, there are 50 distinguishable violations.

34.3(3) The size of the business shall be considered as follows:

Number of Employees	Penalty Reduction
1-25	25%
26-100	15%
101-250	5%
251+	0%

34.3(4) Gravity shall be considered by giving a 20 percent penalty reduction for a low-gravity violation or a 10 percent reduction for a medium-gravity violation. High-gravity violations shall receive no gravity reduction. The gravity of a violation shall be based primarily on its actual or potential harm to employees. Following are examples of gravity determinations:

a. A low-gravity violation includes any merely technical violation of Iowa Code chapter 91A that does not substantially prejudice any employee.

b. A high-gravity violation includes any violation causing financial injury to an employee.

34.3(5) Good faith shall be considered by giving a 15 percent penalty reduction when there is sufficient evidence that the employer made earnest attempts to be well-informed about and in compliance with Iowa Code chapter 91A. A good-faith reduction shall not be given if the employer committed a violation(s) after having received a complaint(s) or warning(s) about a practice clearly in violation of Iowa Code chapter 91A.

34.3(6) History shall be considered by giving a 10 percent penalty reduction if the violation(s) was isolated. Consideration shall be given to prior civil penalty complaints and may include prior wage claims. A history reduction shall not be given if the violation(s) for which the penalty is being calculated occurred over an extended period of time.

34.3(7) If the employer does not, upon request of the commissioner, provide information relevant to the penalty assessment, the commissioner may deny any penalty reduction for which the employer does not provide responsive information.

875—34.4(91A) Settlement opportunity. Prior to initiating a contested case proceeding, the commissioner shall normally request, in writing, that the employer enter into settlement negotiations. This request may be omitted for good cause, including urgent circumstances or reasonable belief that the employer will not comply with the relevant section(s) of Iowa Code chapter 91A as part of a settlement. The commissioner may, in consideration of the overall nature of the violations, the promptness of the employer's remedial action, and ad-

LABOR SERVICES DIVISION[875](cont'd)

ministrative efficiency, accept less than the full penalty from the employer at any time as a settlement.

875—34.5(91A) Notice of penalty assessment; contested case proceedings.

34.5(1) To initiate an Iowa Code chapter 17A contested case proceeding, the commissioner shall serve a notice of penalty assessment in a manner consistent with service of original notice under the Iowa Rules of Civil Procedure. Such notice shall include the following:

a. A statement that the notice concerns a civil penalty assessment for violation of wage laws.

b. A statement that, if a hearing is requested by the employer, the commissioner shall determine, after the hearing is held pursuant to Iowa Code section 91A.12, subsections 2 and 3, whether the penalty assessment shall be upheld.

c. References to this chapter, Iowa Code section 91A.12, and any sections of Iowa Code chapter 91A that are alleged to have been violated.

d. The type of violation(s).

e. The number of violations.

f. The amount of the penalty.

g. A demand that the employer comply with the notice and record-keeping requirements of Iowa Code section 91A.6(1).

h. A statement that the employer has the right to request a hearing within 30 days.

34.5(2) Employer nonresponse. If the employer does not respond to the notice of penalty assessment within 30 days of being served, the commissioner shall assess the full proposed penalty, and such assessment shall be final.

34.5(3) Employer request for hearing. The employer may request a hearing within 30 days of being served by mailing such request to the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. Such request shall include the address to which notice of hearing should be mailed. Upon such request, notice of the time and place of hearing shall be mailed to the employer and a hearing pursuant to Iowa Code chapter 17A shall be conducted before an administrative law judge.

34.5(4) Failure to request judicial review. If, after hearing, the employer does not request judicial review of an adverse decision within 30 days, the ruling is final.

875—34.6(91A) Judicial review.

34.6(1) Employer petition for Iowa Code chapter 17A judicial review. The employer may request judicial review of an adverse ruling within 30 days. Such petition for review shall name the agency as respondent and shall contain a concise statement of the following:

a. The nature of the agency action for which review is requested.

b. The action for which review is requested.

c. The facts on which venue is based.

d. The grounds for the relief sought.

e. The relief sought.

34.6(2) Jurisdiction. Judicial review shall be in the district court of a county in which at least one violation occurred.

34.6(3) Transmittal of record. Within 30 days of the petition for judicial review, or longer as allowed by the court, the commissioner shall transmit the record of the case to the reviewing court.

34.6(4) District court remedies. The district court may require the employer to deposit the amount of the assessed penalty with the clerk of court pending the outcome of the judicial review, may uphold the penalty, and may order that the employer comply with the notice and record-keeping requirements of Iowa Code section 91A.6(1).

These rules are intended to implement Iowa Code chapters 91A and 17A.

ARC 5584B

LABOR SERVICES DIVISION[875]

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 90A.7, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 173, "Professional Boxing," and Chapter 177, "Professional Shoot Fighting," Iowa Administrative Code.

The proposed amendments require participants in shoot fighting and professional boxing events to provide proof of negative antigen tests for the human immunodeficiency, hepatitis A, and hepatitis B viruses within six months prior to the event.

The purposes of these amendments are to protect the health of the public and to implement legislative intent.

If requested by the close of business on December 26, 2006, a public hearing will be held on December 27, 2006, at 9 a.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)242-5869 in advance to arrange access or other needed services.

Interested persons may submit written data, views, or arguments to be considered no later than December 27, 2006, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.state.ia.us.

These amendments are intended to implement Iowa Code chapter 90A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Adopt **new** rule 875—173.54(90A) as follows:

875—173.54(90A) Blood-borne disease testing. Before a contest, each boxer shall provide to the ringside physician test results showing the boxer tested negative for the human immunodeficiency, hepatitis A, and hepatitis B viruses within the six-month period prior to the event. Only results from laboratories certified per the federal Clinical Laboratory Improvement Act shall be accepted. The contestant shall not participate and the physician shall notify the promoter that the contestant is prohibited from fighting for medical reasons if any of the following occurs:

1. The participant does not produce proof of testing;

LABOR SERVICES DIVISION[875](cont'd)

2. The test results are positive;
3. The laboratory is not properly certified;
4. The test was performed more than six months prior to the event; or
5. The test results are otherwise deficient.

ITEM 2. Adopt **new** subrule 177.5(11) as follows:

177.5(11) Blood-borne disease testing. Before a contest, each boxer shall provide to the ringside physician test results showing the boxer tested negative for the human immunodeficiency, hepatitis A, and hepatitis B viruses within the six-month period prior to the event. Only results from laboratories certified per the federal Clinical Laboratory Improvement Act shall be accepted. The contestant shall not participate and the physician shall notify the promoter that the contestant is prohibited from fighting for medical reasons if any of the following occurs:

a. The participant does not produce proof of testing;
b. The test results are positive;
c. The laboratory is not properly certified;
d. The test was performed more than six months prior to the event; or
e. The test results are otherwise deficient.

ARC 5603B

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 87, "Mussel Regulations," Iowa Administrative Code.

The proposed amendment closes the commercial harvest of mussels in the waters of the state and updates sport harvest regulations.

Any interested person may make written suggestions or comments on the proposed amendment on or before January 4, 2007. Such written materials should be directed to Marion Conover, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Fisheries Bureau at (515)281-5208 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on January 4, 2007, at 1 p.m. in the Wallace State Office Building, Fourth Floor Conference Room, 502 East 9th Street, Des Moines, Iowa.

At the public hearing 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 amendment.

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

This amendment is intended to implement Iowa Code sections 482.1 and 482.12.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Rescind rules **571—87.1(481A)** and **571—87.2(481A)** and adopt the following **new** rule in lieu thereof:

571—87.1(481A) Seasons, areas, methods, species, limits. The taking and possession of mussels from the public waters of the state shall be limited to the following regulations.

87.1(1) Seasons. There shall be an open season for taking mussels throughout the year. The taking of mussels is restricted to the hours between sunrise and sunset.

87.1(2) Species. Species other than those listed as threatened or endangered may be lawfully taken and possessed. Zebra mussels shall not be taken and possessed.

87.1(3) Areas. Live mussels may be harvested only from the Mississippi River and connected backwaters. Dead mussels may be harvested from all waters of the state.

87.1(4) Limits. The possession limit is 24 whole mussels or 48 shell halves. The sale of mussels or shells is not permitted. Licensed commercial fishers, licensed sport anglers, and children younger than 16 years of age may take and possess mussels.

87.1(5) Methods. Mussels may be taken by hand, pole and line, diving, and crowfoot bar not to exceed 20 feet in length.

This rule is intended to implement Iowa Code sections 481A.38, 481A.39, 482.1, 482.3 and 482.12.

ARC 5604B

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 94, "Nonresident Deer Hunting," Iowa Administrative Code.

Chapter 94 gives the regulations for hunting deer and includes season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of taking, and transportation tag requirements. These amendments set quotas for nonresident licenses and require successful hunters to report their kill.

Any interested person may make written suggestions or comments on the proposed amendments on or before January 11, 2007. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Bureau at (515)281-6156 or

NATURAL RESOURCE COMMISSION[571](cont'd)

at the Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on January 11, 2007, at 10:30 a.m. in the Fourth Floor East Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.1 and 483A.8.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 571—94.1(483A), introductory paragraph, as follows:

571—94.1(483A) Licenses. Every hunter must have in possession a valid nonresident deer license, a valid nonresident hunting license, and proof that the hunter has paid the current year's wildlife habitat fee when hunting, possessing, or transporting deer. No person, while hunting deer, shall carry or have in possession any license or transportation tag issued to another person. *No one who is issued a deer hunting license and transportation tag shall allow another person to use or possess that license or transportation tag while deer hunting or tagging a deer.*

ITEM 2. Amend paragraph **94.1(1)"c"** as follows:

c. Optional antlerless-only licenses. A hunter who is not successful in drawing an any-deer license may purchase an antlerless-only license as described in rule 571—94.8(483A). This antlerless-only license shall be valid in the ~~zone~~ *county* and season designated by the hunter at the time it is purchased.

ITEM 3. Amend subrules 94.6(1) and 94.6(2) as follows:

94.6(1) Zone license quotas. Nonresident license quotas are as follows:

	Any-deer licenses		Mandatory	Optional
	All Methods	Bow	Antlerless-only	Antlerless-only
Zone 1.	180	63	180	
Zone 2.	180	63	180	
Zone 3.	560	196	560	
Zone 4.	1280	448	1280	
Zone 5.	1600	560	1600	
Zone 6.	800	280	800	
Zone 7.	360	126	360	
Zone 8.	240	84	240	
Zone 9.	600	210	600	
Zone 10.	200	70	200	
Total	6000	2100	6000	3500 ~~statewide~~

94.6(2) Quota applicability. The license quota issued for each zone will be the quota for all bow, regular gun and muzzleloader season licenses combined. No more than 6,000 any-deer licenses and 6,000 mandatory antlerless-only licenses will be issued for all methods of take combined, for the entire state. Of the 6,000 any-deer and 6,000 mandatory antlerless-only licenses, no more than 35 percent in any zone can be bow licenses. A maximum of 3,500 optional antlerless-only licenses~~, regardless of season or zone,~~ will be issued ~~for the entire state~~ *on a county-by-county basis. The licenses will be divided between the counties in the same proportion as resident antlerless-only licenses*. Hunters must designate a zone *or county* and season when purchasing the license and hunt only in that zone *or county* and season.

ITEM 4. Amend subrule 94.8(2) as follows:

94.8(2) Optional antlerless-only licenses. Optional antlerless-only licenses must be purchased through the ELSI telephone ordering system or the ELSI Internet license sales Web site. Licenses for taking only antlerless deer will be available on the same date as excess any-deer licenses are sold as explained in 94.8(1). Optional antlerless-only licenses will be sold first-come, first-served until the ~~statewide~~ *county* quota is filled, or until the last day of the season for which a license is valid. If optional antlerless-only licenses are still available on December 15, they may be purchased by nonresidents to hunt during the period from December 24 through January 2. These licenses will be available to nonresidents who have not purchased a nonresident deer license during one of the current deer seasons. The hunter must have in possession a valid nonresident small game hunting license and proof of having paid the current year's wildlife habitat fee. Optional antlerless-only licenses will be issued by season and ~~zone~~ *county* and will be valid only in the season and ~~zone~~ *county* designated by the hunter at the time the license is purchased.

a. to c. No change.

ITEM 5. Adopt **new** rule 571—94.11(481A) as follows:

571—94.11(481A) Harvest reporting. Each hunter who bags a deer must report that kill according to procedures described in 571—95.1(481A).

ARC 5571B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Behavioral Science Examiners hereby gives Notice of Intended Action to amend Chapter 31, "Licensure of Marital and Family Therapists and Mental Health Counselors," Iowa Administrative Code.

The proposed amendments remove supervisor language that is no longer applicable and add language to endorsement provisions to accept National Credentials Registry verification of credentials.

Any interested person may make written comments on the proposed amendments no later than January 9, 2007, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building,

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Des Moines, Iowa 50319-0075, E-mail pwilson@idph.state.ia.us.

A public hearing will be held on January 9, 2007, from 9 to 9:30 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, 154D and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subparagraph **31.5(2)"b"(3)** as follows:

(3) Be an alternate supervisor who possesses qualifications equivalent to a licensed marital and family therapist or satisfies the criteria for clinical membership of the American Association of Marriage and Family Therapy (AAMFT)~~. Proposed alternate supervisors must submit an alternate supervision request form~~;

ITEM 2. Amend subparagraph **31.7(2)"b"(3)** as follows:

(3) May be an alternate supervisor who possesses qualifications equivalent to a licensed mental health counselor, including mental health professionals licensed pursuant to Iowa Code chapter 147~~. Proposed alternate supervisors must submit an alternate supervision request form~~;

ITEM 3. Amend rule **645—31.8(154D)** by adopting the following **new** paragraph **"7"**:

7. In lieu of the requirements listed in paragraphs "3" through "5" of this rule, the applicant may provide to the board evidence that the applicant has demonstrated appropriate qualifications at either tier 1 or tier 2 of the National Credentials Registry of the American Association of State Counseling Boards. The applicant shall send directly to the board official verification from the National Credentials Registry of the American Association of State Counseling Boards to verify the applicant has met the qualifications.

ARC 5574B

PUBLIC HEALTH DEPARTMENT[641]

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 147A.4, the Department of Public Health proposes to amend Chapter 131, "Emergency Medical Services Provider/Education/Training/Certification," Iowa Administrative Code.

This amendment changes the testing fees of emergency medical care candidates for certification. This change is the result of new processes implemented by the National Registry of EMTs, which provide certification examination for emergency medical care providers.

Consideration will be given to all written suggestions or comments on the proposed amendment received on or before December 26, 2006. Such written comments should be directed to Kirk Schmitt, Bureau of EMS, Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to kschmitt@idph.state.ia.us.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 5573B**. The content of that submission is incorporated by reference.

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

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

ARC 5576B

PUBLIC HEALTH DEPARTMENT[641]

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 135.11, the Department of Public Health proposes to amend Chapter 141, "Love Our Kids Grant," Iowa Administrative Code.

The rules in Chapter 141 describe the process for providing grant funding to statewide, regional and local agencies and service programs that have as their responsibility the development, promotion, and implementation of injury prevention and education initiatives for children in Iowa. The purpose of these amendments is to combine two separate funding categories into one category, thereby allowing easier access to funding, providing more geographically balanced distribution of funds, and enabling rural communities to provide injury prevention projects.

Consideration will be given to all written suggestions or comments on the proposed amendments received on or before December 26, 2006. Such written comments should be directed to Kirk Schmitt, Bureau of EMS, Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to kschmitt@idph.state.ia.us.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 5575B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code section 321.34.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

REVENUE DEPARTMENT

Notice of Electric and Natural Gas Delivery Tax Rates and Municipal Electric and Natural Gas Transfer Replacement Tax Rates for Each Competitive Service Area

Pursuant to the authority of Iowa Code sections 437A.4 and 437A.5, the Director of Revenue hereby gives notice of the electric delivery tax rate, the municipal electric transfer replacement tax rate, the natural gas delivery tax rate, and the municipal natural gas transfer replacement tax rate for each competitive service area in the state. These rates will be used in conjunction with the number of kilowatt-hours of electricity and the number of therms of natural gas delivered to consumers in calendar year 2006 by each taxpayer to determine the tax due for each taxpayer in the 2007-2008 fiscal year.

