



# IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XLIV  
November 17, 2021

NUMBER 10  
Pages 1357 to 1524

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## PREFACE

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

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

The Bulletin may also contain public funds interest rates [12C.6]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and other items required by statute to be published in the Bulletin.

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

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### CITATION of Administrative Rules

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

This citation format applies only to external citations to the Iowa Administrative Code or Iowa Administrative Bulletin and does not apply to citations within the Iowa Administrative Code or Iowa Administrative Bulletin.

|                          |                      |
|--------------------------|----------------------|
| 441 IAC 79               | (Chapter)            |
| 441 IAC 79.1             | (Rule)               |
| 441 IAC 79.1(1)          | (Subrule)            |
| 441 IAC 79.1(1)“a”       | (Paragraph)          |
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| 441 IAC 79.1(1)“a”(1)“1” | (Numbered paragraph) |

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

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

NOTE: In accordance with Iowa Code section 2B.5A, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

## Schedule for Rule Making 2021

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

### PRINTING SCHEDULE FOR IAB

| <u>ISSUE NUMBER</u> | <u>SUBMISSION DEADLINE</u>   | <u>ISSUE DATE</u> |
|---------------------|------------------------------|-------------------|
| 12                  | Friday, November 26, 2021    | December 15, 2021 |
| 13                  | Wednesday, December 8, 2021  | December 29, 2021 |
| 14                  | Wednesday, December 22, 2021 | January 12, 2022  |

**PLEASE NOTE:**

Rules will not be accepted by the Publications Editing Office after **12 o'clock noon** on the filing deadline unless prior approval has been received from the Administrative Rules Coordinator and the Administrative Code Editor.

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

†To allow time for review by the Administrative Rules Coordinator prior to the Notice submission deadline, Notices should generally be submitted in RMS four or more working days in advance of the deadline.

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

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

|  |   |                                 |
|--|---|---------------------------------|
| Public and nonpublic water supply, 9.4(3), 40.2, 43.3, 49.6(1)<br>IAB 11/17/21 <b>ARC 6037C</b>  | Via video/conference call<br>Contact Mark Moeller<br>Email: <a href="mailto:mark.moeller@dnr.iowa.gov">mark.moeller@dnr.iowa.gov</a>                | December 9, 2021<br>1 to 3 p.m. |
| Wastewater, amendments to chs 60 to 64<br>IAB 11/17/21 <b>ARC 6041C</b>  | Via video/conference call<br>Contact Courtney Cswercko<br>Email: <a href="mailto:courtney.cswercko@dnr.iowa.gov">courtney.cswercko@dnr.iowa.gov</a> | December 8, 2021<br>2 to 4 p.m. |
| Land application of sewage sludge, 67.1(1), 67.2(2), 67.4 to 67.8, 67.10, 67.11(2)“h”<br>IAB 11/17/21 <b>ARC 6038C</b>   | Via video/conference call<br>Contact Satya Chennupati<br>Email: <a href="mailto:satya.chennupati@dnr.iowa.gov">satya.chennupati@dnr.iowa.gov</a>    | December 9, 2021<br>2 p.m.      |
| Operator certification—public water supply systems, wastewater treatment systems, 81.1, 81.3, 81.5(1), 81.7(1), 81.7(3)“b”(2), 81.16(1)<br>IAB 11/17/21 <b>ARC 6039C</b> | Via video/conference call<br>Contact Laurie Sharp<br>Email: <a href="mailto:laurie.sharp@dnr.iowa.gov">laurie.sharp@dnr.iowa.gov</a>                | December 8, 2021<br>1 p.m.      |

**INSURANCE DIVISION[191]**

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| Review of rules, amendments to chs 15, 16, 25, 28, 30, 33, 70<br>IAB 11/3/21 <b>ARC 6015C</b>                   | Via conference call<br>Contact Tracy Swalwell<br>Email: <a href="mailto:tracy.swalwell@iid.iowa.gov">tracy.swalwell@iid.iowa.gov</a> | November 30, 2021<br>10 a.m.<br>(If requested) |
| Licensing of public adjusters, 55.5, 55.8, 55.9(7)“g,” 55.12(1), 55.14 to 55.18<br>IAB 11/3/21 <b>ARC 6010C</b> | Via conference call<br>Contact Tracy Swalwell<br>Email: <a href="mailto:tracy.swalwell@iid.iowa.gov">tracy.swalwell@iid.iowa.gov</a> | December 1, 2021<br>10 a.m.                    |

**LABOR SERVICES DIVISION[875]**

|  |  |  |
|--|--|--|
| Federal occupational safety and health standards for exposure to beryllium—adoption by reference, 10.20<br>IAB 11/17/21 <b>ARC 6045C</b> | 150 Des Moines St.<br>Des Moines, Iowa | December 8, 2021<br>9 a.m.<br>(If requested) |
|--|--|--|

**NATURAL RESOURCE COMMISSION[571]**

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|--|---|------------------------------|

**NURSING BOARD[655]**

|  |   |                                  |
|--|---|----------------------------------|
| Administrative and regulatory authority, ch 1<br>IAB 11/17/21 <b>ARC 6034C</b> | Board Office, Suite B<br>400 S.W. 8th St.<br>Des Moines, Iowa | December 7, 2021<br>9 to 10 a.m. |
|--|---|----------------------------------|

**NURSING BOARD[655](cont'd)**

Licensure to practice—registered nurse/licensed practical nurse, ch 3  
IAB 11/17/21 **ARC 6048C**

Board Office, Suite B  
400 S.W. 8th St.  
Des Moines, Iowa

December 7, 2021  
10 to 11 a.m.

Discipline, ch 4  
IAB 11/17/21 **ARC 6049C**

Board Office, Suite B  
400 S.W. 8th St.  
Des Moines, Iowa

December 7, 2021  
1 to 2 p.m.

**PHARMACY BOARD[657]**

Collaborative pharmacy practice, 39.13  
IAB 11/3/21 **ARC 6012C**

Health Professions Board Room  
400 S.W. 8th Street, Suite H  
Des Moines, Iowa

November 24, 2021  
10:30 to 11 a.m.

**PROFESSIONAL LICENSURE DIVISION[645]**

Chiropractic physicians—preceptor approval process, 42.5(1)  
IAB 11/3/21 **ARC 6011C**

Via video/conference call  
Meeting link: [us02web.zoom.us](https://us02web.zoom.us), click “join”  
Meeting ID: 771 308 2382  
Passcode: 109739  
Via telephone: 1.312.626.6799

November 23, 2021  
9 to 9:30 a.m.

Athletic trainers—continuing education, definitions, 352.1, 352.3(2)  
IAB 11/3/21 **ARC 6027C**

Zoom meeting ID: 889 9122 5024  
Passcode: 757070  
Via telephone: 1.312.626.6799  
Access code: 757070

November 23, 2021  
9 to 9:30 a.m.

**RACING AND GAMING COMMISSION[491]**

Gambling games taxes and fees; problem gambling; risk assessment; vendor licenses; trainer and assistant trainer licenses; interstate simulcasting; advance deposit wagering; sports wagering; fantasy sports; coupled entries; reserves; account operation, amendments to chs 5, 6, 8, 10, 11, 13, 14  
IAB 11/17/21 **ARC 6056C**

Commission Office, Suite 100  
1300 Des Moines St.  
Des Moines, Iowa

December 7, 2021  
9 a.m.

**REAL ESTATE APPRAISER EXAMINING BOARD[193F]**

Review of rules, amendments to chs 1, 4 to 6, 8 to 12  
IAB 11/3/21 **ARC 6017C**

Small Conference Room, Third Floor  
200 E. Grand Ave.  
Des Moines, Iowa

November 29, 2021  
11 a.m. to 12 noon

**REVENUE DEPARTMENT[701]**

Qualifying income limit—child and dependent care tax credit, early childhood development tax credit, 42.15, 42.31  
IAB 11/17/21 **ARC 6032C**

Via video/conference call  
Contact Kurt Konek  
Email: [kurt.konek@iowa.gov](mailto:kurt.konek@iowa.gov)

December 9, 2021  
11 a.m. to 12 noon

**REVENUE DEPARTMENT[701](cont'd)**

Optional designations of funds by  
taxpayer, 43.4  
IAB 11/17/21 **ARC 6033C**

Via video/conference call  
Contact Kurt Konek  
Email: [kurt.konek@iowa.gov](mailto:kurt.konek@iowa.gov)

December 10, 2021  
1 to 2 p.m.

**TRANSPORTATION DEPARTMENT[761]**

Warning lights on vehicles or  
equipment not owned and  
operated by the department  
when used in road work zones,  
ch 135  
IAB 11/3/21 **ARC 6014C**

Via conference call  
Contact Tracy George  
Email: [tracy.george@iowadot.us](mailto:tracy.george@iowadot.us)

November 29, 2021  
10 a.m.  
(If requested)

**UTILITIES DIVISION[199]**

Federally registered planning  
authority transmission projects,  
11.14  
IAB 11/3/21 **ARC 6016C**

Board Hearing Room  
1375 E. Court Ave.  
Des Moines, Iowa

December 7, 2021  
10 a.m. to 12 noon

The following list will be updated as changes occur.

“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 are included alphabetically in SMALL CAPITALS at the left-hand margin.

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**ARC 6046C****ECONOMIC DEVELOPMENT AUTHORITY[261]****Notice of Intended Action****Proposing rule making related to high quality jobs program  
and providing an opportunity for public comment**

The Economic Development Authority (IEDA) hereby proposes to amend Chapter 68, “High Quality Jobs Program (HQJP),” Chapter 173, “Standard Definitions,” Chapter 174, “Wage, Benefit, and Investment Requirements,” Chapter 187, “Contracting,” and Chapter 188, “Contract Compliance and Job Counting,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 15.106A.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, 2021 Iowa Acts, Senate File 366, and 2021 Iowa Acts, Senate File 619.

*Purpose and Summary*

The proposed amendments to Chapter 68 reflect legislative changes to the High Quality Jobs Program in 2021 Iowa Acts, Senate File 366, and 2021 Iowa Acts, Senate File 619. Additionally, the amendments would eliminate references to processes for claiming tax credits and incorporate standard definitions from Chapter 173. Proposed amendments to Chapter 173 clarify the applicability of that chapter while preserving references in other rule chapters that apply to the High Quality Jobs Program. An amendment in Chapter 174 would change the date that qualifying wage thresholds are updated each year from July 1 to September 1. Other amendments in Chapters 187 and 188 would provide clarifications and align the rules with current administration of the program.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the IEDA for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the IEDA no later than 4:30 p.m. on December 7, 2021. Comments should be directed to:

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

Lisa Connell  
Iowa Economic Development Authority  
1963 Bell Avenue, Suite 200  
Des Moines, Iowa 50315  
Phone: 515.348.6163  
Email: [lisa.connell@iowaeda.com](mailto:lisa.connell@iowaeda.com)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 261—68.1(15) as follows:

**261—68.1(15) Administrative procedures and definitions.**

**68.1(1) *Administrative procedures.*** The HQJP is subject to the requirements of the authority’s rules located in 261—Part VII, additional application requirements and procedures, and 261—Part VIII, legal and compliance. Part VII and Part VIII include ~~standard definitions~~; standard program requirements; wage, benefit and investment requirements; application review and approval procedures; contracting; contract compliance and job counting; and annual reporting requirements. The standard definitions in 261—Chapter 173 in Part VII have been incorporated as applicable in subrule 68.1(2) and are not otherwise applicable to the HQJP.

**68.1(2) *Definitions.*** ~~In addition to the standard definitions located in 261—Chapter 173, the following definitions apply to the HQJP:~~

“Annual base rent” means the business’s annual lease payment minus taxes, insurance and operating or maintenance expenses.

“Authority” means the economic development authority created in Iowa Code section 15.105.

“Award date” means the date the board approved an application for project completion assistance, other direct financial assistance, or tax incentives.

“Base employment level” means the number of full-time equivalent positions at a business, as established by the authority and a business using the business’s payroll records, as of the date a business applies for tax incentives or project completion assistance. The number of jobs the business has pledged to create shall be in addition to the base employment level. The number of jobs the business has pledged to retain are included as all or a part of the base employment level. If the project is a modernization project, the job obligations will not include created or retained jobs. The business will be required to maintain the base employment level.

“Benefits” means nonwage compensation provided to an employee. Benefits include medical and dental insurance plans; pension, retirement, and profit-sharing plans; child care services; and life insurance, vision insurance, and disability insurance coverage. Benefits may include other nonwage compensation as determined by the board.

“Board” means the members of the economic development authority appointed by the governor and in whom the powers of the authority are vested pursuant to Iowa Code section 15.105.

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

“Brownfield site” means the same as defined in Iowa Code section 15.291.

“Business” means a sole proprietorship, partnership, corporation, or other business entity organized for profit under the laws of the state of Iowa or another state, under federal statutes, or under the laws of another country.

“Community” means a city, county, or other entity established pursuant to Iowa Code chapter 28E.

“Contractor or subcontractor” means a person who contracts with the eligible business or subcontracts with a contractor for the provision of property, materials, or services for the construction or equipping of a facility of the eligible business.

“Created job” means a new, permanent, full-time equivalent (FTE) position added to a business’s payroll in excess of the base employment level.

“Department” means the Iowa department of revenue.

“Economically distressed area” means a county meeting the requirements of a distressed area pursuant to rule 261—174.6(15).

“Eligible business” means a business meeting the conditions of Iowa Code section 15.329.

“Employee” means:

1. An individual filling a full-time position that is part of the payroll of the business receiving financial assistance from any of the programs identified in rule 261—173.1(15).

2. A business’s leased or contract employee, provided all of the following elements are satisfied:

• The business receiving the tax incentives or project completion assistance has a legally binding contract with a third-party provider to provide the leased or contract employee.

• The contract between the third-party provider and the business specifically requires the third-party provider to pay the wages and benefits at the levels required and for the time period required by the authority as conditions of the award to the business.

• The contract between the third-party provider and the business specifically requires the third-party provider to submit payroll records to the authority, in form and content and as frequently as required by the authority, for purposes of verifying that the business’s job creation/retention and benefit requirements are being met.

• The contract between the third-party provider and the business specifically authorizes the authority, or its authorized representatives, to access the third-party provider’s records related to the funded project.

• The business receiving the tax incentives or project completion assistance agrees to be contractually liable to the authority for the performance or nonperformance of the third-party provider.

“Financial assistance” means assistance provided only from the funds, rights, and assets legally available to the authority. Financial assistance includes assistance provided in the form of grants, loans, forgivable loans, float loans, equity-like assistance, and royalty payments and other forms of assistance deemed appropriate by the board, consistent with Iowa law.

“Fiscal impact ratio” or “FIR” means a ratio calculated by estimating the amount of taxes to be received by the state from a business and dividing the estimate by the estimated cost to the state of providing certain project completion assistance and tax incentives to the business, reflecting a ten-year period of taxation and incentives and expressed in terms of current dollars. “Fiscal impact ratio” does not include taxes received by political subdivisions.

“Full-time equivalent job” or “full-time” means the employment of one person:

1. For 8 hours per day for a five-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations and other paid leave; or

2. The number of hours or days per week, including paid holidays, vacations and other paid leave, currently established by schedule, custom, or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit, provided that the number of hours per week is at least 32 hours per week for 52 weeks per year, including paid holidays, vacations, and other paid leave.

For purposes of this definition, “employment of one person” means the employment of one natural person and does not include “job sharing” or any other means of aggregation or combination of hours worked by more than one natural person.

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

“Grayfield site” means the same as defined in Iowa Code section 15.291.

“Greenfield site” means a site that does not meet the definition of a brownfield site or grayfield site. A project proposed at a site located on previously undeveloped or agricultural land shall be presumed to be a greenfield site.

“High quality jobs” means created or retained jobs that meet the wage requirements established in subrule 68.2(4) and subrules 68.2(7) and 68.2(8) when applicable.

“Laborshed area” means the geographic area surrounding an employment center from which the employment center draws its commuting workers. The Iowa department of workforce development (IWD) determines the employment centers and defines the boundaries of each laborshed area. IWD defines laborshed areas by surveying commuters within the various zip codes surrounding an employment center, combining the zip codes into as many as three zones, and determining how many people commute from a zip code to the employment center from each zone. The zones reflect the fact that as the distance from an employment center increases, the number of people willing to commute to the employment center decreases. The laborshed wage applicable to the project shall be the laborshed wage for the closest laborshed area, as determined by road distance between the employment center and the zip code of the project location.

“Laborshed wage” means the same as defined in Iowa Code section 15.327. The authority will calculate the laborshed wage as follows:

1. The most current covered wage and employment data available from IWD will be used.
2. The wage will be computed as a mean wage figure and represented in terms of an hourly wage rate.
3. Only the wages paid by employers for jobs performed within the first two zones of a laborshed area will be included.
4. The wages paid by employers in the following categories will be excluded from the calculation: government, retail trade, health care and social assistance, and accommodations and food service. The wages paid by employers in all other categories will be included in the calculation.
5. To the extent that a laborshed area includes zip codes from states other than Iowa, the wages paid by employers in those zip codes may be included if IWD has finalized a data-sharing agreement with the state in question and has received the required data.
6. Only those wages within two standard deviations from the mean wage will be included.

“Loan” means an award of assistance with the requirement that the award be repaid with term, interest rate, and other conditions specified as part of the conditions of the award. “Loan” includes deferred loans, forgivable loans, and float loans. A “deferred loan” is one for which the payment for principal, interest, or both is not required for some specified period. A “forgivable loan” is one for which repayment is eliminated in part or entirely if the borrower satisfies specified conditions. A “float loan” means a short-term loan (not to exceed 30 months) made from obligated but unexpended moneys.

“Maintenance period” means the period of time between the project completion date and the maintenance period completion date.

“Maintenance period completion date” means the date on which the maintenance period ends. The specific date on which the maintenance period ends will be established by contract between the authority and the business. The maintenance period completion date will be a date on or after the project completion date and will be used to establish the period of time during which the project, the created jobs, and the retained jobs must be maintained. Rule 261—187.3(15) provides standard durations for project completion and maintenance periods.

“Modernization project” means a project that will result in increased skills and wages for current employees and that does not involve created or retained jobs. The business must maintain the base employment level.

“Program” means the high quality jobs program created pursuant to Iowa Code chapter 15, part 13.

“Project” means the same as defined in rule 261—173.2(15) an activity or set of activities directly related to the start-up, location, modernization, or expansion of a business, and proposed in an application by a business, that are consistent with the goals of the program.

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

“Project completion assistance” means the same as defined in rule 261—173.2(15) financial assistance or technical assistance provided to an eligible business in order to facilitate the start-up, location, modernization, or expansion of the business in this state and provided in an expedient manner to ensure the successful completion of the start-up, location, modernization, or expansion project.

“Project completion date” means the date by which a recipient of incentives or assistance has agreed to meet all the terms and obligations contained in an agreement with the authority. The specific date on which the project completion period ends will be established by contract between the authority and the business. The project completion date will be a date on which the project must be completed, all incented jobs must be created or retained, and all other applicable requirements must be met. Rule 261—187.3(15) provides standard durations for project completion and maintenance periods.

“Project completion period” means the period of time between the award date and the project completion date.

“Qualifying wage threshold” means the laborshed wage for an eligible business.

“Retail business” means any business engaged in the business of selling tangible personal property or taxable services at retail in this state. Retail business includes a business obligated to collect sales or use tax under Iowa Code chapter 423. “Retail business” includes any business engaged in selling tangible personal property or taxable services online.

“Retained job” means a full-time equivalent permanent position that is included in the base employment level which remains continuously filled or authorized to be filled as soon as possible and which is at risk of elimination if the project for which the business is seeking assistance does not proceed. The authority may require a business to verify that a job is at risk. Such verification may include the signed statement of an officer of the business, documentation that the business is actively exploring other sites for the project, or any other information the authority may reasonably require during the application review process to establish that a job is at risk.

ITEM 2. Amend rule 261—68.2(15) as follows:

**261—68.2(15) Eligibility requirements.**

**68.2(1)** No change.

**68.2(2)** *Relocations and reductions in operations.*

*a.* The business shall not be solely relocating operations from one area of the state while seeking state or local incentives. A project that does not create new jobs or involve a substantial amount of new capital investment shall be presumed to be a relocation. In determining whether a business is solely relocating operations for purposes of this subrule, the authority will consider whether a letter of support for the move has been provided from the affected local community.

*b.* The business shall not be in the process of reducing operations in one community while simultaneously applying for assistance under the program.

(1) For purposes of this subrule, a reduction in operations within 12 months before or after an application for assistance is submitted to the authority will be presumed to be a reduction in operations while simultaneously applying for assistance under the program.

(2) Pursuant to 2021 Iowa Acts, Senate File 619, the authority shall not presume that a reduction in operations is a reduction in operations while simultaneously applying for assistance as described in subparagraph 68.2(2) “b”(1) with regard to a business that submits an application on or before June 30, 2022, if the business demonstrates to the satisfaction of the authority that the reduction in operations occurred after March 1, 2020, and that the reduction in operations was due to the COVID-19 pandemic. The authority shall consider whether the benefit of the project proposed by a business described in this subparagraph outweighs any negative impact related to the business’s reduction in operations. A business described in this subparagraph shall remain subject to all other eligibility requirements of the program.

*c.* This subrule will not be construed to prohibit the business from expanding its operations in a community if existing operations of a similar nature in this state are not closed or substantially reduced.

**68.2(3)** ~~No retail~~ *Retail or service businesses.* The business shall not be a retail ~~or service~~ business. ~~For purposes of this subrule, The business shall not be a service business is a business providing services~~

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

~~to a local consumer market which does not have unless a significant proportion of its sales coming from, as determined by the authority, are outside the this state.~~

**68.2(4)** No change.

**68.2(5)** *Determination of sufficient benefits.* The business shall ~~provide~~ offer a sufficient package of benefits to each full-time employee holding a created or retained job included in the business's base employment level and to each full-time employee at the project location until the maintenance period completion date. ~~The business shall offer a sufficient benefits package to its employees as defined in 261—Chapter 173. The benefits package provided shall meet the criteria established by the board. The board shall periodically approve such criteria to reflect the most current benefits package typically offered by employers. The criteria established by the board may include, but not be limited to, premium percentages to be paid by the business, deductible requirements, and other such criteria as determined necessary to the evaluation of benefits offered by a business.~~

**68.2(6) to 68.2(8)** No change.

**68.2(9)** *Other benefits.* A business may seek benefits and assistance for its project from other applicable federal, state, and local programs in addition to those provided in this program. ~~However, a business which has received assistance for its project from the wage-benefit tax credit program or the enterprise-zone program shall not be eligible for tax incentives and assistance under this program. A business which has received assistance for its project from the new jobs and income program or the new capital investment program shall not be eligible for tax incentives and assistance under this program for the same project. However, the business may receive tax incentives and assistance under this program for subsequent projects.~~

**68.2(10)** No change.

ITEM 3. Amend paragraph **68.3(1)“a”** as follows:

*a.* The project shall not be initiated prior to application. The authority will accept applications only for projects proposed to begin after application and board approval.

(1) Any one of the following may indicate that a project has been initiated:

1. The start of construction of new or expanded buildings;
2. The start of rehabilitation of existing buildings;
3. The purchase or leasing of existing buildings; or
4. The installation of new machinery and equipment or new computers to be used in the operation of the business's project.

(2) The purchase of land or signing an option to purchase land or earthmoving or other site development activities not involving actual building construction, expansion or rehabilitation shall not constitute project initiation. The costs of any land purchase and site development work incurred prior to the award are not eligible qualifying investment expenses.

ITEM 4. Amend rule 261—68.4(15) as follows:

**261—68.4(15) Tax incentives.**

**68.4(1)** *Sales and use tax refund.* Pursuant to Iowa Code section 15.331A, the approved business may claim a refund of the sales and use taxes paid under Iowa Code chapter 423 for gas, electricity, water, or sewer utility services, ~~goods, wares, or merchandise tangible personal property,~~ or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility of the approved business. Taxes attributable to intangible property and furniture and furnishings shall not be refunded.

*a. Filing a claim.* To receive the refund, the approved business shall file a claim with the department ~~of revenue as follows:~~ pursuant to the department's applicable rules.

~~(1) The contractor or subcontractor shall state under oath, on forms provided by the department of revenue, the amount of sales or goods, wares, or merchandise, or services rendered, furnished, or performed, including water, sewer, gas, and electric utility services upon which sales or use tax has been paid prior to the project completion, and shall file the forms with the approved business before final settlement is made.~~

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

~~(2) The approved business shall, not more than 12 months following project completion, make application to the department of revenue for any refund of the amount of the sales and use taxes paid pursuant to Iowa Code chapter 423 upon any goods, wares, or merchandise, or services rendered, furnished, or performed, including water, sewer, gas, and electric utility services.~~

~~(3) The eligible business shall inform the department of revenue in writing within two weeks of project completion.~~

~~b. Racks, shelving, and conveyor equipment. If the project is the location, expansion, or modernization of a warehouse or distribution center, the approved business may be entitled to a refund of sales and use taxes attributable to racks, shelving, and conveyor equipment. The approved business shall, not more than 12 months following project completion, make written application to the department of revenue for a refund. The application must include the refund amount being requested and documentation such as invoices or contracts which substantiate the requested amount. The department of revenue will validate the refund amount and issue the refund.~~

~~The aggregate combined total amount of refunds and tax credits attributable to sales and use taxes on racks, shelving, and conveyor equipment issued by the department of revenue to businesses approved for high quality jobs program and enterprise zone program benefits shall not exceed \$500,000 during a fiscal year. Tax refunds and tax credits will be issued on a first come, first served basis. If an approved business's application does not receive a refund or tax credits due to the \$500,000 fiscal year limitation, the approved business's application shall be considered in the succeeding fiscal year. An approved business that receives a refund or a tax credit in one fiscal year shall not be considered in a succeeding fiscal year. No business shall receive more than \$500,000 in refunds or credits pursuant to this paragraph.~~

~~**68.4(2) Corporate tax credit for certain sales taxes paid by third-party Third-party developer tax credit.** Pursuant to Iowa Code section 15.331C, the approved business may claim a ~~corporate~~ tax credit up to an amount equal to the sales and use taxes paid by a third-party developer under Iowa Code chapter 423 for gas, electricity, water, or sewer utility services, ~~goods, wares, or merchandise~~ tangible personal property, or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility of the approved business. Taxes attributable to intangible property and furniture and furnishings shall not be refunded.~~

~~Any tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. An approved business may elect to receive a refund of all or a portion of an unused tax credit.~~

~~a. Filing a claim. To receive the tax credit, the approved business shall file a claim with the department of revenue as follows: pursuant to the department's applicable rules.~~

~~(1) The third-party developer shall state under oath, on forms provided by the department of revenue, the amount of sales and use taxes paid and submit the forms to the approved business.~~

~~(2) The approved business shall, not more than 12 months following project completion, submit the completed forms to the department of revenue.~~

~~(3) The department of revenue shall issue a tax credit certificate in an amount equal to all or a portion of the sales and use taxes paid by a third-party developer under Iowa Code chapter 423 for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility of the approved business.~~

~~(4) The approved business shall not claim the tax credit provided in this subrule unless a tax credit certificate issued by the department of revenue is attached to the approved business's tax return for the tax year in which the tax credit is claimed. A tax credit certificate shall contain the approved business's name, address, tax identification number, the amount of the tax credit, and other information required by the department of revenue.~~

~~b. Racks, shelving, and conveyor equipment. If the project is the location, expansion, or modernization of a warehouse or distribution center, the approved business may claim a ~~corporate~~ tax credit up to the amount of sales and use taxes paid by a third-party developer and attributable to racks, shelving, and conveyor equipment. The approved business shall, not more than 12 months following~~

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

~~project completion, make written application to the department of revenue for a tax credit. The application must include the tax credit amount being requested and documentation from the third-party developer such as invoices or contracts which substantiate the requested amount. The department of revenue will confirm the tax credit amount and issue a tax credit certificate in an amount equal to all or a portion of the sales and use taxes attributable to racks, shelving, and conveyor equipment. The approved business shall not claim the tax credit provided in this subrule unless a tax credit certificate is attached to the approved business's tax return for the tax year in which the tax credit is claimed. A tax credit certificate shall contain the approved business's name, address, tax identification number, the amount of the tax credit, and other information required by the department of revenue. Any tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. An approved business may elect to receive a refund of all or a portion of an unused tax credit.~~

~~The aggregate combined total amount of refunds and tax credits attributable to sales and use taxes on racks, shelving, and conveyor equipment approved by the authority for businesses under the high quality jobs program and enterprise zone program shall not exceed \$500,000 during a fiscal year. Tax refunds and tax credits will be issued on a first-come, first-served basis. If an approved business's application does not receive a refund or tax credits due to the \$500,000 fiscal year limitation, the approved business's application shall be considered in the succeeding fiscal year. An approved business that receives a refund or a tax credit in one fiscal year shall not be considered in a succeeding fiscal year. No business shall receive more than \$500,000 in refunds or credits pursuant to this paragraph.~~

**68.4(3) Value-added property tax exemption.** Pursuant to Iowa Code section 15.332, the community may exempt from taxation all or a portion of the actual value added by improvements to real property directly related to jobs created or retained by the project and used in the operations of the approved business. The exemption may be allowed for a period not to exceed 20 years beginning the year the improvements are first assessed for taxation. For purposes of this subrule, improvements include new construction and rehabilitation of and additions to existing structures. The exemption shall apply to all taxing districts in which the real property is located. The community shall provide the authority and the local assessor with a copy of the resolution adopted by its governing body which indicates the estimated value and duration of the authorized exemption.

**68.4(4) Investment tax credit.**

*a. Claiming the investment tax credit.* Pursuant to Iowa Code section 15.333, the approved business may claim an investment tax credit equal to a percentage of the new investment. ~~The tax credit shall be earned~~ can be claimed when the qualifying asset is placed in service.

~~(1) Five-year amortization period.~~ The tax credit shall be amortized over a five-year period. The annual amounts that may be claimed by the business during that period are subject to negotiations. The final five-year amortization period and the negotiated annual amounts will be specified in a contract entered into with the authority. The tax credit shall be allowed against taxes imposed under Iowa Code chapter 422, division II, III, or V and against the moneys and credits tax imposed in Iowa Code section 533.24. The approved business shall not claim a tax credit in excess of the amount specified in a contract entered into with the authority.

~~(2) Flow-through of tax credits.~~ If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 or 501A and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 or 501A and filing as a partnership for federal tax purposes, or estate or trust.

~~(3) Seven-year carryforward.~~ A tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first.

*b. Investment qualifying for the tax credit.* For purposes of this subrule, new investment means all of the following:

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1, ~~subsection 1, paragraphs "e" and "j," 427A.1(1) "e" and "j,"~~ purchased for use in the operation of the approved business.

(2) The purchase price of real property and any buildings and structures located on the real property.

(3) The cost of improvements made to real property which is used in the operation of the approved business.

(4) The annual base rent paid to a third-party developer by an approved business for a period equal to the term of the lease agreement but not to exceed the maximum term specified in a contract entered into with the authority, provided the cumulative cost of the base rent payments for that period does not exceed the cost of the land and the third-party developer's costs to build or renovate the building for the approved business. Annual base rent shall be considered only when the project includes the construction of a new building or the major renovation of an existing building. The approved business shall enter into a lease agreement with the third-party developer for a minimum of five years.

~~The approved business shall not claim a tax credit above the amount defined in the final award documentation or the amount specified in a contract entered into with the authority.~~

**68.4(5) Insurance premium tax credit.** Pursuant to Iowa Code section 15.333A, the approved business may claim an insurance premium tax credit equal to a percentage of the new investment.

*a. Claiming the tax credit.* The tax credit ~~shall be earned~~ can be claimed when the qualifying asset is placed in service. The tax credit shall be amortized equally over a five-year period which the authority will, in consultation with the eligible business, define. The five-year amortization period shall be specified in a contract entered into with the authority. The tax credit shall be allowed against taxes imposed under Iowa Code chapter 432. A tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first. The approved business shall not claim a tax credit in excess of the amount specified in a contract entered into with the authority.

*b. Investment qualifying for the tax credit.* For purposes of this subrule, new investment means all of the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1, ~~subsection 1, paragraphs "e" and "j," 427A.1(1) "e" and "j,"~~ purchased for use in the operation of the approved business.

(2) The purchase price of real property and any buildings and structures located on the real property.

(3) The cost of improvements made to real property which is used in the operation of the approved business.

(4) The annual base rent paid to a third-party developer by an approved business for a period equal to the term of the lease agreement but not to exceed the maximum term specified in a contract entered into with the authority, provided the cumulative cost of the base rent payments for that period does not exceed the cost of the land and the third-party developer's costs to build or renovate the building for the approved business. Annual base rent shall be considered only when the project includes the construction of a new building or the major renovation of an existing building. The approved business shall enter into a lease agreement with the third-party developer for a minimum of five years.

~~The approved business shall not claim a tax credit above the amount defined in the final award documentation or the amount specified in a contract entered into with the authority.~~

**68.4(6) Research activities credit.** Pursuant to Iowa Code section 15.335, the approved business may claim a corporate tax credit for increasing research activities in Iowa during the period the approved business is participating in the program.

*a. Calculation.* The credit equals the sum of the following:

(1) ~~Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.~~

(2) ~~Six and one-half percent of the basic research payments determined under Section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.~~

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures.

*b. Alternate calculation.* In lieu of the credit amount computed in subparagraph 68.4(6) "a"(1), the approved business may elect to compute the credit amount for qualified research expenses incurred in Iowa in a manner consistent with the alternative incremental credit described in Section 41(c)(4) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used for the taxpayer's federal income tax. The election made under subrule 68.4(6) is for the tax year and the taxpayer may use either the method outlined in paragraph "a" or in this paragraph for any subsequent year.

For purposes of this alternate credit computation method, the credit percentages applicable to the qualified research expenses described in clauses (i), (ii), and (iii) of Section 41(c)(4)(A) of the Internal Revenue Code are 1.65 percent, 2.20 percent, and 2.75 percent, respectively.

*c. Additional research activities credit.* The credit allowed in this subrule is in addition to the credit authorized in Iowa Code sections 422.10 and 422.33(5). However, if the alternative credit computation method is used in Iowa Code section 422.10 or 422.33(5), the credit allowed in this subrule shall also be computed using that method.

*d. Flow-through of tax credits.* If the eligible business is a partnership, S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, S corporation, limited liability company, or estate or trust.

*e. Definitions.* For purposes of this subrule, "base amount," "basic research payment," and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under Section 41 of the Internal Revenue Code except that, for the alternative incremental credit, such amounts are for research conducted within Iowa. For purposes of this subrule, "Internal Revenue Code" means the same as defined in Iowa Code section 15.335.

*f. Refunds.* Any credit in excess of the tax liability for the taxable year shall be refunded with interest computed under Iowa Code section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on its final, completed return credited to the tax liability for the following year.

*g. Renewable energy generation components.* For purposes of this subrule, "research activities" includes the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa. A renewable energy generation component will no longer be considered innovative when more than 200 megawatts of installed effective nameplate capacity has been achieved. Research activities credits awarded under this program and the enterprise zone program for innovative renewable energy generation components shall not exceed the amount specified in Iowa Code section 15.335.

**68.4(7) Maximum tax incentives available.** Tax incentives awarded under this program are based upon the number of jobs created or retained that pay the qualifying wage threshold for HQJP as established in 261—Chapter 174 and as defined in 261—Chapter 173 and the amount of qualifying investment. The maximum possible award is based on the following schedule:

*a.* ~~No~~ The business is required to maintain the base employment level, but no high quality jobs are created or retained ~~but~~ and economic activity is furthered by the qualifying investment. For purposes of this paragraph, "economic activity" means a modernization project which will result in increased skills and wages for the current employees ~~or a project involving retained jobs.~~

- (1) Less than \$100,000 in qualifying investment.
  1. Investment tax credit or insurance premium tax credit of up to 1 percent.
  2. Reserved.
- (2) \$100,000 to \$499,999 in qualifying investment.
  1. Investment tax credit or insurance premium tax credit of up to 1 percent.

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

2. Sales and use tax refund or ~~corporate tax credit for certain sales taxes paid by~~ third-party developer tax credit, or both, if applicable.
  - (3) \$500,000 or more in qualifying investment.
    1. Investment tax credit or insurance premium tax credit of up to 1 percent.
    2. Sales and use tax refund or ~~corporate tax credit for certain sales taxes paid by~~ third-party developer tax credit, or both, if applicable.
    3. Research activities credit.
      - b. 1 to 5 high quality jobs are created or retained.
        - (1) Less than \$100,000 in qualifying investment.
          1. Investment tax credit or insurance premium tax credit of up to 2 percent.
          2. Reserved.
        - (2) \$100,000 to \$499,999 in qualifying investment.
          1. Investment tax credit or insurance premium tax credit of up to 2 percent.
          2. Sales and use tax refund or ~~corporate tax credit for certain sales taxes paid by~~ third-party developer tax credit, or both, if applicable.
        - (3) \$500,000 or more in qualifying investment.
          1. Investment tax credit or insurance premium tax credit of up to 2 percent.
          2. Sales and use tax refund or ~~corporate tax credit for certain sales taxes paid by~~ third-party developer tax credit, or both, if applicable.
      - c. 6 to 10 high quality jobs are created or retained.
        - (1) Less than \$100,000 in qualifying investment.
          1. Investment tax credit or insurance premium tax credit of up to 3 percent.
          2. Reserved.
        - (2) \$100,000 to \$499,999 in qualifying investment.
          1. Investment tax credit or insurance premium tax credit of up to 3 percent.
          2. Sales and use tax refund or ~~corporate tax credit for certain sales taxes paid by~~ third-party developer tax credit, or both, if applicable.
        - (3) \$500,000 or more in qualifying investment.
          1. Investment tax credit or insurance premium tax credit of up to 3 percent.
          2. Sales and use tax refund or ~~corporate tax credit for certain sales taxes paid by~~ third-party developer tax credit, or both, if applicable.
      - d. 11 to 15 high quality jobs are created or retained.
        - (1) Less than \$100,000 in qualifying investment.
          1. Investment tax credit or insurance premium tax credit of up to 4 percent.
          2. Reserved.
        - (2) \$100,000 to \$499,999 in qualifying investment.
          1. Investment tax credit or insurance premium tax credit of up to 4 percent.
          2. Sales and use tax refund or ~~corporate tax credit for certain sales taxes paid by~~ third-party developer tax credit, or both, if applicable.
        - (3) \$500,000 or more in qualifying investment.
          1. Investment tax credit or insurance premium tax credit of up to 4 percent.
          2. Sales and use tax refund or ~~corporate tax credit for certain sales taxes paid by~~ third-party developer tax credit, or both, if applicable.
      - e. 16 to 30 high quality jobs are created or retained.
        - (1) Less than \$100,000 in qualifying investment.
          1. Investment tax credit or insurance premium tax credit of up to 5 percent.
          2. Reserved.
        - (2) \$100,000 to \$499,999 in qualifying investment.
          1. Investment tax credit or insurance premium tax credit of up to 5 percent.