2006 ELECTRIC DELIVERY TAX RATES BY SERVICE AREA

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3226	Akron Municipal Utilities	0.00006461
3201	Algona Municipal Utilities	0.00026059
3205	Alta Municipal Power Plant	0.00008375
3069	Alta Vista Municipal Utilities	0.00000000
3070	Alton Municipal Light & Power	0.00000000
3207	Ames Municipal Electric System	0.00000089
3071	Anita Municipal Utilities	0.00000000
3227	Anthon Municipal Electric Utility	0.00014399
3209	Atlantic Municipal Utilities	0.00024840
3073	Auburn Municipal Utility	0.00000000
3074	Aurelia Mun. Electric Utility	0.00009400
3211	Bancroft Municipal Utilities	0.00089101
3213	Bellevue Municipal Utilities	0.00009854
3228	Bigelow Municipal Electric Utility	0.00201649
3229	Bloomfield Municipal Electric Utility	0.00003163
3075	Breda Mun. Electric System	0.00000000
3076	Brooklyn Municipal Utilities	0.00165903
3216	Buffalo Municipal Electric System	0.00000306
3217	Burt Municipal Electric Utility	0.00000190
3077	Callender Electric	0.00000000
3078	Carlisle Municipal Utilities	0.00000000
3079	Cascade Municipal Utilities	0.00130675
3221	Cedar Falls Municipal Elec. Utility	0.00031983
3068	City of Afton	0.00000000
3072	City of Aplington	0.00000000
3082	City of Dike	0.00000000
3088	City of Estherville	0.00000000
3089	City of Fairbank	0.00000000
3090	City of Farnhamville	0.00000000
3230	City of Fredericksburg	0.00000849
3106	City of Larchwood	0.00000000
3107	City of Lawler	0.00000000
3108	City of Lehigh	0.00000000
3113	City of Marathon	0.00000000
3311	City of Pella	0.00006969
3125	City of Renwick	0.00000000
3129	City of Sergeant Bluff	0.00000000
3139	City of Westfield	0.00000000
3143	City of Woolstock	0.00000000
3236	Coggon Municipal Light Plant	0.00004776
3237	Coon Rapids Municipal Utilities	0.00042603
3242	Corning Municipal Utilities	0.00033130
3080	Corwith Municipal Utilities	0.00000000
3243	Danville Municipal Electric Utility	0.00000384
3081	Dayton Light & Power	0.00000000
3244	Denison Municipal Utilities	0.00001032
3245	Denver Municipal Electric Utility	0.00006156
3083	Durant Municipal Electric Plant	0.00000000
3084	Dysart Municipal Utilities	0.00000000
3085	Earlville Municipal Utilities	0.00123246
3087	Ellsworth Municipal Utilities	0.00000000
3091	Fonda Municipal Electric	0.00000000
3252	Fontanelle Municipal Utilities	0.00033242
3092	Forest City Municipal Utilities	0.00000000
3231	Glidden Municipal Electric Utility	0.00000195
3093	Gowrie Municipal Utilities	0.00148389
3256	Graettinger Municipal Light Plant	0.00028571
3094	Grafton Municipal Utilities	0.00000000
3258	Grand Junction Municipal Utilities	0.00000456
3095	Greenfield Municipal Utilities	0.00107248
3096	Grundy Center Light & Power	0.00022173
3232	Guttenberg Municipal Electric	0.00002873
3263	Harlan Municipal Utilities	0.00137185
3097	Hartley Municipal Utilities	0.00000000
3098	Hawarden Municipal Utility	0.00000000
3099	Hinton Municipal Electric/Water	0.00009720
3267	Hopkinton Municipal Utilities	0.00000826
3100	Hudson Municipal Utilities	0.00000000
3101	Independence Light & Power	0.00000000
3271	Indianola Municipal Utilities	0.00000736
3102	Keosauqua Light & Power	0.00000000
3103	Kimballton Municipal Utilities	0.00000000
3104	Lake Mills Municipal Utilities	0.00000000
3105	Lake Park Municipal Utilities	0.00000000
3233	Lake View Municipal Utilities	0.00015764
3274	Lamoni Municipal Utilities	0.00143044
3276	LaPorte City Utilities	0.00000913
3277	Laurens Municipal Utilities	0.00029755
3109	Lenox Mun. Light & Power	0.00044973
3110	Livermore Municipal Utilities	0.00000000
3111	Long Grove Mun. Elec./Water	0.00000000
3282	Manilla Municipal Elec. Utilities	0.00009934
3112	Manning Municipal Electric	0.00026539
3284	Mapleton Municipal Utilities	0.00009055
3285	Maquoketa Municipal Electric	0.00004891
3288	McGregor Municipal Utilities	0.00000689
3291	Milford Municipal Utilities	0.00016326
3114	Montezuma Municipal Light & Power	0.00000000
3115	Mount Pleasant Municipal Utilities	0.00000000
3293	Muscatine Municipal Utilities	0.00009555
3116	Neola Light & Water System	0.00000000
3297	New Hampton Municipal Light Plant	0.00009962
3298	New London Municipal Utility	0.00052973
3304	Ogden Municipal Utilities	0.00006342
3234	Onawa Municipal Utilities	0.00010932
3117	Orange City Municipal Utilities	0.00000000

REVENUE DEPARTMENT(cont'd)

3118	Orient Municipal Utilities	0.00000000
3307	Osage Municipal Utilities	0.00004959
3309	Panora Municipal Electric Utility	0.00008116
3119	Paton Municipal Utilities	0.00000000
3120	Paullina Municipal Utilities	0.00000000
3121	Pocahontas Municipal Utilities	0.00000000
3122	Preston Municipal Utilities	0.00000000
3315	Primghar Municipal Light Plant	0.00001803
3123	Readlyn Municipal Utilities	0.00000000
3124	Remsen Municipal Utilities	0.00000000
3318	Rock Rapids Municipal Utilities	0.00000479
3126	Rockford Municipal Light Plant	0.00000000
3127	Sabula Municipal Utilities	0.00000000
3128	Sanborn Municipal Light & Plant	0.00000000
3130	Shelby Municipal Utilities	0.00000000
3131	Sibley Municipal Utilities	0.00000000
3321	Sioux Center Municipal Utilities	0.00000090
3323	Southern Minnesota Mun. Power	0.00000000
3324	Spencer Municipal Utilities	0.00010190
3132	Stanhope Municipal Utilities	0.00000000
3360	Stanton Municipal Utilities	0.00000000
3326	State Center Municipal Light Plant	0.00031087
3327	Story City Municipal Electric Utility	0.00010589
3134	Stratford Municipal Utilities	0.00000000
3135	Strawberry Point Electric Utility	0.00000000
3136	Stuart Municipal Utilities	0.00128625
3328	Sumner Municipal Light Plant	0.00021044
3330	Tipton Municipal Utilities	0.00149179
3332	Traer Municipal Utilities	0.00053159
3337	Villisca Municipal Power Plant	0.00023515
3137	Vinton Municipal Utilities	0.00000000
3138	Wall Lake Municipal Utilities	0.00000000
3338	Waverly Light & Power	0.00074548
3342	Webster City Municipal Utilities	0.00027843
3345	West Bend Municipal Power Plant	0.00088027
3346	West Liberty Municipal Electric Util.	0.00000671
3347	West Point Municipal Utility System	0.00009639
3140	Whittemore Municipal Utilities	0.00000000
3141	Wilton Municipal Light & Power	0.00000000
3351	Winterset Municipal Utilities	0.00135658
3142	Woodbine Municipal Utilities	0.00000000

CO. #	IOU's − ELECTRIC	DELIVERY TAX RATE
7206	Amana Society Service Co.	0.00049316
7248	Eldridge Electric & Water Utilities	0.00061154
7354	Geneseo Municipal Utilities	0.00000000
7270	IES Utilities	0.00237888
7272	Interstate Power	0.00103630
7289	MidAmerican Energy	0.00264702
7296	Nebraska Public Power District	0.00000000
7302	Northwestern Corporation	0.00000000
7305	Omaha Public Power District	0.00119184
7334	Union Electric	0.00000000

CO. #	REC's	DELIVERY TAX RATE
4319	Access Energy Coop	0.00075412
4203	Allamakee Clayton Electric Coop	0.00093586
4208	Atchison−Holt Electric Coop	0.00089319
4214	Boone Valley Electric Coop	0.00090381
4218	Butler County REC	0.00136469
4219	Calhoun County Electric Coop	0.00141547
4220	Cass Electric Coop	0.00004637
4224	Central Iowa Power Coop	0.00000000
4225	Chariton Valley Electric Coop	0.00111235
4235	Clarke Electric Coop	0.00285792
4287	Consumers Energy	0.00218836
4240	Corn Belt Power Coop	0.00000000
4246	East−Central Iowa REC	0.00212168
4247	Eastern Iowa Light & Power	0.00071335
4250	Farmers Electric Coop − Greenfield	0.00237767
4249	Farmers Electric Coop − Kalona	0.00043783
4251	Federated Rural Electric Association	0.00046380
4253	Franklin Rural Electric Coop	0.00079341
4254	Freeborn−Mower Cooperative	0.00099628
4255	Glidden Rural Electric Coop	0.00058080
4259	Grundy County REC	0.00061523
4260	Grundy Electric Cooperative	0.00055899
4261	Guthrie County REC	0.00210418
4262	Hancock Co. REC	0.00127158
4265	Harrison County REC	0.00108431
4266	Hawkeye Tri−County Electric Coop	0.00076862
4223	Heartland Power Coop	0.00048496
4268	Humboldt County REC	0.00099957
4273	Iowa Lakes Electric Coop	0.00086005
4279	Linn County REC	0.00157141
4280	Lyon Rural Electric Coop	0.00070498
4286	Maquoketa Valley Electric Coop	0.00221262
4290	Midland Power Cooperative	0.00163315
4299	Nishnabotna Valley REC	0.00076653
4300	North West Rural Electric Coop	0.00053450
4301	Northwest Iowa Power Coop	0.00000000
4308	Osceola Electric Coop	0.00041167
4310	Pella Cooperative Electric	0.00194961
4313	Pleasant Hill Community Line	0.00028048
4316	Rideta Electric Coop	0.00292371
4320	Sac County Rural Electric Coop	0.00110413
4322	Southern Iowa Electric Coop	0.00134566
4379	Southwest Iowa Service Coop	0.00289110
4329	T.I.P. Rural Electric Coop	0.00215341
4333	Tri County Electric Coop	0.00126163
4336	United Electric Coop	0.00112324
4348	Western Iowa Power Coop	0.00098068
4352	Woodbury County REC	0.00120142
4353	Wright Co. REC	0.00049077

REVENUE DEPARTMENT(cont'd)

2006 NATURAL GAS DELIVERY TAX RATES BY SERVICE AREA

CO. #	MUNICIPAL GAS	DELIVERY TAX RATE
5021	Bedford Municipal Gas	0.00000000
5215	Brighton Gas	0.00781622
5023	Brooklyn Municipal Gas	0.00000000
5024	Cascade Municipal Gas	0.00000000
5025	Cedar Falls Municipal Gas	0.00000000
5022	City of Bloomfield	0.00000000
5026	City of Clearfield	0.00000000
5028	City of Everly	0.00000000
5029	City of Fairbank	0.00000000
5238	Coon Rapids Municipal Gas	0.00003328
5241	Corning Municipal Gas	0.00000118
5027	Emmetsburg Municipal Gas	0.00000000
5030	Gilmore City Municipal Gas	0.00000000
5031	Graettinger Municipal Gas	0.00000000
5032	Guthrie Center Municipal Gas	0.00000000
5033	Harlan Municipal Gas	0.00000000
5034	Hartley Municipal Gas	0.00000000
5035	Hawarden Municipal Gas	0.00000000
5036	Lake Park Municipal Gas	0.00000000
5275	Lamoni Municipal Gas	0.00102521
5037	Lenox Municipal Gas	0.00000000
5038	Lineville City Natural Gas	0.00000000
5039	Lorimor Municipal Gas	0.00000000
5281	Manilla Municipal Gas	0.00326276
5283	Manning Municipal Gas	0.00021722
5040	Montezuma Natural Gas	0.00000000
5041	Morning Sun Municipal Gas	0.00000000
5042	Moulton Municipal Gas	0.00000000
5306	Osage Municipal Gas	0.00003376
5043	Prescott Municipal Gas	0.00000000
5044	Preston Municipal Gas	0.00000000
5055	Remsen Municipal Gas	0.00000000
5317	Rock Rapids Municipal Gas	0.00007851
5056	Rolfe Municipal Gas	0.00000000
5057	Sabula Municipal Gas	0.00000000
5058	Sac City Municipal Gas	0.00000000
5059	Sanborn Municipal Gas	0.00000000
5060	Sioux Center Municipal Gas	0.00000000
5061	Tipton Municipal Gas	0.00000000
5063	Waukee Municipal Gas	0.00000000
5340	Wayland Municipal Gas	0.00342343
5064	Wellman Municipal Gas	0.00000000
5344	West Bend Municipal Gas	0.00002710
5065	Whittemore Municipal Gas	0.00000000
5349	Winfield Municipal Gas	0.00051657
5066	Woodbine Gas	0.00000000

CO. #	IOU's − GAS	DELIVERY TAX RATE
5204	Allerton Gas	0.01595730
5270	IES Utilities	0.01204344
5272	Interstate Power	0.01524196
5289	MidAmerican Energy	0.01103529
5312	Peoples Natural Gas	0.00927983
5335	United Cities Gas	0.00647805

2006 MUNICIPAL ELECTRIC TRANSFER REPLACEMENT TAX RATES

CO. #	COMPANY	REPLACEMENT TAX RATE
3226	Akron Municipal Utilities	0.01003993
3201	Algona Municipal Utilities	0.00174738
3205	Alta Municipal Power Plant	0.00262572
3069	Alta Vista Municipal Utilities	0.00000000
3070	Alton Municipal Light & Power	*
3207	Ames Municipal Electric System	*
3071	Anita Municipal Utilities	0.00299772
3227	Anthon Municipal Electric Utility	0.01170072
3209	Atlantic Municipal Utilities	0.00235049
3073	Auburn Municipal Utility	0.01913832
3074	Aurelia Municipal Electric Utility	*
3211	Bancroft Municipal Utilities	0.00760814
3213	Bellevue Municipal Utilities	0.00975108
3229	Bloomfield Municipal Electric Utility	0.00894717
3075	Breda Municipal Electric System	0.00000000
3076	Brooklyn Municipal Utilities	0.00000000
3216	Buffalo Municipal Electric System	1.82578471
3217	Burt Municipal Electric Utility	0.00216181
3077	Callender Electric	*
3078	Carlisle Municipal Utilities	0.00029676
3079	Cascade Municipal Utilities	0.00000000
3221	Cedar Falls Mun. Electric Utility	0.00292028
3068	City of Afton	0.00702924
3072	City of Aplington	0.01113859
3082	City of Dike	0.00849629
3088	City of Estherville	0.01356363
3089	City of Fairbank	0.00827800
3090	City of Farnhamville	0.00000000
3230	City of Fredericksburg	*
3106	City of Larchwood	0.00000000
3107	City of Lawler	0.00423176
3108	City of Lehigh	0.66131318
3113	City of Marathon	*
3311	City of Pella	0.00302729
3125	City of Renwick	0.00000000
3129	City of Sergeant Bluff	*
3139	City of Westfield	0.01051031
3143	City of Woolstock	*
3236	Coggon Municipal Light Plant	0.00000000
3237	Coon Rapids Municipal Utilities	0.00294560
3242	Corning Municipal Utilities	*
3080	Corwith Municipal Utilities	0.00000000
3243	Danville Municipal Electric Utility	0.00217187
3081	Dayton Light & Power	0.00217618
3244	Denison Municipal Utilities	0.00202557
3245	Denver Municipal Electric Utility	*
3083	Durant Municipal Electric Plant	0.00000000

REVENUE DEPARTMENT(cont'd)