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

2. Sales and use tax refund or ~~corporate tax credit for certain sales taxes paid by~~ third-party developer tax credit, or both, if applicable.
  - (3) \$500,000 or more in qualifying investment.
    1. Investment tax credit or insurance premium tax credit of up to 4 percent.
    2. Sales and use tax refund or ~~corporate tax credit for certain sales taxes paid by~~ third-party developer tax credit, or both, if applicable.
    3. Research activities credit.
  - f. 31 to 40 high quality jobs are created or retained.
    - (1) \$10 million or more in qualifying investment.
      1. Investment tax credit or insurance premium tax credit of up to 6 percent.
      2. Sales and use tax refund or ~~corporate tax credit for certain sales taxes paid by~~ third-party developer tax credit, or both, if applicable.
      3. Research activities credit.
      4. Value-added property tax exemption.
    - (2) Reserved.
  - g. 41 to 60 high quality jobs are created or retained.
    - (1) \$10 million or more in qualifying investment.
      1. Investment tax credit or insurance premium tax credit of up to 7 percent.
      2. Sales and use tax refund or ~~corporate tax credit for certain sales taxes paid by~~ third-party developer tax credit, or both, if applicable.
      3. Research activities credit.
      4. Value-added property tax exemption.
    - (2) Reserved.
  - h. 61 to 80 high quality jobs are created or retained.
    - (1) \$10 million or more in qualifying investment.
      1. Investment tax credit or insurance premium tax credit of up to 8 percent.
      2. Sales and use tax refund or ~~corporate tax credit for certain sales taxes paid by~~ third-party developer tax credit, or both, if applicable.
      3. Research activities credit.
      4. Value-added property tax exemption.
    - (2) Reserved.
  - i. 81 to 100 high quality jobs are created or retained.
    - (1) \$10 million or more in qualifying investment.
      1. Investment tax credit or insurance premium tax credit of up to 9 percent.
      2. Sales and use tax refund or ~~corporate tax credit for certain sales taxes paid by~~ third-party developer tax credit, or both, if applicable.
      3. Research activities credit.
      4. Value-added property tax exemption.
    - (2) Reserved.
  - j. 101 or more high quality jobs are created or retained.
    - (1) \$10 million or more in qualifying investment.
      1. Investment tax credit or insurance premium tax credit of up to 10 percent.
      2. Sales and use tax refund or ~~corporate tax credit for certain sales taxes paid by~~ third-party developer tax credit, or both, if applicable.
      3. Research activities credit.
      4. Value-added property tax exemption.
    - (2) Reserved.

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

ITEM 5. Rescind subrule **68.5(1)**.

ITEM 6. Renumber subrules **68.5(2)** and **68.5(3)** as **68.5(1)** and **68.5(2)**.

ITEM 7. Amend subrule 173.1(1) as follows:

**173.1(1) Current programs.** ~~Effective July 1, 2014, this~~ This chapter shall apply to the following programs and funding sources as follows:

~~a. Rescinded IAB 6/24/15, effective 7/29/15.~~

~~b. a.~~ EZ (enterprise zone) program (261—Chapter 59). Effective as of July 1, 2014, the EZ program was repealed. See 2014 Iowa Acts, House File 2448. The rules adopted in 261—Chapter 59 continue to apply to agreements entered into prior to that date. All amendments to this chapter made on or after July 1, 2014, shall not apply to agreements entered into under the EZ program prior to that date.

~~e. b.~~ HQJP (high quality jobs program) (261—Chapter 68). This chapter does not apply to the HQJP. Terms applicable to the HQJP are incorporated into 261—Chapter 68. Chapters referencing this subrule in 261—Part VII, additional application requirements and procedures, and 261—Part VIII, legal and compliance, apply to the HQJP as described in 261—subrule 68.1(1).

ITEM 8. Amend subrule 174.2(1) as follows:

**174.2(1) Annual updates.** The authority will update the qualifying wage thresholds described in this chapter annually each fiscal year. The thresholds will take effect on ~~July~~ September 1 of each fiscal year and remain in effect until ~~the end~~ August 31 of the following fiscal year.

ITEM 9. Amend paragraph **187.5(4)“e”** as follows:

~~e.~~ *Extensions.* If an eligible business or eligible housing business fails to meet its requirements under the Act, these rules, or the agreement described in rule 261—187.2(15), the authority, in consultation with the city or county, may elect to grant the business a one-year extension period to meet the requirements. Additional extensions may be granted at the board’s discretion.

ITEM 10. Amend rule 261—188.2(15) as follows:

**261—188.2(15) Contract compliance.** The authority shall provide oversight and contract administration to ensure that funded projects are meeting contract requirements. On-site monitoring will be conducted at the project completion date ~~and~~. On-site or remote monitoring will be conducted at the end of the maintenance period.

ITEM 11. Amend rule 261—188.4(15) as follows:

**261—188.4(15) Business’s employment base.** “Business’s employment base” means the number of jobs that ~~the business and the authority have~~ has established as the job base for a project based on payroll information provided by the business. The number of jobs the business has pledged to create and retain shall be in addition to the business’s employment base.

**188.4(1)** The business’s employment base ~~shall be project specific. In most situations, this will include the number of full-time employees working at the facility receiving funding employed at the project location.~~ It may include the business’s full-time employees as identified by the authority who are employed in this state but are not employed at the project location.

**188.4(2)** and **188.4(3)** No change.

**188.4(4)** The business’s employment base is calculated as part of the application process and is determined before an award is made. The following data points will be verified regarding a business’s employment base:

~~a.~~ The total number of FTEs at the funded facility or at locations identified by the authority as indicated in subrule 188.4(1) (the business’s employment base).

~~b.~~ The average wage of all FTEs.

~~c.~~ The qualifying wage used in the award.

~~d.~~ The benefit value used in the award.

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

- e.* The total number of FTEs at the funded facility that are currently at or above the qualifying wage.
- f.* The average wage of the FTEs identified in paragraph “e.”
- g.* The total number of FTEs at the funded facility or at locations identified by the authority as indicated in subrule 188.4(1) that are currently at or above the qualifying wage after the benefit value has been added.
- h.* The average wage of the FTEs identified in paragraph “g.”

**188.4(5)** Business’s employment base verification. Payroll documents must be collected to calculate and verify the business’s employment base used in each award. The payroll document must include an ID (name, or employer ID number, ~~or social security number~~) and the hourly rate of pay for all FTEs. If the FTEs at the facility do not typically work 40 hours/week, documentation must be collected from the business outlining what the business considers a full-time workweek and how the business’s interpretation fits within the norms of its industry standards. This interpretation may or may not be accepted by the authority.

ITEM 12. Amend rule 261—188.5(15), introductory paragraph, as follows:

**261—188.5(15) Job counting using base employment analysis.** The authority will count jobs to be created or retained as part of a funded project using a base employment analysis. At the time of application, ~~a baseline employment number~~ the business’s employment base will be established using payroll records pursuant to subrule 188.4(4). ~~The baseline data will include details about~~ authority will determine how many jobs at the project location already meet the qualifying wage thresholds (with and without the value of benefits added to the hourly wage). Changes in ~~these baseline~~ employment numbers as compared to the business’s employment base will be collected and analyzed by the authority as part of the annual reporting process.

ITEM 13. Amend subrule 188.5(1) as follows:

**188.5(1)** A base employment analysis will be performed at the following stages of an award:

- a.* At the time of application, before the award is made.
- b.* Annually during the reporting cycle.
- c.* At the project completion date.
- d.* At the ~~end of the~~ maintenance period completion date.

ITEM 14. Amend subrule 188.5(2) as follows:

**188.5(2)** Payroll documents or lists run from payroll systems will be used to calculate and verify the base employment analysis. If a list run from a payroll system is used, the person who submits the documents must, under penalty of perjury, sign the list to verify that it is true and correct. The following items will be calculated and verified as part of the annual status report:

- a.* The total number of FTEs at the funded facility or at other Iowa locations as identified at the time of application as of the date of the report.
- b.* The average wage of all FTEs.
- c.* The qualifying wage used in the award.
- d.* The benefit value used in the award.
- e.* The total number of FTEs at the funded facility or at other Iowa locations as identified at the time of application that are currently at or above the qualifying wage.
- f.* The average wage of the FTEs identified in paragraph “e.”
- g.* The total number of FTEs at the funded facility that are currently at or above the qualifying wage after the benefit value has been added.
- h.* The average wage of the FTEs identified in paragraph “g.”

ITEM 15. Rescind subrule 188.5(3) and adopt the following **new** subrule in lieu thereof:

**188.5(3)** Following is an example of the format that the authority will use for job counting and tracking using the base employment method.

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

| JOB OBLIGATIONS                                       | Employment Base | Jobs to Be Created | Total Job Obligations |
|---|-----------------|--------------------|-----------------------|
| Project Completion Date:<br>Project Maintenance Date: |                 |                    |                       |
| Total employment at project location                  | 1               | 6                  | 8                     |
| Average wage of total employment at project location  | 2               |                    |                       |
| Qualifying wage (per hr)                              | 3               |                    |                       |
| Number of jobs at or above qualifying wage            | 4               | 7                  | 9                     |
| Average wage of jobs at or above qualifying wage      | 5               |                    |                       |

1. The number entered in this cell is the total number of FTEs working at the project location at the time of application. This number must be verified with payroll documents.
2. The number entered in this cell is the average wage of all the FTEs identified in Cell 1. This number must be verified with payroll documents.
3. The number entered in this cell is the applicable qualifying wage threshold used in the award. This data point must include the wage/hr and the percentage in parentheses. [ex: \$15.34/hr (130%)]
4. The number entered in this cell is the number of jobs identified in Cell 1 that meets or exceeds the wage reflected in Cell 3. This number is calculated using the payroll documents. The number of "retained" jobs and retained "other" jobs must be included in this entry. Please note that the number of retained jobs and the number entered here may not match since all jobs existing at the project site may not be considered retained.
5. The number entered in this cell is the average wage of all FTEs identified in Cell 4. This number is calculated using the payroll documents.
6. The number entered in this cell includes the number of "created" jobs, as well as the number of created "other" jobs.
7. The number entered in this cell is the number of "created" jobs in the project.
8. The number entered in this cell is the sum of Cell 1 and Cell 6.
9. The number entered in this cell is the sum of Cell 4 and Cell 7.

ITEM 16. Rescind subrule **188.5(4)**.

**ARC 6047C**

**ECONOMIC DEVELOPMENT AUTHORITY[261]**

**Notice of Intended Action**

**Proposing rule making related to tax credits  
and providing an opportunity for public comment**

The Economic Development Authority (IEDA) hereby proposes to amend Chapter 76, "Aggregate Tax Credit Limit for Certain Economic Development Programs," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 15.106A and 15.119.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 15.119 as amended by 2021 Iowa Acts, Senate File 619.

*Purpose and Summary*

2021 Iowa Acts, Senate File 619, amends Iowa Code section 15.119 relating to the tax credit allocations for certain economic development programs. The following programs were affected: the High Quality Jobs Program, the Renewable Chemical Production Tax Credit Program, the

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

Redevelopment Tax Credit Program for Brownfields and Grayfields, and the Workforce Housing Tax Incentives Program. The proposed amendments strike references to specific programs and amounts of allocations. The proposed amendments also eliminate current inconsistencies with the Iowa Code as well as avoid inconsistencies resulting from any future changes to the allocations.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa beyond that of the legislation it is intended to implement.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the IEDA for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the IEDA no later than 4:30 p.m. on December 7, 2021. Comments should be directed to:

Lisa Connell  
Iowa Economic Development Authority  
1963 Bell Avenue, Suite 200  
Des Moines, Iowa 50315  
Phone: 515.348.6163  
Email: [lisa.connell@iowaeda.com](mailto:lisa.connell@iowaeda.com)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 76.4(3) as follows:

**76.4(3) Reallocation of declinations.** Any amount of tax credits authorized and awarded during a fiscal year for a program specified in ~~rule 261—76.5(15)~~ Iowa Code section 15.119(2) which is irrevocably declined by the awarded business on or before June 30 of the next fiscal year may be reallocated, authorized, and awarded during the fiscal year in which the declination occurs. Tax credits authorized pursuant to this subrule will not be considered for purposes of subrule 76.4(2).

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

- ITEM 2. Rescind rule **261—76.5(15)**.
- ITEM 3. Renumber rule **261—76.6(15)** as **261—76.5(15)**.
- ITEM 4. Amend renumbered rule 261—76.5(15) as follows:

**261—76.5(15) Allocating the tax credit cap.**

**76.5(1) Procedure for allocations.** At a scheduled meeting of the board prior to the start of a fiscal year, the board will allocate a portion of the tax credits available under the cap to the applicable programs listed in rule 261—76.5(15). The board is not required to allocate a portion of the cap to every program listed. The board may allocate a portion of the cap to be shared by programs with a common purpose. ~~For example, the business awards made under the enterprise zone program and high quality jobs program may be allocated one amount to jointly serve both programs.~~ Throughout the fiscal year, the board may review the allocation as necessary, but shall review the allocation at least one time during the fiscal year. Based on its review, the board may make adjustments to the allocation as deemed necessary.

**76.5(2) Required suballocations.** Iowa Code section 15.119 requires the authority to make certain suballocations to the programs subject to the cap. In some cases, there is a minimum required suballocation and in others a maximum suballocation. The authority will make the required suballocations and count them against the maximum aggregate cap before making any discretionary allocations.

**76.5(3) Allocation to programs subject to the cap.** For the fiscal year beginning July 1, 2013, and for all subsequent fiscal years in which the required suballocations are not changed, the authority will allocate the maximum aggregate tax credit cap as follows:

- ~~a.—\$2 million to the credits for investments in qualifying businesses and community-based seed capital funds, unless the authority determines that the program demand is less than that amount.~~
- ~~b.—\$8 million to the tax credits for investments in certified innovation funds, unless the authority determines that the program demand is less than that amount.~~
- ~~c.—\$10 million to the redevelopment tax credit program for brownfields and grayfields, unless the authority determines that the program demand is less than that amount.~~
- ~~d.—To the assistive device tax credit program, an amount necessary to meet the demand for that year.~~
- ~~e.—To any other programs that may be made subject to the cap but which are not listed in this subrule, any amount that may be required by law or such amount as the board determines prudent given the amount of tax credits available.~~
- ~~f.—To the high quality jobs program and the enterprise zone program, an amount equal to the amount necessary to meet the demand for that year, provided that such amount will not exceed the remainder of the maximum aggregate tax credit limit for that year.~~

- ITEM 5. Renumber rule **261—76.8(15)** as **261—76.6(15)**.

**ARC 6037C****ENVIRONMENTAL PROTECTION COMMISSION[567]****Notice of Intended Action****Proposing rule making related to separation distance rules  
and providing an opportunity for public comment**

The Environmental Protection Commission (Commission) hereby proposes to amend Chapter 9, “Delegation of Construction Permitting Authority,” Chapter 40, “Scope of Division—Definitions—Forms—Rules of Practice,” Chapter 43, “Water Supplies—Design and Operation,” and Chapter 49, “Nonpublic Water Supply Wells,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 455B.173.

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

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 455B.173, 455B.174 and 455B.183.

*Purpose and Summary*

Collectively, Chapters 9, 40, 43, and 49 regulate certain aspects of both public and private water supply systems. This proposed rule making includes three broad amendments: two substantive changes aimed at easing regulatory burdens and one editorial change to reflect recently amended state law.

First, the proposed amendment to Chapter 9 aligns the rules with 2020 Iowa Acts, House File 2475. This legislation amended Iowa Code section 455B.183(2) to allow local public works departments to retain a professional engineer in lieu of directly employing an engineer. The Department of Natural Resources (Department) has been enforcing the law since its passage.

Second, proposed amendments to Chapter 43 ease certain aspects of the water main separation requirements. Under the current rules, the Department has had to issue many design- or construction-based variances in order to proceed with permitting; this is burdensome for permittees, consulting engineers, and staff. The proposed amendments incorporate siting and construction alternatives developed from the variances directly into the rules.

In more detail, the following amendments are proposed:

- Separate definitions of the crossing requirements for sanitary sewers and storm sewers.
- Installation of casing pipe around water mains when there is a crossing conflict involving both sanitary and storm sewers (in lieu of replacing sewers with water main material).
- Options for horizontal separation and crossing conflicts with storm sewers, including:
  - Constructing water main of ductile iron piping (DIP) with gaskets impermeable to hydrocarbons.
  - Constructing storm sewer of reinforced concrete piping (RCP) with gaskets impermeable to hydrocarbons.

Ultimately, these proposed changes will be similarly protective of the environment while easing existing regulatory burdens on permittees and consulting engineers.

Third, the proposed amendments to Chapters 40, 43, and 49 add clarity to well separation distances from sources of contamination. Currently, well separation distances vary slightly between programs, as do the naming conventions. Under the proposed amendments, sources of contamination will be consistently named and the distances will be more uniform.

In more detail, the proposed amendments:

- Add a transmission pipeline setback because two other states that border Iowa currently apply this category and because the Department does not have a setback that addresses this scenario. These distances are in line with or are in between the distances set by the two surrounding states with similar regulations.
- Change the term “sanitary landfills” to “solid waste landfills and disposal sites” to match Table A in subrule 43.3(7).
- Change the distance for the preparation or storage area for chemicals to accord with Chapter 44 of the Department of Agriculture and Land Stewardship rules (rule 21—44.53(200)).
- Change the terms “conforming wells” and “nonconforming wells” to eliminate confusion.
- Change the term “ditches, streams, ponds, or lakes” to “flowing streams or other surface water bodies.” This clarifies that this term applies to waterbodies and will match Table A in subrule 43.3(7).
- Add a separate category for liquid propane gas (LPG) storage tanks and assign a setback similar to that for all of the surrounding states. Previously, Iowa used the same setback for liquid propane (LP) and other liquid fuel storage tanks of 100 feet. Other surrounding states have adopted a lesser setback because an LPG spill is not like other gas spills, since propane is volatile.
- Change the language regarding open and closed portions of private sewage disposal systems to match the amendments proposed for Table A in subrule 43.3(7).

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

- Add the word “yard” in front of “hydrants” because this separation distance applies specifically to private wells near yard hydrants.
- Remove the word “ditches” from the term “ditches, streams, ponds, or lakes” and a separate setback is being added for roadside ditches and rights-of-way that is similar to that for several surrounding states. This will help reduce confusion with the current setback that includes ditches along with streams, ponds, and lakes.
- Add three new footnotes to Table 49.6(1) in subrule 49.6(1) to clarify the new and changed terms.

*Fiscal Impact*

This rule making has no negative fiscal impact to the State of Iowa. A copy of the fiscal impact statement is available from the Department upon request.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on December 13, 2021. Comments should be directed to:

Mark Moeller  
Iowa Department of Natural Resources  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319  
Email: [mark.moeller@dnr.iowa.gov](mailto:mark.moeller@dnr.iowa.gov)

*Public Hearing*

A public hearing at which persons may present their views orally will be held via conference call. Persons who wish to attend the conference call should contact Mark Moeller via email. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the public hearing must submit a request to Mark Moeller prior to the hearing to facilitate an orderly hearing.

December 9, 2021  
1 to 3 p.m.

Via video/conference call

Persons who wish to make oral comments at the public hearing will be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

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

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 9.4(3) as follows:

**9.4(3)** The reviewing engineer shall be licensed as a professional engineer in Iowa and shall be employed or retained by the local public works department.

ITEM 2. Amend rule **567—40.2(455B)**, definition of “Septic tank,” as follows:

“*Septic tank*” means a watertight ~~tank which receives sewage~~ structure into which wastewater is discharged for solids separation and digestion.

ITEM 3. Rescind subparagraph **43.3(2)“a”(3)** and adopt the following **new** subparagraph in lieu thereof:

(3) Separation of water mains from sanitary and combined sewers.

1. Horizontal separation of water mains from gravity sanitary and combined sewers. Water mains shall be separated from gravity sanitary and combined sewer mains by a horizontal distance of at least ten feet measured edge to edge unless the bottom of the water main is at least 18 inches above the top of the sewer, and either:

- The water main is placed in a separate trench, or
- The water main is located on a bench of undisturbed earth at a minimum horizontal separation of three feet from the sewer.

If it is not possible to obtain a horizontal separation of three feet and a vertical separation of 18 inches between the bottom of the water main and the top of the sewer, a linear separation of at least two feet shall be provided, and one of the following shall be utilized:

- The water main shall be enclosed in watertight casing pipe with an evenly spaced annular gap and watertight end seals, or
- The sewer shall be constructed of water main materials.

The separation distance between the water main and the sewer shall be the maximum feasible in all cases.

2. Horizontal separation of water mains from sanitary sewer force mains. Water mains shall be separated from sanitary sewer force mains by a horizontal distance of at least ten feet measured edge to edge unless the sanitary sewer force main is constructed of water main materials and the water main is laid at least four feet horizontally from the sanitary sewer force main. The separation distance between the water main and the sanitary sewer force main shall be the maximum feasible in all cases.

3. Vertical separation of water mains from sanitary and combined sewer crossovers. Vertical separation of water mains crossing over any sanitary or combined sewers shall be at least 18 inches when measured from the bottom of the water main to the top of the sewer. If it is not possible to maintain the required vertical separation, one of the following shall be utilized:

- The bottom of the water main shall not be placed closer than six inches above the top of a sewer,
- or
- The top of the water main shall not be placed closer than 18 inches below the bottom of a sewer.

When a water main crosses below or less than 18 inches above a sanitary or combined sewer, one of the following shall be utilized within ten feet measured edge to edge horizontally, centered on the crossing:

- The water main shall be enclosed in watertight casing pipe with an evenly spaced annular gap and watertight ends, or
- Sewer pipe of water main material shall be installed.

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

The separation distance shall be the maximum feasible in all cases. Wherever a water main crosses a sanitary or combined sewer, the water main and sanitary or combined sewer pipes must be adequately supported. A low permeability soil shall be used for backfill material within ten feet of the point of crossing along the water main.

4. Horizontal separation of water mains from sanitary and combined sewer manholes. No water pipe shall pass through or come in contact with any part of a sanitary or combined sewer manhole. A minimum horizontal separation of three feet shall be maintained.

ITEM 4. Adopt the following new subparagraph **43.3(2)“a”(4)** as follows:

(4) Separation of water mains from storm sewers.

1. Horizontal separation of water mains from gravity storm sewers. Water mains shall be separated horizontally from gravity storm sewers by at least ten feet measured edge to edge. If it is not possible to maintain the required horizontal separation of ten feet, a minimum of three feet of separation shall be maintained and one of the following shall be utilized within ten feet measured edge to edge:

- The water main shall be constructed of ductile iron pipe with gaskets impermeable to hydrocarbons, or
- The water main shall be enclosed in watertight casing pipe with an evenly spaced annular gap and watertight end seals, or
- Storm sewer pipe of water main material shall be installed, or
- Reinforced concrete pipe storm sewers shall be constructed with gaskets manufactured in accordance with ASTM C443.

2. Vertical separation of water mains from storm sewer crossovers. Water mains shall be vertically separated from storm sewers by at least 18 inches between the outside edges of the water main and the storm sewer. The separation distance shall be the maximum feasible in all cases. In all cases where a water main crosses a storm sewer, the water main and storm sewer pipes must be adequately supported. A low permeability soil shall be used for backfill material within ten feet of the point of crossing along the water main. If it is not possible to obtain 18 inches of vertical separation where the water main crosses above a storm sewer, a minimum of 6 inches vertical separation shall be maintained and one of the following shall be utilized within ten feet measured edge to edge horizontally, centered on the crossing:

- The water main shall be constructed of ductile iron pipe with gaskets impermeable to hydrocarbons, or
- The water main shall be enclosed in watertight casing pipe with an evenly spaced annular gap and watertight end seals, or
- Storm sewer pipe of water main material shall be installed, or
- Reinforced concrete pipe storm sewers shall be constructed with gaskets manufactured in accordance with ASTM C443.

ITEM 5. Amend subparagraph **43.3(7)“c”(3)** as follows:

(3) Surface water sources. Water samples collected from surface water sources in accordance with 43.3(7)“c”(1) should be collected prior to the design of the surface water treatment facility and shall be conducted and analyzed prior to utilization of the source. The samples shall be collected during June, July, and August. In addition, quarterly monitoring shall be conducted in March, June, September, and December at a location representative of the raw water at its point of withdrawal. Monitoring shall be for turbidity, alkalinity, pH, calcium, chloride, color, copper, hardness, iron, magnesium, manganese, potassium, silica, specific conductance, sodium, sulfate, filterable and nonfilterable solids, carbonate, bicarbonate, algae (qualitative and quantitative), total organic carbon, five-day biochemical oxygen demand, dissolved oxygen, surfactants, nitrogen series (organic, ammonia, nitrite, and nitrate), and phosphate.

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

TABLE A: SEPARATION DISTANCES

| SOURCE OF CONTAMINATION   | REQUIRED MINIMUM LATERAL DISTANCE FROM WELL AS HORIZONTAL ON THE GROUND SURFACE, IN FEET              |  |
|---|---|--|
|   | Deep Well <sup>1</sup>  | Shallow Well <sup>1</sup>  |
| <b>WASTEWATER STRUCTURES:</b>   |   |  |
| Point of Discharge to Ground Surface  |   |  |
| Sanitary & industrial discharges  | 400   | 400  |
| Water treatment plant wastes  | 50  | 50   |
| Well house floor drains   | 5   | 5  |
| Sewers & Drains <sup>2</sup>  |   |  |
| Sanitary & storm sewers, drains   | 0 – 25 feet: prohibited<br>25 – 75 feet if water main pipe<br>75 – 200 feet if sanitary sewer pipe    | 0 – 25 feet: prohibited<br>25 – 75 feet if water main pipe<br>75 – 200 feet if sanitary sewer main pipe    |
| Sewer force mains   | 0 – 75 feet: prohibited<br>75 – 400 feet if water main pipe<br>400 – 1000 feet if sanitary sewer pipe | 0 – 75 feet: prohibited<br>75 – 400 feet if water main pipe<br>400 – 1000 feet if sanitary sewer main pipe |
| Water plant treatment process wastes that are treated onsite  | 0 – 5 feet: prohibited<br>5 – 50 feet if sanitary sewer pipe  | 0 – 5 feet: prohibited<br>5 – 50 feet if sanitary sewer main pipe  |
| Water plant wastes to sanitary sewer  | 0 – 25 feet: prohibited<br>25 – 75 feet if water main pipe<br>75 – 200 feet if sanitary sewer pipe    | 0 – 25 feet: prohibited<br>25 – 75 feet if water main pipe<br>75 – 200 feet if sanitary sewer main pipe    |
| Well house floor drains to sewers   | 0 – 25 feet: prohibited<br>25 – 75 feet if water main pipe<br>75 – 200 feet if sanitary sewer pipe    | 0 – 25 feet: prohibited<br>25 – 75 feet if water main pipe<br>75 – 200 feet if sanitary sewer main pipe    |
| Well house floor drains to surface  | 0 – 5 feet: prohibited<br>5 – 50 feet if sanitary sewer pipe  | 0 – 5 feet: prohibited<br>5 – 50 feet if sanitary sewer main pipe  |
| Land Disposal of Treated Wastes   |   |  |
| Irrigation of wastewater  | 200   | 400  |
| Land application of solid wastes <sup>3</sup>   | 200   | 400  |
| Other   |   |  |
| <u>Cesspools &amp; earth pit privies</u><br><u>Private sewage disposal systems</u><br><u>and onsite treatment systems –</u><br><u>open portion of treatment system<sup>4</sup></u>              | 200   | 400  |
| <u>Concrete vaults &amp; septic tanks</u><br><u>Private sewage disposal systems</u><br><u>and onsite treatment systems</u><br><u>– closed portion of treatment</u><br><u>system<sup>4</sup></u> | 100   | 200  |
| Lagoons   | 400   | 1000   |
| Mechanical wastewater treatment plants  | 200   | 400  |
| Soil absorption fields  | 200   | 400  |
| <b>CHEMICALS:</b>   |   |  |
| Chemical application to ground surface  | 100   | 200  |
| Chemical & mineral storage above ground <sup>5,6</sup>  | 100   | 200  |
| Chemical & mineral storage on or under ground   | 200   | 400  |

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

| SOURCE OF CONTAMINATION   | REQUIRED MINIMUM LATERAL DISTANCE FROM WELL AS HORIZONTAL ON THE GROUND SURFACE, IN FEET |                           |
|---|--|---------------------------|
|   | Deep Well <sup>1</sup>   | Shallow Well <sup>1</sup> |
| Transmission pipelines (such as fertilizer, liquid petroleum, or anhydrous ammonia) | 200  | 400                       |
| ANIMALS:  |  |                           |
| Animal pasturage  | 50   | 50                        |
| Animal enclosure  | 200  | 400                       |
| Earthen silage storage trench or pit  | 100  | 200                       |
| Animal Wastes   |  |                           |
| Land application of liquid or slurry  | 200  | 400                       |
| Land application of solids  | 200  | 400                       |
| Solids stockpile  | 200  | 400                       |
| Storage basin or lagoon   | 400  | 1000                      |
| Storage tank  | 200  | 400                       |
| MISCELLANEOUS:  |  |                           |
| Basements, pits, sumps  | 10   | 10                        |
| Cemeteries  | 200  | 200                       |
| Cisterns  | 50   | 100                       |
| Flowing streams or other surface water bodies                                       | 50   | 50                        |
| GHEX loop boreholes   | 200  | 200                       |
| Railroads   | 100  | 200                       |
| Private wells   | 200  | 400                       |
| Solid waste landfills and disposal sites <sup>4 7</sup>                             | 1000   | 1000                      |

<sup>1</sup>Deep and shallow wells, as defined in 567—40.2(455B): A deep well is a well located and constructed in such a manner that there is a continuous layer of low permeability soil or rock at least 5 feet thick located at least 25 feet below the normal ground surface and above the aquifer from which water is to be drawn. A shallow well is a well located and constructed in such a manner that there is not a continuous layer of low permeability soil or rock (or equivalent retarding mechanism acceptable to the department) at least 5 feet thick, the top of which is located at least 25 feet below the normal ground surface and above the aquifer from which water is to be drawn.

<sup>2</sup>The separation distances are dependent upon two factors: the type of piping that is in the existing sewer or drain, as noted in the table, and that the piping was properly installed in accordance with the standards.

<sup>3</sup>Solid wastes are those derived from the treatment of water or wastewater. Certain types of solid wastes from water treatment processes may be land-applied within the separation distance on an individual, case-by-case basis.

<sup>4</sup>Private sewage disposal system is defined in 567—subrule 69.1(2). “Onsite treatment system” includes any wastewater treatment system not included in the definition of a private sewage disposal system that is utilizing onsite wastewater treatment technologies to treat domestic waste, such as those specified in 567—Chapter 69 (but excluding waste stabilization ponds). Open portions of treatment systems include subsurface absorption systems, mound systems, intermittent sand filters, constructed wetlands, open bottom media filters, and waste stabilization ponds. Closed portions of treatment systems include septic tanks, aerobic treatment units, fully contained media filters and impervious vault toilets. These separation distances also apply to septic systems that are not considered privately owned.

<sup>5</sup>The minimum separation distance for liquid fuel storage associated with standby power generators shall be 50 feet if secondary containment is provided. Secondary containment shall provide for a minimum of 110 percent of the liquid fuel storage capacity. Double-walled storage tanks shall not be considered as secondary containment. The separation distance for liquefied petroleum gas (LPG) storage shall be 15 feet.

<sup>6</sup>Electrical power transformers mounted on a single utility pole are exempt from the minimum separation distance requirements.

<sup>4 7</sup>Solid waste means garbage, refuse, rubbish, and other similar discarded solid or semisolid materials, including but not limited to such materials resulting from industrial, commercial, agricultural, and domestic activities.

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

ITEM 6. Amend subrule 49.6(1) as follows:  
**49.6(1) Minimum distances.** The following minimum lateral distances from all private wells shall apply for the common structures or sources of contamination listed in the following table.

Table 49.6(1) Minimum Lateral Distances, Private Wells

| <u>Sources Structure or Source of Contamination</u>  | <u>Minimum Lateral Distance (feet)</u> |                              |
|--|--|------------------------------|
|  | <u>Shallow Well<sup>1</sup></u>        | <u>Deep Well<sup>1</sup></u> |
| <u>Public water supply well</u>  | <u>400</u>                             | <u>200</u>                   |
| <u>Formed manure storage structure, confinement building, feedlot solids settling facility, open feedlot</u>   | 200                                    | 100                          |
| <del>Public water supply well</del>  | 400                                    | 200                          |
| <u>Transmission pipelines (including, but not limited to, fertilizer, liquid petroleum, or anhydrous ammonia) if a more restrictive setback is not set by the pipeline owner</u>   | <u>200</u>                             | <u>100</u>                   |
|  |  | <u>All Private Wells</u>     |
| <u>Earthen manure storage basin, runoff control basins and anaerobic lagoons (see subrule 49.6(2) below)</u>   |  | 1000                         |
| <u>Drainage wells</u>  |  | <u>1000</u>                  |
| <del>Domestic wastewater lagoon</del>  |  | 400                          |
| <del>Sanitary landfills</del> <u>Solid waste landfills and disposal sites<sup>2</sup></u>  |  | 1000                         |
| <u>Domestic wastewater lagoon</u>  |  | <u>400</u>                   |
| <u>Preparation or storage area for spray materials, commercial fertilizers or chemicals that may result in groundwater contamination</u>   | 400                                    | <u>150</u>                   |
| <del>Drainage wells</del>  |  | 4000                         |
| <del>Nonconforming wells</del>   |  | 40                           |
| <del>Nonconforming Existing wells that do not conform to this chapter</del>  |  | 100                          |
| <u>Liquid hydrocarbon storage tanks, except for liquid propane gas (LPG)</u>   |  | <u>100</u>                   |
| <del>Soil absorption field, any sewage treatment system with an open discharge, pit privy or septic tank discharge line (not conforming to 567—Chapter 69)</del> <u>Private sewage disposal systems – open portion of treatment system<sup>3</sup></u> |  | 100                          |
| <del>Septic tank, concrete vault privy, sewer of tightly joined tile or equivalent material, sewer-connected foundation drain, or sewers under pressure</del> <u>Private sewage disposal systems – closed portion of treatment system<sup>3</sup></u>  |  | 50                           |
| <u>Flowing streams or other surface water bodies</u>   |  | <u>25</u>                    |
| <u>LPG storage tanks</u>   |  | <u>15</u>                    |
| <u>Roadside ditch and road rights-of-way</u>   |  | <u>15</u>                    |
| <u>Existing wells that conform to this chapter</u>   |  | <u>10</u>                    |
| <u>Sewer of cast iron with leaded or mechanical joints, sewer of plastic pipe with glued or compression joints, independent clear water drains, cisterns, well pits, or pump house floor drains</u>  |  | 10                           |

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

|   | <u>All Private<br/>Wells</u> |
|---|------------------------------|
| Hydrants <u>Yard hydrants</u>   | 10                           |
| Property lines (unless a mutual easement is signed and recorded by both parties)        | 4                            |
| Liquid hydrocarbon storage tanks  | 100                          |
| Ditches, streams, ponds, or lakes   | 25                           |
| Frost pit   | 10                           |
| <u>Property lines (unless a mutual easement is signed and recorded by both parties)</u> | <u>4</u>                     |

<sup>1</sup>“Deep well” and “shallow well” are defined in 567—49.2(455B).

<sup>2</sup>Solid waste means garbage, refuse, rubbish, and other similar discarded solid or semisolid materials, including but not limited to such materials resulting from industrial, commercial, agricultural, and domestic activities.

<sup>3</sup>Private sewage disposal system is defined in 567—subrule 69.1(2). Open portions of treatment systems include subsurface absorption systems, mound systems, intermittent sand filters, constructed wetlands, open bottom media filters, and waste stabilization ponds. Closed portions of treatment systems include septic tanks, aerobic treatment units, fully contained media filters, and impervious vault toilets. These separation distances also apply to septic systems that are not considered privately owned.

**ARC 6041C****ENVIRONMENTAL PROTECTION COMMISSION[567]****Notice of Intended Action****Proposing rule making related to cleanup of wastewater rules  
and providing an opportunity for public comment**

The Environmental Protection Commission hereby proposes to amend Chapter 60, “Scope of Title—Definitions—Forms—Rules of Practice,” Chapter 61, “Water Quality Standards,” Chapter 62, “Effluent and Pretreatment Standards: Other Effluent Limitations or Prohibitions,” Chapter 63, “Monitoring, Analytical and Reporting Requirements,” and Chapter 64, “Wastewater Construction and Operation Permits,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 455B.173, 455B.197 and 455B.199B.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 455B.173, 455B.174, 455B.183, 455B.197, and 455B.199B and 40 CFR Parts 122, 124, 127, 130, 136, 153, 300, 441, and 503.

*Purpose and Summary*

Chapters 60 through 64, collectively, regulate wastewater treatment and disposal. In brief, the proposed amendments align the rules with both state and federal law, clarify regulatory requirements, correct wastewater terms, remove obsolete form references, and provide clarity regarding electronic form submittal.

In more detail, the proposed amendments make the following changes:

**Chapter 60, “Scope of Division—Definition—Forms—Rules of Practice”:**

- Update definitions, remove obsolete forms, and add language to allow for the electronic submittal of forms.

**Chapter 61, “Water Quality Standards”:**

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

- Correct a mistake contained in the Adopted and Filed rule, effective on November 11, 2020, published in the Iowa Administrative Bulletin as **ARC 5226C** on October 7, 2020. A portion of a footnote that was struck in the Notice of Intended Action (**ARC 5044C**) was inadvertently left out of the Adopted and Filed rule.

**Chapter 62, “Effluent and Pretreatment Standards: Other Effluent Limitations or Prohibitions”:**

- Update the date reference for the federal effluent and pretreatment standards in the Code of Federal Regulations (CFR), and add a reference to the new federal dental effluent limitation guidelines.

**Chapter 63, “Monitoring, Analytical and Reporting Requirements”:**

- Add references to federally approved analytical testing methods (40 CFR Part 136), and clarify requirements for testing methods, alternative test procedures, and method modifications;

- Update the date of adoption by reference of Supporting Document for Permit Monitoring Frequency Determination to ensure that monitoring frequencies in permits are determined using the most recent water quality standards;

- Update the guidelines for whole effluent toxicity testing by removing outdated language and by referencing current test procedures;

- Add new language regarding electronic reporting and paper submittal of operation records for National Pollution Discharge Elimination System (NPDES) permittees, except for animal feeding operation permittees, to reflect the federal NPDES permit electronic reporting rule;

- Clarify land application monitoring requirements to ensure they are appropriate for each facility;

- Rescind the table for preservation techniques, containers, and holding times, and replace it with a reference to the federal rule’s current table; and

- Move the monitoring well sampling procedures from Table VI to a new subrule.

**Chapter 64, “Wastewater Construction and Operation Permits”:**

- Update the CFR citations;

- Simplify and clarify the general permit language regarding fees, suspension and revocation, and public notice to match the requirements in the reissued and new general permits;

- Allow land application operation permits to be effective for longer than five years;

- Update the public notice and public hearing language to comply with 40 CFR Section 124.10, remove obsolete requirements, and allow for electronic communication;

- Update the disadvantaged community eligibility requirements to be consistent with Iowa Code section 455B.199B;

- Adopt the fee language from Iowa Code section 455B.197; and

- Add new language regarding the nutrient reduction exchange to ensure that investments in nonpoint source best management practices qualify for future regulatory incentives.

*Fiscal Impact*

After analysis and review of this rule making, no fiscal impact to the State of Iowa is anticipated from this proposed rule making. A copy of the fiscal impact statement is available from the Department of Natural Resources (Department) upon request.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

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

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on December 10, 2021. Comments should be directed to:

Courtney Cswercko  
Iowa Department of Natural Resources  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319  
Email: [courtney.cswercko@dnr.iowa.gov](mailto:courtney.cswercko@dnr.iowa.gov)

*Public Hearing*

A public hearing at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend the conference call should contact Courtney Cswercko via email. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the conference call public hearing must submit a request to Courtney Cswercko prior to the hearing to facilitate an orderly hearing.

December 8, 2021  
2 to 4 p.m.

Via video/conference call

Persons who wish to make oral comments at the public hearing will be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule **567—60.2(455B)**, definitions of “Act,” “CFR,” “Continuing planning process (CPP),” “Private sewage disposal system,” “Regional administrator” and “Shallow well,” as follows:

“Act” means the Federal Water Pollution Control Act as amended through ~~July 1, 2007~~ July 1, 2021, 33 U.S.C. §1251 et seq.

“CFR” or “Code of Federal Regulations” means the federal administrative rules adopted by the United States in effect as of ~~January 1, 2015~~ July 1, 2021. The amendment of the date contained in this definition shall constitute the amendment of all CFR references contained in 567—Chapters 60 to 69, Title IV, unless a date of adoption is set forth in a specific rule.

“Continuing planning process (CPP)” means the continuing planning process, including any revision thereto, required by Sections 208 and 303(e) of the Act (33 U.S.C. §§1288 and 1313(e)) for state water pollution control agencies. The continuing planning process is a time-phased process by which the department, working cooperatively with designated areawide planning agencies:

a. Develops a water quality management decision-making process involving elected officials of state and local units of government and representatives of state and local executive departments that conduct activities related to water quality management.