3084	Dysart Municipal Utilities	0.00063865
3085	Earlville Municipal Utilities	*
3086	Eldridge Electric & Water Utility	*
3087	Ellsworth Municipal Utilities	*
3091	Fonda Municipal Electric	0.00580938
3252	Fontanelle Municipal Utilities	0.00400077
3092	Forest City Municipal Utilities	0.00259520
3231	Glidden Municipal Electric Utility	0.01076646
3093	Gowrie Municipal Utilities	0.00096845
3256	Graettinger Municipal Light Plant	0.00274731
3094	Grafton Municipal Utilities	0.02169160
3258	Grand Junction Municipal Utilities	*
3095	Greenfield Municipal Utilities	0.00263354
3096	Grundy Center Light & Power	0.00132024
3232	Guttenberg Municipal Electric	0.00725217
3263	Harlan Municipal Utilities	0.00262230
3097	Hartley Municipal Utilities	0.00054509
3098	Hawarden Municipal Utility	0.01618973
3099	Hinton Municipal Electric/Water	0.00139730
3267	Hopkinton Municipal Utilities	0.00000000
3100	Hudson Municipal Utilities	0.01117525
3101	Independence Light & Power	0.00199279
3271	Indianola Municipal Utilities	0.00245364
3102	Keosauqua Light & Power	*
3103	Kimballton Municipal Utilities	*
3104	Lake Mills Municipal Utilities	0.00323340
3105	Lake Park Municipal Utilities	0.00216696
3233	Lake View Municipal Utilities	0.00855113
3274	Lamoni Municipal Utilities	0.00167422
3276	LaPorte City Utilities	0.00153401
3277	Laurens Municipal Utilities	0.00416123
3109	Lenox Municipal Light & Power	0.00021720
3110	Livermore Municipal Utilities	0.00946207
3111	Long Grove Mun. Elec./Water	0.00000000
3282	Manilla Municipal Elec. Utilities	0.00307119
3112	Manning Municipal Electric	0.00164978
3284	Mapleton Municipal Utilities	0.00263420
3285	Maquoketa Municipal Electric	0.00121521
3288	McGregor Municipal Utilities	0.00129448
3291	Milford Municipal Utilities	0.00000000
3114	Montezuma Municipal Light & Power	0.00147545
3115	Mount Pleasant Municipal Utilities	0.00083593
3293	Muscatine Municipal Utilities	0.00000000
3116	Neola Light & Water System	0.00000000
3297	New Hampton Municipal Light Plant	0.00259630
3298	New London Municipal Utility	*
3304	Ogden Municipal Utilities	0.00216656
3234	Onawa Municipal Utilities	0.00230353
3117	Orange City Municipal Utilities	0.00168216
3118	Orient Municipal Utilities	*
3307	Osage Municipal Utilities	0.00036287
3309	Panora Municipal Electric Utility	*
3119	Paton Municipal Utilities	*
3120	Paullina Municipal Utilities	0.01447172
3121	Pocahontas Municipal Utilities	0.00740982
3122	Preston Municipal Utilities	0.02411080
3315	Primghar Municipal Light Plant	0.00135058
3123	Readlyn Municipal Utilities	*
3124	Remsen Municipal Utilities	0.00229135
3318	Rock Rapids Municipal Utilities	0.00345035
3126	Rockford Municipal Light Plant	0.00000000
3127	Sabula Municipal Utilities	0.00272511
3128	Sanborn Municipal Light & Plant	0.00281050
3130	Shelby Municipal Utilities	0.00000000
3131	Sibley Municipal Utilities	0.00448066
3321	Sioux Center Municipal Utilities	0.00213539
3324	Spencer Municipal Utilities	0.00232324
3132	Stanhope Municipal Utilities	0.01413827
3133	Stanton Municipal Utilities	0.00149396
3326	State Center Municipal Light Plant	0.00029568
3327	Story City Municipal Electric Utility	0.00000000
3134	Stratford Municipal Utilities	0.00998372
3135	Strawberry Point Electric Utility	0.00002358
3136	Stuart Municipal Utilities	0.00236723
3328	Sumner Municipal Light Plant	*
3330	Tipton Municipal Utilities	*
3332	Traer Municipal Utilities	0.00434247
3337	Villisca Municipal Power Plant	0.00000000
3137	Vinton Municipal Utilities	0.00455206
3138	Wall Lake Municipal Utilities	0.00806368
3338	Waverly Light & Power	0.00521224
3342	Webster City Municipal Utilities	0.00283040
3345	West Bend Municipal Power Plant	0.00243451
3346	West Liberty Municipal Electric Util.	*
3347	West Point Municipal Utility System	0.00000000
3140	Whittemore Municipal Utilities	*
3141	Wilton Municipal Light & Power	0.00000000
3351	Winterset Municipal Utilities	0.00219158
3142	Woodbine Municipal Utilities	0.00100951

* No rate provided to the Department by the Municipal

2006 MUNICIPAL NATURAL GAS TRANSFER REPLACEMENT TAX RATES

CO. #	COMPANY	REPLACEMENT TAX RATE
5021	Bedford Municipal Gas	0.06173756
5215	Brighton Gas	0.00000000
5023	Brooklyn Municipal Gas	0.00000000
5024	Cascade Municipal Gas	0.00000000
5025	Cedar Falls Municipal Gas	0.00533235
5022	City of Bloomfield	0.02620092
5026	City of Clearfield	*
5028	City of Everly	*
5029	City of Fairbank	0.00000000
5238	Coon Rapids Municipal Gas	0.00324074
5241	Corning Municipal Gas	*
5027	Emmetsburg Municipal Gas	0.04318691
5030	Gilmore City Municipal Gas	*
5031	Graettinger Municipal Gas	0.02451608
5032	Guthrie Center Municipal Gas	0.00000000

REVENUE DEPARTMENT(cont'd)

5033	Harlan Municipal Gas	0.90234923
5034	Hartley Municipal Gas	0.01019382
5035	Hawarden Municipal Gas	0.16683282
5036	Lake Park Municipal Gas	0.00761159
5275	Lamoni Municipal Gas	0.00720853
5037	Lenox Municipal Gas	*
5038	Lineville City Natural Gas	*
5039	Lorimor Municipal Gas	*
5281	Manilla Municipal Gas	0.01035747
5283	Manning Municipal Gas	0.03006556
5040	Montezuma Natural Gas	0.00000000
5041	Morning Sun Municipal Gas	0.00000000
5042	Moulton Municipal Gas	0.15162432
5306	Osage Municipal Gas	0.02432894
5043	Prescott Municipal Gas	*
5044	Preston Municipal Gas	*
5055	Remsen Municipal Gas	0.00042360
5317	Rock Rapids Municipal Gas	0.00967449
5056	Rolfe Municipal Gas	0.00000000
5057	Sabula Municipal Gas	0.11996201
5058	Sac City Municipal Gas	0.04759257
5059	Sanborn Municipal Gas	0.03218951
5060	Sioux Center Municipal Gas	*
5061	Tipton Municipal Gas	*
5067	Wall Lake Municipal Gas	0.00000000
5063	Waukee Municipal Gas	*
5340	Wayland Municipal Gas	0.37441635
5064	Wellman Municipal Gas	0.02663094
5344	West Bend Municipal Gas	0.03661244
5065	Whittemore Municipal Gas	*
5349	Winfield Municipal Gas	0.00000000
5066	Woodbine Gas	0.57222305

* No rate provided to the Department by the Municipal

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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 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 40, "Determination of Net Income," Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," and Chapter 53, "Determination of Net Income," Iowa Administrative Code.

These amendments are proposed as a result of 2006 Iowa Acts, House Files 2351, 2465 and 2782.

Item 1 amends rule 701—40.1(422) to reference new rule 701—40.69(422).

Item 2 amends subrule 40.38(7) to provide that the federal holding period provisions in Section 1223 of the Internal Revenue Code will be used in determining the ten-year holding period for the Iowa capital gain exclusion for Iowa individual income tax. To illustrate the changes to this subrule, examples are included.

Item 3 amends the implementation clause for rule 701—40.38(422).

Item 4 adopts new rule 701—40.69(422) to provide for an exclusion for individual income tax for ordinary or capital gain income from an involuntary conversion relating to eminent domain. To illustrate this new rule, an example is included.

Item 5 amends subrule 52.1(2) to provide for an exemption for Iowa corporation income tax if the only activity conducted by a foreign corporation in Iowa is using a distribution facility in Iowa and if certain other conditions are met. To illustrate the changes to this subrule, examples are included.

Item 6 amends the implementation clause for rule 701—52.1(422).

Item 7 amends rule 701—53.1(422) to reference new rule 701—53.24(422).

Item 8 adopts new rule 701—53.24(422) to provide for an exclusion for corporation income tax for ordinary or capital gain income from an involuntary conversion relating to eminent domain. This is similar to the change in Item 4.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities that 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 January 8, 2007, to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before December 26, 2006. Such written comments should be directed to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by December 29, 2006.

These amendments are intended to implement Iowa Code section 422.7 as amended by 2006 Iowa Acts, House Files 2351 and 2465, Iowa Code section 422.35 as amended by 2006 Iowa Acts, House File 2351, and Iowa Code section 422.34A as amended by 2006 Iowa Acts, House File 2782.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

REVENUE DEPARTMENT[701](cont'd)

The following amendments are proposed.

ITEM 1. Amend rule 701—40.1(422) as follows:

701—40.1(422) Net income defined. Net income for state individual income tax purposes shall mean federal adjusted gross income as properly computed under the Internal Revenue Code and shall include the adjustments in 40.2(422) to 40.~~10~~ *9*(422). The remaining provisions of this rule and 40.12(422) to 40.~~68~~ *69*(422) shall also be applicable in determining net income.

This rule is intended to implement Iowa Code section 422.7.

ITEM 2. Amend subrule 40.38(7) as follows:

40.38(7) Net capital gains from the sale of real property used in a business. Net capital gains from the sale of real property used in a business are excluded from net income on the Iowa return of the owner of a business to the extent the owner had held the real property in the business for ten or more years and the owner had materially participated in the business for at least ten years. For purposes of this provision, material participation is defined in Section 469(h) of the Internal Revenue Code and described in detail in subrule 40.38(1), paragraph "c."

For capital gains reported for tax years ending prior to January 1, 2006, the term "held" is defined as "owned." See Decision of the Administrative Law Judge in James and Linda Bell, Docket No. 01DORF013, January 15, 2002. Therefore, the real property had to be owned by the taxpayer for ten or more years to meet the ownership requirement for the capital gain deduction for tax years ending prior to January 1, 2006. For capital gains reported for tax years ending on or after January 1, 2006, the term "held" is determined using the holding period provisions set forth in Section 1223 of the Internal Revenue Code and the federal regulations which adopt Section 1223. Therefore, as long as the holding period used to compute the capital gain is ten years or more, the ownership requirement for the capital gain deduction will be met for tax years ending on or after January 1, 2006.

Note that for purposes of taxation of capital gains from the sales of real property of a business by a taxpayer, there is no waiver of the ten-year material participation requirement when the property is sold to a lineal descendant of the taxpayer as there is for capital gains from sales of businesses described in subrule 40.38(8).

In situations in which real property was sold by a partnership, subchapter S corporation, limited liability company, estate, or trust and the capital gain from the sale of the real property flows through to the owners of the business entity for federal income tax purposes, the owners can exclude the capital gain from their net incomes if the real property was owned for ten or more years and the owners had materially participated in the business for ten years prior to the date of sale of the real property, irrespective of whether the type of business entity changed during the ten-year period prior to the date of sale. That is, if the owner of the business had owned and materially participated in the business in the entire ten-year period before the sale, the fact that the business changed from one type of entity to another during the period does not disqualify the owner from excluding capital gains from the sale of real estate owned by the business during that whole ten-year period.

Capital gains from the sale of real property by a C corporation do not qualify for the capital gain exclusion except under the specific circumstances of a liquidation described in subrule 40.38(12).

Capital gains from the sale of real property held for ten or more years for speculation but not used in a business also do not qualify for the capital gain exclusion.

EXAMPLE 1. to EXAMPLE 6. No change.

EXAMPLE 7. Jim Casey had owned farmland in Greene County, Iowa, since 1987, and had materially participated in the farming business. In 1998, Mr. Casey entered into a like-kind exchange under Section 1031 of the Internal Revenue Code for farmland located in Carroll County, Iowa. Mr. Casey continued to materially participate in the farming business in Carroll County. The farmland in Carroll County was sold in 2005, resulting in a capital gain. For federal tax purposes, the holding period for the capital gain starts in 1987 under Section 1223 of the Internal Revenue Code. Because Mr. Casey owned the farmland in Carroll County for less than ten years, based on Iowa law at the time of the sale, the capital gain from the sale does not qualify for the Iowa capital gain exclusion. The exclusion is not allowed even though the holding period for federal tax purposes is longer than ten years because the capital gain was reported for a tax year ending prior to January 1, 2006. If the farmland was sold in 2006, the gain would qualify for the capital gain exclusion since the capital gain would have been reported for a tax year ending on or after January 1, 2006.

EXAMPLE 8. Jane and Ralph Murphy, a married couple, owned farmland in Iowa since 1975. Ralph died in 1994, and under his will, Jane acquired a life interest in the farm. The farmland was managed by their son, Joseph, after Ralph's death. Jane died in 1998, and Joseph continued to materially participate and manage the farm operation. Joseph sold the farmland in 2006 and reported a capital gain. For federal tax purposes, the holding period for the capital gain starts in 1994, when Ralph died, under Section 1223 of the Internal Revenue Code. Because the holding period for the capital gain was ten years or more under Section 1223 of the Internal Revenue Code, Joseph is entitled to the capital gain exclusion under Iowa law since he materially participated for ten years or more and the capital gain was reported for a tax year ending on or after January 1, 2006.

ITEM 3. Amend rule **701—40.38(422)**, implementation clause, as follows:

This rule is intended to implement Iowa Code *Supplement* section 422.7 as amended by ~~1998~~ *2006* Iowa Acts, ~~chapter 1177~~ *House Files 2465 and 2794*.

ITEM 4. Amend 701—Chapter 40 by adopting the following **new** rule:

701—40.69(422) Exclusion of ordinary or capital gain income realized as a result of involuntary conversion of property due to eminent domain. For tax years beginning on or after January 1, 2006, a taxpayer may exclude the amount of ordinary or capital gain income realized as a result of the involuntary conversion of property due to eminent domain for Iowa individual income tax. Eminent domain refers to the authority of government agencies or instrumentalities of government to requisition or condemn private property for any public improvement, public purpose or public use. The exclusion for Iowa individual income tax can only be claimed in the year in which the ordinary or capital gain income was reported on the federal income tax return.

In order for an involuntary conversion to qualify for this exclusion, the sale must occur due to the requisition or condemnation, or its threat or imminence, if it takes place in the presence of, or under the threat or imminence of, legal coercion relating to a requisition or condemnation. There are numerous federal revenue rulings, court cases and other provi-

REVENUE DEPARTMENT[701](cont'd)

sions relating to the definitions of the terms "threat" and "imminence," and these are equally applicable to the exclusion of ordinary or capital gains realized for tax years beginning on or after January 1, 2006.

40.69(1) Reporting requirements. In order to claim an exclusion of ordinary or capital gain income realized as a result of involuntary conversion of property due to eminent domain, the taxpayer must attach a statement to the Iowa individual income tax return in the year in which the exclusion is claimed. The statement should state the date and details of the involuntary conversion, including the amount of the gain being excluded and the reasons why the gain meets the qualifications of an involuntary conversion relating to eminent domain. In addition, if the gain results from the sale of replacement property as outlined in subrule 40.69(2), information must be provided in the statement on that portion of the gain that qualified for the involuntary conversion.

40.69(2) Claiming the exclusion when gain is not recognized for federal tax purposes. For federal tax purposes, an ordinary or capital gain is not recognized when the converted property is replaced with property that is similar to, or related in use to, the converted property. In those cases, the basis of the old property is simply transferred to the new property, and no gain is recognized. In addition, when property is involuntarily converted into money or other unlike property, any gain is not recognized when replacement property is purchased within a specified period for federal tax purposes.

For Iowa individual income tax purposes, no exclusion will be allowed for ordinary or capital gain income when there is no gain recognized for federal tax purposes. The exclusion will only be allowed in the year in which ordinary or capital gain income is realized due to the disposition of the replacement property for federal tax purposes, and the exclusion is limited to the amount of the ordinary or capital gain income relating to the involuntary conversion. The basis of the property for Iowa individual income tax purposes will remain the same as the basis for federal tax purposes and will not be altered because of the exclusion allowed for Iowa individual income tax.

EXAMPLE: In 2007, taxpayer sold some farmland as a result of an involuntary conversion relating to eminent domain and realized a gain of $50,000. However, the taxpayer purchased similar farmland immediately after the sale, and no gain was recognized for federal tax purposes. Therefore, no exclusion is allowed on the 2007 Iowa individual income tax return. In 2009, taxpayer sold the replacement farmland that was not subject to an involuntary conversion and realized a total gain of $70,000, which was reported on the 2009 federal income tax return. The taxpayer can claim a deduction of $50,000 on the 2009 Iowa individual income tax return relating to the gain that resulted from the involuntary conversion.

This rule is intended to implement Iowa Code Supplement section 422.7 as amended by 2006 Iowa Acts, House File 2351.

ITEM 5. Amend subrule **52.1(2)** by adding **new** paragraph **"d"** as follows:

d. For tax years beginning on or after January 1, 2006, a foreign corporation will not be considered to be doing business in Iowa or deriving income from sources within Iowa if its only activities within Iowa, in addition to the activities listed in paragraphs "b" and "c" of this subrule, are utilizing a distribution facility in Iowa, owning or leasing property at a distribution facility in Iowa, or selling property shipped or distributed from a distribution facility in Iowa.

A distribution facility is an establishment at which shipments of tangible personal property are processed for delivery to customers. A distribution facility does not include an establishment at which retail sales of tangible personal property or returns of such property are undertaken with respect to retail customers more than 12 days in a year. However, an exception to the 12-day requirement is allowed for distribution facilities that process customer orders by mail, telephone, or electronic means, if the distribution facility also processes shipments of tangible personal property to customers, as long as no more than 10 percent of the goods are delivered or shipped to a purchaser in Iowa.

The following nonexclusive examples illustrate how this subrule applies:

EXAMPLE 1: A, a foreign corporation, stores its inventory of books at a facility in Iowa. The facility processes orders for these books solely by mail, telephone and the Internet on behalf of A, and customers are not allowed to purchase books at the facility's site in Iowa. The facility processes shipments of these books, and 5 percent of the books at this facility are delivered to purchasers located in Iowa. A does not conduct any other business activities in Iowa. A is not considered to be doing business in Iowa because less than 10 percent of the books at the facility are delivered to an Iowa customer.

EXAMPLE 2: B, a foreign corporation, stores its inventory of compact disks at a facility in Iowa. The facility processes orders for these compact disks solely by mail, telephone and the Internet on behalf of B, and customers are not allowed to purchase compact disks at the facility's site in Iowa. The facility processes shipments of these compact disks, and 15 percent of the compact disks at the facility are delivered to purchasers located in Iowa. B does not conduct any other business activities in Iowa. B is considered to be doing business in Iowa because more than 10 percent of the compact disks at the facility are delivered to an Iowa customer.

EXAMPLE 3: C, a foreign corporation, stores its inventory of doors and windows at a facility in Iowa. The facility processes orders for these windows and doors solely by mail, telephone and the Internet, and customers are not allowed to purchase these windows and doors at the facility's site in Iowa. The facility processes shipments of these windows and doors, and 7 percent of the windows and doors are delivered to purchasers located in Iowa. C will also install these windows and doors in Iowa upon customer request. C is considered to be doing business in Iowa even though less than 10 percent of the windows and doors are delivered to Iowa customers because C is also conducting installation activities in Iowa which are not protected under Public Law 86-272.

EXAMPLE 4: D, a foreign corporation, stores its inventory of home decorating and craft kits at a facility in Iowa. The facility does not process any customer orders by mail, telephone or the Internet, and does not process any shipments of these kits directly to customers. D allows customers to come to the facility 14 days each year to directly purchase these kits, and customers must arrange for their own delivery of the kits. D is considered to be doing business in Iowa because sales to retail customers are conducted more than 12 days in a year, and the facility does not process customer orders or shipments to customers.

ITEM 6. Amend rule **701—52.1(422)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 422.21, 422.24A, 422.32, 422.33, 422.34 ~~as amended by 2003 Iowa Acts, House File 674, section 9~~, 422.34A *as amended by 2006 Iowa Acts, House File 2782,* and 422.36.

ITEM 7. Amend rule 701—53.1(422), introductory paragraph, as follows:

REVENUE DEPARTMENT[701](cont'd)

701—53.1(422) Computation of net income for corporations. Net income for state purposes shall mean federal taxable income, before deduction for net operating losses, as properly computed under the Internal Revenue Code, and shall include the adjustments in 53.2(422) to 53.13(422) and 53.17(422) to 53.~~23~~ *24*(422). The remaining provisions of this rule and 53.14(422) to 53.16(422) shall also be applicable in determining net income.

ITEM 8. Amend 701—Chapter 53 by adopting the following **new** rule:

701—53.24(422) Exclusion of ordinary or capital gain income realized as a result of involuntary conversion of property due to eminent domain. For tax years beginning on or after January 1, 2006, a taxpayer may exclude the amount of ordinary or capital gain income realized as a result of the involuntary conversion of property due to eminent domain for Iowa corporation income tax. Eminent domain refers to the authority of government agencies or instrumentalities of government to requisition or condemn private property for any public improvement, public purpose or public use. The exclusion for Iowa purposes can only be claimed in the year in which the ordinary or capital gain income was reported on the federal income tax return.

In order for an involuntary conversion to qualify for this exclusion, the sale must occur due to the requisition or condemnation, or its threat or imminence, if it takes place in the presence of, or under the threat or imminence of, legal coercion relating to a requisition or condemnation. There are numerous federal revenue rulings, court cases and other provisions relating to the definitions of the terms "threat" and "imminence," and these are equally applicable to the exclusion of ordinary or capital gains realized for tax years beginning on or after January 1, 2006.

53.24(1) Reporting requirements. In order to claim an exclusion of ordinary or capital gain income realized as a result of involuntary conversion of property due to eminent domain, the taxpayer must attach a statement to the Iowa corporation income tax return in the year in which the exclusion is claimed. The statement should state the date and details of the involuntary conversion, including the amount of the gain being excluded and the reasons why the gain meets the qualifications of an involuntary conversion relating to eminent domain. In addition, if the gain results from the sale of replacement property as outlined in subrule 53.24(2), information must be provided in the statement on that portion of the gain that qualified for the involuntary conversion.

53.24(2) Claiming the exclusion when gain is not recognized for federal tax purposes. For federal tax purposes, an ordinary or capital gain is not recognized when the converted property is replaced with property that is similar to, or related in use to, the converted property. In those cases, the basis of the old property is simply transferred to the new property, and no gain is recognized. In addition, when property is involuntarily converted into money or other unlike property, any gain is not recognized when replacement property is purchased within a specified period for federal tax purposes.

For Iowa corporation tax purposes, no exclusion will be allowed for ordinary or capital gain income when there is no gain recognized for federal tax purposes. The exclusion will only be allowed in the year in which ordinary or capital gain income is realized due to the disposition of the replacement property for federal tax purposes, and the exclusion is limited to the amount of the ordinary or capital gain income relating to the involuntary conversion. The basis of the property for Iowa corporation income tax purposes will remain the same as the basis for federal tax purposes and will not be altered because of the exclusion allowed for Iowa corporation income tax.

EXAMPLE: In 2007, taxpayer sold some farmland as a result of an involuntary conversion relating to eminent domain and realized a gain of $50,000. However, the taxpayer purchased similar farmland immediately after the sale, and no gain was recognized for federal tax purposes. Therefore, no exclusion is allowed on the 2007 Iowa corporation income tax return. In 2009, taxpayer sold the replacement farmland that was not subject to an involuntary conversion and realized a total gain of $70,000, which was reported on the 2009 federal income tax return. The taxpayer can claim a deduction of $50,000 on the 2009 Iowa corporation income tax return relating to the gain that resulted from the involuntary conversion.

This rule is intended to implement Iowa Code Supplement section 422.35 as amended by 2006 Iowa Acts, House File 2351.

ARC 5595B

REVENUE DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 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 as a result of 2006 Iowa Acts, Senate Files 2268, 2273 and 2399.

Item 1 amends rule 701—42.23(422) to update the listing regarding the sequence of tax credits to be deducted for individual income tax.

Item 2 amends rule 701—42.25(422,476B) to update a cross reference to another rule.

Item 3 amends subrule 42.25(1) to provide for changes in the application and review process for the wind energy production tax credit for individual income tax.

Item 4 amends subrule 42.25(2) to provide for changes in how the wind energy production tax credit for individual income tax may be allocated for partnerships, limited liability companies, S corporations, and estates or trusts in situations where federal renewable electricity production tax credits are utilized.

Item 5 amends the implementation clause for rule 701—42.25(422,476B).

Item 6 amends rule 701—42.26(422,476C) to update a cross reference to another rule.

Item 7 amends subrule 42.26(1) to provide for changes in the application and review process for the renewable energy tax credit for individual income tax.

Item 8 amends subrule 42.26(2) to provide for changes in how the renewable energy tax credit for individual income tax may be allocated for partnerships, limited liability companies, S corporations, and estates or trusts in situations

REVENUE DEPARTMENT[701](cont'd)

where federal renewable electricity production tax credits are utilized.

Item 9 amends the implementation clause for rule 701—42.26(422,476C).

Item 10 adopts new rule 701—42.34(175,422) to provide for the agricultural assets transfer tax credit for individual income tax.

Item 11 amends rule 701—52.12(422) to update the listing regarding the sequence of tax credits to be deducted for corporation income tax.

Item 12 amends rule 701—52.26(422,476B) to update a cross reference to another rule.

Item 13 amends subrule 52.26(1) to provide for changes in the application and review process for the wind energy production tax credit for corporation income tax. This is similar to the change in Item 3.

Item 14 amends subrule 52.26(2) to provide for changes in how the wind energy production tax credit for corporation income tax may be allocated for partnerships, limited liability companies, S corporations, and estates or trusts in situations where federal renewable electricity production tax credits are utilized. This is similar to the change in Item 4.

Item 15 amends the implementation clause for rule 701—52.26(422,476B).

Item 16 amends rule 701—52.27(422,476C) to update a cross reference to another rule.

Item 17 amends subrule 52.27(1) to provide for changes in the application and review process for the renewable energy tax credit for corporation income tax. This is similar to the change in Item 7.

Item 18 amends subrule 52.27(2) to provide for changes in how the renewable energy tax credit for corporation income tax may be allocated for partnerships, limited liability companies, S corporations, and estates or trusts in situations where federal renewable electricity production tax credits are utilized. This is similar to the change in Item 8.

Item 19 amends the implementation clause for rule 701—52.27(422,476C).

Item 20 adopts new rule 701—52.33(175,422) to provide for the agricultural assets transfer tax credit for corporation income tax. This is similar to the change in Item 10.

Item 21 amends rule 701—58.15(422,476B) to update cross references to rules.

Item 22 amends rule 701—58.16(422,476C) to update cross references to rules.

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 January 8, 2007, to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before December 26, 2006. Such written comments should be directed to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by December 29, 2006.

These amendments are intended to implement 2006 Iowa Acts Senate File 2268, sections 2 and 3; Iowa Code section 422.33 as amended by 2006 Iowa Acts, Senate File 2268; and Iowa Code Supplement chapters 476B and 476C as amended by 2006 Iowa Acts, Senate Files 2273 and 2399.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 701—42.23(422) as follows:

701—42.23(422) Deduction of credits. The credits against computed tax set forth in Iowa Code sections *422.5, 422.8,* 422.10 through 422.12C*, and 422.110* shall be deducted in the following sequence:

1. Personal exemption credits.
2. Tuition and textbook credit.
3. Iowa earned income credit.
4. Nonresident and part-year resident credit.
5. Franchise tax credit.
6. S corporation apportionment credit.
7. ~~Venture capital credits~~ *Historic preservation and cultural and entertainment district tax credit (nonrefundable portion)*.
8. ~~Endow Iowa tax credit~~ *School tuition organization tax credit*.
9. ~~Investment tax credit~~ *Venture capital credits*.
10. ~~Wind energy production tax credit~~ *Endow Iowa tax credit*.
11. ~~Renewable energy tax credit~~ *Agricultural assets transfer tax credit*.
12. ~~New jobs credit~~ *Investment tax credit*.
13. ~~Economic development region revolving fund tax credit~~ *Wind energy production tax credit*.
14. ~~Alternative minimum tax credit~~ *Renewable energy tax credit*.
15. ~~Historic preservation and cultural and entertainment district tax credit~~ *New jobs credit*.
16. ~~Ethanol blended gasoline tax credit~~ *Economic development region revolving fund tax credit*.
17. ~~Research activities credit~~ *Alternative minimum tax credit*.
18. ~~Assistive device credit~~ *Historic preservation and cultural and entertainment district tax credit (refundable portion)*.
19. ~~Out-of-state tax credit~~ *Ethanol blended gasoline tax credit*.
20. ~~Child and dependent care credit or early childhood development tax credit~~ *Research activities credit*.
21. ~~Motor fuel credit~~ *Assistive device credit*.

REVENUE DEPARTMENT[701](cont'd)

22. ~~Claim of right credit (if elected in accordance with rule 701—38.18(422))~~ *Out-of-state tax credit*.

23. ~~Wage-benefits tax credit~~ *Child and dependent care credit or early childhood development tax credit*.

24. ~~Soy-based cutting tool oil tax credit~~ *Motor fuel credit*.

25. ~~Refundable portion of investment tax credit, as provided in subrule 42.2(10), paragraph "b."~~ *Claim of right credit (if elected in accordance with rule 701—38.18(422)).*

26. ~~Estimated payments, payment with vouchers and withholding tax~~ *Wage-benefits tax credit*.

27. Soy-based cutting tool oil tax credit.

28. Refundable portion of investment tax credit, as provided in subrule 42.2(10), paragraph "b."

29. E-85 gasoline promotion tax credit.

30. Biodiesel blended fuel tax credit.

31. Soy-based transformer fluid tax credit.

32. Estimated payments, payment with vouchers and withholding tax.

This rule is intended to implement Iowa Code sections *422.5, 422.8,* 422.10, 422.11, 422.11A, 422.11B, 422.11C, 422.11D, 422.11E, 422.11F, 422.11G, 422.11H, 422.11I, 422.11J, 422.11K, 422.11L, *422.11M, 422.11O, 422.11P,* 422.12, 422.12B, ~~and~~ 422.12C *and 422.110*.

ITEM 2. Amend rule 701—42.25(422,476B), introductory paragraph, as follows:

701—42.25(422,476B) Wind energy production tax credit. Effective for tax years beginning on or after July 1, 2006, an owner of a qualified wind energy production facility that has been approved by the Iowa utilities board may claim a wind energy production tax credit for qualified electricity sold by the owner against a taxpayer's Iowa individual income tax liability. The administrative rules for the certification of eligibility for the wind energy production tax credit for the Iowa utilities board may be found in rule 199—15.18(476*B*~~,81GA,SF390,HF882~~).

ITEM 3. Amend subrule 42.25(1) as follows:

42.25(1) Application and review process for the wind energy production tax credit. An owner of a wind energy production facility must be approved by the Iowa utilities board in order to qualify for the wind energy production tax credit. The facility must be an electrical production facility that produces electricity from wind, is located in Iowa, and must be placed in service on or after July 1, 2005, but before July 1, ~~2008~~ *2009*. In addition, the facility must also be approved by the board of supervisors of the county in which the facility is located. Once the owner receives the approval from the board of supervisors, approval is not required for subsequent tax periods.

The wind energy production tax credit cannot be allowed for a facility for which the owner has claimed an exemption from property tax under Iowa Code section 427B.26 or 441.21(8) or claimed an exemption from sales tax under Iowa Code section 423.3(54). The facility will be subject to the assessment of property tax in accordance with rule 701—80.13(427B).

The maximum amount of nameplate generating capacity for all qualified wind energy production facilities cannot exceed 450 megawatts of nameplate generating capacity. An owner shall not own more than two qualified facilities. A facility that is not operational within 18 months after issuance of the approval from the Iowa utilities board will no longer be considered a qualified facility. *However, a facility that is not operational within 18 months due to the unavailability of necessary equipment shall be granted an additional 12 months to become operational.*

An owner of the qualified facility must apply to the Iowa utilities board for the wind energy production tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is applied. ~~The application must include the following information:~~ *The information to be included in the application is set forth in 199—subrule 15.20(1).**

~~a. A copy of the determination from the utilities board that the facility was approved.~~

~~b. A copy of the executed power purchase agreement or other agreement to purchase electricity.~~

~~c. Documentation that the electricity has been generated by the facility and sold to a purchaser.~~

~~d. The date that the facility was placed in service.~~

~~e. The number of kilowatt-hours of electricity generated and purchased from the facility during the tax year.~~

~~f. The name, address, and tax identification number of the owner.~~

~~g. The type of tax for which the credit will be applied, and the first tax year in which the credits will be applied.~~

~~h. If the application is filed by a partnership, limited liability company, S corporation, or estate or trust requesting a tax credit for individual or corporation income tax, a list of the partners, members, shareholders or beneficiaries of the entity. This list shall include the name, address, tax identification number and pro rata share of earnings from the entity for each of the partners, members, shareholders or beneficiaries.~~

*See Notice of Intended Action published in the September 27, 2006, Iowa Administrative Bulletin as **ARC 5400B**.

ITEM 4. Amend subrule **42.25(2)**, fourth unnumbered paragraph, as follows:

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro-rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust, *except when the taxpayer is eligible to receive renewable electricity production tax credits authorized under Section 45 of the Internal Revenue Code. In cases where the taxpayer is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. In addition, if a taxpayer is a partnership, limited liability company, S corporation, or estate or trust that is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the taxpayer may distribute the tax credit to an equity holder or beneficiary as a liquidating distribution or portion thereof, of an equity holder's interest in the partnership, limited liability company or S corporation, or the beneficiary's interest in the estate or trust.*

ITEM 5. Amend the implementation clause for rule **701—42.25(422,476B)** as follows:

This rule is intended to implement Iowa Code Supplement section 422.11J and Iowa Code Supplement chapter 476B *as amended by 2006 Iowa Acts, Senate File 2399*.

ITEM 6. Amend rule 701—42.26(422,476C), introductory paragraph, as follows:

701—42.26(422,476C) Renewable energy tax credit. Effective for tax years beginning on or after July 1, 2006, a pur-

REVENUE DEPARTMENT[701](cont'd)

chaser or producer of renewable energy whose facility has been approved by the Iowa utilities board may claim a renewable energy tax credit for qualified renewable energy against a taxpayer's Iowa individual income tax liability. The administrative rules for the certification of eligibility for the renewable energy tax credit for the Iowa utilities board may be found in rule 199—15.~~18~~ *19*(476*C*,81GA,SF390,HF882).