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

b. Establishes an intergovernmental process (such as coordinated and cooperative programs with the state conservation commission in aquatic life and recreation matters, and the soil conservation division, department of agriculture and land stewardship in nonpoint pollution control matters) which provides for water quality management decisions to be made on an areawide or local basis and for the incorporation of such decisions into a comprehensive and cohesive statewide program. Through this process, state regulatory programs and activities will be incorporated into the areawide water quality management decision process.

c. Develops a broad-based public participation (such as utilization of such mechanisms as basin advisory committees composed of local elected officials, representatives of areawide planning agencies, the public at large, and conservancy district committees) aimed at both informing and involving the public in the water quality management program.

d. Prepares and implements water quality management plans, which identify water quality goals and established state water quality standards, defines specific programs, priorities and targets for preventing and controlling water pollution in individual approved planning areas and establishes policies which guide decision making over at least a 20-year span of time (in increments of 5 years).

e. Based on the results of the statewide (state and areawide) planning process, develops the state strategy to be updated annually, which sets the state's major objectives, approach, and priorities for preventing and controlling pollution over a five-year period.

f. Translates the state strategy into the annual state program plan (required under Section 106 of the federal Act), which establishes the program objectives, identifies the resources committed for the state program each year, and provides a mechanism for reporting progress toward achievement of program objectives.

g. Periodically reviews and revises water quality standards as required under Section 303(c) of the federal Act.

*"Private sewage disposal system"* means a system which provides for the treatment or disposal of domestic sewage from four or fewer dwelling units or the equivalent of less than 16 individuals on a continuing basis, including domestic waste, whether residential or nonresidential, but not including industrial waste of any flow rate except as provided for in 567—68.11(455B). ~~This includes domestic waste, whether residential or nonresidential, but does not include industrial waste of any flow rate.~~ "Private sewage disposal system" includes, but is not limited to, septic tanks, holding tanks for waste, chemical toilets, impervious vault toilets and portable toilets.

*"Regional administrator"* means the regional administrator of the United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101 ~~11201 Renner Blvd., Lenexa, Kansas 66219, or the authorized representative of the regional administrator.~~

*"Shallow well"* means a well located and constructed in such manner that there is not a continuous 5-foot layer of low permeability soil or rock ~~between the aquifer from which the water supply is drawn and a point 25 feet below the normal ground surface (or equivalent retarding mechanism acceptable to the department) at least 5 feet thick, the top of which is located at least 25 feet below the normal ground surface and above the aquifer from which water is to be drawn.~~

ITEM 2. Adopt the following **new** definitions of "Individual non-storm water permit" and "Individual storm water permit" in rule **567—60.2(455B)**:

*"Individual non-storm water permit"* means a site-specific NPDES or operation permit that is not an individual storm water permit and that authorizes discharges of sewage, industrial waste, or other waste and allowable discharges of storm water associated with industrial activity, as specifically noted in the permit.

*"Individual storm water permit"* means an individual site-specific NPDES permit that authorizes discharges composed entirely of storm water associated with industrial activity or construction activity and other allowable non-storm water discharges as specifically noted in the permit.

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

ITEM 3. Amend rule 567—60.3(455B,17A), introductory paragraph, as follows:

**567—60.3(455B,17A) Forms Wastewater forms.** The following construction permit application forms and operation and NPDES permit forms provided by the department shall be used to apply for departmental approvals and permits and to report on activities related to the department's wastewater programs of the department. Electronic forms may be accessed on the department's website or obtained from the appropriate regional field office. Paper forms, when available, may be obtained from the ~~website of the department~~ department's website or by contacting the appropriate regional field office. Properly completed application forms, reporting forms, and all attachments shall be submitted in accordance with the department instructions. ~~Reporting forms shall be submitted to the appropriate field office.~~

ITEM 4. Rescind and reserve subrules **60.3(2)** and **60.3(3)**.

ITEM 5. Amend paragraph **60.4(2)“a”** as follows:

*a. General.* A person required to obtain or renew a wastewater operation permit or an Iowa NPDES permit pursuant to 567—Chapter 64, 567—Chapter 65, or 567—Chapter 69 must complete the appropriate application form as identified in ~~subrule 60.3(2)~~ 567—60.3(455B,17A).

(1) Complete applications. A permit application is complete and approvable when all necessary questions on the application ~~forms~~ have been completed and the application is signed pursuant to 567—subrule 64.3(8), and when all applicable portions of the application, including the application fee and required attachments, have been submitted. The director may require the submission of an antidegradation alternatives analysis or other additional information deemed necessary to evaluate the application. The due date for a renewal application is 180 days prior to the expiration date of the current permit, as noted in 567—64.8(455B). For a POTW, permission to submit an application at a later date may be granted by the director. The due date for a new application is 180 days prior to the date the operation is scheduled to begin, unless a shorter period is approved by the director.

(2) and (3) No change.

ITEM 6. Amend paragraph **60.4(2)“b,”** introductory paragraph, as follows:

*b. Amendments.* A permittee seeking an amendment to its operation permit shall make a written request ~~in the form of a detailed letter~~ to the department which shall include the nature of and the reasons supporting the requested amendment. A variance waiver or amendment to the terms and conditions of a general permit shall not be granted. If a variance waiver or amendment to a general permit is desired, the applicant must apply for an individual permit following the procedures in 567—paragraph 64.3(4) “a.”

ITEM 7. Amend subparagraph **60.4(2)“b”(3)** as follows:

(3) Monitoring requirements. An amendment request for a change in the minimum monitoring requirements in an existing permit is considered a variance waiver request. A request for a variance waiver shall include a ~~letter and the completed~~ Petition for Waiver or Variance form (542-1258). This form can be obtained from the ~~NPDES section as noted in 60.3(455B)~~ department's website or by contacting the NPDES section. The requesting permittee must provide monitoring results which are frequent enough to reflect variations in actual wastewater characteristics over a period of time and are consistent in results from sample to sample. The department will evaluate the request based upon whether or not less frequent sample results accurately reflect actual wastewater characteristics and whether operational control can be maintained.

Upon receipt of a request, the department may grant, modify, or deny the request. If the request is denied, the department may notify the permittee of any violation of its permit and may proceed administratively on the violation or may request that the commission refer the matter to the attorney general for legal action.

ITEM 8. Amend subrule 61.3(3), TABLE 1, footnote (j), as follows:

- (j) The acute and chronic criteria listed in main table are based on a hardness of 200 mg/l (as CaCO<sub>3</sub> (mg/l)). Numerical criteria (µg/l) for lead are a function of hardness (CaCO<sub>3</sub> (mg/l)) using the following equations:

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|         |  |   |   |
|---------|--|---|---|
| Acute   | $(1.46203 - ((\ln \text{ hardness}) / 0.145712)) \times e^{[1.2731 \ln(\text{Hardness}) - 1.46]}$  | $e^{[1.2731 \ln(\text{Hardness}) - 1.46]}$  | $e^{[1.2731 \ln(\text{Hardness}) - 1.46]}$  |
| Chronic | $(1.46203 - ((\ln \text{ hardness}) / 0.145712)) \times e^{[1.2731 \ln(\text{Hardness}) - 4.705]}$ | $e^{[1.2731 \ln(\text{Hardness}) - 4.705]}$ | $e^{[1.2731 \ln(\text{Hardness}) - 4.705]}$ |

ITEM 9. Amend rule 567—62.4(455B), introductory paragraph, as follows:

**567—62.4(455B) Federal effluent and pretreatment standards.** The federal standards, 40 Code of Federal Regulations (CFR) CFR, revised as of January 1, 2015 2021, are applicable to the following categories:

ITEM 10. Adopt the following **new** subrule 62.4(41):

**62.4(41) Dental office point source category.** The following is adopted by reference: 40 CFR Part 441.

ITEM 11. Amend rule 567—63.1(455B) as follows:

**567—63.1(455B) Guidelines establishing test procedures for the analysis of pollutants.** Only the procedures prescribed in this chapter shall be used to perform the measurements indicated in an application for an operation permit submitted to the department, a report required to be submitted by the terms of an operation permit, and a certification issued by the department pursuant to Section 401 of the Act.

**63.1(1) Identification of test procedures, application for alternative test procedures, and method modifications.**

*a.* The following is adopted by reference: 40 Code of Federal Regulations (CFR) CFR Part 136 (Guidelines Establishing Test Procedures for the Analysis of Pollutants), as amended through August 28, 2017.

*b.* All parameters for which testing is required by a wastewater discharge permit, permit application, or administrative order, except operational performance testing, must be analyzed using one of the following:

(1) An approved methods method specified in 40 CFR Part Section 136.3 or, under certain circumstances, by other methods that may be more advantageous to use when such other methods have;

(2) An alternative method that has been previously approved by the director pursuant to 63.1(2) pursuant to 40 CFR Section 136.4 or 136.5; or

(3) A method identified by the department, when no approved method is specified for the parameter in 40 CFR Part 136.

Samples collected for operational testing pursuant to 63.3(4) need not be analyzed by approved analytical methods; however, commonly accepted test methods should be used.

*c.* Applications for alternative test procedures shall follow the requirements of 40 CFR Section 136.4 or 136.5.

*d.* Method modifications shall follow the requirements of 40 CFR Section 136.6.

**63.1(2) Application for alternate test procedures.**

*a.* ~~Any person may apply to the EPA regional administrator through the director for approval of an alternate test procedure.~~

*b.* ~~The application for an alternate test procedure may be made by letter and shall:~~

(1) ~~Provide the name and address of the responsible person or firm holding or applying for the permit (if not the applicant) and the applicable ID number of the existing or pending permit and type of permit for which the alternate test procedure is requested and the discharge serial number, if any.~~

(2) ~~Identify the pollutant or parameter for which approval of an alternate testing procedure is being requested.~~

(3) ~~Provide justification for using testing procedures other than those specified in 40 CFR Part 136.3.~~

**63.1(3) 63.1(2) Required containers, preservation techniques and holding times.** All samples collected in accordance with self-monitoring requirements as defined in an operation permit shall

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

comply with the container, preservation techniques, and holding time requirements as specified in Table IV 40 CFR Section 136.3, Table II (Required Containers, Preservation Techniques, and Holding Times). Sample preservation should be performed immediately upon collection, if feasible.

~~63.1(4)~~ **63.1(3)** All laboratories conducting analyses required by this chapter must be certified in accordance with 567—Chapter 83. Routine on-site monitoring for pH, temperature, dissolved oxygen, total residual chlorine, other pollutants that must be analyzed immediately upon sample collection, settleable solids, physical measurements such as flow and cell depth, and operational monitoring tests specified in 63.3(4) are excluded from this requirement. All instrumentation used for conducting any analyses required by this chapter must be properly calibrated according to the manufacturer's instructions.

ITEM 12. Amend rule 567—63.3(455B) as follows:

**567—63.3(455B) Minimum self-monitoring requirements in permits.**

**63.3(1)** *Monitoring by organic waste dischargers.* The minimum self-monitoring requirements to be incorporated in operation permits for facilities discharging organic wastes shall be the appropriate requirements in ~~Tables I, II, and III~~ and II. Additional monitoring may be specified in the operation permit based on a case-by-case evaluation of the impact of the discharge on the receiving stream, toxic or deleterious effects of wastewaters, industrial contribution to the system, complexity of the treatment process, history of noncompliance or any other factor which requires strict operational control to meet the effluent limitations of the permit, as described in the Supporting Document for Permit Monitoring Frequency Determination, ~~August 2008~~ [effective date of these amendments], located on the ~~NPDES Web site~~ department's website.

**63.3(2)** *Monitoring by inorganic waste dischargers.* The self-monitoring requirements to be incorporated in the operation permit for facilities discharging inorganic wastes shall be determined on a case-by-case evaluation of the impact of the discharge on the receiving stream, toxic or deleterious effects of wastewaters, complexity of the treatment process, history of noncompliance or any other factor which requires strict control to meet the effluent limitations of the permit, as described in the Supporting Document for Permit Monitoring Frequency Determination, ~~August 2008~~ [effective date of these amendments], located on the ~~NPDES Web site~~ department's website.

**63.3(3)** *Monitoring of significant industrial users of publicly owned treatment works.* Monitoring for significant industrial users as defined in 567—60.2(455B) shall be determined as described in the Supporting Document for Permit Monitoring Frequency Determination, ~~August 2008~~ [effective date of these amendments], located on the ~~NPDES Web site~~ department's website. Results of such monitoring shall be submitted to the department in accordance with the reporting requirements in the operation permit. The monitoring program of a publicly owned treatment works with a pretreatment program approved by the department may be used in lieu of the supporting document.

**63.3(4)** No change.

**63.3(5)** *Modification of minimum monitoring requirements.* Monitoring requirements may be modified or reduced at the discretion of the director when requested by the permittee. Adequate justification must be presented by the permittee that the reduced or modified requirements will accurately reflect actual wastewater characteristics and will not adversely impact the operation of the facility. Requests for modification or reduction of monitoring requirements in an existing permit are considered ~~variance~~ waiver requests and must follow the procedures in 567—paragraph 60.4(2)“b.” All reductions or modifications of monitoring incorporated into an operation or NPDES permit by amendment or upon reissuance of the permit are only effective until the expiration date of that permit.

**63.3(6)** *Impairment monitoring.* If a wastewater treatment facility is located in the watershed of an impaired water body that is listed on Iowa's most recent Section 303(d) list (as described in 40 CFR Section 130.7), additional monitoring for parameters that are contributing to the impairment may be included in the operation or NPDES permit on a case-by-case basis.

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

ITEM 13. Amend paragraphs **63.4(2)“a”** and **“b”** as follows:

*a.* ~~The effluent~~ Effluent toxicity tests shall be performed using a 24-hour composite sample of the effluent collected at the location stated in the operation permit. All composite samples shall be delivered to the testing laboratory within a reasonable time (approximately 24 hours) after collection, and all tests must commence within 36 hours following sample collection. The results of all effluent toxicity tests ~~conducted using approved procedures~~, including any tests performed at a greater frequency than required in the operation permit, shall be submitted to the department, ~~on Form 542-1381 provided by the department~~, within 30 days of completing the test.

*b.* All effluent toxicity tests shall be conducted using the test ~~methodologies~~ methods referenced in 40 CFR Part 136 and protocols described within “Standard Operating Procedure: Effluent Toxicity Testing, Iowa Department of Natural Resources,” March 1991. This procedure is adopted as part of this subrule and is filed as part of this subrule with the administrative rules coordinator. This procedure is an essential part of the testing procedures and is available upon request to the department although not printed in this subrule. Laboratories performing the effluent toxicity tests shall also have a quality assurance plan. in the EPA document EPA-821-R-02-012, Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, 5th edition, October 2002. All effluent toxicity tests shall be conducted by a laboratory certified in Iowa.

ITEM 14. Amend rule 567—63.7(455B) as follows:

**567—63.7(455B) Submission of records of operation.**

**63.7(1) *Electronic reporting.*** Except as provided in this rule and subrules 63.3(4) and 63.5(1) 63.5(2), records of operation required by NPDES permits shall be submitted electronically to the appropriate regional field office of the department within 15 days following the close of the reporting period specified in 567—63.8(455B) and in accordance with monitoring requirements derived from this chapter and incorporated in the operation NPDES permit. Records of operation required by operation permits shall be submitted to the department within 15 days following the close of the reporting period specified in 567—63.8(455B) and in accordance with monitoring requirements derived from this chapter and incorporated in the operation permit.

**63.7(2) *Temporary or permanent paper submittal of records of operation.*** Upon satisfaction of the following criteria and written approval from the department, temporary or permanent paper submittal of records of operation may be allowed in lieu of electronic reporting.

*a. Written request for paper submittal.*

(1) To obtain an approval for temporary or permanent paper submittal of records of operation, a permittee must submit a paper copy of a written request to the NPDES Section, Iowa Department of Natural Resources, 502 East Ninth Street, Des Moines, Iowa 50319. The written request for paper submittal must include the following:

1. Facility name;
2. Individual NPDES permit number or general permit authorization number;
3. Facility address;
4. Owner name and contact information;
5. Name and contact information of the person submitting records of operation (if different than the owner); and
6. Reason for the request, including a justification of why electronic submission is not feasible at this time.

(2) Requests for paper submittal that do not contain all of the above information will not be considered. Electronic (email) requests for paper submittal will not be considered.

*b. Temporary paper submittal.*

(1) The department will approve or deny a request for temporary paper submittal of records of operation within 60 days of receipt of the request. Paper submittal requests shall be approved or denied at the discretion of the director.

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(2) All approvals for temporary paper submittal will expire five years from department approval. After an approval for temporary paper submittal expires, the permittee must submit all records of operation electronically, unless another approval is obtained.

(3) Approved temporary paper submittals are nontransferable.

c. Permanent paper submittal.

(1) The department will approve or deny a request for permanent paper submittal of records of operation within 60 days of receipt of the request. Permanent paper submittal approvals shall only be granted to facilities and entities owned or operated by members of religious communities that choose not to use certain modern technologies (e.g., computers, electricity). Permanent approvals for paper submittal shall not be granted to any other facilities or entities.

(2) Approved permanent paper submittals are nontransferable.

d. Paper copies of records of operation. All permittees who have received temporary or permanent paper submittal approvals must submit paper copies of all records of operation to the department within 15 days following the close of the reporting period specified in 567—63.8(455B) and in accordance with monitoring requirements derived from this chapter and incorporated in the NPDES permit.

63.7(3) Electronic reporting pursuant to NPDES general permits.

a. General Permits 1, 2, 3, 4, and 5. Both electronic and paper reporting options are available to permittees covered under General Permits 1, 2, 3, 4, and 5. Electronic reporting using the options available on the department's website is strongly encouraged, but paper records of operation will be accepted. Paper submittal approval can be obtained by permittees covered under General Permits 1, 2, 3, 4, and 5 according to the procedures in 63.7(2).

b. Electronic reporting requirements for General Permits 8 and 9. Permittees covered under General Permits 8 and 9 are required to report electronically using the department's online database, unless a paper submittal approval is obtained according to the procedures in 63.7(2).

63.7(4) Episodic paper submittal of records of operation. In accordance with the following requirements, episodic paper submittal of records of operation may be allowed in lieu of electronic reporting. The department shall provide notice, individually or through means of mass communication, regarding when episodic paper submittal is allowed, the facilities and entities that qualify for episodic paper submittal, and the likely duration of episodic paper submittal. The department shall determine if and when episodic paper submittal is warranted.

a. Episodic paper submittal is only allowed under the following circumstances:

(1) Large scale emergencies involving catastrophic circumstances beyond the control of a permittee, such as forces of nature (e.g., hurricanes, floods, fires, earthquakes) or other national disasters.

(2) Prolonged electronic reporting system outages (i.e., outages longer than 96 hours).

b. Permittees are not required to request episodic paper submittal. If the department determines that episodic paper submittal is warranted, a permittee shall submit paper copies of all records of operation to the department within 15 days following the close of the reporting period specified in 567—63.8(455B) and in accordance with monitoring requirements derived from this chapter and incorporated in the NPDES permit.

c. Episodic paper submittal is not transferable and cannot last more than 60 days.

63.7(5) Instances of noncompliance. The permittee shall report all instances of noncompliance not reported under 567—63.12(455B) at the time monitoring reports are submitted.

63.7(6) Relevant facts. If a permittee becomes aware that it failed to submit any relevant facts in any report to the director, the permittee shall promptly submit such facts or information.

ITEM 15. Amend rule 567—63.8(455B) as follows:

**567—63.8(455B) Frequency of submitting records of operation.** Except as provided in subrules 63.3(4) and ~~63.5(1)~~ 63.5(2), or as specified in an NPDES general permit issued in accordance with 567—64.4(455B), records of operation required by these rules shall be submitted at monthly intervals. The department may vary the interval at which records of operation shall be submitted in certain cases. Variation from the monthly interval shall be made only under such conditions as the department may prescribe in writing to the person concerned.

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ITEM 16. Amend rule 567—63.10(455B) as follows:

**567—63.10(455B) Records of operation forms.** Records of operation forms shall be those provided by the department unless ~~its forms are not applicable and in such case the records of operation shall be submitted on such other forms as are agreeable to the department~~ a permittee has obtained approval from the department to use an alternative reporting form.

ITEM 17. Adopt the following new rule 567—63.16(455B):

**567—63.16(455B) Sampling procedures for monitoring wells.** The following steps shall be taken prior to monitoring well sampling.

**63.16(1)** Measure depth from top of well head casing to water table.

**63.16(2)** Calculate quantity of water to be flushed from well using the formula:

Gallons to be pumped = 0.221 d(squared)h, where:

d = well diameter in inches

h = depth in feet of standing water in well prior to pumping

**63.16(3)** Pump well.

**63.16(4)** Measure depth from well hand casing to water table after pumping.

**63.16(5)** Wait for well to recharge to or near static water level prior to sampling.

ITEM 18. Amend **567—Chapter 63**, Table I, superscript 4, as follows:

4 - Sample types are defined as:

“Grab Sample” means a representative, discrete portion of sewage, industrial waste, other waste, surface water or groundwater taken without regard to flow rate.

“24-Hour Composite” means:

a. For facilities where no significant industrial waste is present, a sample made by collecting a minimum of six grab samples taken four hours apart and combined in proportion to the flow rate at the time each grab sample was collected. (Generally, grab samples should be collected at 8 a.m., 12 ~~a.m.~~ p.m. (noon), 4 p.m., 8 p.m., 12 ~~p.m.~~ a.m. (midnight), and 4 a.m. on weekdays (Monday through Friday) unless local conditions indicate another more appropriate time for sample collection.)

b. For facilities where significant industrial waste is present, a sample made by collecting a minimum of 12 grab samples taken two hours apart and combined in proportion to the flow rate at the time each grab sample was collected. (Generally, grab samples should be collected at 8 a.m., 10 a.m., 12 ~~a.m.~~ p.m. (noon), 2 p.m., 4 p.m., 6 p.m., 8 p.m., 10 p.m., 12 ~~p.m.~~ a.m. (midnight), 2 a.m., 4 a.m., and 6 a.m. on weekdays (Monday through Friday) unless local conditions indicate another more appropriate time for sample collection.)

ITEM 19. Amend **567—Chapter 63**, Table II, superscript 9, as follows:

9 - Total nitrogen ~~shall be determined by testing for Total Kjeldahl Nitrogen (TKN) and nitrate + nitrite nitrogen and reporting the sum of the TKN and nitrate + nitrite results (reported as N). (as N)~~ is defined as Total Kjeldahl Nitrogen (as N) plus nitrate (as N) plus nitrite (as N). Nitrate + nitrite can be analyzed together or separately. Total phosphorus shall be reported as P. Analyses must be performed by a laboratory certified in Iowa.

ITEM 20. Rescind **567—Chapter 63**, Table III and Table IV.

ITEM 21. Amend paragraphs **64.2(9)“c”** to **“e”** as follows:

c. ~~Variance~~ Waivers from the design standards and siting criteria which provide in the judgment of the department for substantially equivalent or improved effectiveness may be requested when there are unique circumstances not found in most projects. The director may issue ~~variances~~ waivers when circumstances are appropriate. The denial of a ~~variance~~ waiver may be appealed to the commission.

d. When reviewing the ~~variance~~ waiver request the director may consider the unique circumstances of the project, direct or indirect environmental impacts, the durability and reliability of the alternative, and the purpose and intent of the rule or standard in question.

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*e.* Circumstances that would warrant consideration of a variance waiver (which provides for substantially equivalent or improved effectiveness) may include the following:

- (1) The utilization of new equipment or new process technology that is not explicitly covered by the current design standards.
- (2) The application of established and acceptable technologies in an innovative manner not covered by current standards.
- (3) It is reasonably clear that the conditions and circumstances which were considered in the adoption of the rule or standard are not applicable for the project in question and therefore the effective purpose of the rule will not be compromised if a variance waiver is granted.

ITEM 22. Amend paragraphs **64.3(1)“e”** and **“f”** as follows:

*e.* Water well construction and well services related discharge that does not reach a water of the United States as defined in 40 CFR ~~Part~~ Section 122.2.

*f.* Discharges from the application of biological pesticides and chemical pesticides where the discharge does not reach a water of the United States as defined in 40 CFR ~~Part~~ Section 122.2.

ITEM 23. Amend subrule 64.3(4) as follows:

**64.3(4)** Applications.

*a. Individual permit.* Except as provided in 64.3(4)“*b*,” applications for operation permits required under 64.3(1) shall be made on forms provided by the department, as noted in ~~567—subrule 60.3(2)~~ 567—60.3(455B,17A). The application for an operation permit under 64.3(1) shall be filed pursuant to ~~567—subrule 60.4(2)~~. Permit applications for a new discharge of storm water associated with construction activity as defined in ~~567—Chapter 60~~ under “storm water discharge associated with industrial activity” must be submitted at least 60 days before the date on which construction is to commence. Upon completion of a tentative determination with regard to the permit application as described in 64.5(1)“*a*,” the director shall issue operation permits for applications filed pursuant to 64.3(1) within 90 days of the receipt of a complete application unless the application is for an NPDES permit or unless a longer period of time is required and the applicant is so notified.

*b. General permit.* A Notice of Intent (NOI) for coverage under a general permit ~~must~~ shall be made on ~~the appropriate form~~ forms provided by the department listed in ~~567—subrule 60.3(2)~~ as noted in 567—60.3(455B,17A) and in accordance with ~~567—64.6(455B)~~. ~~A Notice of Intent~~ An NOI must be submitted to the department according to the following:

- (1) to (8) No change.

ITEM 24. Amend subrule 64.3(7) as follows:

**64.3(7)** ~~Operation~~ NPDES permits may be granted for any period of time not to exceed five years. Applications All other operation permits may be granted for an appropriate period of time as determined by the director, based on the type of wastewater disposal system being permitted. An application for renewal of an NPDES or operation permit must be submitted to the department 180 days in advance of the date the permit expires. General permits will be issued for a period not to exceed five years. Each permit to be renewed shall be subject to the provisions of all rules of the department in effect at the time of the renewal.

ITEM 25. Amend subrule 64.3(11), introductory paragraph, as follows:

**64.3(11)** The director may amend, revoke and reissue, or terminate in whole or in part any individual operation permit or coverage under a general permit for cause. Except for general permits, the director may modify in whole or in part any individual operation permit for cause. A variance waiver or modification to the terms and conditions of a general permit shall not be granted. If a variance waiver or modification to a general permit is desired, the applicant must apply for an individual permit following the procedures in 64.3(4)“*a*.”

ITEM 26. Amend subparagraph **64.3(11)“b”(8)** as follows:

- (8) Causes listed in 40 CFR Sections 122.62 and 122.64.

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ITEM 27. Amend paragraphs **64.4(1)“d”** and **“e”** as follows:

*d.* Any discharge in compliance with the instruction of an On-Scene Coordinator pursuant to 40 CFR Part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR Section 153.10(e) (Pollution by Oil and Hazardous Substances);

*e.* Any introduction of pollutants from ~~non-point~~ nonpoint source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands, except that this exclusion shall not apply to the following:

- (1) Discharges from concentrated animal feeding operations as defined in 40 CFR Section 122.23;
- (2) Discharges from concentrated aquatic animal production facilities as defined in 40 CFR Section 122.24;
- (3) Discharges to aquaculture projects as defined in 40 CFR Section 122.25;
- (4) Discharges from silvicultural point sources as defined in 40 CFR Section 122.27;

ITEM 28. Amend paragraph **64.4(2)“a”** as follows:

*a.* The director may issue general permits which are consistent with 64.4(2)“b” and the requirements specified in 567—64.6(455B), 567—64.7(455B), subrule 64.8(2), and 567—64.9(455B) ~~for the following activities to regulate one or more categories or subcategories of discharges where the sources within a covered category of discharges are either storm water point sources, point sources other than storm water point sources, or treatment works treating domestic sewage, if the sources within each category or subcategory meet all of the following criteria:~~

~~(1) Storm water point sources requiring an NPDES permit pursuant to Section 402(p) of the federal Clean Water Act and 40 CFR 122.26.~~

~~(2) Private sewage disposal system discharges permitted under 567—Chapter 69 where subsoil discharge is not possible as determined by the administrative authority.~~

~~(3) Discharges from water well construction and related well services where the discharge will reach a water of the United States as defined in 40 CFR Part 122.2.~~

~~(4) For any discharge, except a storm water only discharge, from a mining or processing facility.~~

~~(5) Discharges from the application of biological pesticides and chemical pesticides which leave a residue where the discharge will reach a water of the United States as defined in 40 CFR Part 122.2.~~

~~(6) Discharges from hydrostatic testing, tank ballasting and water lines.~~

~~(7) Discharges from dewatering and residential geothermal systems.~~

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes;

(3) Require the same effluent limitations or operating conditions;

(4) Require the same or similar monitoring; and

(5) Are more appropriately controlled under a general permit than under individual permits.

ITEM 29. Amend subrule 64.5(2) as follows:

**64.5(2) Public notice for individual NPDES permits.**

*a.* Prior to the issuance of an NPDES permit, a major NPDES permit amendment, or the denial of a permit application for an NPDES permit, public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the tentative determination to issue or deny an NPDES permit for the proposed discharge. ~~Procedures for the circulation of public notice shall include at least the procedures of subparagraphs (1) to (4).~~

~~(1) The public notice for a draft NPDES permit or major permit amendment shall be circulated by the applicant within the geographical areas of the proposed discharge by posting the public notice in public places of the city nearest the premises of the applicant in which the effluent source is located and by posting the public notice near the entrance to the applicant’s premises and in nearby places. shall be transmitted by the department to the following persons:~~

1. The applicant;

2. Any other federal or state agency which has issued or is required to issue an NPDES permit for the same facility or activity, including EPA;

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3. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, state historic preservation officers, and affected states (the term "state" includes Indian Tribes treated as states);

4. Any state agency responsible for the development of an areawide waste treatment management plan or a water quality standards and implementation plan under CWA Section 208(b)(2), 208(b)(4) or 303(e);

5. The U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;

6. Any user identified in the permit application of a privately owned treatment works;

7. Any unit of local government having jurisdiction over the area where the facility is located; and

8. Each state agency having any authority under state law with respect to the construction or operation of such facility.

~~(2) The public notice for the denial of a permit application shall be sent to the applicant and circulated by the department within the geographical areas of the proposed discharge by publishing the public notice in local newspapers and periodicals or, if appropriate, in a newspaper of general circulation.~~

~~(3) (2) The public notice shall be sent transmitted by the department to any person upon request.~~

~~(4) (3) Upon request, the department shall add the name of any Any person or group may request to the distribution list to receive copies of all public notices concerning the tentative determinations with respect to the permit applications within the state or within a certain geographical area and shall send. The department shall transmit a copy of all public notices to such persons or groups.~~

(4) The department shall periodically notify the public of the opportunity to receive notices. The director may update the notice distribution list from time to time by requesting written indication of continued interest from those listed. The director may delete from the list the name of any person or group who fails to respond to such a request.

~~b. In addition to the requirements in paragraph 64.5(2) "a," prior to the issuance of a major NPDES permit or a major permit amendment to a major NPDES permit, the public notice shall be published by the applicant in local newspapers and periodicals or, if appropriate, in a newspaper of general circulation. Publication of a public notice is not required prior to the issuance of the following: The director may publish all notices of activities described in paragraph "a" of this subrule to the department's website. If this option is selected for a draft permit, the director must post the draft permit and permit rationale on the website for the duration of the public comment period.~~

~~(1) A minor NPDES permit,~~

~~(2) A minor permit amendment, or~~

~~(3) A major permit amendment to a minor NPDES permit.~~

~~Major and minor NPDES permits and major and minor permit amendments are defined in 567—60.2(455B).~~

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 permit application and request a public hearing pursuant to 64.5(6). Written comments may be submitted by paper or electronic means. All pertinent comments submitted during the 30-day comment period shall be retained by the department and considered by the director in the formulation of the director's final determinations with respect to the permit application. The period for comment may be extended at the discretion of the department. Pertinent and significant comments received during either the original comment period or an extended comment period shall be responded to in a responsiveness summary pursuant to 64.5(8).

d. The contents of the public notice of a draft NPDES permit, a major permit amendment, or the denial of a permit application for an NPDES permit shall include at least the following:

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

(2) The name and address of each applicant.

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(3) A brief description of each applicant's activities or operations which result in the discharge described in the permit application (e.g., municipal waste treatment plant, corn wet milling plant, or meat packing plant).

(4) The name of the waterway to which each discharge of the applicant is made and a short description of the location of each discharge of the applicant on the waterway ~~indicating whether such discharge is a new or an existing discharge.~~

(5) A statement of the department's tentative determination to issue, amend, or deny an NPDES permit for the discharge or discharges described in the permit application.

(6) A brief description of the procedures for the formulation of final determinations, including the 30-day comment period required by paragraph ~~"b"~~ "c" of this subrule, procedures for requesting a public hearing and any other means by which interested persons may influence or comment upon those determinations.

(7) The address, telephone number, ~~and~~ email address, and website of places at which interested persons may obtain further information, request a copy of the tentative determination and any associated documents prepared pursuant to 64.5(1), request a copy of the permit rationale described in 64.5(3), and inspect and copy permit forms and related documents.

e. No public notice is required for a minor permit amendment, including but not limited to an amendment to correct typographical errors, include more frequent monitoring requirements, revise interim compliance schedule dates, change ~~the~~ an owner or facility name or address, include a local pretreatment program, or remove a point source outfall that does not result in the discharge of pollutants from other outfalls.

f. No change.

ITEM 30. Amend subrule 64.5(6) as follows:

**64.5(6) Public hearings on proposed NPDES permits.** The applicant, any affected state, the regional administrator, or any interested agency, person or group of persons may request or petition for a public hearing with respect to an NPDES application. Any such request shall clearly state issues and topics to be addressed at the hearing. Any such request or petition for public hearing must be filed with the director within the 30-day period prescribed in ~~64.5(2)"b"~~ 64.5(2)"c" and shall indicate the interest of the party filing such request and the reasons why a hearing is warranted. The director shall hold an informal and noncontested case hearing if there is a significant public interest (including the filing of requests or petitions for such hearing) in holding such a hearing. Frivolous or insubstantial requests for hearing may be denied by the director. Instances of doubt should be resolved in favor of holding the hearing. Any hearing held pursuant to this subrule shall be held in the geographical area of the proposed discharge when possible, or other appropriate area ~~in~~ at the discretion of the director, ~~and~~. Web-based hearings may also be held at the discretion of the director. In addition, any hearing held pursuant to this subrule may, as appropriate, consider related groups of permit applications.

ITEM 31. Amend subrule 64.5(7) as follows:

**64.5(7) Public notice of public hearings on proposed NPDES permits.**

a. Public notice of any hearing held pursuant to 64.5(6) shall be circulated at least as widely as was the notice of the tentative determinations with respect to the permit application. Notice pursuant to this paragraph shall be made at least 30 days in advance of the hearing.

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

~~(2) (1) Notice shall be sent transmitted to all persons and government agencies which received a copy of the notice for the permit application; and~~

~~(3) (2) Notice shall be mailed transmitted to any person or group upon request; and~~

~~(4) Notice pursuant to subparagraphs (1) and (2) of this paragraph shall be made at least 30 days in advance of the hearing.~~

b. The contents of public notice of any hearing held pursuant to 64.5(6) shall include at least the following:

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

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- (2) The name and address of each applicant whose application will be considered at the hearing;
- (3) The name of the water body to which each discharge is made and a short description of the location of each discharge to the water body;
- (4) A brief reference to the public notice issued for each NPDES application, including the date of issuance;
- (5) Information regarding the time and location for the hearing;
- (6) The purpose of the hearing;
- (7) A concise statement of the issues raised by the person or persons requesting the hearing;
- (8) The address, ~~and telephone number of the premises,~~ email address, and website where interested persons may obtain further information, request a copy of the draft NPDES permit prepared pursuant to 64.5(1), request a copy of the permit rationale prepared pursuant to 64.5(3), and inspect and copy permit forms and related documents;
- (9) A brief description of the nature of the hearing, including the rules and procedures to be followed; and
- (10) The final date for submission of comments (~~paper or electronic~~) regarding the tentative determinations with respect to the permit application.

ITEM 32. Amend subrule 64.6(1) as follows:

**64.6(1) Contents of a complete Notice of Intent.** An applicant proposing to conduct activities covered by a general permit shall file a complete ~~Notice of Intent~~ NOI by submitting to the department materials required in paragraphs “a” to “c” of this subrule ~~except that a Notice of Intent, as applicable.~~ An NOI is not required for discharges authorized under General Permit No. 6 or No. 7, for certain discharges under General Permit No. 8, or for certain discharges under General Permit No. 9.

*a. Notice of Intent (NOI) Application Form.* ~~The following Notice of Intent forms must be completed in full.~~ Electronic NOI forms provided by the department must be completed in full on the department’s website. Paper NOI forms, when provided, must be completed in full.

~~(1) General Permit No. 1 “Storm Water Discharge Associated with Industrial Activity,” Form 542-1415.~~

~~(2) General Permit No. 2 “Storm Water Discharge Associated with Industrial Activity for Construction Activities,” Form 542-1415.~~

~~(3) General Permit No. 3 “Storm Water Discharge Associated with Industrial Activity from Asphalt Plants, Concrete Batch Plants, Rock Crushing Plants and Construction Sand and Gravel Facilities,” Form 542-1415.~~

~~(4) General Permit No. 4 “Discharge from On-Site Wastewater Treatment and Disposal Systems,” Form 542-1541.~~

~~(5) General Permit No. 5 “Discharge from Mining and Processing Facilities,” Form 542-4006.~~

~~(6) General Permit No. 7, “Pesticide General Permit (PGP) for Point Source Discharges to Waters of the United States From the Application of Pesticides.”~~

~~(7) General Permit No. 8 “Discharge from Hydrostatic Testing, Tank Ballasting and Water Lines.”~~

~~(8) General Permit No. 9 “Discharge from Dewatering and Residential Geothermal Systems.”~~

*b. General permit fee.* The applicable general permit fee according to the schedule in 567—64.16(455B) is payable to the Iowa Department of Natural Resources.

*c. Public notification.* ~~The following public notification requirements must be completed for the corresponding general permit only apply to General Permits No. 1, No. 2 and No. 3.~~

(1) Applicants for General Permits No. 1, No. 2 and No. 3—A demonstration must demonstrate that a public notice was published in at least one newspaper with the largest circulation in the area in which the facility is located or the activity will occur.

(2) The newspaper notice shall, at the minimum, contain the following information:

PUBLIC NOTICE OF STORM WATER DISCHARGE

The (applicant name) plans to submit a Notice of Intent to the Iowa Department of Natural Resources to be covered under NPDES General Permit (select the appropriate general permit—No.1 “Storm Water Discharge Associated with Industrial Activity”, ~~or~~ General Permit No.2 “Storm Water

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Discharge Associated with Industrial Activity for Construction Activities” or General Permit No. 3 “Storm Water Discharge Associated with Industrial Activity for Asphalt Plants, Concrete Batch Plants, Rock Crushing Plants, and Construction Sand and Gravel Facilities”). The storm water discharge will be from (description of industrial activity) located in (¼ section, township, range, county). Storm water will be discharged from (number) point source(s) and will be discharged to the following streams: (stream name(s)).

Comments may be submitted to the Storm Water Discharge Coordinator, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319-0034. The public may review the Notice of Intent from 8 a.m. to 4:30 p.m., Monday through Friday, at the above address after it has been received by the department.

~~(2) General Permits No. 4, No. 5, No. 6, No. 7, No. 8 and No. 9. There are no public notification requirements for these permits.~~

ITEM 33. Amend subrule 64.6(2) as follows:

**64.6(2) Authorization to discharge under a general permit.** Upon the submittal of a complete Notice of Intent NOI in accordance with 64.6(1) and 64.3(4) “b,” the applicant is authorized to discharge after evaluation of the Notice of Intent by the department is complete and the determination has been made that the contents of the Notice of Intent satisfy the requirements of 567—Chapter 64. The discharge authorization date for all storm water discharges associated with industrial activity that are in existence on or before October 1, 1992, shall be October 1, 1992. the department has determined that the contents of the NOI satisfy the requirements of 567—Chapter 64, evaluated the NOI, and determined that the proposed discharge meets the requirements of the general permit. The applicant will receive notification by from the department of coverage under the general permit. If any of the items required for filing a Notice of Intent an NOI specified in 64.6(1) are missing, the department will consider the application incomplete and will notify the applicant of the incomplete items. If the discharge described in the NOI does not meet the requirements of the general permit, the NOI may be denied. The department will notify applicants of denial within 30 days.

Authorization to discharge is automatic only for the general permits that do not require an NOI under 64.3(4), provided the discharge is a covered activity and the permittee complies with all applicable permit requirements.

ITEM 34. Amend subrule 64.6(3) as follows:

**64.6(3) General permit suspension or revocation.** In addition to the causes for suspension or revocation which are listed in 64.3(11), the director may suspend or revoke coverage under a general permit issued to a facility or a class of facilities for the following reasons and require the applicant to apply for an individual NPDES permit in accordance with 64.3(4) “a”:

a. The discharge would not comply with Iowa’s water quality standards pursuant to 567—Chapter 61, or

b. The department finds that the activities associated with a Notice of Intent an NOI filed with the department do not meet the conditions of the applicable general permit. The department will notify the affected discharger and establish a deadline, not longer than one year, for submitting an individual permit application, or

c. The department finds that water well construction and well service any discharge are covered under a general permit is not managed in a manner consistent with the conditions specified in General Permit No. 6, or the applicable general permit.

d. The department finds that discharges from biological pesticides and chemical pesticides which leave a residue are not managed in a manner consistent with the conditions specified in General Permit No. 7, or

e. The department finds that discharges from hydrostatic testing, tank ballasting or water line testing are not managed in a manner consistent with the conditions specified in General Permit No. 8, or

f. The department finds that discharges from dewatering or residential geothermal systems are not managed in a manner consistent with the conditions specified in General Permit No. 9.

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The department will notify the affected discharger and establish a deadline, not longer than one year, for submitting an individual permit application.

ITEM 35. Amend subrule 64.6(4) as follows:

**64.6(4) *Eligibility for individual NPDES permit holders.*** A person holding an individual NPDES permit for an activity covered by a general permit may apply for coverage under a general permit ~~upon expiration of the individual permit and~~ by filing a Notice of Intent an NOI according to procedures described in 64.3(4) “b-” and 567—64.6(455B). In addition to these requirements, the permittee must submit a written request, with the NOI, to close or revoke the individual NPDES permit or to amend the individual NPDES permit to remove the general permit-covered activity.

a. Upon receipt of a complete NOI and request for closure, revocation or amendment of an individual NPDES permit, the applicant shall be authorized to discharge under the general permit in accordance with 64.6(2). The applicant will receive notification by the department of coverage under the general permit and of the closure, revocation or amendment of the individual permit.

b. Authorization to discharge under a general permit that does not require an NOI will be automatic in accordance with 64.6(2) and shall commence upon completion of individual NPDES permit closure, revocation, or amendment.

c. Individual NPDES permit amendments under this subrule shall follow the applicable public notice procedures in 567—64.5(455B).

ITEM 36. Amend subrule 64.6(5), introductory paragraph, as follows:

**64.6(5) *Filing a Notice of Discontinuation.*** A notice to discontinue ~~the discharge associated with an activity covered by the NPDES a general permit shall be made electronically or in writing to the department 30 days prior to or after discontinuance of the discharge. For storm water discharge associated with industrial activity for construction activities, the discharge will be considered as discontinued when “final stabilization” has been reached. Final stabilization means that all soil-disturbing activities at the site have been completed and that a uniform perennial vegetative cover with a density of 70 percent for the area has been established or equivalent stabilization measures have been employed in accordance with the conditions established in each general permit.~~

ITEM 37. Amend paragraph **64.7(5)“b”** as follows:

**b. *Disadvantaged community analysis (DCA).*** A regulated entity or affected community must submit a ~~disadvantaged community analysis (DCA)~~ DCA to the director to be considered for disadvantaged status. ~~A DCA may only be submitted when new requirements in a proposed or reissued NPDES permit may result in SWESI.~~

(1) A When new requirements in a proposed or reissued NPDES permit may result in SWESI, a DCA may be submitted by any of the following:

1. A wastewater disposal system owned by a municipal corporation or other public body created by or under Iowa law and having jurisdiction over disposal of sewage, industrial wastes or other wastes, or a designated and approved management agency under Section 208 of the Act (a POTW);

2. A wastewater disposal system for the treatment or disposal of domestic sewage which is not a private sewage disposal system and which is not owned by a city, a sanitary sewer district, or a designated and approved management agency under Section 208 of the Act (33 U.S.C. 1288) (a semipublic system);  
or

3. Any other owner of a wastewater disposal system that is not a private sewage disposal system and does not discharge industrial wastes. “Private sewage disposal system” and “industrial waste” are defined in rule 567—60.2(455B).

(2) A DCA may be submitted prior to the issuance of an initial NPDES permit if the facility does not discharge industrial wastes and is not a new source or new discharger. “New source” is and “new discharger” are defined in rule 567—60.2(455B). “New discharger” means any building, structure, facility, or installation from which there is or may be a discharge of pollutants; that did not commence the discharge of pollutants at a particular site prior to August 13, 1979; that is not a new source; and that has never received a finally effective NPDES permit for discharges at that site.

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(3) A DCA may be submitted by the entities noted in subparagraph 64.7(5)“b”(1) above for consideration of a disadvantaged community loan interest rate under the clean water state revolving fund, independent of the requirements in a proposed or reissued NPDES permit.

ITEM 38. Amend subparagraph **64.7(5)“c”(2)** as follows:

(2) If the DCA is submitted by or for an entity other than a municipality, community, or water treatment facility, the DCA must also contain either:

1. For entities with more than ten households or ratepayers, the median household or ratepayer income, as determined by an income survey conducted by the regulated entity ~~based on the Iowa community development block grant income survey guidelines~~ (the survey must be included in the DCA); or

2. No change.

ITEM 39. Amend paragraph **64.7(5)“e”** as follows:

*e. Disadvantaged community matrix (DCM).* The department hereby incorporates by reference “Disadvantaged Community Matrix,” DNR Form 542-1246, ~~effective January 16, 2013.~~ This document may be obtained on the department’s NPDES website.

Upon receipt of a complete DCA, the director shall use the ~~disadvantaged community matrix (DCM)~~ DCM to evaluate the disadvantaged status of the community. The DCM shall be used to evaluate DCAs submitted in accordance with 64.7(5)“b.” Compliance with the applicable federal regulations, requirements in 567—Chapters 60, 61, 62, 63, and 64, or an order of the department shall be considered to result in SWESI, and the regulated entity and affected community shall be considered a disadvantaged community, if the point total derived from the DCM is equal to or greater than 12. The following data sources shall be used to derive the point total in the DCM:

- (1) The total annual project costs as stated in the DCA;
- (2) The number of households or ratepayers in a community as stated in the DCA;
- (3) The bond rating of the community, if available, as stated in the DCA;
- (4) The MHI of either:

1. The community, as found in the most recent American Community Survey or United States Census or as stated in an income survey that is conducted by the regulated entity or community ~~and is based on the Iowa community development block grant income survey guidelines;~~ or

2. The ratepayer group, as stated in an income survey that is conducted by the regulated entity ~~and is based on the Iowa community development block grant income survey guidelines;~~ and

(5) The unemployment rate of the county where the community is located and of the state as found in the most recent Iowa Workforce Information Network unemployment data.

The ratio of the total annual project costs per household or per ratepayer to MHI shall be calculated in the DCM as follows: The total annual project costs shall be divided by the number of households or ratepayers to obtain the costs per household or per ratepayer, and the costs per household or per ratepayer shall be divided by the MHI to obtain the ratio.

ITEM 40. Amend paragraph **64.7(6)“b”** as follows:

*b. Disadvantaged unsewered community analysis (DUCA).* ~~To be considered for disadvantaged unsewered community status, an unsewered community may submit a disadvantaged unsewered community analysis (DUCA) to the director prior to the issuance of or amendment to an administrative order with requirements that could result in SWESI and that are based on applicable federal regulations, requirements in 567—Chapters 60, 61, 62, 63, and 64, or an order of the department. An unsewered community must submit a DUCA to the director to be considered for disadvantaged unsewered community status.~~ Only unsewered communities may submit a DUCA under this subrule. For the purposes of this subrule, an unsewered community is defined as a grouping of ten or more residential houses with a density of one house or more per acre and with either no wastewater treatment or inadequate wastewater treatment. An entity defined in rule 567—60.2(455B) as a private sewage disposal system may not submit a DUCA or qualify for a disadvantaged unsewered community compliance agreement under paragraph 64.7(6)“g.”

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(1) An unsewered community may submit a DUCA to the director prior to the issuance of or amendment to an administrative order with requirements that could result in SWESI and that are based on applicable federal regulations, requirements in 567—Chapters 60, 61, 62, 63, and 64, or an order of the department.

(2) A DUCA may also be submitted for consideration of a disadvantaged community loan interest rate under the clean water state revolving fund, independent of an administrative order.

ITEM 41. Amend paragraph **64.7(6)“c”** as follows:

*c. Contents of a DUCA.* A DUCA must contain all of the following:

- (1) Proposed total annual project costs as defined in paragraph 64.7(6) “d”;
- (2) The number of households in the unsewered community and source of household information;
- (3) Total amount of any awarded grant funding; and
- (4) An explanation of why the unsewered community believes that compliance with the proposed requirements will result in SWESI.

If no MHI information is available for the unsewered community, the community should conduct a rate survey to determine the MHI. ~~The survey must be conducted in accordance with the Iowa community development block grant income survey guidelines. In addition, the survey must be attached to the DCA.~~

ITEM 42. Amend paragraph **64.7(6)“e”** as follows:

*e. Disadvantaged unsewered community matrix (DUCM).* The department hereby incorporates by reference “Disadvantaged Unsewered Community Matrix,” DNR Form 542-1247, ~~effective January 16, 2013.~~ This document may be obtained on the department’s NPDES website.

Upon receipt of a complete DUCA, the director shall use the ~~disadvantaged unsewered community matrix (DUCM)~~ DUCM to evaluate the disadvantaged status of the unsewered community. The DUCM shall be used to evaluate DUCAs submitted in accordance with 64.7(6) “b.” Compliance with applicable federal regulations, requirements in 567—Chapters 60, 61, 62, 63, and 64, or an order of the department shall be considered to result in SWESI, and the unsewered community shall be considered a disadvantaged unsewered community, if the point total derived from the DUCM is equal to or greater than 10. The following data sources shall be used to derive the point total in the DUCM:

- (1) The total annual project costs as stated in the DUCA;
- (2) The number of households in the unsewered community as stated in the DUCA;
- (3) The MHI of the unsewered community as found in the most recent American Community Survey or United States Census or as stated in an income survey that is conducted by the ~~regulated entity or unsewered community and is based on the Iowa community development block grant income survey guidelines;~~ and
- (4) The unemployment rate of the county where the unsewered community is located and of the state as found in the most recent Iowa Workforce Information Network unemployment data.

The ratio of the total annual project costs per household to MHI shall be calculated in the DUCM as follows: the total annual project costs shall be divided by the number of households in the unsewered community to obtain the costs per household, and the costs per household shall be divided by the MHI to obtain the ratio.

ITEM 43. Amend subrule 64.8(2) as follows:

**64.8(2) Renewal of coverage under a general permit.** Coverage under a general permit will be renewed subject to the terms and conditions in paragraphs “a” ~~to “d.”~~ and “b.”

*a.* If a permittee intends to continue an activity covered by a general permit for which an NOI is required beyond the expiration date of the general permit, the permittee must reapply and submit a complete Notice of Intent NOI in accordance with 64.6(1) the requirements specified in the applicable general permit.

*b.* ~~A complete Notice of Intent for coverage under a reissued or renewed general permit must be submitted to the department within 180 days after the expiration date of a general permit.~~

*e. b.* A person holding a general permit is subject to the terms of the permit until it either the permit expires, the authorization under the permit expires, or a Notice of Discontinuation is submitted in accordance with 64.6(5).

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(1) If the person holding a general permit continues the activity beyond the expiration date of the permit and the permit will be reissued, the conditions of the expired general permit will remain in effect provided the permittee submits a complete Notice of Intent NOI for coverage under a renewed or reissued general permit within 180 days after the expiration date of the expired as required by the applicable general permit.

(2) If the person holding a general permit continues an the activity for which the general permit has expired beyond the expiration date of the permit and the general permit has not been will not be reissued or renewed, the discharge must be permitted with an individual NPDES permit according to the procedures in 64.3(4) "a."

*d.*—The Notice of Intent requirements shall not include a public notification when a general permit has been reissued or renewed provided the permittee has already submitted a complete Notice of Intent including the public notification requirements of 64.6(1). Another public notice is required when any information, including facility location, in the original public notice is changed.

ITEM 44. Amend rule 567—64.10(455B) as follows:

**567—64.10(455B) Silvicultural activities.** The following is adopted by reference: 40 CFR Section 122.27.

ITEM 45. Amend subrule 64.13(1) as follows:

**64.13(1)** The following is adopted by reference: 40 CFR Section 122.26.

ITEM 46. Amend rule 567—64.14(455B) as follows:

**567—64.14(455B) Transfer of title and owner or operator address change.**

**64.14(1)** Permits issued under rule 567—64.2(455B), 567—64.3(455B), or 567—64.6(455B), except 64.6(1) "a" (5) and (6). If title to any disposal system or part thereof for which a permit has been issued under these rules rule 567—64.2(455B), 567—64.3(455B), or 567—64.6(455B) is transferred, the new owner or owners shall be subject to all terms and conditions of the permit. Whenever title to a disposal system or part thereof is changed, the department shall be notified in writing of such change within 30 days of the occurrence. When a discharge is covered by a general permit, the operator of record shall be subject to all terms and conditions of the permit. No transfer of the authorization to discharge from the facility represented by the permit shall take place prior to notification of the department of the transfer of title. Whenever the address of the owner is changed, the department shall be notified in writing within 30 days of the address change. ~~Electronic notification is not sufficient; all title transfers and address changes must be reported to the department by mail.~~

**64.14(2)** ~~Permits issued under 64.6(1) "a" (5) and (6). When the operator of a facility permitted under subparagraphs 64.6(1) "a" (5) and (6) changes, the department must be notified of the transfer within 30 days. When a discharge is covered by the general permit, the operator of record shall be subject to all terms and conditions of the permit. No transfer of the authorization to discharge from the facility represented by the permit shall take place prior to notification of the department of the transfer. Whenever the address of the operator is changed, the department shall be notified in writing within 30 days of the address change. Electronic notification is not sufficient; all transfers and address changes must be reported to the department by mail.~~

ITEM 47. Amend subrule 64.16(1) as follows:

**64.16(1)** A person who applies for an individual permit or coverage under a general permit to construct, install, modify or to operate a disposal system shall submit along with the application an application fee or a permit fee or both as specified in 64.16(3). 64.16(3) "b." Certain individual facilities shall also be required to submit annual fees as specified in 64.16(3) "b." ~~Fees shall be assessed based on the type of permit coverage the applicant requests, either as general permit coverage or as an individual permit.~~ For a wastewater construction permit, an application fee must be submitted with the application, as specified in 64.16(3) "c." For authorization under General Permits Nos. 1, 2, 3 and 5, the applicant has the option of paying an annual permit fee or a multiyear permit fee at the time the Notice of Intent NOI for coverage is submitted. as specified in 64.16(3) "a."

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For ~~municipal separate storm sewer system (MS4s) permits and individual storm water only permits, as defined in 567—60.2(455B), a one-time, multiyear permit fee must be submitted at the time of application. A storm water only permit is defined as an NPDES permit that authorizes the discharge of only storm water and any allowable non-storm water as defined in the permit. For all other individual non-storm water NPDES permits and operation permits, as defined in 567—60.2(455B), the applicant must submit an application fee at the time of application and the appropriate annual fee on a yearly basis, except for municipal water treatment facilities. A non-storm water NPDES permit is defined as any individual NPDES permit or operation permit issued to a municipality, industry, semipublic entity, or animal feeding operation that is not an individual storm water only permit. If a facility needs coverage under more than one NPDES or operation permit, fees for each permit must be submitted appropriately.~~

Fees are nontransferable. Failure to submit the appropriate fee at the time of application renders the application incomplete, and the department shall suspend processing of the application until the fee is received. Failure to submit the appropriate annual fee may result in revocation or suspension of the permit as noted in ~~64.3(11)“f.”~~ 64.3(11).

ITEM 48. Amend subrule 64.16(2) as follows:

**64.16(2)** Payment of fees. Fees shall be paid by check, credit card, electronic payment, or money order made payable to the “Iowa Department of Natural Resources.”

~~For facilities needing coverage under both a storm water only permit and a non-storm water NPDES permit more than one permit (e.g., general, individual storm water, individual non-storm water), separate payments shall be made according to the fee schedule in 64.16(3).~~

ITEM 49. Amend subrule 64.16(3) as follows:

**64.16(3)** Fee schedule. The following fees have been adopted:

~~a. For coverage under the NPDES general permits, the following fees apply: General permit fees. No fees shall be assessed for coverage under general permits not listed in this paragraph. The following fees are applicable to the described general permits:~~

(1) Storm Water Discharges Associated with Industrial Activity, NPDES General Permit No. 1.

|                                 |                 |
|---------------------------------|-----------------|
| Annual Permit Fee . . . . .     | \$175(per year) |
| or                              |                 |
| Five-year Permit Fee . . . . .  | \$700           |
| Four-year Permit Fee . . . . .  | \$525           |
| Three-year Permit Fee . . . . . | \$350           |

All fees are to be submitted with the ~~Notice of Intent~~ NOI for coverage under the general permit.

(2) Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2. The fees are the same as those specified for General Permit No. 1 in subparagraph (1) of this paragraph.

(3) Storm Water Discharge Associated with Industrial Activity from Asphalt Plants, Concrete Batch Plants, and Rock Crushing Plants, NPDES General Permit No. 3. The fees are the same as those specified for General Permit No. 1 in subparagraph (1) of this paragraph.

~~(4) Discharge from Private Sewage Disposal Systems, NPDES Permit No. 4. No fees shall be assessed.~~

~~(5)~~ (4) Discharge from Mining and Processing Facilities, NPDES General Permit No. 5.

|                                 |                  |
|---------------------------------|------------------|
| Annual Permit Fee . . . . .     | \$125 (per year) |
| or                              |                  |
| Five-year Permit Fee . . . . .  | \$500            |
| Four-year Permit Fee . . . . .  | \$400            |
| Three-year Permit Fee . . . . . | \$300            |

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

New facilities seeking General Permit No. 5 coverage shall submit fees with the ~~Notice of Intent NOI~~ for coverage. Maximum coverage is for five years. Coverage may also be obtained for four years, three years, or one year, as shown in the fee schedule above. Existing facilities shall submit annual fees by August 30 of every year, unless a multiyear fee payment was received in an earlier year. In the event a facility is no longer eligible to be covered under General Permit No. 5, the remainder of the fees previously paid by the facility shall be applied toward its individual permit fees.

b. Individual NPDES and operation permit fees. The following fees are applicable for the described individual NPDES ~~permit permits~~:

(1) For ~~individual storm water permits that authorize the discharge of only storm water associated with industrial activity and any allowable non-storm water~~, a five-year permit fee of \$1,250 must accompany the application.

(2) For permits that authorize the discharge of only storm water from municipal separate storm sewer systems (MS4s) and any allowable non-storm water, a five-year permit fee of \$1,250 must accompany the application.

(3) For ~~operation and individual non-storm water NPDES and operation permits not subject to subparagraphs (1) and (2)~~, a single application fee of \$85 as established in Iowa Code section 455B.197 is due at the time of application. The \$1,250 fee in subparagraphs (1) and (2) is not required for individual non-storm water permits that authorize storm water discharges along with other wastewater discharges. The \$85 application fee is to be submitted with the application forms (as required by 567—Chapter 60) at the time of a new application, renewal application, or amendment application. Before an approved amendment request submitted by a facility holding a non-storm water NPDES or operation permit can be processed by the department, the application \$85 fee must be submitted. Application fees will not be charged to facilities holding non-storm water NPDES permits, except when an amendment request is initiated by the director, when the requested amendment will correct an error in the permit, when the amendment is for a disadvantaged community compliance schedule or nutrient reduction strategy, or when there is a transfer of title or change in the address of the owner as noted in 567—64.14(455B).

(4) ~~For every major and minor municipal facility, every semipublic facility, every major and minor industrial facility, every facility that holds an operation permit (no wastewater discharge into surface waters), and every open feedlot animal feeding operation required to hold a non-storm water NPDES permit, an individual non-storm water NPDES and operation permits, the following annual fee fees, as established in Iowa Code section 455B.197 is, are due by August 30 of each year:~~

1. Major municipal facility: \$1,275.

2. Minor municipal facility: \$210. For a city with a population of 250 or less, the maximum fee shall be \$210 regardless of how many individual non-storm water NPDES permits the city holds.

3. Semipublic facility: \$340.

4. Major industrial facility: \$3,400.

5. Minor industrial facility: \$300.

6. Facilities that hold an operation permit: \$170.

7. Animal feeding operations covered by a non-storm water NPDES permit: \$340.

(5) ~~For every a municipal water treatment facility with a an individual non-storm water NPDES permit, no fee is charged (as established in Iowa Code section 455B.197) fees shall be assessed.~~

(6) For a new facility covered by an individual non-storm water NPDES or operating permit, an a prorated annual fee as established in Iowa Code section 455B.197, calculated by taking the annual fee amount multiplied by the number of months remaining before the next annual fee due date divided by 12, is due 30 days after the new permit is issued.

c. No change.

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

ITEM 50. Rescind subrules **64.16(5)** to **64.16(8)**.

ITEM 51. Renumber subrule **64.16(9)** as **64.16(5)**.

ITEM 52. Renumber rules **567—64.17(455B)** and **567—64.18(455B)** as **567—64.18(455B)** and **567—64.19(455B)**.

ITEM 53. Adopt the following new rule 567—64.17(455B):

**567—64.17(455B) Nutrient reduction exchange.** The department shall maintain a registry of nonpoint source nutrient reduction practices installed by permittees. Practices listed in the registry may be eligible for future regulatory incentives.

**ARC 6038C****ENVIRONMENTAL PROTECTION COMMISSION[567]****Notice of Intended Action****Proposing rule making related to standards for the land application of sewage sludge and providing an opportunity for public comment**

The Environmental Protection Commission (Commission) hereby proposes to amend Chapter 67, “Standards for the Land Application of Sewage Sludge,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 455B.304.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 455B.304 and 40 CFR Parts 127 and 503.

*Purpose and Summary*

Chapter 67 establishes standards for the land application of sewage sludge generated during the treatment of domestic sewage in a treatment works. The purpose of this proposed rule making is to clean up and modify the sludge rules for readability and to align with governing federal law.

Broadly speaking, the proposed amendments to Chapter 67 will clarify and refine definitions and other land application requirements. The proposed amendments also update the sewage sludge classifications, terms, land application pathogen reduction methods, and sludge testing methods to be consistent with 40 CFR Part 503 (Standards for the Use or Disposal of Sewage Sludge). Finally, the proposed amendments revise the sewage sludge annual reporting rules to comply with the federal electronic reporting requirements in 40 CFR Part 127 (NPDES [National Pollution Discharge Elimination System] Electronic Reporting).

In more detail, the proposed amendments make the following changes:

- Items 1, 3, 4, and 5, collectively, move all definitions into the chapter’s definition rule, add definitions of existing but previously undefined terms (Class I, II, and III sludge), adopt the federal definitions of “generator” and “sewage sludge,” and either add or update references to other applicable state and federal law.

- Item 2 clarifies that sludge generated at an industrial treatment plant treating only domestic sewage is regulated by Chapter 67, consistent with 40 CFR Part 503.

- Item 6 modifies the sludge permit requirements. The Department of Natural Resources (Department) generally does not need a separate permit application for sludge land application because the sewage sludge requirements are contained as permit conditions in all Department-issued NPDES permits for publicly owned treatment works, and the sewage sludge regulations are self-regulating in

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

nature. The proposed addition of subrule 67.6(2) will allow for a case-by-case review in the unlikely event the sewage sludge is generated at a facility without a Department-issued NPDES permit.

- Items 7 and 8 adopt several aspects of federal law. First, the amendments adopt the six alternatives for meeting the Class A pathogen requirements in 40 CFR Section 503.32. The amendments update the Class I sludge vector attraction reduction (VAR) methods to be consistent with 40 CFR Section 503.33. Finally, the amendments add clarifying language and strike the open waterway site management restriction for Class I sludge because there is no site restriction for such sludge in 40 CFR Part 503.

- Items 9 and 17 correct the conversion amounts for metric tons to English tons in the monitoring tables.

- Items 10 and 18 adopt the federal NPDES eReporting requirements.

- Items 11 through 15, collectively, simplify the Class II sludge language, clarify the Class II sludge criteria and site management restrictions, match the proposed changes to subrules 67.7(1) and 67.7(2) regarding Class I sludge, and align with the best management practices in 40 CFR Part 503 and EPA's Biosolids Management Handbook. The proposed Class II VAR methods are identical to the Class I methods.

- Item 16 adopts the language from 40 CFR Section 503.32(b)(5)(i) concerning food crop harvesting.

- Item 19 updates sampling and analytical method references.

- Item 20 rescinds redundant language. This lettered subparagraph is duplicative to the High pH – High Temperature Process alternative of the Class A pathogen requirements for Class I sludge in subrule 67.7(1).

#### *Fiscal Impact*

This rule making has no negative fiscal impact to the State of Iowa. Additionally, no negative fiscal impact is expected to the private sector. A copy of the fiscal impact statement is available from the Department upon request.

#### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

#### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

#### *Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on December 13, 2021. Comments should be directed to:

Satya Chennupati  
Iowa Department of Natural Resources  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319  
Email: [satya.chennupati@dnr.iowa.gov](mailto:satya.chennupati@dnr.iowa.gov)

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

*Public Hearing*

A public hearing at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend the conference call should contact Satya Chennupati via email. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the conference call public hearing must submit a request to Satya Chennupati prior to the hearing to facilitate an orderly hearing.

December 9, 2021  
2 p.m.

Via video/conference call

Persons who wish to make oral comments at the public hearing will be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 67.1(1) as follows:

**67.1(1)** General. This chapter establishes standards for the land application of sewage sludge generated during the treatment of domestic sewage in a treatment works. This chapter applies to any ~~person who prepares sewage sludge (generator), to any person who applies sewage sludge to the land (applicator)~~ generator, applicator, or both, and to sewage sludge applied to the land. No person shall land apply sewage sludge through any practice for which requirements are established in this chapter except in accordance with such requirements.

*a.* In areas that are not specifically addressed in this chapter or in 567—Chapter 68, but which are addressed in federal regulations for sewage sludge applied to land at 40 CFR Part 503 as amended through July 1, 2021, the federal regulations shall apply under this rule and are hereby adopted by reference under this chapter.

*b.* On a case-by-case basis, this department may impose requirements for the land application of sewage sludge in addition to or more stringent than the requirements in this chapter when necessary to protect public health and the environment from any adverse effect of a pollutant in the sewage sludge.

ITEM 2. Amend subrule 67.2(1) as follows:

**67.2(1)** Sludge generated at an industrial facility, not including sludge generated from separately treated domestic sewage at an industrial facility.

ITEM 3. Amend rule 567—67.4(455B) as follows:

**567—67.4(455B) Land application program.** All sewage sludge generators wishing to land apply sewage sludge shall establish and maintain in writing a long-range program for land application of sewage sludge. This program shall be developed for a minimum period of five years and shall be updated annually. A copy of this program shall be available at the facility for inspection by the department. At a minimum, this program shall contain the following information in detail for the next calendar year and in general terms for the following four years. The plan shall include, but not be limited to, the following:

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

**67.4(1)** An outline of the sewage sludge sampling schedule and procedures ~~which that~~ will be followed to ensure that the sewage sludge being applied to land continues to meet the requirements.

**67.4(2)** A determination of the amount of land required to allow land application to be conducted in accordance with the requirements.

**67.4(3)** Identification of the land and application methods ~~which that~~ will be used for land application of the sewage sludge. Those areas and application methods shall be selected as necessary to ensure that land application can be conducted in accordance with the requirements.

**67.4(4)** The names of the ~~owners landowners and operators of the applicators~~ for all land areas to be used for land application, and identification of any legal arrangements made relative to related to the use of these areas. The programs ~~should shall~~ also outline any restrictions or special conditions ~~which that~~ exist regarding the use of these areas for land application of sewage sludge.

**67.4(5)** An overall schedule for the land application of sewage sludge. This schedule ~~should shall~~ indicate the areas being used, the time of year that land application will occur on each area ~~will be conducted~~, and the ~~proposed estimated application rates~~ rate for each area.

**67.4(6)** A determination of the types and capacities of the equipment required for land application of sewage sludge in accordance with the developed application schedule. The program shall also outline how the ~~required~~ application equipment will be made available and who will be responsible for conducting land application operations.

**67.4(7)** A determination of the ~~volumes and types and capacities of sludge storage and handling facilities required~~ structures used to allow ensure that the land application of sewage sludge ~~to be is~~ conducted in accordance with the land application schedule. The program shall also outline ~~how whether~~ any ~~required~~ additional sludge storage or handling facilities ~~will be provided are needed~~.

**67.4(8)** A plan to construct or obtain any additional sludge storage, handling or application facilities or equipment ~~which that~~ are required by the land application program.

ITEM 4. Adopt the following new definitions of “Applicator,” “Class I sewage sludge,” “Class II sewage sludge,” “Class III sewage sludge” and “Generator” in rule ~~567—67.5(455B)~~:

“*Applicator*” or “*sewage sludge applicator*” is any person who applies sewage sludge to the land.

“*Class I sewage sludge*” is sewage sludge that meets the criteria under subrule 67.7(1).

“*Class II sewage sludge*” is sewage sludge that meets the criteria under subrule 67.8(1).

“*Class III sewage sludge*” is any sewage sludge that cannot meet either Class I sewage sludge criteria or Class II sewage sludge criteria.

“*Generator*” or “*sewage sludge generator*” is any person who generates sewage sludge, who derives a material from sewage sludge, or both.

ITEM 5. Amend rule ~~567—67.5(455B)~~, definition of “Sewage sludge,” as follows:

“*Sewage sludge*” is solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or the grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

ITEM 6. Amend rule ~~567—67.6(455B)~~ as follows:

**~~567—67.6(455B)~~ Permit requirements.** Prior to any land application of sewage sludge, a permit must be obtained by the sewage sludge generator in accordance with the following requirements:

**~~67.6(1)~~** Any treatment facility ~~proposing to land apply sewage sludge shall apply for a permit for land application of sewage sludge on a properly completed form supplied by the department. Application forms may be obtained from:~~

Environmental Services Division  
Iowa Department of Natural Resources  
Wallace State Office Building  
502 East 9th Street

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Des Moines, Iowa 50319

<http://www.iowadnr.gov/>

Properly completed forms should be submitted in accordance with the instructions for the form.

*a.*—Permit application for land application of sewage sludge from new facilities shall be filed at least 180 days prior to the date operation is scheduled to begin unless a shorter period of time is approved by the department.

*b.*—Existing facilities generating sewage sludge shall file an application for land application of sewage sludge within 90 days of September 21, 1994, or at least 180 days prior to the expiration of any state operation or NPDES permit issued to the facility pursuant to 567—64.3(455B) or 567—64.4(455B), whichever date is later.

*c.*—Sewage sludge disposal operations which are not regulated under 567—Chapter 64 shall apply for a permit for land application of sewage sludge no later than 90 days after September 21, 1994.

~~67.6(2)~~ **67.6(1)** The permit for the land application of sewage sludge for ~~any sewage sludge generating facility~~ produced by a wastewater treatment facility that has been issued a construction permit from the department will be issued concurrently and as part of a state operation permit or NPDES permit. The issuance process and permit terms will be the same as that specified for NPDES permits in 567—Chapter 64.

**67.6(2)** The department will review, on a case-by-case basis, requests for a permit to land apply sewage sludge or any material derived from sewage sludge if the sewage sludge is produced outside of the state of Iowa or produced by a wastewater treatment plant that has not been issued a construction permit from the department.

ITEM 7. Amend subrule 67.7(1) as follows:

**67.7(1)** *Class I sewage sludge criteria.* ~~Class I sludge is sewage sludge that has excellent quality and has been treated in a process equivalent to processes to further reduce pathogens (PFRP).~~ Class I sewage sludge is sewage sludge that meets the pollutant concentrations in paragraph 67.7(1) “a,” the Class A pathogen reduction requirements in paragraph 67.7(1) “b,” and the vector attraction reduction requirements in paragraph 67.7(1) “c” below.

*a.* Pollutant concentrations for Class I sewage sludge. The concentration of each pollutant in the sewage sludge shall not exceed the concentration for the pollutant in Table 1.

TABLE 1—POLLUTANT CONCENTRATIONS

| Pollutant | Monthly Average Concentration |
|-----------|-------------------------------|
|           | milligrams per kilogram*      |
| Arsenic   | 41                            |
| Cadmium   | 39                            |
| Copper    | 1500                          |
| Lead      | 300                           |
| Mercury   | 17                            |
| Nickel    | 420                           |
| Selenium  | 100                           |
| Zinc      | 2800                          |

\*Dry weight basis

*b.* Class A pathogen requirements for Class I sewage sludge. ~~One of the monitoring processes in (1) below and also one of the analytical and treatment processes in (2) below shall be met for a sewage sludge to be classified as Class I sludge.~~ The sewage sludge shall comply with subparagraphs 67.7(1) “b”(1) and (2) below.

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

(1) Monitoring processes. The sewage sludge shall comply with one of the following monitoring processes. Compliance with pathogen density shall not be based on an average value. Each individual sample result shall meet the numerical pathogen standards.

1. The density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or

2. The density of Salmonella sp. bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis).

(2) Analytical and treatment processes. The sewage sludge shall comply with one of the following analytical and treatment processes.

1. The density of enteric viruses in the sewage sludge shall be less than one Plaque-forming Unit per four grams of total solids (dry weight basis). The temperature of the sewage sludge shall be maintained at a specific value for a period of time using one of the procedures detailed below.

- When the percent solids of the sewage sludge is 7 percent or higher, the temperature of the sewage sludge shall be 50 degrees Celsius or higher; the time period shall be 20 minutes or longer; and the temperature and time period shall be determined using Equation 1, except when small particles of sewage sludge are heated by either warmed gases or an immiscible liquid.

- When the percent solids of the sewage sludge is 7 percent or higher and small particles of sewage sludge are heated by either warmed gases or an immiscible liquid, the temperature of the sewage sludge shall be 50 degrees Celsius or higher; the time period shall be 15 seconds or longer; and the temperature and time period shall be determined using Equation 1.

- When the percent solids of the sewage sludge is less than 7 percent and the time period is at least 15 seconds, but less than 30 minutes, the temperature and time period shall be determined using Equation 1.

Equation 1:

$$D = 131,700,000/10^{0.1400t}$$

Where D = time in days; t = temperature in degrees Celsius.

- When the percent solids of the sewage sludge is less than 7 percent; the temperature of the sewage sludge is 50 degrees Celsius or higher; and the time period is 30 minutes or longer, the temperature and time period shall be determined using Equation 2.

Equation 2:

$$D = 50,070,000/10^{0.1400t}$$

Where D = time in days; t = temperature in degrees Celsius.

2. The density of viable helminth ova in the sewage sludge shall be less than one per four grams of total solids (dry weight basis). The sewage sludge shall meet all of the following requirements:

- The pH of the sewage sludge shall be raised to above 12 and shall remain above 12 for 72 hours;
- The temperature of the sewage sludge shall be above 52 degrees Celsius for 12 hours or longer during the period that the pH of the sewage sludge is above 12; and

- At the end of the 72-hour period during which the pH of the sewage sludge is above 12, the sewage sludge shall be air dried to achieve a percent solids in the sewage sludge greater than 50 percent.

3. Sewage sludge treated in other known processes shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains enteric viruses and viable helminth ova. The density of enteric viruses in the sewage sludge after pathogen treatment shall be less than one plaque-forming unit per four grams of total solids (dry weight basis). The density of viable helminth ova in the sewage sludge after pathogen treatment shall be less than one per four grams of total solids (dry weight basis). Once the process has been demonstrated to achieve the required pathogen reduction, the process must be operated under the same conditions that were used during the demonstration.

4. Sewage sludge treated by unknown processes or by processes operating at conditions less stringent than the operating conditions at which the sewage sludge could qualify as Class I under other

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

alternatives shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains enteric viruses and viable helminth ova. The density of enteric viruses in the sewage sludge shall be less than one plaque-forming unit per four grams of total solids (dry weight basis). The density of viable helminth ova in the sewage sludge shall be less than one per four grams of total solids (dry weight basis).

~~3.~~ 5. Sewage sludge shall be treated in one of the Processes to Further Reduce Pathogens (PFRP) described in 567—67.11(455B).

~~4.~~ 6. Sewage sludge shall be treated in a process that is equivalent to a Process to Further Reduce Pathogens (PFRP), as determined by the department.

*c.* Vector attraction reduction requirements for Class I sewage sludge. One of the vector attraction reduction requirements shall be met for a sewage sludge to be classified as Class I sludge. The sewage sludge shall meet one of the following vector attraction reduction requirements.

(1) The mass of volatile solids in the sewage sludge shall be reduced by a minimum of 38 percent.

(2) Digest a portion of the previously anaerobically digested sewage sludge anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30 and 37 degrees Celsius. If, at the end of the 40 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 17 percent, vector attraction reduction is achieved.

(3) Digest a portion of the previously aerobically digested sewage sludge that has 2 percent solids or less aerobically in the laboratory in a bench-scale unit for 30 additional days at 20 degrees Celsius. If, at the end of the 30 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 15 percent, vector attraction reduction is achieved.

~~(2)~~ (4) The specific oxygen uptake rate (SOUR) for sewage sludge treated in an aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20 degrees Celsius.

~~(3)~~ Digest a portion of the previously anaerobically digested sewage sludge anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30 and 37 degrees Celsius. At the end of the 40 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 17 percent.

~~(4)~~ Digest a portion of the previously aerobically digested sewage sludge that has a percent solids of 2 percent or less aerobically in the laboratory in a bench-scale unit for 30 additional days at 20 degrees Celsius. At the end of the 30 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 15 percent.

(5) Sewage sludge shall be treated in an aerobic process for 14 days or longer. During that time, the temperature of the sewage sludge shall be higher than 40 degrees Celsius and the average temperature of the sewage sludge shall be higher than 45 degrees Celsius.

(6) The pH of sewage sludge shall be raised to 12 or higher, measured at 25 degrees Celsius, by alkali addition and, without the addition of more alkali, shall remain at 12 or higher for 2 hours and then at 11.5 or higher for an additional 22 hours.

(7) The percent solids of sewage sludge that does not contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 75 percent based on the moisture content and total solids prior to mixing with other materials.

(8) The percent solids of sewage sludge that contains unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 90 percent based on the moisture content and total solids prior to mixing with other materials.

~~(7)~~ (9) Sewage sludge shall be injected below the surface of the land and no significant amount of the sewage sludge shall be present on the land surface within one hour after the sewage sludge is injected.

~~(8)~~ (10) Sewage sludge applied to the land surface or placed on a surface disposal site shall be incorporated into the soil within six hours after application to or placement on the land.

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

ITEM 8. Amend subrule 67.7(2) as follows:

**67.7(2) Management practices for Class I sewage sludge.** Class I sewage sludge may be land applied in conformance with the following rules:

- ~~a.~~ a. Only Class I sewage sludge ~~can~~ may be applied to a lawn or a home garden.
- ~~b.~~ b. Sewage sludge shall not be applied to land that is 35 feet or less from an open waterway.
- ~~c.~~ b. Sewage sludge shall be applied to the land at an annual whole sludge application rate that is equal to or less than the agronomic nitrogen uptake rate, unless otherwise specified by the department.
- ~~d.~~ c. An information sheet shall be provided to the person who receives sewage sludge sold or given away in a container for application to the land. The label or information sheet shall contain the following information:

- (1) The name and address of the sewage sludge generator.
- (2) A statement that application of the sewage sludge to the land is prohibited except in accordance with the instructions on the information sheet.
- (3) The annual application rate for the sewage sludge.