ITEM 7. Amend subrule 42.26(1) as follows:

42.26(1) Application and review process for the renewable energy tax credit. A producer or purchaser of a renewable energy facility must be approved by the Iowa utilities board in order to qualify for the renewable energy credit. The eligible renewable energy facility can be a wind energy conversion facility, biogas recovery facility, biomass conversion facility, methane gas recovery facility, ~~or a~~ solar energy conversion facility *or refuse conversion facility*. The facility must be located in Iowa and placed in service on or after July 1, 2005, and before January 1, ~~2011~~ *2012*.

The maximum amount of nameplate generating capacity of all wind energy conversion facilities cannot exceed ~~90~~ *180* megawatts of nameplate generating capacity. The maximum amount of energy production capacity for biogas recovery facilities, biomass conversion facilities, methane gas recovery facilities, ~~and~~ solar energy conversion facilities *and refuse conversion facilities* cannot exceed *a combined output of* ~~10~~ *20* megawatts of nameplate generating capacity *and 167 billion British thermal units of heat for a commercial purpose*. A facility that is not operational within ~~18~~ *30* months after issuance of approval from the utilities board will no longer be considered a qualified facility. A producer of renewable energy, which is the person who owns the renewable energy facility, cannot own more than two eligible renewable energy facilities. *A person that has an equity interest equal to or greater than 51 percent in an eligible renewable energy facility cannot have an equity interest greater than 10 percent in any other renewable energy facility.*

A producer or purchaser of a renewable energy facility must apply to the utilities board for the renewable energy tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is applied. ~~The application must include the following information:~~ *The information to be included in the application is set forth in 199—subrule 15.21(1).**

~~a. A copy of the determination from the utilities board that the facility was approved.~~

~~b. A copy of the power purchase agreement or other agreement to purchase from the facility electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose. The agreement shall designate whether the producer or the purchaser of renewable energy will be eligible to apply for the renewable energy tax credit.~~

~~c. Documentation that the electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose has been generated by the facility and sold to a purchaser.~~

~~d. The date that the facility was placed in service.~~

~~e. The number of kilowatt-hours of electricity, standard cubic feet of hydrogen fuel, British thermal units of methane gas or other biogas used to generate electricity, or British thermal units of heat for a commercial purpose generated and purchased from the facility during the tax period.~~

~~f. The name, address and tax identification number of the purchaser or producer.~~

~~g. The type of tax for which the credit will be applied, and the first tax year in which the credits will be applied.~~

~~h. If the application is filed by a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, a list of the partners, members, shareholders or beneficiaries of the entity. This list shall include the name, address, tax identification number and pro-rata share of earnings from the entity for each of the partners, members, shareholders or beneficiaries.~~

*See Notice of Intended Action published in the September 27, 2006, Iowa Administrative Bulletin as **ARC 5400B**.

ITEM 8. Amend subrule **42.26(2)**, third, fourth and fifth unnumbered paragraphs, as follows:

The utilities board will notify the department of the number of kilowatt-hours, standard cubic feet or British thermal units that are generated and purchased from an eligible facility during the tax year. The department will calculate the credit and issue a tax credit certificate to the purchaser or producer. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit certificate, as provided in subrule 42.26(3). If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.41(17A). The department will not issue a tax credit certificate if the facility is not operational within ~~18~~ *30* months after approval was given by the utilities board. In addition, the department will not issue a tax credit certificate to any person who received a wind energy production tax credit in accordance with Iowa Code chapter 476B.

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro-rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust, *except when the taxpayer is eligible to receive renewable electricity production tax credits authorized under Section 45 of the Internal Revenue Code. In cases where the taxpayer is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. In addition, if a taxpayer is a partnership, limited liability company, S corporation, or estate or trust that is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the taxpayer may distribute the tax credit to an equity holder or beneficiary as a liquidating distribution or portion thereof, of an equity holder's interest in the partnership, limited liability company or S corporation, or the beneficiary's interest in the estate or trust.*

The credit can be allowed for a ten-year period beginning on the date the qualified facility was originally placed in service. For example, if a renewable energy facility was placed in service on April 1, 2006, the credit can be claimed for kilowatt-hours, standard cubic feet or British thermal units generated and purchased between April 1, 2006, and March 31, 2016. Tax credit certificates cannot be issued for renewable energy purchased after December 31, ~~2020~~ *2021*.

REVENUE DEPARTMENT[701](cont'd)

ITEM 9. Amend the implementation clause for rule **701—42.26(422,476C)** as follows:

This rule is intended to implement Iowa Code Supplement section 422.11J and Iowa Code Supplement chapter 476C *as amended by 2006 Iowa Acts, Senate Files 2273 and 2399*.

ITEM 10. Amend 701—Chapter 42 by adopting the following **new** rule:

701—42.34(175,422) Agricultural assets transfer tax credit. Effective for tax years beginning on or after January 1, 2007, an owner of agricultural assets that rent assets to qualified beginning farmers may claim an agricultural assets transfer tax credit for Iowa individual income tax. The credit is equal to 5 percent of the rental income received by the owner for cash rental agreements, and the credit is equal to 15 percent of the rental income received by the owner for commodity share agreements. The administrative rules for the agricultural assets transfer tax credit for the Iowa agricultural development authority may be found under 25—Chapter 6.

To qualify for the tax credit, an owner of agricultural assets must enter into a lease or rental agreement with a beginning farmer for a term of at least two years, but not more than five years. Both the owner of agricultural assets and the beginning farmer must meet certain qualifications set forth by the Iowa agricultural development authority, and the beginning farmer must be eligible to receive financial assistance under Iowa Code section 175.12.

The Iowa agricultural development authority will issue a tax credit certificate to the owner of agricultural assets which will include the name, address and tax identification number of the owner, the amount of the credit, and the tax period for which the credit may be applied. To claim the tax credit, the owner must attach the tax credit certificate to the tax return for the tax period set forth on the certificate.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit shall not be carried back to a tax year prior to the year in which the owner redeems the credit. The credit is not transferable to any other person other than the taxpayer's estate or trust upon the death of the taxpayer.

If an owner of agricultural assets is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

The lease or rental agreement may be terminated by either the owner or the beginning farmer. If the agricultural development authority determines that the owner is not at fault for the termination, the authority will not issue a tax credit certificate for subsequent years, but any prior tax credit certificates issued will be allowed. If the authority determines that the owner is at fault for the termination, any prior tax credit certificates will be disallowed. The amount of tax credits previously allowed will be recaptured, and the owner will be required to repay the entire amount of tax credits previously claimed on Iowa returns.

This rule is intended to implement Iowa Code sections 175.37 and 422.11M.

ITEM 11. Amend rule 701—52.12(422) as follows:

701—52.12(422) Deduction of credits. The credits against computed tax set forth in Iowa Code ~~section~~ *sections* 422.33 *and 422.110* shall be deducted in the following sequence.

1. Franchise tax credit.
2. ~~Venture capital credits~~ *Historic preservation and cultural and entertainment district tax credit (nonrefundable portion)*.
3. ~~Endow Iowa tax credit~~ *Venture capital credits*.
4. ~~Investment tax credit~~ *Endow Iowa tax credit*.
5. ~~Wind energy production tax credit~~ *Agricultural assets transfer tax credit*.
6. ~~Renewable energy tax credit~~ *Investment tax credit*.
7. ~~New jobs credit~~ *Wind energy production tax credit*.
8. ~~Economic development region revolving fund tax credit~~ *Renewable energy tax credit*.
9. ~~Alternative minimum tax credit~~ *New jobs credit*.
10. ~~Historic preservation and cultural and entertainment district tax credit~~ *Economic development region revolving fund tax credit*.
11. ~~Corporate tax credit for certain sales tax paid by developer~~ *Alternative minimum tax credit*.
12. ~~Ethanol blended gasoline tax credit~~ *Historic preservation and cultural and entertainment district tax credit (refundable portion)*.
13. ~~Research activities credit~~ *Corporate tax credit for certain sales tax paid by developer.*
14. ~~Assistive device credit~~ *Ethanol blended gasoline tax credit*.
15. ~~Motor fuel credit~~ *Research activities credit*.
16. ~~Wage-benefits tax credit~~ *Assistive device credit*.
17. ~~Soy-based cutting tool oil tax credit~~ *Motor fuel credit*.
18. ~~Refundable portion of investment tax credit, as provided in subrule 52.10(4)~~ *Wage-benefits tax credit*.
19. ~~Estimated tax and payments with vouchers~~ *Soy-based cutting tool oil tax credit*.
20. Refundable portion of investment tax credit, as provided in 701—subrule 52.10(4).
21. E-85 gasoline promotion tax credit.
22. Biodiesel blended fuel tax credit.
23. Soy-based transformer fluid tax credit.
24. Estimated tax and payments with vouchers.

This rule is intended to implement Iowa Code sections 15.333, 15.335, 422.33, 422.91 and 422.110.

ITEM 12. Amend rule 701—52.26(422,476B), introductory paragraph, as follows:

701—52.26(422,476B) Wind energy production tax credit. Effective for tax years beginning on or after July 1, 2006, an owner of a qualified wind energy production facility that has been approved by the Iowa utilities board may claim a wind energy production tax credit for qualified electricity sold by the owner against a taxpayer's Iowa corporation income tax liability. The administrative rules for the certification of eligibility for the wind energy production tax credit for the Iowa utilities board may be found in rule 199—15.18(476*B*~~,81GA,SF390,HF882~~).

ITEM 13. Amend subrule 52.26(1) as follows:

52.26(1) Application and review process for the wind energy production tax credit. An owner of a wind energy production facility must be approved by the Iowa utilities board in order to qualify for the wind energy production tax credit. The facility must be an electrical production facility that produces electricity from wind, is located in Iowa, and must be placed in service on or after July 1, 2005, but before July 1, ~~2008~~ *2009*. In addition, the facility must also be approved by the board of supervisors of the county in which the facility is located. Once the owner receives the approval from the board of supervisors, approval is not required for subsequent tax periods.

REVENUE DEPARTMENT[701](cont'd)

The wind energy production tax credit cannot be allowed for a facility for which the owner has claimed an exemption from property tax under Iowa Code section 427B.26 or 441.21(8) or claimed an exemption from sales tax under Iowa Code section 423.3(54). The facility will be subject to the assessment of property tax in accordance with rule 701—80.13(427B).

The maximum amount of nameplate generating capacity for all qualified wind energy production facilities cannot exceed 450 megawatts of nameplate generating capacity. An owner shall not own more than two qualified facilities. A facility that is not operational within 18 months after issuance of the approval from the Iowa utilities board will no longer be considered a qualified facility. *However, a facility that is not operational within 18 months due to the unavailability of necessary equipment shall be granted an additional 12 months to become operational.*

An owner of the qualified facility must apply to the Iowa utilities board for the wind energy production tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is applied. ~~The application must include the following information:~~ *The information to be included in the application is set forth in 199—subrule 15.20(1).**

~~a. A copy of the determination from the utilities board that the facility was approved.~~

~~b. A copy of the executed power purchase agreement or other agreement to purchase electricity.~~

~~c. Documentation that the electricity has been generated by the facility and sold to a purchaser.~~

~~d. The date that the facility was placed in service.~~

~~e. The number of kilowatt-hours of electricity generated and purchased from the facility during the tax year.~~

~~f. The name, address, and tax identification number of the owner.~~

~~g. The type of tax for which the credit will be applied, and the first tax year in which the credits will be applied.~~

~~h. If the application is filed by a partnership, limited liability company, S corporation, or estate or trust requesting a tax credit for individual or corporation income tax, a list of the partners, members, shareholders or beneficiaries of the entity. This list shall include the name, address, tax identification number and pro rata share of earnings from the entity for each of the partners, members, shareholders or beneficiaries.~~

*See Notice of Intended Action published in the September 27, 2006, Iowa Administrative Bulletin as **ARC 5400B**.

ITEM 14. Amend subrule **52.26(2)**, fourth unnumbered paragraph, as follows:

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro-rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust, *except when the taxpayer is eligible to receive renewable electricity production tax credits authorized under Section 45 of the Internal Revenue Code. In cases where the taxpayer is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. In addition, if a taxpayer is a partnership, limited liability company, S corporation, or estate or trust that is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the taxpayer may distribute the tax credit to an equity holder or beneficiary as a liquidating distribution or portion thereof, of an equity holder's interest in the partnership, limited liability company or S corporation, or the beneficiary's interest in the estate or trust.*

ITEM 15. Amend the implementation clause for rule **701—52.26(422,476B)** as follows:

This rule is intended to implement Iowa Code Supplement section 422.33 and Iowa Code Supplement chapter 476B *as amended by 2006 Iowa Acts, Senate File 2399*.

ITEM 16. Amend rule 701—52.27(422,476C), introductory paragraph, as follows:

701—52.27(422,476C) Renewable energy tax credit. Effective for tax years beginning on or after July 1, 2006, a purchaser or producer of renewable energy whose facility has been approved by the Iowa utilities board may claim a renewable energy tax credit for qualified renewable energy against a taxpayer's Iowa corporation income tax liability. The administrative rules for the certification of eligibility for the renewable energy tax credit for the Iowa utilities board may be found in rule 199—15.~~18~~ *19*(476*C*~~,81GA,SF390,HF882~~).

ITEM 17. Amend subrule 52.27(1) as follows:

52.27(1) Application and review process for the renewable energy tax credit. A producer or purchaser of a renewable energy facility must be approved by the Iowa utilities board in order to qualify for the renewable energy credit. The eligible renewable energy facility can be a wind energy conversion facility, biogas recovery facility, biomass conversion facility, methane gas recovery facility, ~~or a~~ solar energy conversion facility *or refuse conversion facility.* The facility must be located in Iowa and placed in service on or after July 1, 2005, and before January 1, ~~2011~~ *2012*.

The maximum amount of nameplate generating capacity of all wind energy conversion facilities cannot exceed ~~90~~ *180* megawatts of nameplate generating capacity. The maximum amount of energy production capacity for biogas recovery facilities, biomass conversion facilities, methane gas recovery facilities, ~~and~~ solar energy conversion facilities *and refuse conversion facilities* cannot exceed *a combined output of* ~~10~~ *20* megawatts of nameplate generating capacity *and 167 billion British thermal units of heat for a commercial purpose*. A facility that is not operational within ~~18~~ *30* months after issuance of approval from the utilities board will no longer be considered a qualified facility. A producer of renewable energy, which is the person who owns the renewable energy facility, cannot own more than two eligible renewable energy facilities. *A person that has an equity interest equal to or greater than 51 percent in an eligible renewable energy facility cannot have an equity interest greater than 10 percent in any other renewable energy facility.*

A producer or purchaser of a renewable energy facility must apply to the utilities board for the renewable energy tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is applied. ~~The application must include the following information:~~ *The information to be included in the application is set forth in 199—subrule 15.21(1).**

~~a. A copy of the determination from the utilities board that the facility was approved.~~

~~b. A copy of the power purchase agreement or other agreement to purchase from the facility electricity, hydrogen fuel, methane or other biogas, or heat for a commercial pur-~~

REVENUE DEPARTMENT[701](cont'd)

~~pose. The agreement shall designate whether the producer or the purchaser of renewable energy will be eligible to apply for the renewable energy tax credit.~~

~~c. Documentation that the electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose has been generated by the facility and sold to a purchaser.~~

~~d. The date that the facility was placed in service.~~

~~e. The number of kilowatt-hours of electricity, standard cubic feet of hydrogen fuel, British thermal units of methane gas or other biogas used to generate electricity, or British thermal units of heat for a commercial purpose generated and purchased from the facility during the tax period.~~

~~f. The name, address and tax identification number of the purchaser or producer.~~

~~g. The type of tax for which the credit will be applied, and the first tax year in which the credits will be applied.~~

~~h. If the application is filed by a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, a list of the partners, members, shareholders or beneficiaries of the entity. This list shall include the name, address, tax identification number and pro-rata share of earnings from the entity for each of the partners, members, shareholders or beneficiaries.~~

*See Notice of Intended Action published in the September 27, 2006, Iowa Administrative Bulletin as **ARC 5400B**.

ITEM 18. Amend subrule **52.27(2)**, third, fourth and fifth unnumbered paragraphs, as follows:

The utilities board will notify the department of the number of kilowatt-hours, standard cubic feet or British thermal units that are generated and purchased from an eligible facility during the tax year. The department will calculate the credit and issue a tax credit certificate to the purchaser or producer. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit certificate, as provided in subrule 52.27(3). If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.41(17A). The department will not issue a tax credit certificate if the facility is not operational within ~~18~~ *30* months after approval was given by the utilities board. In addition, the department will not issue a tax credit certificate to any person who received a wind energy production tax credit in accordance with Iowa Code chapter 476B.