ITEM 9. Amend paragraph 67.7(3)“a” as follows:

- a. The frequency of monitoring for the pollutants listed in Table 1, the pathogen density requirements, and the vector attraction reduction requirements shall be the frequency stated in Table 2.

TABLE 2—FREQUENCY OF MONITORING

| Amount of sewage sludge<br><del>metric tons</del> per 365-day period<br>dry weight basis  | Monitoring<br>Frequency                |
|---|--|
| Greater than <del>zero</del> 0 but<br>less than 290 <u>metric tons</u><br>(or <del>325</del> <u>320</u> <del>English ton</del> <u>tons</u> )  | once per year                          |
| Equal to or greater than<br>290 but less than 1,500 <u>metric</u><br><u>tons</u><br>( <del>English ton</del> <del>325</del> <u>320</u> to <del>1,680</del><br><u>1,653</u> <u>English tons</u> )          | once per quarter<br>(4 times per year) |
| Equal to or greater than<br>1,500 but less than 15,000 <u>metric</u><br><u>tons</u><br>( <del>English ton</del> <del>1,680</del> <u>1,653</u> to<br><del>16,800</del> <u>16,535</u> <u>English tons</u> ) | once per 60 days<br>(6 times per year) |
| Equal to or greater than<br>15,000 <u>metric tons</u><br>(or <del>16,800</del> <u>16,535</u> <u>English ton</u><br><u>tons</u> )  | once per month<br>(12 times per year)  |

ITEM 10. Amend paragraph 67.7(4)“b” as follows:

- b. Treatment works with a design flow rate of 1 million gallons per day or greater and treatment works that serve 10,000 people or more shall submit the above information to the ~~department~~ EPA, using EPA’s NPDES eReporting Tool (NeT), by February 19 of each year for the previous calendar year.

ITEM 11. Amend subrule 67.8(1), introductory paragraph, as follows:

**67.8(1) Class II sludge criteria.** ~~Class II sludge is sewage sludge that has normal quality and has been treated in a process equivalent to Processes to Significantly Reduce Pathogens (PSRP).~~ Class II sewage sludge is sewage sludge that meets the pollutant concentrations in paragraph 67.8(1)“a,” the

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

pathogen reduction standards in paragraph 67.8(1) "b," and the vector attraction reduction requirements in paragraph 67.8(1) "c" below.

ITEM 12. Amend paragraph **67.8(1)"a,"** introductory paragraph, as follows:

a. Pollutant concentrations for Class II sewage sludge. The concentration of any pollutant in the sewage sludge shall not exceed the ceiling concentration for the pollutant in Table 3.

ITEM 13. Amend paragraph **67.8(1)"b,"** introductory paragraph, as follows:

b. Pathogen reduction requirements for Class II sewage sludge. ~~One~~ The sewage sludge shall meet one of the following Processes to Significantly Reduce Pathogens requirements (PSRP) shall be met for a sewage sludge to be classified as Class II sludge three alternatives.

ITEM 14. Amend paragraph **67.8(1)"c"** as follows:

c. Vector attraction reduction requirements for Class II sewage sludge. ~~One of the vector attraction reduction requirements shall be met for a sewage sludge to be classified as Class II sludge.~~ The sewage sludge shall meet one of the following vector attraction reduction requirements.

(1) The mass of volatile solids in the sewage sludge shall be reduced by a minimum of 38 percent.

(2) ~~The specific oxygen uptake rate (SOUR) for sewage sludge treated in an aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20 degrees Celsius.~~ Digest a portion of the previously anaerobically digested sewage sludge anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30 and 37 degrees Celsius. If, at the end of the 40 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 17 percent, vector attraction reduction is achieved.

(3) ~~Digest a portion of the previously anaerobically digested sewage sludge anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30 and 37 degrees Celsius. At the end of the 40 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 17 percent.~~ Digest a portion of the previously aerobically digested sewage sludge that has a percent solids of 2 percent or less aerobically in the laboratory in a bench-scale unit for 30 additional days at 20 degrees Celsius. If, at the end of the 30 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 15 percent, vector attraction reduction is achieved.

(4) ~~Digest a portion of the previously aerobically digested sewage sludge that has a percent solids of 2 percent or less aerobically in the laboratory in a bench-scale unit for 30 additional days at 20 degrees Celsius. At the end of the 30 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 15 percent.~~ The specific oxygen uptake rate (SOUR) for sewage sludge treated in an aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20 degrees Celsius.

(5) Sewage sludge shall be treated in an aerobic process for 14 days or longer. During that time, the temperature of the sewage sludge shall be higher than 40 degrees Celsius and the average temperature of the sewage sludge shall be higher than 45 degrees Celsius.

(6) The pH of sewage sludge shall be raised to 12 or higher, measured at 25 degrees Celsius, by alkali addition and, without the addition of more alkali, shall remain at 12 or higher for 2 hours and then at 11.5 or higher for an additional 22 hours.

(7) The percent solids of sewage sludge that does not contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 75 percent based on the moisture content and total solids prior to mixing with other materials.

(8) The percent solids of sewage sludge that contains unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 90 percent based on the moisture content and total solids prior to mixing with other materials.

~~(7)~~ (9) Sewage sludge shall be injected below the surface of the land and no significant amount of the sewage sludge shall be present on the land surface within one hour after the sewage sludge is injected.

~~(8)~~ (10) Sewage sludge applied to the land surface or placed on a surface disposal site shall be incorporated into the soil within six hours after application to or placement on the land.

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

ITEM 15. Amend subrule 67.8(2), introductory paragraph, as follows:

**67.8(2) Management practices for Class II sewage sludge.** Class II sewage sludge may be land applied in conformance with the following:

ITEM 16. Amend paragraph **67.8(2)“1”** as follows:

*l.* Food crops with harvested parts that touch the sewage sludge/soil mixture and that are totally above the land surface shall not be harvested for 38 14 months after application of sewage sludge.

ITEM 17. Amend paragraph **67.8(3)“a”** as follows:

*a.* The frequency of monitoring for the pollutants listed in Table 3, the pathogen density requirements, and the vector attraction reduction requirements shall be at the frequency stated in Table 5.

TABLE 5—FREQUENCY OF MONITORING

| Amount of sewage sludge<br>metric tons per 365-day period<br>dry weight basis  | Monitoring<br>Frequency                |
|--|--|
| Greater than <del>zero</del> 0 but<br>less than 290 metric tons<br>(or <del>325</del> 320 English <del>ton</del> tons)                                     | once per year                          |
| Equal to or greater than<br>290 but less than 1,500 metric<br>tons<br>( <del>English ton 325</del> 320 to 1,680<br>1,653 English tons)                     | once per quarter<br>(4 times per year) |
| Equal to or greater than<br>1,500 but less than 15,000 metric<br>tons<br>( <del>English ton 1,680</del> 1,653 to<br><del>16,800</del> 16,535 English tons) | once per 60 days<br>(6 times per year) |
| Equal to or greater than<br>15,000 metric tons<br>(or <del>16,800</del> 16,535 English <del>ton</del><br>tons)   | once per month<br>(12 times per year)  |

ITEM 18. Amend paragraph **67.8(4)“b”** as follows:

*b.* Treatment works with a design flow rate of 1 million gallons per day or greater and treatment works that serve 10,000 people or more shall submit the above information to the ~~department~~ EPA, using EPA’s NPDES eReporting Tool (NeT), by February 19 of each year for the previous calendar year. In addition, a supplemental sewage sludge report that includes the land application information listed in subparagraphs 67.8(4)“a”(6) to (9) shall be submitted to the department by the same due date.

ITEM 19. Amend rule 567—67.10(455B) as follows:

**567—67.10(455B) Sampling and analytical methods.**

**67.10(1)** No change.

**67.10(2) Enteric viruses.** ~~ASTM Designation: D 4994-89 D4994-19, “Standard Practice for Recovery of Viruses From Wastewater Sludges,” Annual Book of ASTM Standards: Section 11—Water and Environmental Technology, ASTM, Philadelphia, PA, 1992~~ ASTM International, West Conshohocken, PA, 2019, www.astm.org.

**67.10(3) Fecal coliform.** ~~Part 9221 E. or Part 9222 D. SM 9221 E-2011 or SM 9222 D-2011, “Standard Methods for the Examination of Water and Wastewater,” 18th Edition, American Public~~

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

Health Association, Washington, D.C., 1992; EPA Method 1680: Fecal Coliforms in Sewage Sludge (Biosolids) by Multiple-Tube Fermentation using Lauryl Tryptose Broth (LBT) and EC Medium, EPA-821-R-14-009, September 2014; EPA Method 1681: Fecal Coliforms in Sewage Sludge (Biosolids) by Multiple-Tube Fermentation using A-1 medium, EPA-821-R-06-013, July 2006.

**67.10(4) *Helminth ova.*** Yanko, W.A. W., "Occurrence of Pathogens in Distribution and Marketing Municipal Sludges," EPA 600/1-87-014, 1987. PB 88-154273/AS, National Technical Information Service, Springfield, Virginia U.S. Environmental Protection Agency, Washington, D.C., EPA/600/1-87/014 (NTIS PB88154273), 1988.

**67.10(5) *Inorganic pollutants.*** "Test Methods for Evaluating Solid Waste, Physical/ Chemical Methods," EPA Publication SW-846, Second Edition (1982) with Updates I and II and Third Edition (1986) with Revision I. Second Edition - PB87-120-291, National Technical Information Service, Springfield, Virginia. Third Edition Document number 955-001-00000-1, Superintendent of Documents, Government Printing Office, Washington, D.C.

*a. Metals.* "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" EPA Publication SW-846, 3rd Edition, Final Updates V (2015), [www.epa.gov/hw-sw846/sw-846-compendium](http://www.epa.gov/hw-sw846/sw-846-compendium).

*b. Nonmetals.* For nonmetals not identified elsewhere in this chapter, methods approved at 40 CFR Part 136, as amended through August 28, 2017.

**67.10(6) *Salmonella sp. bacteria.*** Part 9260 D. SM 9260 B-2011, "Standard Methods for the Examination of Water and Wastewater," 18th Edition, American Public Health Association, Washington, D.C., 1992; EPA Method 1682: *Salmonella* in Sewage Sludge (Biosolids) by Modified Semisolid Rappaport-Vassiliadis (MSRV) Medium, EPA-821-R-06-14, July 2006; or Kenner, B.A. and H.P. Clark, "Detection and Enumeration of *Salmonella* and *Pseudomonas aeruginosa*," J. Water Pollution Control Federation, 46(9):2163-2171, 1974.

**67.10(7) *Specific oxygen uptake rate.*** Part 2710 B. SM 2710 B-2011, "Standard Methods for the Examination of Water and Wastewater," 18th Edition, American Public Health Association, Washington, D.C. 1992.

**67.10(8) *Total, fixed, and volatile solids.*** Part 2540 G. SM 2540 G-2011, "Standard Methods for the Examination of Water and Wastewater," 18th Edition, American Public Health Association, Washington, D.C., 1992.

**67.10(9) *Percent volatile solids reduction calculation.*** "Environmental Regulations and Technology - Control of Pathogens and Vectors in Sewage Sludge," EPA-625/R-92/013, U.S. Environmental Protection Agency, Cincinnati, Ohio, 1992 July 2003.

ITEM 20. Rescind paragraph 67.11(2)"h."

**ARC 6039C**

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Notice of Intended Action**

**Proposing rule making related to public water supply systems and wastewater treatment systems operator certification and providing an opportunity for public comment**

The Environmental Protection Commission (Commission) hereby proposes to amend Chapter 81, "Operator Certification: Public Water Supply Systems and Wastewater Treatment Systems," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 455B.222.

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

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 455B.212, 455B.213, 455B.222 and 455B.223.

*Purpose and Summary*

Chapter 81 provides for the certification of public water supply and wastewater treatment system operators. The chapter sets forth certification grades, eligibility requirements, and examination and continuing education requirements, among other performance standards. These proposed amendments add a new classification grade that will benefit very small communities. These proposed amendments also simplify and refine the rules by clarifying definitions, better specifying certain operator requirements, and removing references to an obsolete classification grade.

More specifically, these amendments propose the following changes:

- Items 1 and 2 add a new definition for “advanced aerated lagoon system,” revise some existing definitions for clarity, and add a “W” and remove “IIL” from the definition of “grade.”
- Item 3 amends the Wastewater Treatment Plant Classifications table to add a new Grade W for onsite treatment systems, add a new advanced aerated lagoon system treatment type, and remove obsolete Grade IIL. These amendments will ensure that the operator certification grade for smaller facilities and for facilities designed with new technologies can be properly determined using this table.
- Item 4 amends the Water Distribution System Classification table to clarify the certified operator requirements for transient noncommunity water systems not classified as Grade A. These requirements are currently implied in Chapter 81, but are not clearly specified.
- Item 5 amends the Operator Education and Experience Qualifications table to add eligibility requirements for the new Grade W and remove the reference to obsolete Grade 2 Lagoon Classification (IIL).
- Items 6 and 7 similarly remove references to obsolete Grade IIL.

*Fiscal Impact*

No fiscal impact is expected from this rule making to either the State of Iowa or to the private sector. A copy of the fiscal impact statement is available from the Department of Natural Resource (Department) upon request.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on December 13, 2021. Comments should be directed to:

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

Laurie Sharp  
Iowa Department of Natural Resources  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319  
Email: [laurie.sharp@dnr.iowa.gov](mailto:laurie.sharp@dnr.iowa.gov)

*Public Hearing*

A public hearing at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend the conference call should contact Laurie Sharp via email. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the conference call public hearing must submit a request to Laurie Sharp prior to the hearing to facilitate an orderly hearing.

December 8, 2021  
1 p.m.

Video/conference call

Persons who wish to make oral comments at the public hearing will be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following new definition of "Advanced aerated lagoon system" in rule **567—81.1(455B)**:

*"Advanced aerated lagoon system"* means an aerated lagoon system that has been augmented by adding other treatment processes. Examples include, but are not limited to, covered lagoon systems with enhanced aeration and mixing, the addition of fixed film processes to the lagoon process, or the utilization of algal-based treatment processes.

ITEM 2. Amend rule **567—81.1(455B)**, definitions of "Activated sludge," "Aeration," "Fixed film biological treatment" and "Grade," as follows:

*"Activated sludge system"* means a biological wastewater treatment process in which a mixture of wastewater and sludge floc, produced in a raw or settled wastewater by the growth of microorganisms, is agitated and aerated in the presence of a sufficient concentration of dissolved oxygen, followed by sedimentation. Examples include, but are not limited to, conventional activated sludge systems, extended aeration activated sludge systems, oxidation ditches, and sequencing batch reactors.

*"Aeration"* means the process of initiating contact between air and water. ~~This definition includes~~ Examples include, but is are not limited to, spraying the water in the air, bubbling air through the water, or forcing the air into the water by pressure.

*"Fixed film biological treatment"* means a treatment process in which wastewater is passed over a media onto which are attached biological organisms capable of oxidizing the organic matter, normally followed by sedimentation. ~~This definition includes~~ Examples include, but is are not limited to, trickling filters, rotating biological contactors, packed towers and activated filters.

*"Grade"* means one of seven certification levels, designated as A, W, I, IL, II, ~~III~~, III, or IV.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 3. Amend rule 567—81.3(455B) as follows:

**567—81.3(455B) Wastewater treatment plant grades.**

**81.3(1) Classifications.** The wastewater treatment plant classifications are listed in the following table:

Wastewater Treatment Plant Classifications

| Treatment Type  | Grade   |                                    |                                     |                                      |                                     |
|---|---|------------------------------------|-------------------------------------|--------------------------------------|-------------------------------------|
|   | Based on Design Pounds of BOD <sub>5</sub> /day |                                    |                                     |                                      |                                     |
|   | less than 334                                   | 334-835                            | 836-2,505                           | 2,506-8,350                          | more than 8,350                     |
|   | Based on Design Population Equivalent           |                                    |                                     |                                      |                                     |
|   | less than 2,000                                 | 2,000-5,000                        | 5,001-15,000                        | 15,001-50,000                        | more than 50,000                    |
| 1. <del>Primary Treatment Onsite Treatment System</del> | <del>I</del> <u>W</u>                           | <del>I</del> <u>Not Applicable</u> | <del>II</del> <u>Not Applicable</u> | <del>III</del> <u>Not Applicable</u> | <del>IV</del> <u>Not Applicable</u> |
| 2. Waste Stabilization Lagoon System                    | IL  | IL                                 | IL                                  | IL                                   | IL                                  |
| 3. Aerated Lagoon System                                | IL  | IL                                 | <del>III</del> <u>I</u>             | <del>III</del> <u>I</u>              | <del>III</del> <u>I</u>             |
| 4. Advanced Aerated Lagoon System                       | <u>II</u>                                       | <u>II</u>                          | <u>II</u>                           | <u>II</u>                            | <u>II</u>                           |
| 4. 5. Fixed Film Biological Treatment System            | II  | II                                 | III                                 | III                                  | IV                                  |
| <del>5.</del> 6. Activated Sludge System                | II  | III                                | III                                 | IV                                   | IV                                  |

**81.3(2) Unknown design BOD<sub>5</sub> loading BOD<sub>5</sub> loading.** When the design BOD<sub>5</sub> loading is unknown, the plant BOD<sub>5</sub> loading shall be determined by using the average pounds of BOD<sub>5</sub> of the 24-hour composite influent samples taken in the last 12 months. If ~~no~~ 24-hour composite influent samples were taken are not available, then grab samples shall be used.

**81.3(3) ~~IL and III~~ wastewater operator requirements.** A Grade I, II, III, or IV wastewater treatment certificate will satisfy the certification requirements for a Grade IL plant. ~~A Grade II, III, or IV wastewater treatment certificate will satisfy the certification requirements for a Grade III plant.~~

**81.3(4) Grade W onsite wastewater classification.** Any wastewater treatment plant that discharges to a water of the state and that utilizes onsite wastewater treatment technologies, such as those specified in 567—Chapter 69, but excluding waste stabilization ponds, shall be classified as an onsite treatment system (Grade W).

ITEM 4. Amend subrule 81.5(1) as follows:

**81.5(1) Classifications.** The water distribution plant classifications are listed in the following table:

Water Distribution System Classifications\*

| System Type  | Grade**                      |           |            |           |
|--|------------------------------|-----------|------------|-----------|
|  | Average Daily Pumpage in MGD |           |            |           |
|  | 0-0.1                        | >0.1-1.5  | >1.5-5     | >5        |
| All municipal water systems  | I                            | II        | III        | IV        |
| Community water systems not classified as a Grade A water system                     | I                            | II        | III        | IV        |
| Nontransient noncommunity water systems not classified as a Grade A water system     | I                            | II        | III        | IV        |
| <u>Transient noncommunity water systems not classified as a Grade A water system</u> | <u>I</u>                     | <u>II</u> | <u>III</u> | <u>IV</u> |
| Rural water districts  | Miles of Pipe                |           |            |           |

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

| System Type | Grade**                      |            |              |        |
|-------------|------------------------------|------------|--------------|--------|
|             | Average Daily Pumpage in MGD |            |              |        |
|             | 0-0.1                        | >0.1-1.5   | >1.5-5       | >5     |
|             | 0-100                        | >100-1,000 | >1,000-2,500 | >2,500 |
|             | II                           | II         | III          | IV     |

\*Note: A public water system with a well, storage, and a distribution system shall be classified as a water distribution system if no treatment is provided.

\*\*For Grade A water system classification, see subrule 81.6(1).

ITEM 5. Amend subrule 81.7(1) as follows:

**81.7(1) Education and experience requirements.** All applicants shall meet the education and experience requirements for the grade of certificate shown in the table below prior to being allowed to take the examination. Experience shall be in the same classification for which the applicant is applying except that partial credit may be given in accordance with subrules 81.7(2) and 81.7(3). Directly related post-high school education shall be in the same subject matter as the classification in which the applicant is applying. The director will determine which courses qualify as “directly related” in cases which are not clearly defined. A military service applicant may apply for credit for verified military education, training, or service toward any education or experience requirement for certification, pursuant to subrule 81.7(4).

## Operator Education and Experience Qualifications

| Grade          | Education   | Substitution for Education | Experience  | Substitution for Experience             |
|----------------|---|----------------------------|---|---|
| A              | High school diploma or GED  | None                       | Completion of an IDNR-approved training course                          | None                                    |
| <u>W</u>       | <u>High school diploma or GED</u>   | <u>None</u>                | <u>Completion of an IDNR-approved training course</u>                   | <u>None</u>                             |
| I              | High school diploma or GED  | None                       | 1 year  | See 81.7(3) “b”(1), (3) to (5)          |
| IL             | High school diploma or GED  | None                       | 1 year  | See 81.7(3) “b”(1), (3) to (5)          |
| II             | High school diploma or GED  | None                       | 3 years   | See 81.7(3) “b”(2) to (5)               |
| <del>III</del> | <del>High school diploma or GED</del>   | <del>None</del>            | <del>3 years</del>  | <del>See 81.7(3) “b”(2) to (5)</del>    |
| III            | High school diploma or GED and 2 years of post-high school education (1 year must be directly related)  | See 81.7(3) “a” (1), (3)   | 4 years of experience in a Grade I or higher                            | See 81.7(3) “b”(2), (3)                 |
| IV             | High school diploma or GED and 4 years of post-high school education (2 years must be directly related) | See 81.7(3) “a” (2), (3)   | 4 years of experience including 2 years of DRC in a Grade III or higher | See 81.7(3) “b”(2), (3) and 81.7(3) “c” |

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

ITEM 6. Amend subparagraph **81.7(3)“b”(2)** as follows:

(2) Thirty semester hours or 45 quarter hours or 45 CEUs of post-high school education may be substituted for one year of experience up to a maximum of one-half the experience requirement for Grades II, ~~III~~, III and IV.

ITEM 7. Amend subrule 81.16(1) as follows:

**81.16(1) Affidavit allowance.** The owner of a plant or distribution system that is required to have a Grade A, I, IL, or ~~II, III~~ certified operator may sign an affidavit with a certified operator of the required classification and grade.

**ARC 6045C**

**LABOR SERVICES DIVISION[875]**

**Notice of Intended Action**

**Proposing rule making related to federal occupational safety and health standards  
and providing an opportunity for public comment**

The Labor Commissioner hereby proposes to amend Chapter 10, “General Industry Safety and Health Rules,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 88.5.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 88.

*Purpose and Summary*

This rule making proposes to adopt by reference changes to the federal occupational safety and health standards concerning beryllium in general industry. The federal changes include adding and modifying definitions, clarifying requirements for an employee exposed to a trace amount of beryllium, replacing Appendix A, and clarifying requirements for employees with confirmed or suspected cases of chronic beryllium disease.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commissioner for a waiver of the discretionary provisions, if any, pursuant to 875—Chapter 1.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Commissioner no later than 4:30 p.m. on December 8, 2021. Comments should be directed to:

LABOR SERVICES DIVISION[875](cont'd)

Kathleen Uehling  
 Division of Labor Services  
 150 Des Moines Street  
 Des Moines, Iowa 50309  
 Email: [kathleen.uehling@iwd.iowa.gov](mailto:kathleen.uehling@iwd.iowa.gov)

*Public Hearing*

If requested, a public hearing at which persons may present their views orally or in writing will be held as follows:

December 8, 2021  
 9 a.m.

150 Des Moines Street  
 Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

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 Commissioner and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend rule **875—10.20(88)** by inserting the following at the end thereof:  
 83 Fed. Reg. 31045 (July 3, 2018)  
 85 Fed. Reg. 42625 (July 14, 2020)

**ARC 6034C**

**NURSING BOARD[655]**

**Notice of Intended Action**

**Proposing rule making related to administrative and regulatory authority of the board and providing an opportunity for public comment**

The Board of Nursing hereby proposes to rescind Chapter 1, "Administrative and Regulatory Authority," Iowa Administrative Code, and adopt a new Chapter 1 with the same title.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code chapters 17A, 147, and 152.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapters 17A, 147, 152, and 272C.

*Purpose and Summary*

Iowa Code section 17A.3 requires that agencies adopt as a rule a description of the organization of the agency that states the general course and method of its operations, the administrative subdivisions of

## NURSING BOARD[655](cont'd)

the agency and the programs implemented by each of them, a statement of the mission of the agency, and the methods by which and the location where the public may obtain information or make submissions or requests. Chapter 1 provides this information for the Board. Pursuant to Iowa Code section 17A.7, the Board conducted a five-year review of this chapter and proposes a number of changes intended to simplify the chapter and also align it with the Board's current practices.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 655—Chapter 15.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on December 7, 2021. Comments should be directed to:

Kathy Weinberg  
Iowa Board of Nursing  
400 S.W. Eighth Street, Suite B  
Des Moines, Iowa 50309  
Email: [kathy.weinberg@iowa.gov](mailto:kathy.weinberg@iowa.gov)

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

December 7, 2021  
9 to 10 a.m.

Board Office, Suite B  
400 S.W. Eighth Street  
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

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 Board and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

## NURSING BOARD[655](cont'd)

Rescind 655—Chapter 1 and adopt the following **new** chapter in lieu thereof:

CHAPTER 1  
ADMINISTRATIVE AND REGULATORY AUTHORITY

**655—1.1(17A) Board mission.** The board of nursing protects the public health, safety, and welfare by regulating the licensure of nurses, the practice of nursing, nursing education, and continuing education.

**655—1.2(17A,147,152,152E,272C) Description and organization of the board.**

**1.2(1) Board composition.** The board is composed of four registered nurses, two of whom are engaged in active practice and two of whom are nurse educators from nursing education programs; one licensed practical nurse actively engaged in practice; and two members who represent the general public and are not registered nurses or licensed practical nurses. Of those board members who are nurse educators, one should be involved in higher education, and the other should be involved in area community college and vocational-technical nurse education.

**1.2(2) Board leadership and committees.** The board shall annually select a chairperson and a vice chairperson from its own membership. The election of chairperson and vice chairperson, as well as standing committee assignments, shall be done during the first regularly scheduled meeting after May 1.

**1.2(3) Executive director.** The board shall retain a full-time executive director who is responsible for the administration of policies and programs of the board and for the operation of the board office. Pursuant to Iowa Code section 135.11B, the board shall advise the director of the department of public health in evaluating potential candidates for the position of executive director, consult with the director in the hiring of the executive director, and review and advise the director on the performance of the executive director in the discharge of the executive director's duties.

**1.2(4) Board authority.** The board's authority for regulating nursing education, nursing practice, and continuing education for nurses in the state of Iowa is found in Iowa Code chapters 147, 147A, 152, 152E, and 272C.

**655—1.3(17A,152,152E,272C) Responsibilities.** The responsibilities of the board include but are not limited to:

1. Licensing qualified applicants for the practice of nursing by examination, endorsement, renewal, and compact privilege pursuant to Iowa Code chapters 147, 152, 152E, and 272C.
2. Conducting investigations and imposing discipline for violations of statutes or rules related to the practice of nursing pursuant to Iowa Code chapters 147, 152, and 272C.
3. Approving nursing education programs pursuant to Iowa Code section 152.5.
4. Collecting, analyzing, and disseminating nursing workforce data pursuant to Iowa Code section 152.4.
5. Approving continuing education providers to ensure continued competency of individuals licensed by the board to practice nursing pursuant to Iowa Code chapter 272C.
6. Administering the Iowa nurse assistance program to support the evaluation and monitoring of licensees who are impaired as a result of any substance use or mental or physical condition pursuant to Iowa Code section 272C.3.
7. Overseeing the nursing profession through policymaking, rule making, and advocating for and against legislation pursuant to Iowa Code section 135.11B.

**655—1.4(17A,272) Submission of requests, obtaining information, and board office.** Members of the general public may obtain information or submit requests or complaints relative to the licensure of nursing, practice of nursing, nursing education, continuing education, or any other matters relating to the function and authority of this board. Correspondence should be submitted to the executive director at the board office. The board office is located at: RiverPoint Business Park, 400 S.W. Eighth Street, Suite B, Des Moines, Iowa 50309-4685.

## NURSING BOARD[655](cont'd)

**655—1.5(17A,21) Meetings.**

**1.5(1) Quorum.** A majority of the members of the board constitutes a quorum.

**1.5(2) Meeting schedule and public notice.** The board shall schedule and hold regular meetings. The date, time, and location of each meeting of the board shall be made available to the public on the board's website and upon request by contacting the board office.

**1.5(3) Special meetings.** Special meetings of the board may be called by the chairperson or upon request of four board members to the chairperson or the executive director.

**1.5(4) Meeting materials.** Materials received at the board office at least three weeks prior to a scheduled board meeting shall be placed on the agenda. Materials from emergency or unusual circumstances may be added to the agenda with the chairperson or executive director's approval.

**1.5(5) Public observation and comment.** The board shall provide a means for members of the public to observe and, when appropriate, offer public comment during board meetings unless the board votes to hold a closed session.

*a.* Anyone who has submitted materials for the agenda or whose presence has been requested by the board shall be given the opportunity to address the board.

*b.* At every regularly scheduled board meeting, time will be designated for public comment. During the time on the agenda for public comment, anyone may speak for up to two minutes per person. Requests to speak at a later time for two minutes per person when a particular topic comes before the board should be made at the time for public comment and will be granted at the discretion of the chairperson. No more than ten minutes will be allotted to public comment at any one time unless the chairperson indicates otherwise.

*c.* One who has not asked to address the board during the time for public comment may be recognized by the chairperson upon request. Acknowledgment and an opportunity to speak will be at the discretion of the chairperson.

**655—1.6(147,152,272C) Communications.** The board may issue or disseminate communications as a means to provide information to licensees and the general public related to the mission and responsibilities of the board. Board communications may include, but are not limited to, publishing updates on its website, issuing a newsletter, and other written, audio, or video methods of communication.

These rules are intended to implement Iowa Code chapters 17A, 147, 152, 152E, and 272C.

**ARC 6048C**

**NURSING BOARD[655]**

**Notice of Intended Action**

**Proposing rule making related to licensure to practice for registered nurses and licensed practical nurses and providing an opportunity for public comment**

The Board of Nursing hereby proposes to rescind Chapter 3, "Licensure to Practice—Registered Nurse/Licensed Practical Nurse," Iowa Administrative Code, and to adopt a new Chapter 3 with the same title.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code chapters 17A, 147 and 152.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapters 17A, 147, 152 and 272C.

NURSING BOARD[655](cont'd)

*Purpose and Summary*

Pursuant to the five-year review of rules required by Iowa Code section 17A.7, the Board reviewed Chapter 3, which sets forth the basic requirements to obtain an initial registered nurse (RN) and licensed practical nurse (LPN) license by examination or endorsement, to obtain license renewals and reactivations, and to issue license denials. The Board has made several changes intended to make the proposed rules easier to understand, incorporate the interstate licensure compact requirements from Iowa Code chapter 152E, eliminate superfluous language, and reflect the Board's current practices. Except for a change to paragraph 3.11(2)"b" for clarity and consistency in terminology, no changes have been made to rule 655—3.11(272C), the content of which was adopted in 2021 in **ARC 5761C**, IAB 7/14/21.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 655—Chapter 15.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on December 7, 2021. Comments should be directed to:

Kathy Weinberg  
Iowa Board of Nursing  
400 S.W. Eighth Street, Suite B  
Des Moines, Iowa 50309  
Email: [kathy.weinberg@iowa.gov](mailto:kathy.weinberg@iowa.gov)

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

December 7, 2021  
10 to 11 a.m.

Board Office, Suite B  
400 S.W. Eighth Street  
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

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 Board and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's

## NURSING BOARD[655](cont'd)

meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Rescind 655—Chapter 3 and adopt the following new chapter in lieu thereof:

## CHAPTER 3

## LICENSURE TO PRACTICE—REGISTERED NURSE/LICENSED PRACTICAL NURSE

**655—3.1(17A,147,152,152E,272C) Definitions.**

“*Approved nursing program*” means a nursing education program whose status has been recognized by the board or by a similar board in another jurisdiction that prepares individuals for licensure as a licensed practical nurse, registered nurse, or advanced registered nurse practitioner; or grants a baccalaureate, master’s or doctorate degree with a major in nursing.

“*CGFNS*” means the Commission on Graduates of Foreign Nursing Schools.

“*Fees*” means those fees collected that are based upon the cost of sustaining the board’s mission to protect the public health, safety and welfare. The nonrefundable fees set by the board are as follows:

1. Application for an original license based on the registered nurse examination, \$93 (plus the fee for evaluation of the fingerprint cards and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI)).

2. Application for an original license based on the practical nurse examination, \$93 (plus the fee for evaluation of the fingerprint cards and the criminal history background checks by the DCI and the FBI).

3. Application for a registered nurse/licensed practical nurse license by endorsement, \$119 (plus the fee for evaluation of the fingerprint cards and the criminal history background checks by the DCI and the FBI).

4. Application for an original license or renewal as an advanced registered nurse practitioner, \$81 for any period of licensure up to three years.

5. For a certified statement that a registered nurse/licensed practical nurse is licensed in this state or registered as an advanced registered nurse practitioner, \$25.

6. For reactivation of a license to practice as a registered nurse/licensed practical nurse, \$175 for a license lasting more than 24 months up to 36 months (plus the fee for evaluation of the fingerprint cards and the criminal history background checks by the DCI and the FBI).

7. For reactivation of a license to practice as an advanced registered nurse practitioner, \$81 for any period of licensure up to three years.

8. For the renewal of a license to practice as a registered nurse/licensed practical nurse, \$99 for a three-year period.

9. For the late renewal of a registered nurse/licensed practical nurse license, \$50 (plus the renewal fee as specified in paragraph “8” of this definition).

10. For a check returned for any reason, \$15. If licensure/registration has been issued by the board office based on a check for the payment of fees and the check is later returned by the bank, the board shall request payment by certified check or money order.

11. For a certified copy of an original document, \$20.

12. For the processing of the fingerprint cards and the DCI and FBI criminal history background checks, \$50.

13. For a petition for eligibility determination, \$25.

“*IELTS™*” means the International English Language Testing System.

“*Inactive license*” means a registered nurse or licensed practical nurse license that has been placed on inactive status because it was not renewed by the fifteenth day of the month following the expiration date or means that the board has received notification that a licensee has declared another compact state as the primary state of residency.

## NURSING BOARD[655](cont'd)

“*Late license*” means a registered nurse or licensed practical nurse license that has not been renewed by the expiration date. The time between the expiration date and the fifteenth day of the month following the expiration date is considered a grace period.

“*Licensee*” means a person who has been issued a license to practice as a registered nurse, licensed practical nurse or advanced registered nurse practitioner under the laws of this state.

“*Multistate license*” means a license to practice as a registered nurse or licensed practical nurse issued to a qualified person under Iowa Code chapter 152E, which authorizes the holder to practice in all party states under a multistate licensure privilege.

“*Multistate licensure privilege*” means a legal authorization associated with a multistate license permitting the practice of nursing as either a registered nurse or a licensed practical nurse in a party state.

“*NCSBN*” means the National Council of State Boards of Nursing, Inc.

“*Nurse licensure compact*” means the agreement between party states, as set forth in Iowa Code chapter 152E, to allow mutual recognition of a nursing license.

“*Overpayment*” means payment in excess of the required fee. An overpayment less than \$10 received by the board shall not be refunded.

“*Party state*” means any state that has adopted the nurse licensure compact.

“*TOEFL®*” means the Test of English as a Foreign Language.

**655—3.2(17A,147,152,272C) Mandatory licensure.**

**3.2(1)** A person who engages in the practice of nursing in the state of Iowa as defined in Iowa Code section 152.1, outside of caring for one’s family, shall have a current Iowa license, whether or not the person’s employer is in Iowa and whether or not the person receives compensation. Any nurse who participates in the care of a patient situated in Iowa, whether that care is provided through telephonic, electronic or in-person means, and regardless of the location of the nurse, must obtain Iowa licensure unless specifically exempted.

**3.2(2)** Current Iowa licensure is not mandatory when:

*a.* A nurse holds an active multistate license issued by a party state, pursuant to Iowa Code chapter 152E. A nurse who practices nursing in Iowa pursuant to a multistate licensure privilege is subject to the jurisdiction of the board, the courts, and the laws of Iowa.

*b.* A nurse holds an active license in another state and is providing services to patients in Iowa only during interstate transit.

*c.* A nurse holds an active license in another state and is providing emergency services in an area in which the governor of Iowa has declared a state of emergency.

**3.2(3)** A licensed practical nurse who is enrolled in an approved program for registered nurses shall hold an active licensed practical nurse license in all jurisdictions in which the licensed practical nurse provides patient care. A registered nurse who is enrolled in an approved program for advanced registered nurse practitioners shall hold an active registered nurse license in all jurisdictions in which the registered nurse provides patient care.

**655—3.3(17A,147,152,272C) Licensure qualifications for registered nurse and licensed practical nurse.** Applicants for registered nurse and licensed practical nurse licenses shall meet the following requirements:

**3.3(1)** Graduation from an approved nursing program.

**3.3(2)** Successful passage of the National Council Licensure Examination (NCLEX®) or the State Board Test Pool Examination, the national examination used prior to 1982. The passing standard shall be the standard established by the testing authority at the time the test was administered.

**3.3(3)** If applicable, board approval of an applicant with a criminal history, pursuant to rule 655—3.11(272C), or a record of prior disciplinary action, regardless of jurisdiction.

**655—3.4(17A,147,152,272C) Licensure by examination.**

## NURSING BOARD[655](cont'd)

**3.4(1) Board application.** A graduate of an approved nursing program seeking initial licensure as a registered nurse or licensed practical nurse shall submit the following:

- a. A completed application for licensure by examination.
- b. Payment of the application fee.
- c. Two completed fingerprint cards and a signed waiver form to facilitate a national criminal history background check.
- d. If the applicant has a criminal history, copies of all documents required by rule 655—3.11(272C).
- e. An official transcript denoting the date of graduation and diploma or degree conferred, sent directly to the board from the nursing program.

**3.4(2) Test registration.** The applicant shall complete NCLEX® registration, including payment of applicable fees through the national test service agency.

**3.4(3) Americans with Disabilities Act accommodations.** An applicant with a disability may submit a request to the board for testing accommodations. The request must include the nature of the disability and the specific testing accommodations being requested. A request must be accompanied by written documentation from the applicant's health care provider describing the disability and the recommended accommodations, and documentation from the applicant's nursing education program if testing accommodations were provided to the applicant during school. The board's recommendation regarding approval of accommodation requests will be communicated to the national test service agency.

**3.4(4) Authorization to test.** An applicant will not receive an authorization to test until all of the requirements in subrules 3.4(1) and 3.4(2) are met. An applicant shall self-schedule the examination with an approved testing center and must test within 91 days of receiving the authorization to test. An applicant who does not test within 91 days of receiving the authorization to test is required to submit a new completed application for licensure by examination and fee to the board. An applicant who does not appear for a testing appointment or does not complete the examination must follow the requirements for reexamination.

**3.4(5) Reexamination.** An applicant who fails the examination and reapplies within 12 months of submitting a prior application to the board shall be required to complete the requirements in paragraphs 3.4(1) "a" and "b" and subrule 3.4(2). An applicant who fails the examination and reapplies after 12 months of submitting a prior application to the board shall be required to complete all requirements in subrules 3.4(1) and 3.4(2).

**3.4(6) Licensure.** Upon satisfactory review of the documentation required by subrule 3.4(1) and proof of successful passage of the examination, the applicant will be issued a license to practice as a registered nurse or licensed practical nurse.

**3.4(7) Failure to complete the licensure process.** Once an application is initiated, the applicant has 12 months to complete the licensure process. The board reserves the right to destroy any applications and supporting documents after 12 months if the applicant has not completed the licensure process. Applicants who fail to complete the licensure process within 12 months are required to start the application process anew.

**655—3.5(17A,147,152,272C) Licensure by endorsement.**

**3.5(1) Board application.** A graduate of an approved nursing program seeking licensure as a registered nurse or licensed practical nurse in Iowa who has been licensed in another state shall submit the following:

- a. A completed application for licensure by endorsement.
- b. Payment of the application fee.
- c. Two completed fingerprint cards and a signed waiver form to facilitate a national criminal history background check.
- d. If the applicant has a criminal history, copies of all documents required by rule 655—3.11(272C).
- e. Copies of relevant disciplinary documents if the applicant has had disciplinary action taken by another state.

## NURSING BOARD[655](cont'd)

*f.* Verification of the license from the original state of licensure, which may be done through [www.nursys.com](http://www.nursys.com) or by using the verification form depending on the requirements of the original state of licensure.

*g.* Proof of active licensure in any jurisdiction within the previous five years from the date of application or proof of completion of a nurse refresher course in accordance with rule 655—3.10(152) within the 12 months prior to the date of application.

*h.* An official transcript denoting the date of graduation and diploma or degree conferred, sent directly to the board from the nursing program. An applicant may be excused from this requirement if the nursing program is closed and records are no longer available.

**3.5(2) Temporary license.** An applicant who has submitted all documentation described in paragraphs 3.5(1)“a” to “g” may request a temporary registered nurse or licensed practical nurse license, which authorizes the practice of nursing in Iowa for a maximum of 30 days, pending receipt of official transcripts from the nursing program. A temporarily licensed licensee will automatically be issued a permanent license upon receipt of satisfactory transcripts from the nursing program.

**3.5(3) Licensure.** Upon satisfactory review of the documentation described in subrule 3.5(1), the applicant will be issued a license to practice as a registered nurse or licensed practical nurse.

**3.5(4) Failure to complete the licensure process.** Once an application is initiated, the applicant has 12 months to complete the licensure process. The board reserves the right to destroy any applications and supporting documents after 12 months if the applicant has not completed the licensure process. Applicants who fail to complete the licensure process within 12 months are required to start the application process anew.

**3.5(5) Changing primary state of residence for multistate license.** A nurse who holds a multistate license issued by a party state and who changes the nurse’s primary state of residence to Iowa must apply for licensure in Iowa pursuant to this rule. Upon issuance of a multistate license by the board, the nurse’s prior multistate license will be deactivated.

**655—3.6(17A,147,152,272C) Applicants educated in a foreign country or in a U.S. territory that is not a member of NCSBN.**

**3.6(1) Applicant for licensure.** An applicant seeking licensure in Iowa who was educated in a foreign country or in a U.S. territory that is not a member of NCSBN shall apply for licensure by examination pursuant to rule 655—3.4(17A,147,152,272C) or licensure by endorsement pursuant to rule 655—3.5(17A,147,152,272C), as applicable, but instead of submitting an official transcript, shall submit one of the following documents issued by CGFNS:

- a.* A Credentials Evaluation Service (CES) Professional Report®.
- b.* VisaScreen® certificate or certificate verification letter verifying that a VisaScreen® certificate was issued.
- c.* CGFNS Certification Program® certificate or certificate verification letter verifying that a CGFNS Certification Program® certificate was issued.

**3.6(2) CGFNS documentation.** The documentation issued by CGFNS shall verify all of the following:

- a.* Completion of education equivalent to approved nursing programs for licensed practical nurse and registered nurse applicants.
- b.* The applicant’s licensure or registration as a nurse in the applicant’s country or U.S. territory of origin, current country or U.S. territory of residence, or country or U.S. territory where educated.
- c.* The ability to read, write, speak, and understand the English language as determined by passing the TOEFL® or IELTS™ test. For the TOEFL® test, a passing score is as follows: 560 for the TOEFL® paper-based test, or 220 for the TOEFL® computer-based test, or 84 for the TOEFL® Internet-based test with a speaking score of at least 26. For the IELTS™ test, a passing score is as follows: an overall score of 6.5 and a speaking score of 7.0. An applicant shall be exempt from taking either the TOEFL® or IELTS™ test when all of the following requirements are met:

## NURSING BOARD[655](cont'd)

(1) The nursing education was completed in a college, university, or professional school located in Australia, Barbados, Canada (except Quebec), Ireland, Jamaica, New Zealand, South Africa, Trinidad and Tobago, or the United Kingdom.

(2) The language of instruction in the nursing program was English.

(3) The language of the textbooks in the nursing program was English.

**3.6(3) Social security number.** To be eligible for a multistate license, an applicant must have a social security number. An applicant who does not have a social security number shall submit documentation of lawful presence and will only be eligible for a single state license.

**655—3.7(17A,147,152,272C) License renewal and reactivation.**

**3.7(1) Name and address changes.** Licensees must notify the board in writing of any name or address change within 30 days of the change. Licensure documents are mailed to the licensee at the address on file in the board office. There is no fee for a change of name or address in board records.

**3.7(2) Initial licenses.** The board shall issue licenses by endorsement and examination for a 24- to 36-month period. When the license is renewed, it will be placed on a three-year renewal cycle. License expiration shall be on the fifteenth day of the licensee's birth month.

**3.7(3) Renewal.** The licensee may renew the license beginning 60 days prior to license expiration.

*a.* The licensee shall:

(1) Attest that Iowa is the primary state of residence or that the primary state of residence is a noncompact state. The board may request evidence of residency.

(2) Submit the renewal application and the renewal fee.

(3) Meet the continuing education requirement as set forth in 655—Chapter 5, prior to license renewal.

(4) Complete the required mandatory reporter training set forth in paragraph 3.7(3)“*b.*”

*b.* Mandatory reporter training.

(1) The course(s) shall be the curriculum provided by the Iowa department of human services.

(2) A licensee who regularly examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of training in child abuse identification and reporting as required by Iowa Code section 232.69(3)“*b*” in the previous three years or condition(s) for rule suspension as identified in subparagraph 3.7(3)“*b*”(5).

(3) A licensee who regularly examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of training in dependent adult abuse identification and reporting as required by Iowa Code section 235B.16(5)“*b*” in the previous three years or condition(s) for rule suspension as identified in subparagraph 3.7(3)“*b*”(5).

(4) The licensee shall maintain written documentation for three years after mandatory training as identified in subparagraphs 3.7(3)“*b*”(2) and (3), including program date(s), content, duration, and proof of participation.

(5) The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

1. Is engaged in active duty in the military service of this state or the United States.

2. Holds a current exemption based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 655—Chapter 5.

(6) The board may select licensees for audit of compliance with the requirements in subparagraphs 3.7(3)“*b*”(1) to (5).

**3.7(4) Late renewal.** The license shall become late when the license has not been renewed by the expiration date. The licensee shall be assessed a late fee as specified in rule 655—3.1(17A,147,152,152E,272C). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee before the fifteenth day of the month following the expiration date.

## NURSING BOARD[655](cont'd)

**3.7(5) Inactive status.** The license shall become inactive when the license has not been renewed by the fifteenth day of the month following the expiration date.

*a.* If the inactive license is not reactivated, it shall remain inactive.

*b.* If the licensee resides in Iowa or a noncompact state, the licensee shall not practice nursing in Iowa until the license is reactivated to active status. If the licensee is identified as engaging in the practice of nursing with an inactive license, disciplinary proceedings may be initiated.

*c.* The licensee is not required to obtain continuing education credit or pay fees while the license is inactive.

**3.7(6) Changing primary state of residence for multistate license.** A licensee who holds a multistate license issued by this board and who changes the licensee's primary state of residency to another party state must apply for licensure in the new party state. Once the board has been notified by the new party state that a new license has been issued, the Iowa multistate license will become inactive.

**3.7(7) Reactivation.**

*a.* To reactivate an inactive license, the licensee shall comply with the following:

(1) The licensee shall submit the following:

1. A completed reactivation application.

2. Payment of the applicable fees.

3. A completed continuing education report form and supporting continuing education certificates.

4. Two completed fingerprint cards and a signed waiver form to facilitate a national criminal history background check.

(2) The licensee shall have obtained 36 contact hours of continuing education, as specified in 655—Chapter 5, within the 36 months prior to reactivation.

(3) If a licensee has not held an active license in any jurisdiction within the previous five years, the licensee must complete a nurse refresher course in accordance with rule 655—3.10(152) within 12 months of applying for reactivation.

*b.* Upon receipt of all necessary materials, the licensee shall be issued a license for a 24- to 36-month period. At the time of the next renewal, the license will be placed on a three-year renewal cycle. License expiration shall be on the fifteenth day of the licensee's birth month.

*c.* An applicant who fails to complete the reactivation of licensure process within 12 months from the date of initial application must reapply. All fees are nonrefundable.

**655—3.8(17A,147,152,272C) Verification.** Upon written request from the licensee or another jurisdiction and payment of the verification fee as specified in rule 655—3.1(17A,147,152,152E,272C), the board shall provide a certified statement to another jurisdiction or entity that the license of a registered nurse, licensed practical nurse or advanced registered nurse practitioner is active, inactive or encumbered/disciplined in Iowa.

**655—3.9(17A,272C) License denial.**

**3.9(1)** Prior to the denial of licensure to an applicant, the board shall issue a preliminary notice of denial that cites the factual and legal basis for denying the application, notifies the applicant of the appeal process and specifies the date upon which the denial will become final if not appealed.

**3.9(2)** An applicant who has been issued a preliminary notice of denial may appeal the notice and request a hearing on the issues related to the preliminary notice of denial by serving a request for hearing upon the executive director within 30 days following the date the preliminary notice of denial was mailed. The request for hearing shall specify the factual or legal errors in the preliminary notice of denial and provide any additional written information or documents in support of the licensure.

**3.9(3)** All hearings held pursuant to this rule shall be held in accordance with the process outlined in 655—Chapter 20.

**3.9(4)** If an applicant does not appeal a preliminary notice of denial, the preliminary notice of denial automatically becomes final.

**655—3.10(152) Nurse refresher course.**

## NURSING BOARD[655](cont'd)

**3.10(1)** A nurse refresher course shall meet the following requirements:

*a.* A minimum of 80 hours of theory, with content in basic nursing skills, pharmacology, physical assessment, intravenous (IV) therapy (registered nurse only), and legal and ethical considerations in health care; and

*b.* A minimum of 80 hours of hands-on supervised clinical learning experiences.

**3.10(2)** To participate in the clinical component of a nurse refresher course in Iowa, a licensee must have an active license to practice nursing in Iowa or a limited authorization issued by the board. A licensee shall request the limited authorization from the board prior to beginning the clinical component of a nurse refresher course.

**3.10(3)** To receive a certificate of completion from the nurse refresher course, a licensee must complete all requirements of the nurse refresher course to the satisfaction of the course provider. The course provider shall submit proof of the licensee's completion of the nurse refresher course directly to the board.

**655—3.11(272C) Use of criminal convictions in eligibility determinations and initial licensing decisions.**

**3.11(1) Definitions.**

*"Complete criminal record"* includes the complaint and judgment of conviction for each offense of which the applicant has been convicted, regardless of whether the offense is classified as a felony or a misdemeanor and regardless of the jurisdiction in which the offense occurred.

*"Conviction"* means a finding, plea, or verdict of guilt made or returned in a criminal proceeding, even if the adjudication of guilt is deferred, withheld, or not entered. "Conviction" includes Alford pleas and pleas of nolo contendere.

*"Disqualifying offense"* means a conviction directly related to the duties and responsibilities of the profession. A conviction is directly related to the duties and responsibilities of the profession if either (1) the actions taken in furtherance of an offense are actions customarily performed within the scope of practice of a licensed profession, or (2) the circumstances under which an offense was committed are circumstances customary to a licensed profession.

*"License"* means a license issued by the board.

**3.11(2) License application.** Unless an applicant for licensure petitions the board for an eligibility determination pursuant to subrule 3.11(3), the applicant's convictions will be reviewed when the board receives a completed license application.

*a.* An applicant must disclose all convictions on a license application. Failure to disclose all convictions is grounds for license denial or disciplinary action following license issuance.

*b.* In order for the license application to be considered complete, an applicant with one or more convictions shall submit the complete criminal record for each conviction and a personal statement regarding whether each conviction directly relates to the duties and responsibilities of the profession.

*c.* An applicant must submit as part of the license application all evidence of rehabilitation that the applicant wishes to be considered by the board.

*d.* The board may deny a license if the applicant has a disqualifying offense, unless the applicant demonstrates by clear and convincing evidence that the applicant is rehabilitated pursuant to Iowa Code section 272C.15.

*e.* An applicant with one or more disqualifying offenses who has been found rehabilitated must still satisfy all other requirements for licensure.

*f.* Any application fees paid will not be refunded if the license is denied.

**3.11(3) Eligibility determination.**

*a.* An individual who has not yet submitted a completed license application may petition the board for a determination of whether one or more of the individual's convictions are disqualifying offenses that would render the individual ineligible for licensure. An individual with a conviction is not required to petition the board for an eligibility determination prior to applying for licensure.

*b.* To petition the board for an eligibility determination of whether one or more of the petitioner's convictions are disqualifying offenses, a petitioner shall submit all of the following:

## NURSING BOARD[655](cont'd)

- (1) A completed eligibility determination form;
- (2) The complete criminal record for each of the petitioner's convictions;
- (3) A personal statement regarding whether each conviction directly relates to the duties and responsibilities of the profession and why the board should deem the petitioner rehabilitated;
- (4) All evidence of rehabilitation that the petitioner wishes to be considered by the board; and
- (5) Payment of a nonrefundable fee of \$25.

**3.11(4) Appeal.** A petitioner deemed ineligible or an applicant denied a license because of a disqualifying offense may appeal the decision in the manner and time frame set forth in the board's written decision. A timely appeal will initiate a nondisciplinary contested case proceeding. The board's rules governing contested case proceedings will apply unless otherwise specified in this rule. If the petitioner or applicant fails to timely appeal, the board's written decision will become a final order.

*a.* An administrative law judge will serve as the presiding officer of the nondisciplinary contested case proceeding, unless the board elects to serve as the presiding officer. When an administrative law judge serves as the presiding officer, the decision rendered shall be a proposed decision.

*b.* The contested case hearing shall be closed to the public, and the board's review of a proposed decision shall occur in closed session.

*c.* The office of the attorney general shall represent the board's initial ineligibility determination or license denial and shall have the burden of proof to establish that the petitioner's or applicant's convictions include at least one disqualifying offense. Upon the satisfaction of this burden by a preponderance of the evidence by the office of the attorney general, the burden of proof shall shift to the petitioner or applicant to establish rehabilitation by clear and convincing evidence.

*d.* A petitioner or applicant must appeal an ineligibility determination or license denial in order to exhaust administrative remedies. A petitioner or applicant may only seek judicial review of an ineligibility determination or license denial after the issuance of a final order following a contested case proceeding. Judicial review of the final order following a contested case proceeding shall be in accordance with Iowa Code chapter 17A.

**3.11(5) Future petitions or applications.** If a final order determines a petitioner is ineligible, the petitioner may not submit a subsequent petition for eligibility determination or a license application prior to the date specified in the final order. If a final order denies a license application, the applicant may not submit a subsequent license application or a petition for eligibility determination prior to the date specified in the final order.

These rules are intended to implement Iowa Code chapters 17A, 147, 152, 152E, and 272C.

**ARC 6049C****NURSING BOARD[655]****Notice of Intended Action****Proposing rule making related to discipline  
and providing an opportunity for public comment**

The Board of Nursing hereby proposes to rescind Chapter 4, "Discipline," Iowa Administrative Code, and adopt a new Chapter 4 with the same title.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 147.55, 152.10, and 272C.4.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapters 17A, 147, 152, and 272C.

NURSING BOARD[655](cont'd)

*Purpose and Summary*

Chapter 4 governs the disciplinary process for advanced registered nurse practitioners (ARNPs), registered nurses (RNs), and licensed practical nurses (LPNs) licensed by the Board. Pursuant to Iowa Code section 17A.7, each agency must conduct a comprehensive review of its rules on a five-year basis. The Board therefore reviewed Chapter 4 as part of its five-year review of its rules and now proposes a number of changes intended to make the chapter easier to read and align with the provisions of other similar licensing boards. These changes include adding headings or titles to subrules, explaining the nature of confidential letters, and explaining the available sanctions. Changes to the disciplinary grounds include adding attempted misappropriation of medications; adding participation in a sexual, emotional, social, or business relationship with a patient; removing the reference to prescription “blanks” to account for e-prescribing; and updating citations of Iowa Code sections that have been renumbered.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 655—Chapter 15.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on December 7, 2021. Comments should be directed to:

Kathy Weinberg  
Iowa Board of Nursing  
400 S.W. Eighth Street, Suite B  
Des Moines, Iowa 50309  
Email: [kathy.weinberg@iowa.gov](mailto:kathy.weinberg@iowa.gov)

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

December 7, 2021  
1 to 2 p.m.

Board Office, Suite B  
400 S.W. Eighth Street  
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

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 Board and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s

## NURSING BOARD[655](cont'd)

meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Rescind 655—Chapter 4 and adopt the following new chapter in lieu thereof:

CHAPTER 4  
DISCIPLINE

**655—4.1(17A,147,152,272C) Board authority.** The board may discipline a licensee pursuant to Iowa Code chapters 147, 152, 272C, and 272D, and rules promulgated thereunder.

**655—4.2(17A,147,152,272C) Complaints and investigations.**

**4.2(1) General.** Upon receipt of a written complaint or upon its own motion pursuant to other information received by the board, the board may review and investigate alleged acts or omissions that may violate the board's rules or that are related to the ethical or professional conduct of a licensee. The board may also determine that a complaint does not warrant an investigation.

**4.2(2) Confidentiality of investigative files.** Complaint files, investigation files, and all other investigation reports and investigation information in the possession of the board, including any employees or agents of the board, that relate to licensee discipline are confidential pursuant to Iowa Code section 272C.6(4).

**4.2(3) Investigation.** In order to determine whether disciplinary action is warranted, the executive director or a board investigator may conduct an investigation into the allegations of a complaint. Upon completion of an investigation, the investigator shall prepare a report for the board's consideration. The report may contain evidence gathered by the investigator, findings made by the investigator, the licensee's response to the allegations, and the potential laws or rules alleged to have been violated.

**655—4.3(17A,147,152,272C) Issuance of investigatory subpoenas.** The board has the authority to issue investigatory subpoenas pursuant to Iowa Code section 17A.13.

**4.3(1) Scope of subpoena.** The executive director or designee may, upon the written request of a board investigator or on the executive director's own initiative, subpoena books, papers, records, and any other real evidence necessary for the board to determine whether it should institute a contested case proceeding.

**4.3(2) Content of request.** A written request for a subpoena or the executive director's written memorandum in support of the issuance of a subpoena shall contain the following:

- a. The name and address of the person to whom the subpoena will be directed;
- b. A specific description of the books, papers, records or other real evidence requested;
- c. An explanation of why the documents sought to be subpoenaed are necessary for the board to determine whether it should institute a contested case proceeding; and
- d. In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 4.3(1) have been satisfied.

**4.3(3) Additional requirements for subpoenas for mental health records.** In the case of a subpoena for mental health records, a written request for a subpoena or the executive director's written memorandum in support of the issuance of the subpoena shall, in addition to the requirements of subrule 4.3(2), set forth sufficient facts to establish the following:

- a. The nature of the complaint reasonably justifies the issuance of a subpoena;
- b. Adequate safeguards have been established to prevent unauthorized disclosure;
- c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and
- d. An attempt was made to notify the patient and to secure an authorization from the patient for release of the records at issue.

**4.3(4) Contents of subpoena.** Each issued subpoena shall contain the following:

## NURSING BOARD[655](cont'd)

- a. The name and address of the person to whom the subpoena is directed;
- b. A description of the books, papers, records, or other real evidence requested;
- c. The date, time, and location for production or inspection and copying;
- d. The time within which a motion to quash or modify the subpoena must be filed;
- e. The signature, address, and telephone number of the executive director or designee;
- f. The date of issuance; and
- g. A return of service.

**4.3(5) Motion to quash.** Any person who is aggrieved or adversely affected by compliance with the subpoena and who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

**4.3(6) Ruling on motion.** Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to issue a decision, or the board may issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

**4.3(7) Appeal of an administrative law judge ruling.** A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the executive director, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

**4.3(8) Judicial review.** If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until either:

- a. The person is notified that the investigation has been concluded with no formal action; or
- b. There is a final decision in the contested case.

**655—4.4(17A,147,152,272C) Board action.** When reviewing complaints and investigative material, the board shall do one of the following:

**4.4(1)** Close the case without further action.

**4.4(2)** Close the case and issue the licensee a confidential letter of warning or letter of education. The purpose of confidential letters of warning and letters of education is to alert the licensee to possible violations of Iowa law or board rules so the licensee may address any issues. Confidential letters of warning and letters of education do not constitute formal disciplinary action and are not open for inspection under Iowa Code chapter 22. The board shall maintain a copy of confidential letters of warning and letters of education in the confidential investigative file regarding the licensee. Confidential letters of warning and letters of education may be used as evidence against a licensee in future contested case hearings before the board.

**4.4(3)** Request further investigation, including obtaining a peer review.

**4.4(4)** Determine the existence of probable cause and issue a notice of hearing and statement of charges or approve a combined statement of charges and settlement agreement.

**655—4.5(17A,147,152,272C) Peer review committee.** Any case may be referred to peer review for evaluation of the professional services rendered by the licensee.

**4.5(1) Contract and case referral.** The board shall enter into a contract with peer reviewers to provide peer review services. The board or board staff shall determine which peer reviewer(s) will review a case and what investigative information shall be referred to a peer reviewer.

**4.5(2) Written report.** Peer reviewers shall review the information provided and provide a written report to the board. The written report shall contain an opinion of the peer reviewer regarding whether the licensee conformed to minimum standards of acceptable and prevailing practice of nursing and the rationale supporting the opinion.

## NURSING BOARD[655](cont'd)

**4.5(3) Confidentiality.** Peer reviewers shall observe the confidentiality requirements imposed by Iowa Code section 272C.6(4).

**655—4.6(17A,147,152,272C) Grounds for discipline.** A licensee may be disciplined for failure to comply with the rules promulgated by the board and for any wrongful act or omission related to nursing practice, licensure, or professional conduct.

**4.6(1)** In accordance with Iowa Code section 147.55(1), behavior which constitutes fraud in procuring a license may include, but need not be limited to, the following:

- a. Falsification of the application, credentials, or records submitted to the board for licensure or license renewal as a registered nurse, licensed practical nurse, or advanced registered nurse practitioner.
- b. Fraud, misrepresentation, or deceit in taking the licensing examination or in obtaining a license as a registered nurse, licensed practical nurse, or advanced registered nurse practitioner.
- c. Impersonating any applicant in any examination for licensure as a registered nurse, licensed practical nurse, or advanced registered nurse practitioner.

**4.6(2)** In accordance with Iowa Code section 147.55(2), professional incompetency may include, but need not be limited to, the following:

- a. Lack of knowledge, skill, or ability to discharge professional obligations within the scope of nursing practice.
- b. Deviation by the licensee from the standards of learning, education, or skill ordinarily possessed and applied by other nurses in the state of Iowa acting in the same or similar circumstances.
- c. Willful or repeated departure from or failure to conform to the minimum standards of acceptable and prevailing practice of nursing in the state of Iowa.
- d. Willful or repeated failure to practice nursing with reasonable skill and safety.
- e. Willful or repeated failure to practice within the scope of current licensure or level of preparation.
- f. Failure to meet the standards as defined in 655—Chapter 6.
- g. Failure to meet the standards as defined in 655—Chapter 7.
- h. Failure to comply with the requirements of Iowa Code chapter 139A.

**4.6(3)** In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of a profession may include, but need not be limited to, the following:

- a. Oral or written misrepresentation relating to degrees, credentials, licensure status, records, and applications.
- b. Falsifying records related to nursing practice or knowingly permitting the use of falsified information in those records.

**4.6(4)** In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct or practice harmful or detrimental to the public may include, but need not be limited to, the following:

- a. Performing nursing services beyond the authorized scope of practice for which the individual is licensed or prepared.
- b. Allowing another person to use one's nursing license for any purpose.
- c. Failing to comply with any rule promulgated by the board related to minimum standards of nursing.
- d. Improper delegation of nursing services, functions, or responsibilities.
- e. Committing an act or omission which may adversely affect the physical or psychosocial welfare of the patient or client.
- f. Committing an act which causes physical, emotional, or financial injury to the patient or client.
- g. Failing to report to, or leaving, a nursing assignment without properly notifying appropriate supervisory personnel and ensuring the safety and welfare of the patient or client.
- h. Violating the confidentiality or privacy rights of the patient or client.
- i. Discriminating against a patient or client because of age, sex, race, ethnicity, national origin, creed, illness, disability, sexual orientation, or economic or social status.

## NURSING BOARD[655](cont'd)

- j.* Failing to assess, accurately document, evaluate, or report the status of a patient or client.
- k.* Misappropriating or attempting to misappropriate medications, property, supplies, or equipment of the patient, client, or agency.
- l.* Fraudulently or inappropriately using or permitting the use of prescriptions, obtaining or attempting to obtain prescription medications under false pretenses, or assisting others to obtain or attempt to obtain prescription medication under false pretenses.
- m.* Practicing nursing while under the influence of alcohol, marijuana, or illicit drugs or while impaired by the use of pharmacological agents or medications, even if legitimately prescribed.
- n.* Being involved in the unauthorized manufacture or distribution of a controlled substance.
- o.* Being involved in the unauthorized possession or use of a controlled substance.
- p.* Engaging in behavior that is contradictory to professional decorum.
- q.* Failing to report suspected wrongful acts or omissions committed by a licensee of the board.
- r.* Failing to comply with an order of the board.
- s.* For an advanced registered nurse practitioner, prescribing, dispensing, administering, or distributing drugs:
  - (1) In an unsafe manner.
  - (2) Without accurately documenting it or without assessing, evaluating, or instructing the patient or client.
  - (3) To individuals who are not patients or who are outside of the licensee's specialty area.
- t.* Engaging in repeated verbal or physical conduct that interferes with another health care worker's performance or creates an intimidating, hostile, or offensive work environment.
- u.* Failing to properly safeguard or secure medications.
- v.* Failing to properly document or perform medication wastage.

**4.6(5)** For purposes of this subrule, "patient" is defined to include the patient and the patient's family or caretakers who are present with the patient while the patient is under the care of the licensee. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct or practice harmful or detrimental to the public may include, but need not be limited to, the following professional boundaries violations:

- a.* Sexual contact with a patient, regardless of patient consent.
- b.* Making lewd, suggestive, demeaning, or otherwise sexual comments, regardless of patient consent.
- c.* Participating in, initiating, or attempting to initiate a sexual, emotional, social, or business relationship with a patient, regardless of patient consent.
- d.* Soliciting, borrowing, or misappropriating money or property from a patient, regardless of patient consent.
- e.* Repeatedly divulging personal information to a patient for nontherapeutic purposes, regardless of patient consent.
- f.* Engaging in a sexual, emotional, social, or business relationship with a former patient when there is a risk of exploitation or harm to the patient, regardless of patient consent.

**4.6(6)** In accordance with Iowa Code section 147.55(4), habitual intoxication or addiction to the use of drugs may include, but need not be limited to, the following:

- a.* Excessive use of alcohol which may impair a licensee's ability to practice the profession with reasonable skill and safety.
- b.* Excessive use of drugs which may impair a licensee's ability to practice the profession with reasonable skill and safety.

**4.6(7)** Being convicted of an offense that directly relates to the duties and responsibilities of the profession. A conviction includes a guilty plea, including Alford and nolo contendere pleas, or a finding or verdict of guilt, even if the adjudication of guilt is deferred, withheld, or not entered. A copy of the guilty plea or order of conviction constitutes conclusive evidence of conviction. An offense directly relates to the duties and responsibilities of the profession if the actions taken in furtherance of the offense are actions customarily performed within the scope of practice of the profession or the circumstances under which the offense was committed are circumstances customary to the profession.

## NURSING BOARD[655](cont'd)

**4.6(8)** In accordance with Iowa Code section 147.55(5), fraud in representation as to skill or ability.

**4.6(9)** In accordance with Iowa Code section 147.55(6), use of untruthful or improbable statements in advertisements.

**4.6(10)** In accordance with Iowa Code section 147.55(7), willful or repeated violations of provisions of Iowa Code chapter 147, 152, or 272C.

**4.6(11)** In accordance with Iowa Code section 147.55(8), other acts or offenses as specified by board rule, including the following:

*a.* Failing to provide written notification of a change of address to the board within 30 days of the event.

*b.* Failing to notify the board within 30 days from the date of the final decision in a disciplinary action taken by the licensing authority of another state, territory, or country.

*c.* Failing to notify the board of a criminal conviction within 30 days of the action, regardless of whether the judgment of conviction or sentence was deferred, and regardless of the jurisdiction where it occurred.

*d.* Failing to submit an additional completed fingerprint packet as required and applicable fee, when a previous fingerprint submission has been determined to be unacceptable, within 30 days of a request made by board staff.

*e.* Failing to respond to the board during a board audit or submit verification of compliance with continuing education requirements or exceptions within the time period provided.

*f.* Failing to respond to the board during a board audit or submit verification of compliance with training in child or dependent adult abuse identification and reporting or exceptions within the time period provided.

*g.* Failing to respond to the board during a board audit or submit verification of compliance with the requirements for the supervision of fluoroscopy set forth in 655—subrule 7.4(5) or exceptions within the time period provided.

*h.* Failing to respond to or comply with a board investigation or subpoena.

*i.* Engaging in behavior that is threatening or harassing to the board, board staff, or agents of the board.

*j.* Violating an initial agreement or contract with the Iowa nurse assistance program committee.

**4.6(12)** In accordance with Iowa Code section 147.2 or 147.10:

*a.* Engaging in the practice of nursing in Iowa prior to licensure or not pursuant to the nurse licensure compact.

*b.* Engaging in the practice of nursing in Iowa on an inactive license.

**4.6(13)** In accordance with Iowa Code section 152.10(2):

*a.* Continuing to practice while knowingly having an infectious or contagious disease which could be harmful to a patient's welfare without taking precautions to meet the current standard of care.

*b.* Having a license to practice nursing as a registered nurse, licensed practical/vocational nurse, or advanced registered nurse practitioner revoked or suspended, or having other disciplinary action taken, by a licensing authority of another state, territory, or country.

*c.* Having a license to practice nursing as a registered nurse, licensed practical/vocational nurse, or advanced registered nurse practitioner revoked or suspended, or having other disciplinary action taken, by a licensing authority in another state which has adopted the nurse licensure compact contained in Iowa Code section 152E.1 or the advanced practice registered nurse compact contained in Iowa Code section 152E.3 and which has communicated information relating to such action pursuant to the coordinated licensure information system established by the compact. If the action taken by the licensing authority occurs in a jurisdiction which does not afford the procedural protections of Iowa Code chapter 17A, the licensee may object to the communicated information and shall be afforded the procedural protections of Iowa Code chapter 17A.

*d.* Knowingly aiding, assisting, procuring, advising, or allowing a person to unlawfully practice nursing.

## NURSING BOARD[655](cont'd)

*e.* Being adjudicated mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a license for the duration of the license unless the board orders otherwise.

*f.* Being unable to practice nursing with reasonable skill and safety by reason of illness or as a result of a mental or physical condition.

**655—4.7(17A,147,152,272C) Sanctions.**

**4.7(1)** A sanction is a disciplinary action by the board which resolves a contested case.

**4.7(2)** The board may impose one or more of the following sanctions:

- a.* Revocation of a license.
- b.* Suspension of a license until further order of the board or for a specified period.
- c.* Nonrenewal of a license.
- d.* Restriction on engaging in specified nursing procedures, methods, settings, or acts.
- e.* Probation.
- f.* Additional education or training, reexamination, or both.
- g.* Physical, mental, or substance abuse evaluation, alcohol or drug screening, or clinical competency evaluation.
- h.* Civil Penalty. Assessment of a fine shall be specified in the order and may not exceed a maximum amount of \$1,000.
- i.* Citation and warning.
- j.* Such other sanctions allowed by law as may be appropriate.

**655—4.8(17A,147,152,272C) Voluntary surrender.** A voluntary surrender of licensure may be submitted to the board as resolution of a contested case or in lieu of continued compliance with a disciplinary decision of the board. A voluntary surrender, when accepted by the board, has the same force and effect as an order of revocation. A voluntary surrender of a license during the pendency of a complaint or investigation shall be considered discipline and shall have the same force and effect as an order of revocation.

**655—4.9(17A,147,152,272C) Prohibited grounds for discipline.** The board shall not suspend or revoke the license of a person who is in default or is delinquent on repayment of a service obligation under federal or state postsecondary educational loans or public or private services-conditional postsecondary tuition assistance solely on the basis of such default or delinquency.

These rules are intended to implement Iowa Code chapters 17A, 147, 152, and 272C.

**ARC 6050C**

**PUBLIC HEALTH DEPARTMENT[641]**

**Notice of Intended Action**

**Proposing rule making related to the Iowa care for yourself program  
and providing an opportunity for public comment**

The Public Health Department hereby proposes to amend Chapter 8, “Iowa Care for Yourself (IA CFY) Program,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 135.11(1) and 135.39.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 135.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

*Purpose and Summary*

The proposed amendments include changes to clarify statements, match medical definitions, and allow for cervical cancer services to be provided by the IA CFY program to an expanded population of persons 21 to 39 years of age who do not have access to other programs providing these services. The IA CFY program will also now be able to provide breast cancer services to asymptomatic persons under 40 years of age who are identified as at high risk for breast cancer.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department's waiver provisions contained in 641—Chapter 178.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on December 7, 2021. Comments should be directed to:

Jill Myers Gadelmann  
Department of Public Health  
Lucas State Office Building  
321 East 12th Street  
Des Moines, Iowa 50319  
Email: [jill.myers-gadelmann@idph.iowa.gov](mailto:jill.myers-gadelmann@idph.iowa.gov)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 641—8.1(135) as follows:

**641—8.1(135) Definitions.** For purposes of this chapter, the following definitions apply:

“*Abnormal screen*” means a suspicion of breast or cervical cancer or laboratory values of total cholesterol or blood glucose and average blood pressure reading in the range defined by the CDC according to National Heart, Lung and Blood Institute guidelines.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

1. A suspicion of breast cancer includes clinical breast examination findings of: palpable breast mass, breast dimpling, nipple retraction, bloody nipple discharge, palpable lymph nodes around clavicle or axilla, nipple erythema and scaliness, a mammography result of breast imaging reporting and data systems (BI-RADS) category 4 (suspicious abnormality suggesting need for biopsy) or category 5 (highly suggestive of malignancy) (ICD-10 R92.0, R92.1, R92.2, R92.8), breast biopsy result of ductal cancer in situ (ICD-10 D05.10, D05.11, D05.12), lobular cancer in situ (ICD-10 D05.00, D05.01, D05.02) or breast or lymph node (or other) biopsy result of breast cancer.

2. Suspicion of cervical cancer is a Pap test result of atypical squamous cells cannot exclude high-grade squamous intraepithelial lesions (ASC-H) (ICD-10 R87.611 or ~~R87.622~~ R87.621), atypical glandular cells (AGC) (ICD-10 R87.619 or R87.629), low-grade squamous intraepithelial lesions (LSIL) (ICD-10 R87.612 or R87.622), or high-grade squamous intraepithelial lesions (HSIL) (ICD-10 R87.613 or R87.623), leukoplakia of the cervix (ICD-10 N88.0), or cervical biopsy result of cervical intraepithelial neoplasia II (ICD-10 N.87.1) or III (ICD-10 D06.0, D06.1, D06.7 or D06.9), or cancer in situ (ICD-10 D06.0, D06.1, D06.7 or D06.9).

3. Abnormal value means laboratory values of total cholesterol or blood glucose (HbA1c if diagnosed diabetic) and average blood pressure reading in the range defined by the CDC according to National Heart, Lung and Blood Institute guidelines.

“ACR” or “*American College of Radiology*” means one of the Food and Drug Administration-recognized accreditation bodies for minimum quality standards for personnel, equipment, and record keeping in facilities that provide breast imaging.

“*Advanced registered nurse practitioner*” means an individual licensed to practice under 655—Chapter 7.

“*Alert value*” means laboratory values of total cholesterol, blood glucose or average blood pressure reading in the range defined by the CDC according to National Heart, Lung and Blood Institute guidelines.

“*BCCPTA*” or “*Breast and Cervical Cancer Prevention and Treatment Act of 2000*” means a federal law that provides each state with the option of extending Medicaid eligibility to individuals who were diagnosed with breast or cervical cancer through the National Breast and Cervical Cancer Early Detection Program.

“*BCCT option of Medicaid*” or “*breast and cervical cancer treatment option of Medicaid*” means the optional program of medical aid designed for individuals who are unable to afford regular medical service and are diagnosed with breast or cervical precancer or cancer through the National Breast and Cervical Cancer Early Detection Program or through funds from family planning centers, community health centers, or nonprofit organizations. The individuals who receive screening or services meet eligibility requirements established by the Iowa care for yourself program. The BCCT option of Medicaid is financed by federal and state payment sources and is authorized by Title XIX of the Social Security Act.

“*Benign*” means a noncancerous condition that does not spread to other parts of the body.

“*Biopsy*” means the removal of a sample or an entire abnormality for microscopic examination to diagnose a problem. Examples of a sampling would be a core biopsy or incisional biopsy; an example of entire removal would be an excisional biopsy.

“*BI-RADS*” or “*breast imaging reporting and data systems*” means a standardized reporting system for mammography, breast ultrasound and breast magnetic resonance imaging (MRI) reports.

“*Blood glucose*” means a simple sugar found in the blood that is an important energy source in living organisms and is a component of many carbohydrates.

“*Blood pressure*” means the force of blood against the circulatory system. The systolic blood pressure is the force caused when the heart contracts and pushes out the blood. The diastolic blood pressure is when the heart relaxes and fills with blood.

“*BMI*” or “*body-mass index*” means an index for relating weight to height a person’s weight in kilograms divided by the square of the person’s height in meters. BMI provides a reliable indicator of body fatness for most people and is used to screen for weight categories that may lead to health problems.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

“*Breast ultrasound*” means an imaging technique commonly used to screen for tumors and other breast abnormalities. The breast ultrasound uses high-energy sound waves to produce a detailed image of the inside of the breast.

“*Cancer*” means a group of diseases involving abnormal cell growth with the potential to invade or spread to other parts of the body.

“*Carcinoma in situ*” means a group of abnormal cells found only in the place where they first formed in the body.

“*Cardiologist*” means a physician licensed to practice under Iowa Code chapter 148 who specializes in the study or treatment of the heart and its action and diseases.

“*Cardiovascular disease*” means a broad term used to describe a range of diseases that affect the heart and, in some cases, blood vessels.

“*Cardiovascular disease risk factors*” means identifiable factors that make some people more susceptible than others to cardiovascular disease. Cardiovascular disease risk factors include:

1. Obesity.
2. Physical inactivity.
3. High blood pressure.
4. High blood cholesterol.
5. Diabetes.
6. Tobacco use.

Risk factors that cannot be changed are age, gender and family history. The more cardiovascular disease risk factors a person has increases the person’s chance of developing cardiovascular disease.

“*Case management*” means the IA CFY program component that involves establishing, brokering, and sustaining a system of available clinical and essential support services for all individuals enrolled in the program.

“*CBE*” or “*clinical breast examination*” means complete examination of an individual’s breast and axilla with palpation by a health care provider trained to recognize many different types of abnormalities and warning signs.

“*CDC*” means the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services, a federal agency that conducts and supports health promotion, prevention and preparedness activities in the ~~U.S.~~ United States, with the goal of improving overall public health.

“*Cholesterol*” means a waxy, fat-like substance made in the liver and other cells and found in certain foods, such as foods from animals, for example, dairy products, eggs and meat. Types of cholesterol are as follows:

1. Low density lipoprotein or LDL, also called “bad” cholesterol. LDL can cause buildup of ~~plaque on the walls of arteries. The more LDL there is in the blood, the greater,~~ which narrows the arteries and increases the risk of cardiovascular disease.