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro-rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust, *except when the taxpayer is eligible to receive renewable electricity production tax credits authorized under Section 45 of the Internal Revenue Code. In cases where the taxpayer is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. In addition, if a taxpayer is a partnership, limited liability company, S corporation, or estate or trust that is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the taxpayer may distribute the tax credit to an equity holder or beneficiary as a liquidating distribution or portion thereof, of an equity holder's interest in the partnership, limited liability company or S corporation, or the beneficiary's interest in the estate or trust.*

The credit can be allowed for a ten-year period beginning on the date the qualified facility was originally placed in service. For example, if a renewable energy facility was placed in service on April 1, 2006, the credit can be claimed for kilowatt-hours, standard cubic feet or British thermal units generated and purchased between April 1, 2006, and March 31, 2016. Tax credit certificates cannot be issued for renewable energy purchased after December 31, ~~2020~~ *2021*.

ITEM 19. Amend the implementation clause for rule **701—52.27(422,476C)** as follows:

This rule is intended to implement Iowa Code Supplement section 422.33 and Iowa Code Supplement chapter 476C *as amended by 2006 Iowa Acts, Senate Files 2273 and 2399*.

ITEM 20. Amend 701—Chapter 52 by adopting the following **new** rule:

701—52.33(175,422) Agricultural assets transfer tax credit. Effective for tax years beginning on or after January 1, 2007, an owner of agricultural assets that rent assets to qualified beginning farmers may claim an agricultural assets transfer tax credit for Iowa corporation income tax. The credit is equal to 5 percent of the rental income received by the owner for cash rental agreements, and the credit is equal to 15 percent of the rental income received by the owner for commodity share agreements. The administrative rules for the agricultural assets transfer tax credit for the Iowa agricultural development authority may be found under 25—Chapter 6.

To qualify for the tax credit, an owner of agricultural assets must enter into a lease or rental agreement with a beginning farmer for a term of at least two years, but not more than five years. Both the owner of agricultural assets and the beginning farmer must meet certain qualifications set forth by the Iowa agricultural development authority, and the beginning farmer must be eligible to receive financial assistance under Iowa Code section 175.12.

The Iowa agricultural development authority will issue a tax credit certificate to the owner of agricultural assets which will include the name, address and tax identification number of the owner, the amount of the credit, and the tax period for which the credit may be applied. To claim the tax credit, the owner must attach the tax credit certificate to the tax return for the tax period set forth on the certificate.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit shall not be carried back to a tax year prior to the year in which the owner redeems the credit. The credit is not transferable to any other person other than the taxpayer's estate or trust upon the death of the taxpayer.

If an owner of agricultural assets is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

The lease or rental agreement may be terminated by either the owner or the beginning farmer. If the agricultural development authority determines that the owner is not at fault for

REVENUE DEPARTMENT[701](cont'd)

the termination, the authority will not issue a tax credit certificate for subsequent years, but any prior tax credit certificates issued will be allowed. If the authority determines that the owner is at fault for the termination, any prior tax credit certificates will be disallowed. The amount of tax credits previously allowed will be recaptured, and the owner will be required to repay the entire amount of tax credits previously claimed on Iowa returns.

This rule is intended to implement Iowa Code section 175.37 and Iowa Code section 422.33 as amended by 2006 Iowa Acts, Senate File 2268.

ITEM 21. Amend rule 701—58.15(422,476B) as follows:

701—58.15(422,476B) Wind energy production tax credit. Effective for tax years beginning on or after July 1, 2006, owners of qualified wind energy production facilities approved by the Iowa utilities board may claim a wind energy production tax credit for qualified electricity sold by the owner against a taxpayer's Iowa franchise tax liability. For information on the application and review process for the wind energy production tax credit, how the wind energy production tax credit is computed, how the wind energy production tax credit can be transferred and other details about the credit, see rule 701—52.26(422,476B). See also the administrative rules ~~for eligibility~~ for the wind energy production tax credit for the Iowa utilities board in ~~rule~~ *rules* 199—15.18(476*B*~~, 81GA,SF390,HF882~~) *and 199—15.20(476B)*.*

*See Notice of Intended Action published in the September 27, 2006, Iowa Administrative Bulletin as **ARC 5400B**.

ITEM 22. Amend rule 701—58.16(422,476C) as follows:

701—58.16(422,476C) Renewable energy tax credit. Effective for tax years beginning on or after July 1, 2006, a purchaser or producer of renewable energy whose facility has been approved by the Iowa utilities board may claim a renewable energy tax credit for qualified renewable energy against a taxpayer's Iowa franchise tax liability. For information on the application and review process for the renewable energy tax credit, how the renewable energy tax credit is computed, how the renewable energy tax credit can be transferred and other details about the credit, see rule 701—52.27(422,476C). See also the administrative rules ~~for eligibility~~ for the renewable energy tax credit for the Iowa utilities board in ~~rule~~ *rules* 199—15.~~18~~ *19*(476*C*~~,81GA,SF390,HF882~~) *and 199—15.21(476C)*.*

*See Notice of Intended Action published in the September 27, 2006, Iowa Administrative Bulletin as **ARC 5400B**.

NOTICE—USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

December 1, 2005 — December 31, 2005	6.50%
January 1, 2006 — January 31, 2006	6.50%
February 1, 2006 — February 28, 2006	6.50%
March 1, 2006 — March 31, 2006	6.50%
April 1, 2006 — April 30, 2006	6.50%
May 1, 2006 — May 31, 2006	6.75%
June 1, 2006 — June 30, 2006	7.00%
July 1, 2006 — July 31, 2006	7.00%
August 1, 2006 — August 31, 2006	7.25%
September 1, 2006 — September 30, 2006	7.00%
October 1, 2006 — October 31, 2006	7.00%
November 1, 2006 — November 30, 2006	6.75%
December 1, 2006 — December 31, 2006	6.75%

ARC 5582B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 7, "Appeals and Hearings," and adopts Chapter 187, "Aftercare Services and Supports," Iowa Administrative Code.

These rules define and structure the aftercare service programs that assist youth leaving foster care in their successful transition to adulthood. Division I of the chapter addresses aftercare services. The aftercare program is operated with federal funds received through the John H. Chafee Foster Care Independence Program, which was created through amendments to Title IV-E of the Social Security Act enacted in Public Law 106-169, the Foster Care Independence Act of 1999. The Department contracts with private child welfare agencies to provide self-sufficiency planning, basic living skills training, vendor payments, case management, and personal contacts to eligible youth.

Division II addresses the preparation for adult living component, a new program authorized and funded by the Eighty-first General Assembly to provide a monthly cash stipend to meet the basic needs of youth receiving aftercare services after leaving state-paid foster care. To be eligible, youth must be engaged in or actively pursuing full-time activity comprised of one or more of the following:

- Enrollment in a postsecondary educational training program or work training;
- Employment for an average of 25 hours or more per week; or
- School or program attendance leading to a high school diploma or GED.

Payments are based on the basic rate for foster family care for a child aged 16 or older and are reduced when a child's net earnings exceed the maximum payment amount.

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

These amendments were previously Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on July 5, 2006, as **ARC 5220B**. Notice of Intended Action to solicit comments on that submission was published on the same date as **ARC 5202B**. The Department received one comment on the Notice of Intended Action and has made the following changes in response:

- Inserted the words "or designee" after the words "program administrator" in subrule 187.4(1), rule 441—187.5(234), subrule 187.11(3), rule 441—187.12(234), subrule 187.13(2), and rule 441—187.14(234), due to the need to make decisions at the local subcontractor level.
- Lowered the minimum requirement for hours of employment in paragraph 187.11(5)"b" to 25 hours per week instead of 30, based on the observation that youth in aftercare have great difficulty securing jobs that average 30 or more hours per week.
- Added new language to subrule 187.11(5) to clarify that initial and ongoing eligibility shall be based on the youth's income and need as determined according to subrule 187.12(1).
- Added language to subrule 187.12(1) to require that the stipend amount be determined quarterly based on the best projection of the youth's income and needs and to prescribe how income will be projected and how changes in income will be treated.

The Council on Human Services adopted these amendments November 8, 2006.

The Department finds that these amendments confer a benefit on youth in the preparation for adult living program by easing work requirements and providing for quarterly determination of the stipend amount. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

These amendments are intended to implement Iowa Code section 234.6, Public Law 106-109, and 2006 Iowa Acts, Senate File 2217, Division V.

These amendments became effective December 1, 2006.

The following amendments are adopted.

ITEM 1. Amend rule **441—7.1(17A)**, definition of "aggrieved person," numbered paragraph **"4,"** by adding the following **new** bulleted paragraph:

- Who has been referred to aftercare services under 441—Chapter 187 and has exhausted the aftercare provider's dispute resolution process.

ITEM 2. Adopt **new** 441—Chapter 187 as follows:

CHAPTER 187
AFTERCARE SERVICES AND SUPPORTS

PREAMBLE

These rules define and structure the aftercare services program, which assists youth leaving foster care in their successful transition to adulthood. The aftercare program, including the preparation for adult living (PAL) component, helps former foster care youth to continue preparing for the challenges and opportunities presented by adulthood while receiving services and supports. The program also offers financial benefits to eligible youth up to the age of 21. All services and supports are voluntary.

DIVISION I
AFTERCARE SERVICES

441—187.1(234) Purpose. The purpose of aftercare services is to provide services and supports to youth aged 18, 19 or 20 who were formerly in foster care. The primary goal of the program is for participants to achieve self-sufficiency and to recognize and accept their personal responsibility for the transition from adolescence to adulthood.

441—187.2(234) Eligibility. To be eligible for aftercare services, a youth must meet the following requirements:

187.2(1) Residence. The youth must reside in Iowa.

187.2(2) Age. The youth must be at least 18 years of age but less than 21 years of age.

187.2(3) Foster care experience.

a. The youth must leave foster care either:

(1) On or after the youth's eighteenth birthday; or

(2) Between the ages of 17 ½ and 18 after being in foster care continuously for at least six months.

b. For purposes of this division, "foster care" is defined as 24-hour substitute care for a child who is placed away from the child's parents or guardians and for whom the department or juvenile court services has placement and care

responsibility through either court order or voluntary agreement.

c. A placement may meet the definition of foster care regardless of whether:

(1) The placement is licensed and the state or a local agency makes payments for the child's care;

(2) Adoption subsidy payments are being made before the finalization of adoption; or

(3) There is federal matching of any payments made.

d. Foster care may include, but is not limited to, placement in:

(1) A foster family home;

(2) A foster home of relatives;

(3) A group home;

(4) An emergency shelter;

(5) A preadoptive home;

(6) A residential facility; or

(7) The home of an unlicensed relative or suitable person.

e. Foster care does not include placement in:

(1) A detention facility;

(2) A forestry camp;

(3) A training school; or

(4) Any other facility operated primarily for the detention of children who are determined to be delinquent.

187.2(4) Responsibility. The youth must:

a. Actively take part in developing and participating in a self-sufficiency plan; and

b. Indicate recognition and acceptance of personal responsibility in the transition toward self-sufficiency.

441—187.3(234) Services and supports provided. The aftercare program shall provide the following services and supports to eligible youth:

187.3(1) Individual self-sufficiency plan. Each youth shall have an individual self-sufficiency plan based on an assessment of the youth's strengths and needs. The plan shall identify:

a. The youth's goals for achieving self-sufficiency;

b. The target date for reaching the goals; and

c. The tasks, responsible parties, time frames, and desired outcomes needed to reach the goals.

187.3(2) Life skills services. The program shall provide life skills services to enable youth to maintain a safe, healthy, and stable home.

187.3(3) Vendor payments. The program shall make vendor payments to meet direct expenses of the participant that are necessary in order to meet goals of the participant's self-sufficiency plan.

a. Need. To receive a vendor payment, the youth must demonstrate that there are no other means to meet these needs. Youth receiving a PAL stipend are not eligible for a vendor payment.

b. Scope. Vendor payments may include but are not limited to:

(1) Life skills training;

(2) Transportation assistance;

(3) Employment and education assistance;

(4) Clothing; and

(5) Room and board.

c. Maximum payment. The amount available for a 12-month period of service shall not exceed $1200 per youth.

187.3(4) Follow-up. The program shall maintain individual face-to-face contact with the youth at a frequency as defined in the youth's self-sufficiency plan to ensure that the youth is meeting the goals of the plan.

187.3(5) Ongoing assessment. Ongoing assessment activities shall be directed toward:

a. Monitoring the progress being made in the youth's ability to achieve self-sufficiency; and

b. Coordination and evaluation of the services and supports being provided to reach the self-sufficiency goal.

187.3(6) Case management. Case management activities shall include, but not be limited to:

a. Community involvement services to enable the youth to access community resources; and

b. Development of support systems, including services to assist the youth in establishing or reestablishing relationships with significant adults.

441—187.4(234) Termination. Aftercare services and supports shall be terminated when any of the following conditions apply:

187.4(1) The youth fails to follow self-sufficiency plan components and expectations as determined by the program administrator.

187.4(2) The youth voluntarily withdraws from aftercare services.

187.4(3) The youth is no longer residing in Iowa.

187.4(4) The youth reaches 21 years of age.

187.4(5) There are insufficient funds to continue the services.

441—187.5(234) Waiting list. The program administrator or designee shall create a waiting list when all funds for the aftercare services program are committed for the fiscal year. Names shall be entered on the waiting list on a first-come, first-served basis once the youth is determined eligible.

441—187.6(234) Administration. The department may contract with another state agency or a private organization to perform the administrative and case management functions necessary to administer this program.

187.6(1) The contractor and any subcontractors shall meet the standards in 441—subrule 150.5(3) and paragraph 150.3(3)"i."

187.6(2) Agencies providing services or supports shall meet the standards in rules 441—108.2(238) through 441—108.6(238).

441—187.7 to **187.9** Reserved.

These rules are intended to implement Iowa Code section 234.6 and Public Law 106−169, the Foster Care Independence Act of 1999.

DIVISION II

PREPARATION FOR ADULT LIVING (PAL) PROGRAM

441—187.10(234) Purpose. The purpose of the PAL program is to provide financial support to eligible youth who are receiving aftercare services. Youth receiving a PAL stipend are not eligible to receive aftercare vendor payments.

441—187.11(234) Eligibility. A monthly stipend may be provided to a youth receiving aftercare services who left foster care after May 1, 2006, and who meets all of the following criteria:

187.11(1) Ineligibility for foster care. The youth must be ineligible for voluntary foster care placement under 441—Chapter 202.

187.11(2) Foster care experience. The youth must:

a. Leave foster care paid for by the state under Iowa Code section 234.35 on or after the youth's eighteenth birthday; and

b. Have been in foster care paid for by the state under Iowa Code section 234.35 in at least 6 of the last 12 months before the youth left foster care.

187.11(3) Living arrangement. The youth must have a living arrangement other than a parent's home, which may include a former foster family, an apartment, a college dormitory, or another approved arrangement. The program administrator or designee is responsible for approving the living arrangement.

187.11(4) Activity. The youth must be engaged in or actively pursuing full-time activity comprised of one or more of the following:

a. Enrollment in a postsecondary educational training program or work training;

b. Employment for an average of 25 hours or more per week; or

c. School or program attendance leading to a high school diploma or GED.

187.11(5) Financial need. A youth whose unearned income exceeds the maximum payment determined according to 187.12(2) is not eligible for a stipend. Initial and ongoing eligibility shall be based on the youth's income and need as determined according to 187.12(1).

441—187.12(234) Payment. The program administrator or designee shall issue a monthly stipend to each participant according to the following guidelines:

187.12(1) Need. The amount of the PAL stipend shall be based on the needs of the youth as documented in the youth's self-sufficiency plan. Eligibility and the stipend amount shall be based on the best estimate of the youth's income, as determined at least quarterly.

a. All earned and unearned income received by the youth during the 30 days before the determination shall be used to project future income. If the 30-day period is not indicative of future income, income from a longer period or verification of anticipated income from the income source may be used to project future income.

b. The youth shall timely report the beginning or ending of earned or unearned income. A report shall be considered timely when made within ten days from the receipt of income or the date income ended.

c. When the youth timely reports a change in income, prospective eligibility and stipend amount for the following month shall be determined based on the change.

d. Recoupment shall be made for any overpayment due to failure to timely report a change in income.

e. Recoupment shall not be made when a youth timely reports a change in income and the change is timely acted upon, but the timely notice policy in rule 441—7.7(17A) requires that the action be delayed until the second calendar month following the month of change.

187.12(2) Amount. The monthly stipend shall be based on the foster family basic daily maintenance rate for a child aged 16 or older. The maximum monthly payment shall be calculated by multiplying the daily rate in 441—subrule 156.6(1) by 365 and dividing by 12.

a. The stipend shall be prorated based on the date of entry.

b. When the net earnings of the youth exceed the maximum payment, the stipend shall be reduced the following month by 50 cents for every dollar earned over the maximum payment.

187.12(3) Payee. The PAL stipend may be paid to the youth, the foster family, or another payee other than a department employee. The payee shall be agreed upon by the parties involved and specified in the self-sufficiency plan under 187.3(1).

441—187.13(234) Termination of stipend. The PAL stipend shall be terminated when any of the following conditions apply:

187.13(1) The youth reaches the age of 21.