2. High density lipoprotein or HDL, also called “good” cholesterol. HDL helps the body get rid of bad cholesterol in the blood. If levels of HDL are low, risk of cardiovascular disease increases.

3. Very low density lipoprotein or VLDL. VLDL is similar to LDL cholesterol in that it contains mostly fat and not much protein. It differs in that VLDL carries triglycerides, whereas LDL carries mainly cholesterol.

4. Total cholesterol means the sum of the very low, low and high density lipoproteins.

“*CLIA*” or “*Clinical Laboratory Improvement Acts of 1988*” means the federal regulatory standards that apply to all clinical laboratory testing performed on humans in the ~~U.S.~~ United States. These standards establish minimum quality standards for personnel and quality assurance methods that monitor patient test management and assess quality control, proficiency testing, and personnel handling of laboratory and pathology specimens.

“*CLIA-waived tests*” means simple laboratory examinations and procedures that are cleared by the federal government for home use, that employ methodologies that are so simple and accurate that erroneous results would be negligible, or that pose no reasonable risk of harm to the patient if the test is performed incorrectly.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

“*CMS*” or “*Centers for Medicare and Medicaid Services*” is a federal agency within the United States Department of Health and Human Services that administers health care programs, including Medicare, Medicaid, the children’s health insurance program (CHIP) and health insurance exchanges, in partnership with state governments.

“*Colposcopy*” means a medical procedure that allows close examination of the surface of the cervix with a high-powered microscope.

“*Community referral*” means to direct individuals elsewhere to obtain needed information, mutual support or community resources through help lines or other methods.

“*Community resource*” means a source of information, service or expertise that is available within the community, including respite care services, health and mental health services and other social services.

“*Cooperative agreement*” means a signed contract between the department and another party, for example, a health care facility, which allows the ~~department~~ department’s IA CFY program to pay the health care facility for providing services to IA CFY program participants.

“*CPT*” or “*current procedural terminology*” is means a listing of descriptive terms and identifying codes for uniform language to report medical services and procedures performed by qualified health care professionals and allows clinicians, statisticians, politicians, health insurance programs, health planners and others to speak a common language.

“*Creditable coverage*” means any insurance that pays for medical bills incurred for the screening, diagnosis, or treatment of breast and cervical cancer. Creditable coverage as described by the Health Insurance Portability and Accountability Act of 1996 includes, but is not limited to, group health plans or health insurance coverage consisting of medical care under any hospital or medical service policy, health maintenance organization, Medicare Part A or B, Medicaid, armed forces insurance, or state health risk pool. An individual who has creditable coverage shall not be eligible for coverage under the breast and cervical cancer treatment option of Medicaid.

“*Creditable coverage circumstances*” means those instances in which an individual has creditable coverage but is not actually covered for treatment of breast or cervical cancer.

1. When there is a preexisting-condition exclusion or when the annual or lifetime limit on benefits has been exhausted, an individual is not considered to have creditable coverage for this treatment.

2. If an individual has limited coverage, such as a high deductible, limited drug coverage, or a limited number of outpatient visits, the individual is still considered to have creditable coverage and is not eligible for coverage under the breast and cervical cancer treatment option of Medicaid.

3. If an individual has a policy with a limited scope of coverage, such as only dental, vision, or long-term care, or has a policy that covers only a specific disease or illness, the individual is not considered to have creditable coverage unless the policy provides coverage for breast and cervical cancer treatment.

4. For the purposes of this program, eligibility for Indian Health Services or tribal health care is not considered creditable coverage (according to P.L. 107-121, the Native American Breast and Cervical Cancer Treatment Technical Amendment Act of 2001).

“*Cytology*” means the branch of biology that studies the structure and function of a cell.

“*Cytopathology*” means the branch of pathology that studies and diagnoses disease on the cellular level.

“*Cytotechnologist*” means a laboratory professional who studies cells and cellular abnormalities.

“*Department*” means the Iowa department of public health.

“*DHS*” or “*department of human services*” means the Iowa department of human services, a state agency that provides a wide range of services, including health care coverage for low-income uninsured individuals diagnosed with breast or cervical cancer or precancer and requiring treatment.

“*Diagnostic mammography*” means a radiological examination performed for clinical indications, such as breast mass(es), other breast signs or symptoms (spontaneous nipple discharge, skin changes), or special cases, such as a history of breast cancer with breast conservation or augmented breasts.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

“Facility” means a place where health care is provided, including hospitals, clinics, outpatient care centers, laboratories, and specialized care centers that have completed enrollment paperwork with the IA CFY program.

“Family planning clinic” means a Title X family planning program site dedicated to the provision of family planning and related preventive health services to low-income and underserved populations.

“FDA” or “Food and Drug Administration” means the federal governmental body which certifies that a breast imaging facility meets minimum quality standards for personnel, equipment, and record keeping.

“Follow-up” means the IA CFY program component that involves a system for seeking information about or reviewing an abnormal condition, rescreening, or recall for annual visits ensures provision of timely and adequate services for participants who have abnormal screening results.

“Gynecologist” means a physician licensed to practice under Iowa Code chapter 148 who specializes in treating diseases of the female reproductive organs in women and providing well-woman health care that focuses primarily on the reproductive organs.

“HbA1c” or “glycosylated hemoglobin” means a clinical laboratory test for the purposes of diagnosing diabetes or determining control of diabetes over the past two to three months.

“Health care provider” means any physician, pharmacist, advanced registered nurse practitioner, or physician assistant who is authorized to practice by the state; who is performing within the scope of the practice as defined by state law; and who provides care to IA CFY program-enrolled individuals.

“IA BCCEDP” or “Iowa breast and cervical cancer early detection program” means a comprehensive breast and cervical cancer screening program established and funded under Title XV of the federal Public Health Service Act and administered by the Iowa department of public health, with the delegated responsibility of implementation and evaluation from the CDC, Division of Cancer Prevention and Control.

“IA CFY program” or “Iowa care for yourself program” means an integrated comprehensive breast and cervical cancer screening program and cardiovascular risk factor screening and intervention program administered by the Iowa department of public health.

“IA WISEWOMAN” or “Iowa well-integrated screening and evaluation for women across the nation” means a cardiovascular-related risk factor screening and intervention program to provide standard preventive screening services, including blood pressure measurements, cholesterol testing, blood glucose testing, and lifestyle interventions that target poor nutrition, physical inactivity, and tobacco use. The program is authorized by the federal government and administered by the CDC to help reduce deaths and disability from cardiovascular disease and stroke.

“ICD-10” or “International Classification of Disease, 10th edition” means a standardized classification of diseases, injuries, and reasons of death, by cause and anatomic localization, which is systematically put into a number of up to seven digits and which allows clinicians, statisticians, politicians, health planners and others to speak a common language, both in the United States and internationally.

“Infrastructure” means the basic framework of sufficient staff and adequate support systems to plan, implement, and evaluate the components of the IA CFY program.

“In need of treatment” means that a medical or surgical intervention is required because of an abnormal finding of breast or cervical cancer or precancer that was determined as a result of a screening or diagnostic procedure for breast or cervical cancer/precancer.

“Intervention” means services that promote a cardiovascular-healthy diet and physical activity and that are based on screening results, which include blood pressure, cholesterol, blood glucose, weight, height, personal medical history, family medical history, and health behavior and readiness-to-change assessments.

“MAB” or “medical advisory board” means a body that may be utilized by the IA CFY program to offer knowledge and experience as related to the fields of expertise of the members of the board. Duties of the MAB may include, but are not limited to, the following:

1. Reviewing and making recommendations for clinical service expansion.
2. Reviewing program-developed clinical protocols.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

3. Providing recommendations related to other clinical and participant-related issues.
4. Providing input related to quality assurance issues.
5. Reviewing program screening and diagnostic data.

“MDEs” or “minimum data elements” means a set of standardized data elements used to collect patient-level screening records demographic and clinical information on individuals served through the with NBCCEDP in order funds. The MDEs are reported to the CDC to evaluate whether programs are meeting clinical standards and programmatic priorities.

“Medicaid” means a health care program that assists low-income families or individuals in paying for doctor visits, hospital stays, long-term medical care, custodial care costs and more; the program is financed by federal and state payment sources and authorized by Title XIX of the Social Security Act and administered by the Iowa department of human services.

“Medicare” means the program of federal payment source for health benefits, especially for the aged, which is authorized by Title XVIII of the Social Security Act. Medicare is administered by CMS.

“MRI” or “magnetic resonance imaging” means a medical imaging technique used in radiology to form pictures of the anatomy and the physiological processes of the body. MRI scanners use strong magnetic fields, magnetic field gradients, and radio waves to generate images of the organs in the body.

“NBCCEDP” or “National Breast and Cervical Cancer Early Detection Program” means a program established with the passage of the Breast and Cervical Cancer Mortality Prevention Act of 1990 (Public Law 101-354). The law authorizes the CDC to establish a program of grants to states, tribes, and territories for increasing the early detection of breast and cervical cancer, particularly among low-income, uninsured, and underserved individuals.

“Nonprofit organization” means a group organized for purposes other than generating profit and in which no part of the organization’s income is distributed to its members, directors, or officers, except under limited circumstances.

“Oncologist” means a physician licensed to practice under Iowa Code chapter 148 who is a specialist in treating or studying the physical, chemical, and biologic properties and features of neoplasms, including causation, pathogenesis, and treatment.

“Outreach” means the IA CFY program component that involves recruiting targeted populations or individuals who never or rarely utilize preventive health services.

“Pap test” or “Papanicolaou screening test” means the Papanicolaou screening test that collects a procedure to collect cells from the cervix for examination under a microscope. The Pap test can detect abnormal cells or precancerous cells before cancer develops.

“Pathologist” means a physician licensed to practice under Iowa Code chapter 148 who is a specialist in identifying who interprets and diagnoses the changes caused by diseases by studying cells and tissues under a microscope in tissues and body fluids.

“Patient navigation” means an IA CFY program component that assists individuals in overcoming health care system barriers and facilitates timely access to quality screening and diagnostics as well as initiation of breast or cervical cancer treatment services.

“Pharmacist” means an individual licensed to practice under Iowa Code chapter 155A who is able to receive or process prescription drug orders in accordance with the pharmacy laws.

“Physician” means an individual licensed to practice medicine and surgery or osteopathic medicine and surgery under Iowa Code chapter 148.

“Physician assistant” means an individual who has successfully completed an approved program and passed an examination approved by the board or is otherwise found by the board to be qualified to perform medical services under the supervision of a physician and is licensed to practice under Iowa Code chapter 148C.

“Precancerous” means a condition or lesion involving abnormal cells that are associated with an increased risk of developing into cancer.

“Program and fiscal management” means the IA CFY program component that includes planning, organizing, directing, coordinating, managing, budgeting for, and evaluating program activities.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

“*Quitline Iowa*” means a toll-free, statewide ~~smoking tobacco~~ cessation telephone counseling hotline through which trained counselors provide assistance in making an individualized tobacco use quit plan and provide ongoing support through optional follow-up calls.

“*Radiologist*” means a physician licensed to practice under Iowa Code chapter 148 who specializes in the branch of medicine that diagnoses injuries and diseases using medical imaging procedures such as X-rays, sound waves, or other types of energy.

“*Rarely or never been screened*” means, as defined for the NBCCEDP, that an individual has not had cervical cancer screening within the last ~~five years~~ 3,469 days (9.5 years) or has never been screened for cervical cancer.

“*Recruitment*” means the IA CFY program component that involves ~~enrolling targeted populations or individuals~~ finding new individuals to enroll in the IA CFY program for preventive breast and cervical health services.

“*Referral*” means the IA CFY program component that involves directing individuals with abnormal/alert screening results or barriers to services to appropriate resources for follow-up action.

“*Screening mammography*” means the use of X-ray of the breasts of asymptomatic individuals in an attempt to detect abnormal lesions of the breast when they are small, nonpalpable, and confined to the breast.

“*Service delivery*” means providing, either directly or through contractual arrangements, comprehensive breast and cervical cancer screening and cardiovascular disease and stroke risk factor screening, diagnosis, and treatment services through tracking of screening intervals, timeliness of diagnosis, and timeliness of treatment of individuals.

“*Surgeon*” means a physician licensed to practice under Iowa Code chapter 148 who treats disease, injury, or deformity by physical operation or manipulation.

“*Surveillance*” means the IA CFY program component that involves the systematic collection, analysis, and interpretation of health data.

“*TBS*” or “*the Bethesda system*” means a system for reporting cervical or vaginal cytologic diagnoses, used for reporting Pap test results.

“*Triglycerides*” means a type of fat that is carried in the blood by very low density lipoproteins. Excess calories, alcohol, or sugar in the body are converted into triglycerides and stored in fat cells throughout the body.

ITEM 2. Amend paragraph **8.2(2)“a”** as follows:

*a.* The IA CFY program shall cover breast and cervical cancer screening and diagnostic services including, but not limited to, the following when those services are provided by a participating health care provider ~~who~~ whose facility has a cooperative agreement with the Iowa department of public ~~health~~ health’s IA CFY program. Payment shall be based on Medicare Part B participating-provider rates as released annually at the beginning of each calendar year.

(1) to (10) No change.

ITEM 3. Amend paragraph **8.2(2)“f”** as follows:

*f.* A health care provider ~~that~~ whose facility has a cooperative agreement with the IA CFY program shall be subject to the following:

(1) to (7) No change.

ITEM 4. Adopt the following **new** paragraph **8.3(1)“f”**:

*f.* If the applicant is 21 through 39 years of age and asymptomatic for breast cancer, the applicant may receive an office visit for a cervical cancer screening according to IA CFY protocol. If the applicant is determined to be at high risk for developing breast cancer using a risk assessment model that relies on family history, the applicant may receive breast services, including a mammogram and an MRI, in accordance with IA CFY protocols. EXCEPTION: This categorized group is not eligible for cardiovascular services under this program.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 5. Amend paragraph **8.3(3)“c”** as follows:

c. Individuals who have creditable coverage, Medicaid, or Medicare Part B are eligible for patient navigation if declaring a barrier to services.

ITEM 6. Amend subrule 8.3(5) as follows:

**8.3(5) Ineligible.** The IA CFY program does not provide coverage for: men.

~~a. Men.~~

~~b. Individuals 39 years of age and younger unless they have symptoms of breast cancer.~~

ITEM 7. Adopt the following **new** paragraph **8.5(1)“e”**:

e. Fifth priority shall be given to individuals 21 through 39 years of age.

ITEM 8. Amend paragraph **8.7(1)“a”** as follows:

a. The individual was enrolled in the IA CFY program when diagnosed; has had at least one of the screening services (Pap test, screening mammogram, CBE or MRI) or diagnostic procedures paid for by the IA CFY program or with funds from family planning centers, community health centers, or nonprofit organizations; and must be in need of treatment for breast or cervical cancer or precancerous conditions; or

**ARC 6051C**

**PUBLIC HEALTH DEPARTMENT[641]**

**Notice of Intended Action**

**Proposing rule making related to radiation machines and radioactive materials  
and providing an opportunity for public comment**

The Public Health Department hereby proposes to amend Chapter 38, “General Provisions for Radiation Machines and Radioactive Materials,” and Chapter 41, “Safety Requirements for the Use of Radiation Machines and Certain Uses of Radioactive Materials,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code chapter 136C.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 136C.

*Purpose and Summary*

The proposed amendments to Chapter 38 strike the fee related to the State of Iowa as a mammography accrediting body (AB) and providing services for mammography interpretation fees and accreditation fees. The State of Iowa relinquished the role of AB effective January 1, 2021. The fees are being removed to reflect the current fee collections by the Bureau of Radiological Health.

The proposed amendments to Chapter 41 align with the current changes in technology of X-ray machines for mammography and stereotactic breast biopsy and reflect the requirements of the quality control programs outlined by the unit manufacturers. Additional amendments will align the Department’s rules with the Food and Drug Administration (FDA) on certain requirements outlined in the Mammography Quality Standards Act (MQSA).

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department's waiver provisions contained in 641—Chapter 178.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on December 7, 2021. Comments should be directed to:

Angela Leek  
Bureau of Radiological Health  
Department of Public Health  
321 East 12th Street  
Des Moines, Iowa 50319  
Email: [angela.leek@idph.iowa.gov](mailto:angela.leek@idph.iowa.gov)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

- ITEM 1. Amend paragraph **38.8(1)“b”** as follows:
- b.* Each registrant shall, where appropriate, pay the following special inspections/interpretation fee at the written request of the department:
- (1) Mammography unit inspections fees:
    1. \$1,575 for the first unit and, if the facility has additional units at the address of the first unit, a fee of \$375 for each additional unit; or
    2. \$1,575 per portable unit for each site ~~where the unit is off loaded and used and where the processing and patient films are stored~~; or
    3. Dollar amount to be determined and justified by the department on a case-by-case basis for facilities which do not meet the above criteria; or
    4. \$675 for the second facility follow-up visit to review or determine the corrective action taken to address noncompliances; or
    5. \$1,575 for each stereotactic breast biopsy unit.
  - ~~(2) Mammography interpretation fees of \$100 per mammography examination provided to the department for the purpose of determining film diagnostic quality.~~
  - ~~(3)~~ (2) Industrial and oncology accelerator registrants and electronic brachytherapy registrants shall pay for each inspection a fee of \$900 for the first unit and \$225 for each additional unit.
  - ~~(4)~~ (3) Industrial radiography X-ray units/walk-in cabinet radiography X-ray unit registrants shall pay for each inspection a fee of \$450 for the first unit and \$130 for each additional unit.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 2. Rescind paragraph **38.8(1)“f.”**

ITEM 3. Amend subrule 41.6(1) as follows:

**41.6(1) Definitions.** In addition to the definitions provided in 641—38.2(136C), 641—40.2(136C), and 641—41.1(136C), the following definitions shall be applicable to this rule.

“*Accreditation body*” means an entity that has been approved by FDA to accredit mammography facilities.

“*Acquisition workstation*” or “*AWS*” means the soft copy display workstation used in conjunction with the mammography unit.

“*Action limits*” or “*action levels*” means the minimum and maximum values of a quality assurance measurement that can be interpreted as representing acceptable performance with respect to the parameter being tested. Values less than the minimum or greater than the maximum action limit or level indicate that corrective action must be taken by the facility. Action limits or levels are also sometimes called control limits or levels.

“*Adverse event*” means an undesirable experience associated with mammography activities. Adverse events include but are not limited to:

1. Poor image quality;
2. Failure to send mammography reports within 30 days to the referring physician or in a timely manner to the self-referred patient; and
3. Use of personnel who do not meet the applicable requirements of this chapter.

“*Air kerma*” means kerma in a given mass of air. The unit used to measure the quantity of air kerma is the Gray (Gy). For X-rays with energies less than 300 kiloelectronvolts (keV), 1 Gray of absorbed dose is delivered by 114 roentgens (R) of exposure.

“*Annually*” means within 10 to 14 months of previous occurrence.

“*Artifact*” means a substance or structure not naturally present in living tissue but of which an authentic image appears in a radiograph.

“*Automatic exposure control systems*” means automatic exposure control systems, often referred to as phototimers, which are designed to automatically determine and provide the exposure needed to produce an adequate density image by sampling the X-ray intensity after passage through the patient and image receptor.

“*Average glandular dose*” means the energy deposited per unit mass of glandular tissue averaged over all the glandular tissue in the breast, calculated from values of entrance exposure in air, the X-ray beam quality (half-value layer), and compressed breast thickness. For a 50 percent-50 percent adipose and glandular 4.2 centimeter breast, the average glandular dose shall not exceed 300 millirad (3 mGy). See also: “Dose.”

“*Breast implant*” means a prosthetic device implanted in the breast.

“*Calendar quarter*” means any one of the following time periods during a given year: January 1 through March 31, April 1 through June 30, July 1 through September 30, or October 1 through December 31.

“*Category 1*” means medical education activities that have been designated as Category 1 by the Accreditation Council for Continuing Medical Education (ACCME), the American Osteopathic Association (AOA), a state medical society, or an equivalent organization.

“*Certificate*” means the certificate described in 41.6(2)“a”(2).

“*Certification*” means the process of approval of a facility by the FDA or this agency to provide mammography services.

“*Clinical image*” means a mammogram.

“*Compression device*” means a firm plastic paddle used to help hold the breast stationary and eliminate blurring due to motion, to help separate structures within the breast, and to decrease the thickness of breast tissue, minimizing the amount of radiation used and the amount of scattered radiation reaching the film.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

*“Computed radiography mammography”* means a type of digital mammography in which the digital image receptor must be removed from the X-ray unit for the image to be read and processed by a separate image receptor reader.

*“Consumer”* means an individual who chooses to comment or complain in reference to a mammography examination, including the patient or representative of the patient (e.g., family member or referring physician).

*“Contact hour”* means an hour of training received through direct instruction.

*“Continuing education unit”* or *“continuing education credit”* means one contact hour of training.

*“Craniocaudal view”* means one of two routine views for mammography. The detector system is placed caudad to (below) the breast and the vertical X-ray beam is directed from cranial to caudad (downward) through the breast.

*“Dedicated mammography equipment”* means X-ray systems designed specifically for breast imaging, providing optimum imaging geometry, a device for breast compression and low dose exposure that can generate reproducible images of high quality.

*“Digital breast tomosynthesis”* or *“DBT”* means mammography that uses reconstructions to create three-dimensional images of the breasts.

*“Direct detector technology”* means a digital mammogram captured using a material which converts the X-ray energies directly to an electric signal.

*“Direct instruction”* means:

1. Face-to-face interaction between instructor(s) and student(s), as when the instructor provides a lecture, conducts demonstrations, or reviews student performance; or
2. The administration and correction of student examinations by an instructor(s) with subsequent feedback to the student(s).

*“Direct supervision”* means that:

1. During joint interpretation of mammograms, the supervising interpreting physician reviews, discusses, and confirms the diagnosis of the physician being supervised and signs the resulting report before it is entered into the patient’s records; or
2. During the performance of a mammography examination or survey of the facility’s equipment and quality assurance program, the supervisor is present to observe and correct, as needed, the performance of the individual being supervised who is performing the examination or conducting the survey.

*“Dose”* means the amount of energy deposited per unit mass of tissue due to X-radiation. The newer unit of absorbed dose is the Gray: 1 Gray=1 Joule of energy deposited per kilogram of tissue. The older unit of absorbed dose is the rad: 1 rad=0.01 Gray, 1 centiGray, or 10 milliGray.

*“EQUIP”* means enhancing quality using the inspection program and uses inspection questions related to the image quality regulations of MQSA to emphasize the significance of continuous clinical image quality.

*“Exposure”* means the amount of X-radiation, quantitated by measuring the amount of ionization in air caused by the radiation. The units of exposure are Coulombs of charge ionized per kilogram of air. The older unit of exposure is the Roentgen: 1 Roentgen= $2.58 \times 10E-4$  Coulombs of charge per kilogram of air.

*“Facility”* means a hospital, outpatient department, clinic, radiology practice, mobile unit, office of a physician, or other facility that conducts mammography activities, including the following: operation of equipment to produce a mammogram, initial interpretation of the mammogram, and maintaining viewing conditions for that interpretation. This term does not include a facility of the Department of Veterans Affairs.

*“FDA”* means the Food and Drug Administration.

*“First allowable time”* means the earliest time a resident physician is eligible to take the diagnostic radiology boards from an FDA-designated certifying body. The “first allowable time” may vary with the certifying body.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

“*Full field digital mammography*” or “*FFDM*” means radiographic imaging of the breast using a digital image receptor with minimum dimensions of 18×23 cm to allow imaging the average size breast in a single exposure.

“*Grids*” means a set of thin lead strips spaced close to one another, interspaced by carbon fiber for mammographic grids. The grid is placed between the breast and the screen-film image receptor to reduce scattered radiation reaching the image receptor.

“*Image noise.*” See “Radiographic noise.”

“*Image receptor support device*” means, for mammography X-ray systems, that part of the system designed to support the image receptor during a mammographic examination and to provide a primary protective barrier.

“*Inspection*” means to assess and determine compliance with regulations.

“*Interpreting physician*” means a licensed radiologist who interprets mammograms and who meets the requirements set forth in 41.6(3)“a.”

“*Kerma*” means the sum of the initial energies of all the charged particles liberated by uncharged ionizing particles in a material of given mass.

“*Laterality*” means the designation of either the right or left breast.

“*Lead interpreting physician*” means the interpreting physician assigned the general responsibility for ensuring that a facility’s quality assurance program meets all of the requirements of this chapter. The administrative title and other supervisory responsibilities of the individual, if any, are left to the discretion of the facility.

“*Mammogram*” means a radiographic image produced through mammography.

“*Mammographic modality*” means a technology for radiography of the breast. Examples are screen-film mammography, ~~xeromammography~~, and full field digital mammography and digital breast tomosynthesis.

“*Mammography*” means radiography of the breast but, for the purposes of 641—41.6(136C), does not include:

1. Radiography of the breast performed during invasive interventions for localization or biopsy procedures; or
2. Radiography of the breast performed with an investigational mammography device as part of a scientific study conducted in accordance with FDA investigational device exemption regulations; or
3. Radiography of the breast performed as part of either a breast localization procedure or a post-stereotactic clip placement localization procedure.

“*Mammography equipment evaluation*” means an on-site assessment of the mammography unit or ~~image processor performance~~ review workstation by a medical physicist for the purpose of making a preliminary determination as to whether the equipment meets all of the applicable standards.

“*Mammography medical outcomes audit*” means a systematic collection of mammography results and the comparison of those results with outcomes data.

“*Mammography unit(s)*” means an assemblage of components for the production of X-rays for use during mammography including, at a minimum: an X-ray generator, an X-ray control, a tube housing assembly, a beam limiting device, and the supporting structures for these components.

“*Mean optical density*” means the average of the optical densities measured using phantom thicknesses of 2, 4, and 6 centimeters with values of kilovolt peak (kVp) clinically appropriate for those thicknesses.

“*Medical physicist*” means a person trained in evaluating the performance of mammography equipment and facility quality assurance programs and who meets the qualifications for a medical physicist set forth in 41.6(3)“c.”

“*Mediolateral view*” means one of the routine views for mammography in addition to the craniocaudal view. The detector system is placed lateral to the breast and the horizontal X-ray beam is directed from medial to lateral aspect through the breast.

“*MQSA*” means the Mammography Quality Standards Act of 1992.

“*Multi-reading*” means two or more physicians, at least one of whom is an interpreting physician, interpreting the same mammogram. A radiologist may count the current mammographic examination

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and one prior mammographic examination, provided the radiologist was not the interpreter of the prior mammographic examination. A separate tally shall be kept for the prior examinations.

*“Oblique mediolateral view”* means one of the standard two views of the breast. The detector system (~~cassette holder assembly~~) is angled 30-60 degrees from horizontal so that the ~~cassette assembly~~ detector system is parallel to the pectoral muscle and the corner of the ~~cassette holder~~ detector system fits comfortably into the axilla. The X-ray beam is directed from the supero-medial to the infero-lateral aspect of the breast.

*“Patient”* means any individual who undergoes a mammography evaluation in a facility, regardless of whether the person is referred by a physician or is self-referred.

*“Phantom”* means an artificial test object used to simulate radiographic characteristics of compressed breast tissue and containing components that radiographically model aspects of breast disease and cancer.

*“Phantom image”* means a radiographic image of a phantom.

*“Physical science”* means physics, chemistry, radiation science (including medical physics and health physics), and engineering.

*“Positive mammogram”* means a mammogram that has an overall assessment of findings that are either “suspicious” or “highly suggestive of malignancy.”

*“Provisional certification”* means the six-month certification time period in which a facility has to complete the accreditation/certification process.

*“Qualified instructor”* means individuals whose training and experience adequately prepare them to carry out specified training assignments. Interpreting physicians, radiologic technologists, or medical physicists who meet the requirements of 41.6(3) would be considered qualified instructors in their respective areas of mammography. Radiological technologists who meet the requirements of 41.6(3) and have passed a state-approved mammography examination such as the examination given by the American Registry of Radiography Technologists would be considered qualified instructors in their respective areas of mammography. The examination would include, but not necessarily be limited to: breast anatomy and physiology, positioning and compression, quality assurance/quality control techniques, and imaging of patients with breast implants. Other examples of individuals who may be qualified instructors for the purpose of providing training to meet the regulations of this chapter include, but are not limited to, instructors in a post-high school training institution and manufacturers’ representatives.

*“Quality control technologist”* means an individual meeting the requirements of 41.6(5)“a”(4) who is responsible for those quality assurance responsibilities not assigned to the lead interpreting physician or to the medical physicist.

*“Radiographic equipment”* means X-ray equipment used for the production of static X-ray images.

*“Radiologic technologist”* means an individual specifically trained in the use of radiographic equipment and in the positioning of patients for radiographic examinations and who meets the requirements set forth in 41.6(3)“b.”

*“Radiologist continuing experience”* means the number of mammograms interpreted by a radiologist in the past 24-month period. For the purpose of counting, a radiologist may count the current mammographic examination and one prior mammographic examination, provided the radiologist was not the interpreter of the prior mammographic examination. A separate tally shall be kept for the prior examinations.

*“Reinstatement”* means the process of recertification of a facility that has lost or voluntarily given up previous accreditation/certification.

*“Review workstation”* or *“RWS”* means soft copy display device intended for use in mammography interpretations.

*“Screen-film mammography”* means mammography performed with high-detailed intensifying screen(s) in close contact with the film.

*“Screening mammography”* means X-ray breast examination of asymptomatic individuals in an attempt to detect breast cancer when it is small, nonpalpable, and confined to the breast.

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“*Serious adverse event*” means an adverse event that may significantly compromise clinical outcomes or an adverse event for which a facility fails to take appropriate corrective action in a timely manner.

“*Serious complaint*” means a report of a serious adverse event.

“*Standard breast*” means a 4.2 centimeter (cm) thick compressed breast consisting of 50 percent glandular and 50 percent adipose tissue.

“*Supplier*” means the individual in control of a mammography facility whose basic responsibility is the overall quality of all mammograms conducted in that particular facility.

“*Survey*” means an on-site physics consultation and evaluation of a facility quality assurance program performed by a medical physicist.

“*Time cycle*” means the film development time.

“*Traceable to a national standard*” means an instrument is calibrated at either the National Institute of Standards and Technology (NIST) or at a calibration laboratory that participates in a proficiency program with NIST at least once every two years and the results of the proficiency test conducted within 24 months of calibration show agreement within  $\pm 3$  percent of the national standard in the mammography energy range.

“*Written report*” means interpreting physician’s technical narrative of a mammography evaluation.

“*Written statement*” means interpreting physician’s description of a mammography examination written in lay terms.

ITEM 4. Amend paragraph **41.6(2)“b,”** introductory paragraph, as follows:

*b.* Each facility wishing to perform mammography shall apply for agency approval authorization by providing or verifying the following information for each mammography machine:

ITEM 5. Amend paragraphs **41.6(2)“f”** to **“i”** as follows:

*f.* ~~The authorization of facilities is included in the accreditation process for facilities accredited by the state of Iowa. Determination of the quality of the mammograms produced by facilities accredited by the state of Iowa will be made. To make the determination, each facility will: An application for authorization shall be submitted to the department and processed for agency approval. A mammography authorization is effective for three years.~~

~~(1) Provide at the time of initial accreditation, new unit installation, or reaccreditation (at least every three years) thereafter, two original (not copies) mammography examinations which meet the following criteria for the clinical image review process by the agency:~~

~~1. One mammography examination, including craniocaudal and mediolateral oblique views of each breast, of a patient with predominantly fatty breast tissue,~~

~~2. One mammography examination, including craniocaudal and mediolateral oblique views of each breast, of a patient with predominantly glandular breast tissue, and~~

~~3. Each mammography examination must have been interpreted as a “negative” or “benign” examination.~~

~~(2) Provide randomly, at the request of agency mammography inspectors, two mammography examinations (mammograms) which meet the criteria in 41.6(2)“f”(1).~~

~~(3) Provide at the time of initial accreditation, new unit installation, or reaccreditation (at least every three years) thereafter, a phantom image taken with the unit being accredited within six months of the submission date for review by the agency.~~

~~(4) Be billed the fee for the quality review process as set forth in 641—subparagraph 38.8(1)“b”(2).~~

~~(5) Be provided with a written explanation of the results of the quality review process which will accompany the returned mammograms referred to in 41.6(2)“f”(3).~~

*g.* ~~Facilities accredited by an approved accrediting body other than the state of Iowa must be authorized by the agency. Quality determination for these facilities will be made by the agency through a phantom image provided at the time of initial authorization, new unit authorization, or reauthorization (at least every three years) thereafter, taken with the unit being accredited within six months of the submission date. A phantom image taken with the authorized unit(s) shall be reviewed at the time of annual inspection by the agency.~~

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- h.* No change.
- i.* ~~Soft copy review workstation~~ Review workstation (RWS) requirements.
- (1) ~~Soft copy review workstations~~ RWS used for final interpretation of mammogram images must ~~be a configuration of two monitors that meet one of~~ meet the following criteria:
1. Have 5 megapixel resolution; or
  2. Be approved by the United States Food and Drug Administration 510K process and be intended for digital mammography use.
- (2) The workstation must have a quality control program substantially the same as that outlined by the ~~image receptor~~ mammography unit manufacturer's quality control manual ~~or that outlined by the image receptor,~~ that outlined by the RWS monitor manufacturer's ~~designated soft copy review workstation~~ quality control manual or the quality control program outlined by an FDA-approved accrediting body.

ITEM 6. Amend subrule 41.6(3) as follows:

**41.6(3) Mammography personnel.** The following requirements apply to all personnel involved in any aspect of mammography, including the production, processing, and interpretation of mammograms and related quality assurance activities:

*a. Interpreting physicians.* All radiologists interpreting mammograms shall meet the following qualifications:

(1) Initial qualifications. Unless the exemption in 41.6(3)"a"(3)"1" applies, before beginning to interpret mammograms independently, the interpreting radiologist shall:

1. and 2. No change.
  - Be certified in an appropriate specialty area by a body determined by FDA to have procedures and requirements adequate to ensure that physicians certified by the body are competent to interpret radiological procedures, including mammography; or
  - Have had at least three months of documented formal training in the interpretation of mammograms and in topics related to mammography. The training shall include instruction in radiation physics, including radiation physics specific to mammography, radiation effects, and radiation protection. The mammographic interpretation component shall be under the direct supervision of a radiologist who meets the requirements of 41.6(3)"a"; and

3. and 4. No change.

5. Before an interpreting physician may begin independently interpreting mammograms produced by a new mammographic modality other than the modality in which the initial training was received, the interpreting physician shall have ~~at least 8 hours of Category 1 continuing medical education credits in the new mammographic modality or at least 8~~ eight hours of training in the new mammographic modality ~~provided by a vendor manufacturing the new mammographic modality equipment. An interpreting physician previously qualified to interpret a new mammographic modality in another state will have six months to complete this requirement. The six-month time frame begins when the interpreting physician commences Iowa new mammographic modality interpretation.~~

(2) Continuing experience and education. All interpreting physicians shall maintain their qualifications by meeting the following requirements:

1. Following the second anniversary date of the end of the calendar quarter in which the requirements of 41.6(3)"a"(1) were completed, the interpreting physician shall have read or multi-read at least 960 mammographic examinations during the ~~prior~~ 24 months immediately preceding the date of the facility's annual MQSA inspection, during the 24-month period ending on the last day of the ~~previous~~ calendar quarter preceding the inspection, or during any 24-month period between the two. The facility will choose one of these dates to determine the 24-month period.

2. Following the third anniversary date of the end of the calendar quarter in which the requirements of 41.6(3)"a"(1) were completed, the interpreting physician shall have taught or completed at least 15 Category 1 continuing education units in mammography during the ~~prior~~ 36 months immediately preceding the date of the facility's annual MQSA inspection, during the 36-month period ending on

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the last day of the ~~previous~~ calendar quarter preceding the inspection, or during any 36-month period between the two. The facility will choose one of these dates to determine the 36-month period.

3. Units earned through teaching a specific course can be counted only once towards the 15 required by 41.6(3)“a”(2)“2” even if the course is taught multiple times during the previous 36 months.

4. ~~Continuing qualifications must be met and a~~ A current state of Iowa medical license must be in effect whenever mammography interpretations are performed by the physician.

(3) and (4) No change.

*b. Radiologic technologists.* All mammographic examinations shall be performed by general radiographers who meet the following general requirements, mammography requirements, and continuing education and experience requirements:

(1) General requirements. Be permitted to operate as a general radiographer in Iowa; and

(2) Mammography requirements. Have qualified as a radiologic technologist under 41.6(3)“b” before April 28, 1999, or have completed at least 40 contact hours of documented training specific to mammography under the supervision of a qualified instructor after successful completion of ~~at least a two-year~~ a formal radiography training program. The hours of documented training shall include, but not necessarily be limited to:

1. Training in breast anatomy and physiology, positioning and compression, quality assurance/quality control techniques, and imaging of patients with breast implants;

2. The performance of a minimum of 25 examinations under the direct supervision of an individual qualified under 41.6(3)“b”; and

3. Before a radiologic technologist may begin independently performing mammographic examinations using a mammographic modality other than one of those for which the technologist received training under 41.6(3)“b”(2)“3,” the technologist shall have at least ~~8~~ eight hours of continuing education units in the new modality. The ~~8~~ eight hours may not be derived from the supervised examination of patients; and

(3) Continuing education requirements.

1. Following the third anniversary date of the end of the calendar quarter in which the requirements of 41.6(3)“b”(1) and (2) were completed, the radiologic technologist shall have taught or completed at least 15 continuing education units in mammography during the ~~prior~~ 36 months immediately preceding the date of the facility’s annual MQSA inspection, during the 36-month period ending on the last day of the ~~previous~~ calendar quarter preceding the inspection, or during any 36-month period between the two. The facility will choose one of these dates to determine the 36-month period.

2. Units earned through teaching a specific course can be counted only once towards the 15 required in 41.6(3)“b”(3)“1” even if the course is taught multiple times during the previous 36 months.

3. Requalification. A radiologic technologist who fails to meet the continuing education requirements of 41.6(3)“b”(3)“1” shall obtain a sufficient number of continuing education units in mammography to bring the total up to at least 15 in the previous 36 months. The continuing education for requalification cannot be obtained by performing supervised mammography examinations. The technologist may not resume performing unsupervised mammography examinations until the continuing education requirements are completed.

4. ~~Continuing qualifications must be met and an~~ An Iowa permit to practice radiography must be in effect whenever mammogram procedures are performed by the radiologic technologist.

5. Only 50 percent of the total required mammography continuing education hours may be obtained through presenting, or acting as a trainer for, a continuing education or training program.

(4) Continuing experience requirements.

1. Following the second anniversary date on which the requirements of 41.6(3)“b”(1) and (2) were completed, the radiologic technologist shall have performed a minimum of 200 mammography examinations during the ~~prior~~ 24 months immediately preceding the date of the facility’s annual inspection, during the 24-month period ending on the last day of the ~~previous~~ calendar quarter preceding the inspection, or during any 24-month period between the two. The facility will choose one of these dates to determine the 24-month period.

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2. Requalification. Radiologic technologists who fail to meet the continuing experience requirements of this subrule shall perform a minimum of 25 mammography examinations under the direct supervision of a qualified radiologic technologist before resuming the performance of unsupervised mammography examinations.

~~3. Continuing qualifications must be met and an Iowa permit to practice radiography must be in effect whenever mammogram procedures are performed by the radiologic technologist.~~

(5) Consecutive or back-to-back requalification of mammography personnel, due to failure to meet continuing education or experience requirements, will be allowed once without proof of extenuating circumstances. This agency will determine the validity of such proof and render a decision after review of all pertinent information. Those individuals who are denied requalification will be allowed to resubmit for requalification following a 90-day waiting period.

*c. Medical physicists.* All medical physicists conducting surveys of mammography facilities and providing oversight of the facility quality assurance program under 41.6(3)“c”(2) shall meet the following:

(1) Initial qualifications.