187.13(2) The youth fails to meet work or education eligibility requirements for 30 consecutive days without good cause as determined by the program administrator or designee.

187.13(3) The youth fails to follow self-sufficiency plan components and expectations as determined by the program administrator or designee.

187.13(4) The youth fails to maintain satisfactory progress as defined by the education or training program in which the youth is enrolled. A youth who is not making satisfactory progress may stay in the PAL program by choosing the work option.

187.13(5) The youth chooses to live in a nonapproved setting.

187.13(6) The youth no longer resides in Iowa.

187.13(7) The youth lives with a parent.

187.13(8) There are insufficient funds to continue the stipend.

441—187.14(234) Waiting list. The program administrator or designee shall create a waiting list when all funds for the PAL program are committed for the fiscal year. Names shall be entered on the waiting list on a first-come, first-served basis once the youth is determined eligible.

441—187.15(234) Administration. The department may contract with another state agency or a private organization to perform the administrative functions necessary to administer the PAL program.

187.15(1) The contractor and any subcontractors shall meet the standards in 441—subrule 150.5(3) and paragraph 150.3(3)"i."

187.15(2) Agencies providing support or services shall meet the standards in rules 441—108.2(238) through 441—108.6(238).

These rules are intended to implement 2006 Iowa Acts, Senate File 2217, Division V.

[Filed Emergency After Notice 11/9/06, effective 12/1/06]
[Published 12/6/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/6/06.

ARC 5578B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 83, "Medicaid Waiver Services," Iowa Administrative Code.

2006 Iowa Acts, House File 2734, included funding for a 3 percent increase in reimbursement for most Medicaid providers, including home- and community-based services waiver providers, which was effective July 1, 2006. The Medicaid AIDS/HIV waiver, brain injury waiver, children's mental health waiver, elderly waiver, ill and handicapped

HUMAN SERVICES DEPARTMENT[441](cont'd)

waiver, and physical disability waiver all have limits on the allowable monthly cost of waiver services, based on the consumer's level of care. These amendments increase the limits on maximum cost for services under these waivers by 3 percent.

For consumers whose service costs are at or near the limit, the implementation of the 3 percent rate increase may require a reduction of the authorized service level in order for the service costs to remain within the limit. The Department does not believe that it was the intent of the legislature for the rate increase to result in a decrease in services for waiver consumers, especially for those with the highest needs.

In addition, Executive Order 43, signed July 4, 2005, directs the Department to "meet and confer" with AFSCME, the union representing waiver consumer-directed attendant care providers. One of the terms of the agreement currently under negotiation is to increase the waiver caps by 3 percent to accommodate the 3 percent provider increase. This increase ensures that providers of consumer-directed attendant care are not prevented from receiving the increase because of the limit on waiver service costs. The agreement is expected to become effective as of December 1, 2006.

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

The Council on Human Services adopted these amendments on November 8, 2006.

The Department finds that notice and public participation are unnecessary because the Department believes that it was the intent of the legislature for providers and consumers to be able to take advantage of the 3 percent rate increase without decreasing the amount of service delivered. These changes are necessary to conform to the rate increases that were approved by the legislature. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department finds that these amendments confer a benefit to waiver consumers and providers. The increase in the cost limits will allow the full rate increase to be paid to all providers without harming consumers whose waiver service costs are at or near the limit. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

These amendments are also published herein under Notice of Intended Action as **ARC 5577B** to allow for public comment.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments became effective December 1, 2006.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend paragraph **83.2(2)"b,"** introductory paragraph, as follows:

b. Except as provided below, the total monthly cost of the ill and handicapped waiver services shall not exceed the established aggregate monthly cost for level of care as follows:

Skilled level of care	Nursing level of care	ICF/MR
~~$2,480~~ *$2,554*	~~$852~~ *$878*	~~$3,019~~ *$3,110*

ITEM 2. Amend subparagraph **83.22(2)"c"(2)** as follows:

(2) Services must be the least costly available to meet the service needs of the consumer. The total monthly cost of the elderly waiver services exclusive of case management services shall not exceed the established monthly cost of the level of care. Aggregate monthly costs are limited as follows:

Skilled level of care	Nursing level of care
~~$2,480~~ *$2,554*	~~$1,052~~ *$1,084*

ITEM 3. Amend paragraph **83.42(2)"b"** as follows:

b. The total monthly cost of the AIDS/HIV waiver services shall not exceed the established aggregate monthly cost for level of care. The monthly cost of AIDS/HIV waiver services cannot exceed the established limit of ~~$1650~~ *$1,700*.

ITEM 4. Amend paragraph **83.82(2)"d"** as follows:

d. The total cost of brain injury waiver services shall not exceed ~~$2,650~~ *$2,730* per month. If more than $500 is paid for home and vehicle modification services, the service worker shall encumber up to $500 per month within the monthly dollar cap allowed for the consumer until the total amount of the modification is reached within a 12-month period.

ITEM 5. Amend paragraph **83.102(2)"b"** as follows:

b. The total cost of physical disability waiver services shall not exceed ~~$621~~ *$640* per month. If more than $500 is paid for home and vehicle modification services, the service worker shall encumber up to $500 per month within the monthly dollar cap allowed for the consumer until the total amount of the modification is reached within a 12-month period.

ITEM 6. Amend paragraph **83.122(6)"b"** as follows:

b. The total cost of children's mental health waiver services needed to meet the consumer's needs may not exceed ~~$1765~~ *$1,818* per month.

[Filed Emergency 11/8/06, effective 12/1/06]
[Published 12/6/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/6/06.

ARC 5581B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 217.6 and 234.6, the Department of Human Services amends Chapter 151, "Juvenile Court Services Directed Programs," Iowa Administrative Code.

These amendments modify the components of the graduated sanction service, "supervised community treatment." Supervised community treatment services are early intervention and follow-up services provided to youth who have been adjudicated delinquent, including registered sex offenders, and to youth who have been referred to juvenile court services for a delinquency violation or who have exhibited behaviors likely to result in a juvenile delinquency referral. The amendments:

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Give the chief juvenile court officers flexibility to eliminate components of the service as necessary to meet budgetary limitations; and
- Require that staff providing individual, group, or family therapy meet applicable state licensing standards. This change will enable the provider to bill the Medicaid program for services to Medicaid-eligible youth.
- Make a technical change to the implementation sentence for Division III, "Graduated Sanction Services."

The chief juvenile court officers have unanimously agreed to the rule changes. The loss of Medicaid funding for rehabilitative treatment services limits the funds available for graduated sanction services to the state funds that were previously used to match the federal Medicaid expenditures. The modifications to the service components allow the chief juvenile court officers flexibility to continue providing services to this population and to maximize the available funding. Communities and the public benefit from the involvement, oversight, and supervision provided to youth who present a threat to their communities and the public.

These amendments do not provide for waivers in specified situations. The rules allow flexibility to meet certain service needs as anticipated by the chief juvenile court officers whose clients are under court orders. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments November 8, 2006.

The Department finds that notice and public participation are contrary to the public interest. The loss of Medicaid funding for rehabilitative treatment services has created an urgent need to spend state dollars in the most cost-efficient, cost-effective manner known to meet the needs of clients. State funding for these programs has already been appropriated. Delaying measures for more cost-effective operation risks termination of the entire program due to lack of funds. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(2).

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(3), that the normal effective date of these amendments should be waived because of imminent peril to the public welfare. The services provided contribute to community safety by addressing service needs of youth who pose a risk to the community.

These amendments are also published herein under Notice of Intended Action as **ARC 5580B** to allow for public comment.

These amendments are intended to implement Iowa Code section 232.191.

These amendments became effective December 1, 2006.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend subrule 151.32(2) as follows:

151.32(2) Service components. Supervised community treatment programs provide treatment to children as well as an opportunity for children to participate in state-funded educational programming. Supportive therapy or counseling and skill development services may be provided through this program to the child's family.

a. Supervised community treatment programs may be co-located with school programs. Although the costs of the state-funded educational programming shall not be funded through the supervised community treatment appropriation, programs shall be developed so that there is close coordination between the treatment and the state-funded educational components.

b. Supervised community treatment programs shall ~~be developed in accordance with~~ *include one or more of* the following ~~characteristics and treatment~~ components:

~~a. The non-state-funded educational portion of the program shall be available for children to attend at least three hours per day for at least three days per week. Children may attend less than three hours per day and less than three days per week, but the attendance must be planned and must be specified in the child's treatment plan.~~

~~b. Children shall receive skill-building~~ *(1) Skill-building* services focusing on social skills, recreational activities, employment readiness, independent living, and other areas related to their treatment needs each day they attend the program.

~~c. Children shall receive individual~~ *(2) Individual*, group, and family therapy and counseling as determined appropriate by the program director and referral source. *Staff that provide individual, group, or family therapy shall meet applicable state licensing standards.*

~~d.~~ *(3)* Snacks and meals ~~shall be provided~~ as necessary ~~throughout~~ *during* the non-state-funded educational portion of the program day.

~~e.~~ *(4)* Supervision and support services, such as transportation to the non-state-funded educational program, family outreach, telephone contact, and electronic monitoring of children~~, shall be provided when necessary~~.

~~f.~~ *(5)* Aftercare service planning ~~shall begin~~ upon admission, so that timely aftercare services are available upon discharge, if needed.

~~g.~~ *(6)* Supervision and support services ~~shall be provided~~ when necessary to help children transition out of the program.

~~h~~ *c.* The contract must specify the responsibilities of the provider.

ITEM 2. Amend **441—Chapter 151**, **Division III**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section ~~232.141~~ *232.191*.

[Filed Emergency 11/9/06, effective 12/1/06]
[Published 12/6/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/6/06.

ARC 5573B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby amends Chapter 131, "Emergency Medical Services Provider Education/Training/Certification," Iowa Administrative Code.

The rules in Chapter 131 describe the standards for the education, training, and certification of emergency medical providers and establish a standard of conduct for training programs, students, and providers. This amendment changes testing fees of emergency medical care candidates for certifi-

PUBLIC HEALTH DEPARTMENT[641](cont'd)

cation. The candidate will now pay a one-time fee of $30 to the Department instead of a $20 fee for each examination attempt. This change will decrease delay in testing for candidates needing to retest.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable because of the immediate need to implement new processes to be aligned with the certification testing by the National Registry of EMTs.

The Department also 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 January 1, 2007, as it confers a benefit on EMS candidates testing for certification.

The State Board of Health adopted this amendment on November 8, 2006.

This amendment is also published herein under Notice of Intended Action as **ARC 5574B** to allow public comment. This emergency filing permits the Department to be aligned with the certification testing by the National Registry of EMTs.

This amendment shall become effective on January 1, 2007.

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

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is adopted.

Amend subrule **131.4(1)**, paragraph **"k,"** as follows:

k. The fee for ~~processing each FR, EMT-B, EMT-I, EMT-P and paramedic specialist written examination~~ *certification as an emergency medical care provider* is ~~$20~~ *$30*, payable to the Iowa Department of Public Health. *This nonrefundable fee shall be paid prior to a candidate's attempting the written portion of the certification examination.*

[Filed Emergency 11/8/06, effective 1/1/07]
[Published 12/6/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/6/06.

ARC 5575B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby amends Chapter 141, "Love Our Kids Grant," Iowa Administrative Code.

The rules in Chapter 141 describe the process for providing grant funding to statewide, regional and local agencies and service programs that have as their responsibility the development, promotion, and implementation of injury prevention and education initiatives for children in Iowa. The purpose of these amendments is to combine two separate funding categories into one category, thereby allowing easier access to funding, providing more geographically balanced distribution of funds, and enabling rural communities to provide injury prevention projects.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable because of the immediate need to distribute available funds for injury prevention projects to protect children.

The Department also finds, pursuant to Iowa Code section 17A.(2)"b"(2), that the normal effective date of the amendments should be waived and these amendments should be made effective upon filing with the Administrative Rules Coordinator on November 8, 2006, as they confer a benefit upon the public by making funding available to child safety organizations.

These amendments were adopted by the State Board of Health on November 8, 2006.

These amendments are also published herein under Notice of Intended Action as **ARC 5576B** to allow for public comment. This emergency filing permits the Department to implement the changes and allow injury prevention programs to receive funding immediately.

These amendments became effective on November 8, 2006.

These amendments are intended to implement Iowa Code section 321.34.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend rule **641—141.1(321)** as follows:

Rescind the definitions of "competitive grant," "continuous grant" and "RFP."

Amend the definitions of "project period" and "service delivery area" as follows:

"Project period" means the period of time which the department intends to support the project. ~~without requiring the recompetition for funds. The project period is specified within the grant application period and may extend to three years.~~

"Service delivery area" means the defined geographic area for delivery of project services. ~~Competitive applications~~ *Applications* shall not fragment existing integrated service delivery within the defined geographic area.

ITEM 2. Amend rule 641—141.2(321) as follows:

641—141.2(321) Purpose. The purpose of the love our kids grant is to provide ~~competitive~~ grant funding to statewide, regional and local agencies and service programs that have as their responsibility the development, promotion, and implementation of injury prevention and education initiatives for children in Iowa.

ITEM 3. Amend rule 641—141.3(321), introductory paragraph, as follows:

641—141.3(321) Funding limitations. Grants awarded under this program shall be subject to the guidelines within the ~~RFP~~ *contract* and the following, including but not limited to:

ITEM 4. Rescind and reserve subrule **141.3(2)**.

ITEM 5. Amend subrule 141.3(3) as follows:

141.3(3) Following the disbursement of the funds pursuant to subrule 141.3(1), ~~50 percent of the remaining funds~~ *depending upon availability of funds, up to 24 contracts, with a goal of funding at least three per EMS region for $1500 each*, may be made available to statewide, regional and local agencies or service programs that *are located within the federally appointed rural areas (listing of eligible rural counties can be found at http://ruralhealth.hrsa.gov and* have as their

responsibility the development, promotion, and implementation of injury prevention and education initiatives for children.

ITEM 6. Amend subrule 141.3(5) as follows:

141.3(5) ~~Continuous grant~~ *Grant* awards shall be subject to the availability of funds.

ITEM 7. Amend rule 641—141.4(321) as follows:

641—141.4(321) Use of funds. Funds may be used for injury prevention initiatives specified within the ~~RFP~~ guidelines for children aged birth to 21 including but not limited to:

1. Education and materials;
2. Training materials and equipment;
3. Safety equipment;
4. Public information and education campaigns;
5. Conferences/seminars/workshops;
6. Systems development;
7. Contractual services;
8. Personnel costs.

ITEM 8. Amend subrule 141.5(1) as follows:

141.5(1) Applications from qualified applicants shall be submitted ~~within the request for proposal (RFP) guidelines established by the department~~ *to the department prior to July 1 of each year.*

[Filed Emergency 11/8/06, effective 11/8/06]
[Published 12/6/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/6/06.

ARC 5605B

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education amends Chapter 17, "Open Enrollment," Iowa Administrative Code.

The primary change adds detail to an administrative appeal newly available to a resident district for protesting an approval of a late-filed open enrollment request by a receiving district. Another major change clarifies that the exception of "continuous enrollment" is not available to the parent/guardian of a child entering kindergarten for the first time. Other changes are minor "cleanup" changes (deleting superfluous definitions, changing deadlines in accordance with statutory changes, eliminating reference to Phase III dollars, and eliminating the requirement to send copies of requests to the Department because the Department lacks statutory authorization).

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

Notice of Intended Action was published in the October 11, 2006, Iowa Administrative Bulletin as **ARC 5415B**. A public hearing was held on November 1, 2006, from 2:30 to 4 p.m.; no one attended the public hearing. Public comments were allowed until 4:30 p.m. on November 1, 2006. No written comments were received. One oral comment was received, inquiring whether new subrule 17.4(6) in Item 6 of the Notice provided a sufficient amount of time for the board of a resident district to meet in order to decide whether to pursue an appeal under subrule 17.4(6). The commenter pointed out that it may not be practical for the board of a resident district to meet within 15 days of receipt by the resident district of notification of the approval by the receiving district of a late-filed open enrollment application.

Since the Notice of Intended Action was published, and in response to the oral comment, Item 6 has been changed to double the time period (from 15 days to 30 days) in which a resident district must file an appeal to the director.

New subrule 17.4(6) now reads as follows:

"**17.4(6)** If the resident district believes that the board of the receiving district approved a late-filed open enrollment request that does not meet the definition of 'good cause' under Iowa Code section 282.18(4)'b,' the resident district may appeal to the director.

"a. Upon affirmative vote of a majority of its board to do so, the resident district shall file a written appeal to the director within 30 days of receipt by the resident district of notification by the board of the receiving district of the approval by the receiving district of a late-filed open enrollment request. The written appeal shall state the name and grade level of the affected student, the name of the receiving district, the date of approval by the board of the receiving district, the date the resident district was notified of the approval, and a brief statement explaining why the resident district board believes there is no good cause for the request to have been filed and approved after March 1. The appeal shall be signed by the president of the board of the resident district and shall have attached to it a copy of the disputed open enrollment request and the minutes of the board meeting at which the resident district board voted to appeal. An appeal is timely filed if it is postmarked or delivered personally or via facsimile transmission to the director within the 30-day time period.

"b. The director shall, upon receipt of an appeal, first attempt to mediate the dispute. If mediation is unsuccessful, the director shall schedule a telephonic hearing for the purpose of hearing testimony from both boards.

"c. If a hearing is necessary, the boards may stipulate to any or all facts to be considered by the director. At the sole discretion of the director, an in-person hearing may be scheduled. The director shall issue a written decision within ten days of the hearing, upholding or reversing the decision of the board of the receiving district.

"d. Within five days of the issuance of the decision of the director, the aggrieved board may appeal the decision to the state board of education under the procedures in Iowa Code chapter 290."

These amendments are intended to implement Iowa Code section 282.18 as amended by 2006 Iowa Acts, Senate File 2272, sections 41 to 43.

These amendments shall become effective January 10, 2007.

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 Ch 17] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 5415B**, IAB 10/11/06.

[Filed 11/15/06, effective 1/10/07]
[Published 12/6/06]

[For replacement pages for IAC, see IAC Supplement 12/6/06.]

ARC 5606B

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education rescinds Chapter 62, "Educational Improvement Projects," Iowa Administrative Code.

Chapter 62 was adopted and filed in 1984 to implement then Iowa Code chapter 260A. The legislation was never funded, and the Iowa Code chapter was rescinded in 1989. The rules in Chapter 62 serve no purpose and should be rescinded.

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

Notice of Intended Action was published in the October 11, 2006, Iowa Administrative Bulletin as **ARC 5416B**. No public hearing was held. Public comments were allowed until October 31, 2006, at 4:30 p.m. No written or oral comments were received.

This amendment is identical to that published under Notice.

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

This amendment shall become effective January 10, 2007.

The following amendment is adopted.

EDUCATION DEPARTMENT[281](cont'd)

Rescind and reserve **281—Chapter 62**.

[Filed 11/15/06, effective 1/10/07]
[Published 12/6/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/6/06.

ARC 5600B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of 2006 Iowa Acts, House File 2362, section 7, the Environmental Protection Commission hereby adopts new Chapter 215, "Mercury-Added Switch Recovery from End-of-Life Vehicles," Iowa Administrative Code.

This rule making is in response to 2006 Iowa Acts, House File 2362. The rules are taken directly from the legislation that was passed with only minor formatting changes.

Notice of Intended Action was published in the September 27, 2006, Iowa Administrative Bulletin as **ARC 5386B**.

A public hearing was held on October 17, 2006, at 8:30 a.m. in the Fourth Floor West Conference Room of the Wallace State Office Building. One comment was received. No changes were made.

These rules are intended to implement 2006 Iowa Acts, House File 2362.

These rules will become effective January 10, 2007.

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 215] is being omitted. These rules are identical to those published under Notice as **ARC 5386B**, IAB 9/27/06.

[Filed 11/15/06, effective 1/10/07]
[Published 12/6/06]

[For replacement pages for IAC, see IAC Supplement 12/6/06.]

ARC 5579B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, "Conditions of Eligibility," and Chapter 81, "Nursing Facilities," Iowa Administrative Code.

These amendments implement an increase in the personal needs allowance for Medicaid residents in nursing facilities to $50 per month. The personal needs allowance is the amount of income a Medicaid resident is allowed to keep for clothing, toiletries, and other personal expenses. The amount of the personal needs allowance has not changed since July 1988, when it was increased from $25 to the current $30 due to federal legislation. The Eighty-first General Assembly directed the Department to increase the allowance in 2006 Iowa Acts, House File 2319, and appropriated funds for this purpose in 2006 Iowa Acts, House File 2734.

Aged, blind, or disabled people who have little or no countable income are eligible to receive SSI payments to bring their income up to $30 when they live in a facility where Medicaid is paying more than 50 percent of the cost of their care. This limited SSI payment will not change. In order to achieve the mandated increase in the personal needs allowance for all Medicaid residents in nursing facilities, it is necessary to supplement the income of residents whose income is less than $50.

These amendments establish a new state-funded payment to eligible nursing home residents to cover the difference between the resident's countable income and $50. This payment is not considered a benefit under Title XIX of the Social Security Act (the legislation authorizing the federal Medicaid program).

Under the terms of the state legislation, neither the increased personal needs allowance nor the supplemental payment apply to residents of an intermediate care facility for persons with mental illness or an intermediate care facility for persons with mental retardation.

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

These amendments were previously Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on July 5, 2006, as **ARC 5211B**. Notice of Intended Action to solicit comments on these amendments was published in the Iowa Administrative Bulletin as **ARC 5212B** on the same date. The Department received no comments on the Notice of Intended Action. These amendments are identical to those Adopted and Filed Emergency and published under Notice of Intended Action.

The Council on Human Services adopted these amendments on November 8, 2006.

These amendments are intended to implement Iowa Code section 249A.4 and 2006 Iowa Acts, House File 2319, and House File 2734, section 30(1)(l).

These amendments shall become effective January 10, 2007, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend subrule **75.16(2)**, paragraph **"a,"** as follows:

a. Ongoing personal needs allowance. All clients shall retain $30 of their monthly income for a personal needs allowance ~~with the following exception~~.

(1) If the client is a veteran or *a* surviving spouse of a veteran who receives a Veterans' Administration pension subject to limitation of $90 after the month of entry pursuant to 38 U.S.C. Section 3203(f)(2), the veteran or *the* surviving spouse of a veteran shall retain $90 from the veteran's pension for ~~their~~ *the client's* personal needs allowance beginning the month after entry to a medical institution. The $90 allowance from a veteran's pension is in lieu of the $30 allowance from any income, not in addition thereto.

(2) If the client has earned income, an additional $65 is added to the ongoing personal needs allowance from the earned income only.

(3) If the client is residing in a nursing facility as defined in Iowa Code section 135C.1, an additional $20 is added to the ongoing personal needs allowance.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 2. Adopt **new** rule 441—81.23(249A) as follows:

441—81.23(249A) State-funded personal needs supplement. When a resident of a nursing facility as defined in Iowa Code section 135C.1 has countable income for purposes of rule 441—75.16(249A) of less than $50 per month, the department shall issue a state-funded payment to the resident for the difference between that countable income and $50. This payment shall not be considered a benefit under Title XIX of the Social Security Act.

This rule is intended to implement 2006 Iowa Acts, House File 2319.

[Filed 11/8/06, effective 1/10/07]
[Published 12/6/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/6/06.

ARC 5585B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135B.7, the Department of Inspections and Appeals hereby amends Chapter 51, "Hospitals," Iowa Administrative Code.

The adopted amendments are expressly limited to the licensure of a long-term acute care hospital within a currently licensed hospital. The adopted amendments also specifically exclude specialty hospitals currently recognized within the federal Medicare system.

The Department's action comes as the result of two petitions filed this year by St. Luke's Hospital of Cedar Rapids. The Department denied a request for declaratory order after comments made during a public meeting indicated a universal need for long-term acute care hospitals. Granting the request for declaratory order would have benefited only St. Luke's Hospital, while the emerging trends indicate a statewide need for long-term acute care facilities. While the request for declaratory order was denied, a petition for rule making filed by the Cedar Rapids hospital was granted.

Under its historical interpretation of Iowa law, the Department has always viewed Iowa Code chapter 135B as permitting licensed hospital premises that may consist of multiple buildings but not permitting the licensing of a hospital within the premises of an existing, licensed hospital. This interpretation has not permitted a single, licensed building to be portioned to house multiple hospital licensees.

The adopted amendments keep pace with recently emerging federal Medicare policies that affect health care delivery systems in all states, including Iowa. The changes to the Department's administrative rules will more closely reflect the current federal Medicare rules, which now provide a reimbursement system for long-term acute care hospitals.

The adopted amendments were presented to the Hospital Licensing Board at its July 26, 2006, meeting, at which time the Board approved the amendments.

The State Board of Health initially reviewed the proposed amendments at its September 13, 2006, meeting. The Board approved the amendments at its November 8, 2006, meeting.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 11, 2006, as **ARC 5431B**. A public hearing on the adopted amendments was held November 1, 2006, at which time public comment was received.

The following changes have been made since the Notice of Intended Action was published.

Suggestions that clarify the definition of "long-term acute care hospital" have been incorporated in rule 481—51.5(135B). The definition reads as follows:

"'Long-term acute care hospital' means any hospital that has an average inpatient length of stay greater than 25 days, and that provides extended medical and rehabilitative care for patients who are clinically complex and who may suffer from multiple acute or chronic conditions. Services provided by a long-term acute care hospital include but are not limited to comprehensive rehabilitation, respiratory therapy, head trauma treatment, and pain management. A long-term acute care hospital shall meet the requirements for a general hospital including emergency services, except that obstetrical facilities are not required, and, if the long-term acute care hospital is located within a separately licensed hospital and does not provide its own emergency services, the long-term acute care hospital shall contract for emergency services with the host general hospital."

In subrule 51.2(5), new language has been added to clarify that the Department may initiate an inspection when it is determined that the inspection findings of the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) or the American Osteopathic Association are insufficient to address concerns identified as possible licensure issues. The subrule reads as follows:

"**51.2(5)** The department shall recognize, in lieu of its own licensure inspection, the comparable inspections and inspection findings of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the American Osteopathic Association (AOA), if the department is provided with copies of all requested materials relating to the inspection process. In cases of the initial licensure, the department may require its own inspection when needed in addition to comparable accreditations to allow the hospital to begin operations. The department may also initiate its own inspection when it is determined that the inspection findings of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the American Osteopathic Association are insufficient to address concerns identified as possible licensure issues."

In subrule 51.2(6), the date of the Code of Federal Regulations has been changed from October 1, 2004, to October 1, 2006.

These amendments will become effective January 10, 2007.

These amendments are intended to implement Iowa Code sections 10A.104(5) and 135B.7.

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 Ch 51] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 5431B**, IAB 10/11/06.

[Filed 11/15/06, effective 1/10/07]
[Published 12/6/06]

[For replacement pages for IAC, see IAC Supplement 12/6/06.]

ARC 5587B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby amends Chapter 58, "Nursing Facilities," and Chapter 61, "Minimum Physical Standards for Nursing Facilities," Iowa Administrative Code.

The adopted amendments permit long-term care facilities to establish person directed care environments, which are defined as facilities or portions of facilities in which the provision of care or services promotes decision making and choices by the residents, enhances the primary caregiver's capacity to respond to each resident's needs, and promotes a homelike environment. The adopted amendments minimize regulatory barriers to the establishment of person directed care environments by inserting resident choice in various provisions, including those dealing with resident clothing, bathing, living arrangements, care and treatment plans, medication administration, and meal planning. Additionally, the amendments remove certain restrictions on employee duties, thus permitting employees to serve in dual capacities, such as resident care and meal preparation.

Additional changes made to the rules by the adopted amendments strike outdated requirements dealing with the physical structure of nursing facilities, such as the arrangement of resident rooms, and requirements dealing with specific rooms. Adoption of the amendments will permit long-term care facilities to construct new facilities based on such designs as the Green House concept, which divides larger facilities into smaller neighborhoods or living units. Facilities that wish to renovate, too, will be able to break up larger traditional structures into smaller, person directed care environments.

The amendments were presented to the State Board of Health for initial review at the Board's September 13, 2006, meeting. The Board approved the amendments at its November 8, 2006, meeting.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 11, 2006, as **ARC 5429B**. A public hearing on the adopted amendments was held November 1, 2006. No comment was received at that time. The adopted amendments are identical to those published under Notice of Intended Action.

These amendments will become effective January 10, 2007.

These amendments are intended to implement Iowa Code sections 10A.104(5) and 135C.14.

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 58, 61] is being omitted. These amendments are identical to those published under Notice as **ARC 5429B**, IAB 10/11/06.

[Filed 11/15/06, effective 1/10/07]
[Published 12/6/06]

[For replacement pages for IAC, see IAC Supplement 12/6/06.]

ARC 5586B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby amends Chapter 58, "Nursing Facilities," Chapter 64, "Intermediate Care Facilities for the Mentally Retarded," and Chapter 65, "Intermediate Care Facilities for Persons with Mental Illness (ICF/PMI)," Iowa Administrative Code.

The adopted amendments implement changes made in the admission procedures for certain long-term care facilities as required by 2006 Iowa Acts, House File 2363. The adopted amendments remove the requirement that long-term care facilities receiving reimbursement through the Medicaid program submit to the Iowa Department of Veterans Affairs the names of all new residents for the purpose of identifying residents' eligibility or potential eligibility for benefits through the United States Department of Veterans Affairs. The adopted amendments stipulate that long-term care facilities need only submit the names of those residents identified as potential veterans along with the names of their spouses and any dependent children.

The adopted amendments were presented to the State Board of Health for initial review at the Board's September 13, 2006, meeting. The Board approved the amendments at its November 8, 2006, meeting.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 11, 2006, as **ARC 5430B**. Only one public comment was received. The Iowa Association of Homes and Services for the Aging (IAHSA) noted that facilities cannot determine if a resident is a veteran. For clarification, the Association requested that a change be made to the proposed amendments by changing the word "veteran" to the phrase "potential veteran." The Department has included the Association's suggestion in the second sentence in paragraph 58.12(1)"l," in subrule 64.6(1), and in rule 481—65.10(135C)"10."

The sentence reads as follows: "If the facility determines that the resident is a potential veteran, the facility shall report the resident's name along with the names of the resident's spouse and any dependent children, as well as the name of the contact person for this information, to the Iowa department of veterans affairs."

These amendments will become effective January 10, 2007.

These amendments are intended to implement 2006 Iowa Acts, House File 2363.

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 [58.12(1), 64.6, 65.10] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 5430B**, IAB 10/11/06.

[Filed 11/15/06, effective 1/10/07]
[Published 12/6/06]

[For replacement pages for IAC, see IAC Supplement 12/6/06.]

ARC 5572B

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of 2004 Iowa Acts, chapter 1104, the Insurance Division hereby rescinds Chapter 55, "Iowa Business Opportunity Sales Act," Iowa Administrative Code.

2004 Iowa Acts, chapter 1104, sections 4 to 31, rescinded the Iowa Code chapter 523B registration requirements and transferred administration of the only remaining filing requirement, service of process, from the Insurance Division to the Iowa Secretary of State, effective July 1, 2004.

Notice of Intended Action was published in the August 2, 2006, Iowa Administrative Bulletin as **ARC 5280B**. No public comments were received on the Notice of Intended Action. There are no changes from the Notice of Intended Action.

This amendment is intended to implement 2004 Iowa Acts, chapter 1104, section 31.

This amendment shall become effective January 10, 2007.

The following amendment is adopted.

Rescind and reserve **191—Chapter 55**.

[Filed 11/7/06, effective 1/10/07]
[Published 12/6/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/6/06.

ARC 5601B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby adopts amendments to Chapter 67, "Development and Management of Recreation Trails on State Lands," Iowa Administrative Code.

This rule making clarifies the expectations for trail users on areas where designated trails exist, incorporates the Department's policy on trail closure, and updates terminology and definitions.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 30, 2006, as **ARC 5352B**. A public hearing was held September 27, 2006.

The following changes have been made since the Notice of Intended Action was published. In rule 571—67.2(456A, 461A), the definition of "equestrian hunting permit application" has been changed to acknowledge that the permit may be issued on an annual basis. The definition reads as follows:

"'Equestrian hunting permit, which may include an annual permit, application' means an application by a hunter wishing to ride off trail to hunt in an area. This application shall include the dates and area and provide a contact number in case of conflicts or questions. Applications will be evaluated for potential user conflicts and the potential for the need to obtain a special event permit pursuant to 571—subrule 61.7(16)."

In subrule 67.8(1), the second sentence has been stricken because it is redundant.

These amendments will become effective January 10, 2007.

These amendments are intended to implement Iowa Code section 455A.5(6).

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 67] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 5352B**, IAB 8/30/06.

[Filed 11/15/06, effective 1/10/07]
[Published 12/6/06]

[For replacement pages for IAC, see IAC Supplement 12/6/06.]

ARC 5602B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 81, "Fishing Regulations," Iowa Administrative Code.

The amendments modify length limit regulations for walleye at specific lakes, lower the minimum length limit for largemouth bass at Green Valley Lake, and remove the daily bag limit and size restriction for hybrid striped bass in Big Creek Lake.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 30, 2006, as **ARC 5348B**. Public hearings were held on September 22, 2006, and September 25, 2006. There are no changes from the Notice.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.67, and 481A.76.

These amendments will become effective January 10, 2007.

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 [81.2(2), 81.2(3), 81.2(12)] is being omitted. These amendments are identical to those published under Notice as **ARC 5348B**, IAB 8/30/06.

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