1. Be Iowa approved; and  
 2. Have a master’s degree or higher in a physical science from an accredited institution, with no less than 20 semester hours or 30 quarter hours of college undergraduate or graduate level physics; and  
 3. Have 20 contact hours of documented specialized training in conducting surveys of mammography facilities; and

4. Have at least eight hours of training in surveying units of a new modality other than the one for which the physicist received training to qualify under 41.6(3)“c”(1)“3” before independently performing the new mammographic modality; and

4. 5. Have experience conducting surveys in at least one mammography facility and have a total of at least 10 mammography units. No more than one survey of a specific unit within a period of 60 days can be counted towards the total mammography unit survey requirement. After April 28, 1999, experience conducting surveys must be acquired under the direct supervision of a medical physicist who meets all the requirements of this subrule; or

(2) Alternative initial qualifications.

1. Have qualified as a medical physicist under FDA interim regulations and have retained that qualification by maintenance of the active status of any licensure, approval, or certification required under the interim regulations; and

2. Prior to April 28, 1999, have:

- A bachelor’s degree or higher in a physical science from an accredited institution with no less than 10 semester hours or equivalent of college undergraduate or graduate level physics.
- Forty contact hours of documented specialized training in conducting surveys of mammography facilities.

- Experience conducting surveys in at least one mammography facility and have a total of at least 20 mammography units. No more than one survey of a specific unit within a period of 60 days can be counted towards the total mammography unit survey requirement. The training and experience requirements must be met after fulfilling the degree requirement.

- ~~At least eight hours of training in surveying units of the new mammographic modality before independently performing mammographic surveys of a new mammographic modality other than one for which the physicist received training to qualify under this subrule.~~ Have at least eight hours of training in surveying units of a new modality other than the one for which the physicist received training to qualify under 41.6(3)“c”(1)“3” before independently performing the new mammographic modality.

(3) and (4) No change.

*d.* No change.

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ITEM 7. Amend paragraph **41.6(4)“f”** as follows:

*f.* Mammographic image identification. Each mammographic image shall have the following information indicated on it in a permanent, legible, and unambiguous manner and placed so as not to obscure anatomic structures:

(1) to (5) No change.

~~(6) Cassette/screen identification.~~

~~(7) (6) Mammography unit identification, if there is more than one unit in the facility.~~

ITEM 8. Amend subrule 41.6(5) as follows:

**41.6(5) Quality assurance program.**

*a.* The facility shall ensure that the facility has an equipment quality assurance program specific to mammography and covering all components of the system to ensure consistently high-quality images with minimum patient exposure. Responsibility for the quality assurance program and for each of its elements shall be assigned to individuals who are qualified for their assignments and who shall be allowed adequate time to perform these duties.

(1) Lead interpreting physician. The facility shall identify a lead interpreting physician who shall have the general responsibility of ensuring that the quality assurance program, EQUIP included, meets all requirements of these rules. No other individual shall be assigned or shall retain responsibility for quality assurance tasks unless the lead interpreting physician has determined that the individual's qualifications for, and performance of, the assignment are adequate.

(2) and (3) No change.

(4) Quality control technologist. Responsibility for all individual tasks within the quality assurance program not assigned to the lead interpreting physician or the medical physicist shall be assigned to a quality control technologist(s). The tasks are to be performed by the quality control technologist or by other personnel qualified to perform the tasks. When other personnel are utilized for these tasks, the quality control technologist shall ensure that the tasks are completed in such a way as to meet the requirements of 41.6(5) “~~k.~~” “j.”

*b.* to *d.* No change.

*e.* Performance monitoring. The supplier facility shall routinely ensure that the performance of the mammography system is monitored. The parameters to be monitored ~~for film-screen mammography~~ shall include ~~but not be limited to:~~ all testing as outlined in the manufacturer's mammography unit's quality control manual and the RWS quality control requirements of 41.6(2) “*i*”(2).

~~(1) Processor performance (through daily sensitometric densitometric means).~~

~~(2) Half value layer.~~

~~(3) Output reproducibility and linearity.~~

~~(4) Automatic exposure control reproducibility and linearity.~~

~~(5) Adequacy of film storage (both before use and after exposure if processing does not occur immediately).~~

~~(6) Availability and use of technique charts that shall include an indication of the kV-target-filter combination to be used with each image receptor.~~

~~(7) Darkroom integrity, to be performed at least semiannually or when conditions have changed, shall include an inspection for light leaks, a fog test, and a safe light test.~~

~~(8) Image quality. The minimum image quality achieved at a mammography facility shall be the ability to observe the image of at least four 0.75-mm fibriles, three 0.32-mm speck groups, and three 0.75-mm masses from an FDA-approved phantom (or equivalent) on the standard mammographic film used at the facility. No mammograms shall be performed if this minimum is not met.~~

*f.* Frequency of monitoring. Availability and use of technique charts that shall include an indication of the kV-target-filter combination to be used with each image receptor.

~~(1) Processor performance shall be accomplished daily before processing patient films.~~

~~(2) Image quality shall be monitored at least weekly with a phantom and every time the unit is altered including the replacement of parts.~~

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~~(3) All other parameters shall be proportional to the expected variability of each parameter, but at least annually.~~

g. Evaluation of monitoring results. ~~Full field digital FFDM and DBT~~ mammography units must comply with the quality control test requirements outlined by the performance criteria in the appropriate manufacturer's quality control manual.

(1) Standards of image quality giving acceptable ranges of values for each of the parameters tested shall be established to aid in the evaluation. The standards of image quality related to dose shall include a requirement that the mean glandular dose for one craniocaudal view of a 4.2 cm compressed breast (50 percent adipose/50 percent glandular) or equivalent phantom shall not exceed ~~100 millirad for film-screen units with no grids, 300 millirad for film-screen units with grids, or 300 millirad for full field digital units.~~

(2) The monitoring results shall be compared routinely by the facility staff to the standards of image quality in ~~41.6(5) "k."~~ If the results fall outside the acceptable range, the test shall be repeated. For ~~film-screen mammography, if the results continue to be unacceptable, the source of the problem shall be identified and corrected before further examinations are conducted. For full field digital mammography, if 41.6(5) "j."~~ If any test results fall outside the performance criteria range listed for the unit, specific actions as directed in the appropriate quality control manual shall be followed.

~~h. Retake analysis program—film-screen and full field digital.~~

(1) ~~A program shall be established as a further aid in detecting and correcting problems affecting image quality or exposure.~~

(2) ~~All retakes shall be logged including date, technologist's name and reason for retake. A retake analysis shall be performed every 250 patients or quarterly, whichever comes first. If more than 250 mammograms are performed in one week, weekly analysis is acceptable.~~

(3) ~~If the total repeat or reject rate changes from the previously determined rate by more than 2.0 percent of the total films included in the analysis, the reason(s) for the change shall be determined. Any corrective actions shall be recorded and the results of these corrective actions shall be assessed.~~

~~i. h.~~ Medical outcomes audit. Each facility shall establish a system for reviewing outcome data from all mammography performed, including follow-up on the disposition of positive mammograms and correlation of surgical biopsy results with the interpreting physician's findings. This program shall be designed to ensure the reliability, clarity, and accuracy of the interpretation of mammograms.

(1) to (3) No change.

~~j. i.~~ Quality assurance records. The lead interpreting physician, quality control technologist, and medical physicist shall ensure that records concerning employee qualifications to meet assigned quality assurance tasks, mammography technique and procedures, quality control (including monitoring data, problems detected by analysis of that data, corrective actions, and the effectiveness of the corrective actions), safety, and protection are properly maintained and updated. These quality control records shall be kept for each test specified in these rules until the next annual inspection has been completed and the facility is in compliance with the quality assurance requirements or until the test has been performed two additional times at the required frequency, whichever is longer.

~~k. j.~~ Quality assurance—equipment.

(1) ~~Daily, weekly, bi-weekly, monthly, quarterly, semiannual and annual~~ quality control tests. ~~Film processors used to develop mammograms shall be adjusted and maintained to meet the technical development specifications for the mammography film in use. A processor performance test shall be performed on each day that clinical films are processed before any clinical films are processed that day. The test shall include an assessment of base plus fog density, mid-density, and density difference, using the mammography film used clinically at the facility. Facilities shall perform quality control tests as required by the manufacturer's mammography unit's quality control manual, the RWS quality control requirements of 41.6(2) "i"(2) or the quality control program outlined by an FDA-approved accrediting body.~~

~~1. The base plus fog density shall be below plus 0.03 of the established operating level.~~

~~2. The mid-density shall be within plus or minus 0.15 of the established operating level.~~

~~3. The density difference shall be within plus or minus 0.15 of the established operating level.~~

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~~(2) Weekly quality control tests. Facilities with screen-film systems shall perform an image quality evaluation test, using an FDA-approved phantom, at least weekly.~~

~~1. The optical density of the film at the center of an image of a standard FDA-accepted phantom shall be at least 1.20 when exposed under a typical clinical condition.~~

~~2. The optical density of the film at the center of the phantom image shall not change by more than plus or minus 0.20 from the established operating level.~~

~~3. The phantom image shall achieve at least the minimum score established by the accreditation body and accepted by the FDA.~~

~~4. The density difference between the background of the phantom and an added test object used to assess image contrast shall be measured and shall not vary by more than plus or minus 0.05 from the established operating level.~~

~~(3) Quarterly quality control tests. Facilities with screen-film systems shall perform the following quality control tests at least quarterly:~~

~~● Fixer retention in film. The residual fixer shall be no more than 5 micrograms per square centimeter.~~

~~(4) Semiannual quality control tests. Facilities with screen-film systems shall perform the following quality control tests at least semiannually:~~

~~1. Darkroom fog. The optical density attributable to darkroom fog shall not exceed 0.05 when a mammography film of the type used in the facility, which has a mid-density of no less than 1.2 OD, is exposed to typical darkroom conditions for two minutes while such film is placed on the countertop emulsion side up. If the darkroom has a safelight used for mammography film, it shall be on during this test.~~

~~2. Screen-film contact. Testing for screen-film contact shall be conducted using 40 mesh copper screen. All cassettes used in the facility for mammography shall be tested.~~

~~3. Compression device performance. The maximum compression force for the initial power drive shall be between 25 pounds (111 newtons) and 45 pounds (200 newtons).~~

~~(5) Annual quality control tests. Facilities with screen-film systems shall perform the following quality control tests at least annually:~~

~~1. Automatic exposure control (AEC) performance.~~

~~● The AEC shall be capable of maintaining film optical density (OD) within plus or minus 0.15 of the mean optical density when thickness of a homogenous material is varied over a range of 2 to 6 centimeters and the kVp is varied appropriately for such thicknesses over the kVp range used clinically in the facility.~~

~~● The optical density of the film in the center of the phantom image shall not be less than 1.20.~~

~~2. kVp accuracy and reproducibility.~~

~~● The kVp shall be accurate within plus or minus 5 percent of the indicated or selected kVp at the lowest clinical kVp that can be measured by a kVp test device, the most commonly used clinical kVp, and the highest available clinical kVp.~~

~~● At the most commonly used clinical settings of kVp, the coefficient of variation of reproducibility of the kVp shall be equal to or less than 0.02.~~

~~3. Focal spot condition. Facilities shall evaluate focal spot condition only by determining the system resolution.~~

~~● Each X-ray system used for mammography, in combination with the mammography screen-film combination used in the facility, shall provide a minimum resolution of 11 cycles/millimeters (mm) (line pairs/mm) when a high contrast resolution bar test pattern is oriented with the bars perpendicular to the anode-cathode axis, and a minimum resolution of 13 line pairs/mm when the bars are parallel to that axis.~~

~~● The bar pattern shall be placed 4.5 centimeters above the breast support surface, centered with respect to the chest wall edge of the image receptor, and with the edge of the pattern within 1 centimeter of the chest wall edge of the image receptor.~~

~~● When more than one target material is provided, the measurement above shall be made using the appropriate focal spot for each target material.~~

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- When more than one SID is provided, the test shall be performed at the SID most commonly used clinically.
- Test kVp shall be set at the value used clinically by the facility for a standard breast and shall be performed in the AEC mode, if available. If necessary, a suitable absorber may be placed in the beam to increase exposure times. The screen-film cassette combination used by the facility shall be used to test for this requirement and shall be placed in the normal location used for clinical procedures.
- Focal spot dimensions. Measured values of the focal spot length (dimension parallel to the anode-cathode axis) and width (dimension perpendicular to the anode-cathode axis) shall be within tolerance limits specified in Table 1.

Table 1

| Focal Spot Tolerance Limit<br>Nominal Focal Spot Size (mm) | Maximum Measured Dimensions Width (mm) | Length (mm) |
|--|--|-------------|
| 0.10   | 0.15                                   | 0.15        |
| 0.15   | 0.23                                   | 0.23        |
| 0.20   | 0.30                                   | 0.30        |
| 0.30   | 0.45                                   | 0.65        |
| 0.40   | 0.60                                   | 0.85        |
| 0.60   | 0.90                                   | 1.30        |

4. Beam quality and half-value layer (HVL). The HVL shall meet the specification of 41.1(4) and 41.1(6) for the minimum HVL. These values, extrapolated to the mammographic range, are shown in Table 2. Values not shown in Table 2 may be determined by linear interpolation or extrapolation.

Table 2

| X-ray Tube Voltage (kilovolt peak) and Minimum HVL<br>Designed Operating Range (kV) Below 50 |  |
|--|--|
| Measured Operating Voltage (kV)  | Minimum HVL<br>(millimeters of aluminum) |
| 20   | 0.20                                     |
| 25   | 0.25                                     |
| 30   | 0.30                                     |

5. Breast entrance air kerma and AEC reproducibility. The coefficient of variation for both air kerma and mAs shall not exceed 0.05.

6. Dosimetry. The average glandular dose delivered during a single cranio-caudal view of an FDA-accepted phantom simulating a standard breast shall not exceed 0.3 rad (3.0 milligray (mGy)) per exposure. The dose shall be determined with technique factors and conditions used clinically for a standard breast.

7. X-ray field/light field/image receptor/compression paddle alignment.

- All systems shall have beam-limiting devices that allow the entire chest wall edge of the X-ray field to extend to the chest wall edge of the image receptor and provide means to ensure that the X-ray field does not extend beyond any edge of the image receptor by more than 2 percent of the SID.
- The chest wall edge of the compression paddle shall not extend beyond the chest wall edge of the image receptor by more than 1 percent of the SID when tested with the compression paddle placed above the breast support surface at a distance equivalent to standard breast thickness. The shadow of the vertical edge of the compression paddle shall be not be visible on the image.

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~~8. — Uniformity of screen speed. Uniformity of screen speed of all the cassettes in the facility shall be tested and the difference between the maximum and minimum optical densities shall not exceed 0.30. Screen artifacts shall also be evaluated during this test.~~

~~9. — System artifacts. System artifacts shall be evaluated with a high grade, defect free sheet of homogeneous material large enough to cover the mammography cassette and shall be performed for all cassette sizes used in the facility using a grid appropriate for the cassette size being tested. System artifacts shall also be evaluated for all available focal spot sizes and target filter combinations used clinically.~~

~~10. — Radiation output.~~

~~● — The system shall be capable of producing a minimum output of 800 milliRoentgen (mR) per second (7.0 mGy air kerma per second) when operating at 28 kVp in the standard (moly/moly) mammography mode at any SID where the system is designed to operate and when measured by a detector with its center located 4.5 centimeters above the breast support surface with the compression paddle in place between the source and the detector.~~

~~● — The system shall be capable of maintaining the required minimum radiation output averaged over a 3.0 second period.~~

~~11. — Decompression. If the system is equipped with a provision for automatic decompression after completion of an exposure or interruption of power to the system, the system shall be tested to confirm that it provides:~~

- ~~● — An override capability to allow maintenance of compression;~~
- ~~● — A continuous display of the override status; and~~
- ~~● — A manual emergency compression release that can be activated in the event of power or automatic release failure.~~

~~(6) — Quality control tests — other modalities. For systems with image receptor modalities other than screen film, the quality assurance program shall be substantially the same as the quality assurance program recommended by the image receptor manufacturer, except that the maximum allowable dose shall not exceed the maximum allowable dose for screen film systems in 41.6(5) “k”(5)“6.”~~

~~(7) — Use of test results.~~

~~1. — After completion of the tests specified in 41.6(5) “k,” the facility shall compare the test results to the corresponding specified action limits; or, for non-screen film modalities, to the manufacturer’s recommended action limits; or, for post-move, preexamination testing of mobile units, to the limits established in the test method used by the facility.~~

~~2. — If the test results fall outside the action limits, the source of the problem shall be identified, and corrective actions shall be taken before any further examinations are performed or any films are processed using the component of the mammography system that failed the test, if the failed test was that described in 41.6(5) “k.”~~

~~3. — Full field digital unit corrective actions shall be made as prescribed in the appropriate manufacturer’s quality control manual or in accordance with the appropriate FDA approved alternative requirements.~~

~~(8) (2) — Surveys.~~

~~1. — At least once a year annually, each facility shall undergo a survey by a medical physicist or by an individual under the direct supervision of a medical physicist. At a minimum, this survey shall include the performance of tests to ensure that the facility meets the quality assurance requirements of the annual tests described in 41.6(5) “k”(5) and (6), the weekly phantom image quality test described in 41.6(5) “k”(2) and the quarterly retake analysis results described in 41.6(5) “h.” The survey shall include testing as required by the manufacturer’s mammography unit’s quality control manual, the RWS quality control manual or the quality control program outlined by the accrediting body.~~

~~2. — The results of all tests conducted by the facility in accordance with 41.6(5) “k”(1) through (7) for film-screen units, as well as written documentation of any corrective actions taken and their results, shall be evaluated for adequacy by the medical physicist performing the survey. Surveys of full field digital mammography units shall be conducted as described in the appropriate manufacturer’s quality~~

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~~control manual.~~ The results of the tests, any corrective actions taken and their results shall be evaluated for adequacy by the medical physicist performing the survey.

3. The medical physicist shall prepare a survey report that includes a summary of this review and recommendations for necessary improvements.

4. The survey report shall be sent to the facility within 30 days of the date of the survey.

5. The survey report shall be dated and signed by the medical physicist performing or supervising the survey. If the survey was performed entirely or in part by another individual under the direct supervision of the medical physicist, that individual and the part of the survey that individual performed shall also be identified in the survey report.

~~(9)~~ (3) Mammography equipment evaluations. Additional evaluations of mammography units or image processors or any other applicable mammography system ancillary parts shall be conducted at new installations, at disassembly, at reassembly, at the same or a new location, or when major components are changed or repaired. These evaluations shall be used to determine whether the new or changed equipment meets the requirements of applicable standards in 41.6(5) and 41.6(6). All problems shall be corrected before the new or changed equipment is put into service for examinations or film processing. The mammography equipment evaluation shall be performed by a medical physicist or by an individual under the direct supervision of an Iowa-approved medical physicist.

~~(10) Facility cleanliness.~~

~~1. The facility shall establish and implement adequate protocols for maintaining darkroom, screen, and viewbox cleanliness.~~

~~2. The facility shall document that all cleaning procedures are performed at the frequencies specified in the protocols.~~

~~(11)~~ (4) Calibration of air kerma measuring instruments. Instruments used by medical physicists in their annual survey to measure the air kerma or air kerma rate from a mammography unit shall be calibrated at least once every two years and each time the instrument is repaired. The instrument calibration must be traceable to a national standard and calibrated with an accuracy of plus or minus 6 percent (95 percent confidence level) in the mammography energy range.

~~(12)~~ (5) Infection control. Facilities shall establish and comply with a system specifying procedures to be followed by the facility for cleaning and disinfecting mammography equipment after contact with blood or other potentially infectious materials. This system shall specify the methods for documenting facility compliance with the infection control procedures established and shall:

1. Comply with all applicable federal, state, and local regulations pertaining to infection control; and

2. Comply with the manufacturer's recommended procedures for the cleaning and disinfecting of the mammography equipment used in the facility; or

3. If adequate manufacturer's recommendations are not available, comply with generally accepted guidance on infection control, until such recommendations become available.

~~l. k.~~ Mammography procedures and techniques for mammography of patients with breast implants.

(1) and (2) No change.

~~m. l.~~ Consumer complaint mechanism. Each facility shall:

(1) to (4) No change.

~~m. m.~~ Clinical image quality. Clinical images produced by any certified facility must continue to comply with the standards for clinical image quality established by that facility's accreditation body.

~~o. n.~~ Additional mammography review and patient notification.

(1) and (2) No change.

ITEM 9. Amend subrule 41.6(6) as follows:

**41.6(6) Equipment standards.** The equipment used to perform mammography shall meet the following standards:

a. and b. No change.

c. Image receptor systems:

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(1) Have image receptor systems and individual components which are appropriate for mammography and used according to the manufacturer's recommendations.

~~(1) Systems using screen-film image receptors shall provide, at a minimum, for operation for image receptors of 18 × 24 centimeters and 24 × 30 centimeters.~~

~~(2) Systems using screen-film image receptors shall be equipped with moving grids matched to all image receptor sizes provided.~~

~~(3) (2)~~ Systems used for magnification procedures shall be capable of operation with the grid removed from between the source and image receptor.

*d. to f.* No change.

~~*g.* Film/screen contact: Shall check film/screen contact when cassettes are first placed into use and semiannually thereafter.~~

*h. g.* Focal spot: The focal spot size, magnification factor and source to image receptor distance (SID) shall be appropriate for mammography, ~~and in the ranges shown below:~~

| SID         | Nominal Focal Spot Size |
|-------------|-------------------------|
| > 65 cm     | < or = to 0.6 mm        |
| 50 to 65 cm | < or = to 0.5 mm        |
| < 50 cm     | < or = to 0.4 mm        |

(1) When more than one focal spot is provided, the system shall indicate, prior to exposure, which focal spot is selected.

(2) When more than one target material is provided, the system shall indicate, prior to exposure, the preselected target material.

(3) When the target material or focal spot, or both, is selected by a system algorithm that is based on the exposure or on a test exposure, the system shall display, after the exposure, the target material or focal spot, or both, actually used during the exposure.

~~*i. h.* Compression devices: Shall have compression devices parallel to the imaging plane and able to immobilize and compress the breast with a force of at least 25 pounds per square inch and shall be capable of maintaining this compression for at least three seconds. Effective October 28, 2002, each~~  
Each system shall provide:

(1) An initial power-driven compression activated by hands-free controls operable from both sides of the patient; and

(2) Fine adjustment compression controls operable from both sides of the patient.

(3) Systems shall be equipped with different sized compression paddles that match the sizes of all full field image receptors provided for the system. Compression paddles for special purposes, including those smaller than the full size of the image receptor (for "spot compression"), may be provided. Such compression paddles for special purposes are not subject to ~~41.6(6)"i"(6)~~ 41.6(6)"h"(6) and (7).

(4) Except as provided in ~~41.6(6)"i"(5)~~, 41.6(6)"h," the compression paddle shall be flat and parallel to the breast support table and shall not deflect from parallel by more than 1.0 cm at any point on the surface of the compression paddle when compression is applied.

(5) Equipment intended by the manufacturer's design not to be flat and parallel to the breast support table during compression shall meet the manufacturer's design specifications and maintenance requirements.

(6) The chest wall edge of the compression paddle shall be straight and parallel to the edge of the image receptor. Equipment intended by the manufacturer's design not to be straight and parallel to the edge of the image receptor shall meet the manufacturer's design specifications and maintenance requirements.

(7) The chest wall edge of the compression paddle may be bent upward to allow for patient comfort but shall not appear on the image.

~~*j. i.*~~ *i.* Grids: Shall have the capability for using antiscatter grids.

~~*k. j.*~~ *j.* AEC: Shall have automatic exposure control such that:

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

~~(1) Each screen film system shall provide an AEC mode that is operable in all combinations of equipment configuration provided, e.g., grid, nongrid; magnification, nonmagnification; and various target-filter combinations.~~

~~(2) (1) The positioning or selection of the detector shall permit flexibility in the placement of the detector under the target tissue.~~

- The size and available positions of the detector shall be clearly indicated at the X-ray input surface of the breast compression paddle.

- The selected position of the detector shall be clearly indicated.

~~(3) (2) The system shall provide means for the operator to vary the selected optical density from the normal (zero) setting.~~

~~l. k. Control panel: Shall have a control panel that:~~

~~(1) to (5) No change.~~

~~m. l. mAs: Shall indicate, or provide a means of determining, the mAs resulting from each exposure made with automatic exposure control.~~

~~n. Viewboxes: Shall have a viewbox that is checked periodically to ensure optimal conditions. When the mammogram is placed on the viewbox, the area surrounding the film must be masked to exclude extraneous light which may reduce image contrast.~~

~~o. X ray film: Shall use X ray film that has been designated by the film manufacturer as appropriate for mammography and that is matched to the screen's spectral output as specified by the manufacturer.~~

~~p. Intensifying screens: Shall use intensifying screens that have been designated by the screen manufacturer as appropriate for mammography.~~

~~q. Chemicals: Shall use chemical solutions for processing mammography films that are capable of developing the films in a manner equivalent to the minimum requirements specified by the film manufacturer.~~

~~r. Hot lights: Shall make special lights for film illumination, i.e., hot lights, capable of producing light levels greater than that provided by the viewbox, available to the interpreting physicians.~~

~~s. Masking devices: Shall ensure that film masking devices that can limit the illuminated area to a region equal to or smaller than the exposed portion of the film are available to all interpreting physicians interpreting for the facility.~~

~~t. Mobile units and vans—film screen.~~

~~(1) A phantom image shall be produced, processed, and evaluated after each relocation and prior to examinations being conducted.~~

~~(2) If processing is not available, a check of the radiation output shall be made and compared to a preset standard for quality. Equipment shall be recalibrated as necessary to maintain quality of phantom image.~~

~~u. m. Mobile units and vans—full field digital. Appropriate manufacturer's quality control manual procedures and criteria shall be met.~~

ITEM 10. Amend paragraph 41.6(7)“e” as follows:

e. Records of all inspections, inspection reports, and consultations medical physicist surveys shall be maintained for at least seven years.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

| HVL  | Mo/Mo Target Filter X-Ray Voltage (kVp) |     |     |     |     |     |     |     |     |     |     | W/AI<br>Target Filter<br>Combination |     |
|------|---|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|--------------------------------------|-----|
|      | 23                                      | 24  | 25  | 26  | 27  | 28  | 29  | 30  | 31  | 32  | 33  |                                      |     |
| 0.23 | 109                                     |     |     |     |     |     |     |     |     |     |     |                                      |     |
| 0.24 | 113                                     | 116 |     |     |     |     |     |     |     |     |     |                                      |     |
| 0.25 | 117                                     | 120 | 122 |     |     |     |     |     |     |     |     |                                      |     |
| 0.26 | 121                                     | 124 | 126 | 128 |     |     |     |     |     |     |     |                                      |     |
| 0.27 | 126                                     | 128 | 130 | 132 | 134 |     |     |     |     |     |     |                                      |     |
| 0.28 | 130                                     | 132 | 134 | 136 | 138 | 139 |     |     |     |     |     |                                      |     |
| 0.29 | 135                                     | 137 | 139 | 141 | 142 | 143 | 144 |     |     |     |     |                                      |     |
| 0.30 | 139                                     | 141 | 143 | 145 | 146 | 147 | 148 | 149 |     |     |     |                                      | 170 |
| 0.31 | 144                                     | 146 | 147 | 149 | 150 | 151 | 152 | 153 | 154 |     |     |                                      | 175 |
| 0.32 | 148                                     | 150 | 151 | 153 | 154 | 155 | 156 | 158 | 159 | 160 | 160 |                                      | 180 |
| 0.33 | 153                                     | 154 | 155 | 157 | 158 | 159 | 160 | 162 | 163 | 164 | 164 |                                      | 185 |
| 0.34 | 157                                     | 159 | 160 | 161 | 162 | 163 | 164 | 166 | 167 | 168 | 168 |                                      | 190 |
| 0.35 |   | 163 | 164 | 166 | 167 | 168 | 169 | 170 | 171 | 172 | 172 |                                      | 194 |
| 0.36 |   |     | 168 | 170 | 171 | 172 | 173 | 174 | 175 | 176 | 176 |                                      | 199 |
| 0.37 |   |     |     | 174 | 175 | 176 | 177 | 178 | 178 | 179 | 180 |                                      | 204 |
| 0.38 |   |     |     |     | 179 | 180 | 181 | 182 | 182 | 183 | 184 |                                      | 208 |
| 0.39 |   |     |     |     |     | 184 | 185 | 186 | 186 | 187 | 188 |                                      | 213 |
| 0.40 |   |     |     |     |     |     | 189 | 190 | 191 | 192 | 192 |                                      | 217 |
| 0.41 |   |     |     |     |     |     |     | 194 | 195 | 196 | 196 |                                      | 221 |
| 0.42 |   |     |     |     |     |     |     |     |     | 200 | 200 |                                      | 225 |
| 0.43 |   |     |     |     |     |     |     |     |     |     | 204 |                                      | 230 |
| 0.44 |   |     |     |     |     |     |     |     |     |     |     |                                      | 234 |
| 0.45 |   |     |     |     |     |     |     |     |     |     |     |                                      | 238 |

To convert from entrance exposure in air in Roentgen to mean glandular breast dose in millirads, multiply the entrance exposure by the factor shown in the table for the appropriate kVp and beam quality (HVL) combination. For example, a measured entrance exposure of 0.50 Roentgen from a Mo/Mo Target Filter system at 30 kVp with a measured HVL of 0.36 mm aluminum yields an average glandular dose of  $(0.50 \text{ R}) \times (174 \text{ mrad/R}) = 87 \text{ mrad}$  or 0.87 mGy.

\*Wu X. Breast dosimetry in screen film mammography. In: Barnes GT, Frey GD (eds), Screen film mammography: Imaging considerations and medical physics responsibilities. Madison, WI: Medical Physics Publishing; 159-175, 1991. W/AI conversion factors are derived from fits to data from Stanton L et al. Dosage evaluation in mammography. Radiology 1984; 150:577-584.

ITEM 11. Amend rule 641—41.6(136C), Appendix II, as follows:

Glandular Dose (in mrad) for 1 Roentgen Entrance Exposure  
4.5-cm 4.2 cm Breast Thickness—50% Adipose/50% Glandular Breast Tissue\*

ITEM 12. Adopt the following **new** definitions of “Phantom” and “Stereotactic training phantom” in subrule 41.7(1):

“*Phantom*” means an artificial test object used to simulate radiographic characteristics of compressed breast tissue and containing components that radiographically model aspects of breast disease and cancer.

“*Stereotactic training phantom*” means a training or practice tool or medium used for stereotactically guided breast biopsy procedures.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 13. Amend subrule 41.7(3) as follows:

**41.7(3) Physicians.** Physicians must be qualified according to the setting and their role in performing stereotactically guided breast biopsies as outlined below.

a. Requirements for a radiologist in a collaborative setting are as follows:

- (1) No change.
- (2) Maintenance of proficiency and CME requirements.

1. ~~Perform at least 12 stereotactically guided breast biopsies per year.~~ Following the first anniversary in which the requirements of this subrule were met, completion of a total of 12 breast biopsy procedures must be met for each calendar year with at least 6 being stereotactic breast biopsies. The remaining 6 can be any combination of the following, and demonstration of the chosen combination needs to be clearly documented:

- Stereotactic breast biopsy procedures.
- Stereotactic biopsy of a stereotactic training phantom with documentation of steps taken or a written report.
  - Stereotactic breast biopsy case review, which must be documented to include a review of pre-biopsy mammographic examination, scout and stereotactic positioning, biopsy needle pre-fire and post-fire positioning and targeting, specimen radiograph images, post-biopsy images and review of post-biopsy pathology results.
  - Mammographic-guided, stereotactic-guided, or both, wire localization procedures.
  - Ultrasound-guided breast biopsy procedures.
  - MRI-guided breast biopsy procedures.

If experience is not maintained, the physician must requalify by performing ~~3~~ three procedures under direct supervision of a qualified training physician or an agency-approved manufacturer applications specialist before resuming unsupervised procedures.

2. ~~Obtain~~ Following the first anniversary in which the requirements of this subrule were met, obtain at least three hours of Category 1 CME or three hours of training approved by the agency in ~~stereotactically guided~~ stereotactic-guided breast biopsy every during the 36 months immediately preceding the date of the facility's annual stereotactic biopsy inspection, or during the 36-month period ending on the last day of the calendar quarter preceding the inspection. If education is not maintained, the physician must requalify by obtaining additional CME credits to reach 3 CME credits in the prior 36 months before resuming unsupervised procedures. These CMEs cannot be obtained by the performance of supervised procedures.

3. ~~Continuing qualifications must be met and a~~ A current state of Iowa medical license must be in effect whenever procedures are performed independently by the physician.

b. Requirements for a physician other than a qualified radiologist in a collaborative setting are as follows:

- (1) No change.
- (2) Maintenance of proficiency and CME requirements.

1. ~~Perform or participate in at least 12 stereotactically guided breast biopsies per year or~~ Following the first anniversary in which the requirements of this subrule were met, completion of a total of 12 breast biopsy procedures must be met for each calendar year with at least 6 being stereotactic breast biopsies. The remaining 6 can be any combination of the following and demonstration of the chosen combination needs to be clearly documented:

- Stereotactic breast biopsy procedures.
- Stereotactic biopsy of a stereotactic training phantom with documentation of steps taken or a written report.
  - Stereotactic breast biopsy case review, which must be documented to include a review of pre-biopsy mammographic examination, scout and stereotactic positioning, biopsy needle pre-fire and post-fire positioning and targeting, specimen radiograph images, post-biopsy images and review of post-biopsy pathology results.
  - Mammographic-guided, stereotactic-guided, or both, wire localization procedures.
  - Ultrasound-guided breast biopsy procedures.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

- MRI-guided breast biopsy procedures.

If experience is not maintained, the physician must requalify by performing 3 three procedures under direct supervision of a qualified training physician or an agency-approved manufacturer applications specialist before resuming unsupervised procedures.

2. ~~Obtain~~ Following the first anniversary in which the requirements of this subrule were met, obtain at least three hours of Category 1 CME ~~or three hours of training approved by the agency in stereotactically guided breast biopsy every 36 months~~ immediately preceding the date of the facility's annual stereotactic biopsy inspection, or during the 36-month period ending on the last day of the calendar quarter preceding the inspection. If education is not maintained, the physician must requalify by obtaining additional CME credits to reach 3 CME credits in the prior 36 months before resuming unsupervised procedures. These CMEs cannot be obtained by the performance of supervised procedures.

3. ~~Continuing qualifications must be met and a~~ A current state of Iowa medical license must be in effect whenever unsupervised procedures are performed by the physician.

c. Requirements for a radiologist performing stereotactically guided breast biopsy independently are as follows:

- (1) No change.
- (2) Maintenance of proficiency and CME requirements.

1. ~~Perform at least 12 stereotactically guided breast biopsies per year or~~ Following the first anniversary in which the requirements of this subrule were met, completion of a total of 12 breast biopsy procedures must be met for each calendar year with at least 6 being stereotactic breast biopsies. The remaining 6 can be any combination of the following and demonstration of the chosen combination needs to be clearly documented:

- Stereotactic breast biopsy procedures.
- Stereotactic biopsy of a stereotactic training phantom with documentation of steps taken or a written report.

- Stereotactic breast biopsy case review, which must be documented to include a review of pre-biopsy mammographic examination, scout and stereotactic positioning, biopsy needle pre-fire and post-fire positioning and targeting, specimen radiograph images, post-biopsy images and review of post-biopsy pathology results.

- Mammographic-guided, stereotactic-guided, or both, wire localization procedures.
- Ultrasound-guided breast biopsy procedures.
- MRI-guided breast biopsy procedures.

If experience is not maintained, the physician must requalify by performing 3 three procedures under direct supervision of a qualified training physician or an agency-approved manufacturer applications specialist before resuming unsupervised procedures.

2. ~~Obtain~~ Following the first anniversary in which the requirements of this subrule were met, obtain at least three hours of Category 1 CME ~~or three hours of training approved by the agency in stereotactically guided breast biopsy every 36 months~~ immediately preceding the date of the facility's annual stereotactic biopsy inspection, or during the 36-month period ending on the last day of the calendar quarter preceding the inspection which includes post-biopsy management of the patient. If education is not maintained, the physician must requalify by obtaining additional CME credits to reach 3 CME credits in the prior 36 months before resuming unsupervised procedures. These CMEs cannot be obtained by the performance of supervised procedures.

3. ~~Continuing qualifications must be met and a~~ A current state of Iowa medical license must be in effect whenever unsupervised procedures are performed by the physician.

d. Requirements for a physician other than a qualified radiologist (under 41.7(3) "c") performing stereotactically guided breast biopsy independently are as follows:

- (1) No change.
- (2) Maintenance of proficiency and CME requirements.

1. Continue to evaluate at least 480 mammograms every 24 months in consultation with a physician who is qualified according to 41.6(3) "a."

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

~~2. Perform at least 12 stereotactically guided breast biopsies per year or~~ Following the first anniversary in which the requirements of this subrule were met, completion of a total of 12 breast biopsy procedures must be met for each calendar year with at least 6 being stereotactic breast biopsies. The remaining 6 can be any combination of the following and demonstration of the chosen combination needs to be clearly documented:

- Stereotactic breast biopsy procedures.
- Stereotactic biopsy of a stereotactic training phantom with documentation of steps taken or a written report.
- Stereotactic breast biopsy case review, which must be documented to include a review of pre-biopsy mammographic examination, scout and stereotactic positioning, biopsy needle pre-fire and post-fire positioning and targeting, specimen radiograph images, post-biopsy images and review of post-biopsy pathology results.
- Mammographic-guided, stereotactic-guided, or both, wire localization procedures.
- Ultrasound-guided breast biopsy procedures.
- MRI-guided breast biopsy procedures.

If experience is not maintained, the physician must requalify by performing 3 three procedures under direct supervision of a qualified training physician or an agency-approved manufacturer applications specialist before resuming unsupervised procedures.

3. ~~Obtain~~ Following the first anniversary in which the requirements of this subrule were met, obtain at least three hours of Category 1 CME ~~or three hours of training approved by the agency in stereotactically guided breast biopsy every 36 months immediately preceding the date of the facility's annual stereotactic biopsy inspection, or during the 36-month period ending on the last day of the calendar quarter preceding the inspection.~~ If education is not maintained, the physician must requalify by obtaining additional CME credits to reach 3 CME credits in the prior 36 months before resuming unsupervised procedures. The CME credits for requalification cannot be obtained by performing procedures.

4. ~~Continuing qualifications must be met and a~~ A current state of Iowa medical license must be in effect whenever unsupervised procedures are performed by the physician.

ITEM 14. Amend subrule 41.7(5) as follows:

**41.7(5) Radiologic technologist.**

a. Must be qualified according to 41.6(3) "b."

b. Must meet the following initial requirements:

(1) Five hands-on stereotactically guided breast biopsy procedures on patients under the supervision of a physician or technologist qualified under rule 641—41.7(136C).

(2) ~~Three contact hours of continuing education in stereotactically guided breast biopsy. The required continuing education cannot be obtained through the performance of supervised stereotactically guided breast biopsy procedures.~~

c. Maintenance of proficiency and continuing education and experience requirements.

(1) ~~Following the first anniversary in which the requirements of this subrule were met, have performed at least 12 stereotactically guided breast biopsies per year or~~ completion of a total of 12 breast biopsy procedures must be met for each calendar year with at least 6 being stereotactic breast biopsies. The remaining 6 can be any combination of the following and demonstration of the chosen combination needs to be clearly documented:

1. Stereotactic breast biopsy procedures.

2. Stereotactic biopsy of a stereotactic training phantom with documentation of steps taken or a written report.

3. Stereotactic breast biopsy case review, must be documented to include a review of pre-biopsy mammographic examination, scout and stereotactic images, biopsy needle pre-fire and post-fire images, specimen radiograph images, post-biopsy images and review of post-biopsy pathology results.

4. Mammographic-guided, stereotactic-guided, or both, wire localization procedures.

5. Ultrasound-guided breast biopsy procedures.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

6. MRI-guided breast biopsy procedures.

If experience is not maintained, the radiologic technologist must requalify by performing 3 three stereotactically guided breast biopsies under the supervision of a physician or radiologic technologist qualified under 41.7(3) or 41.7(5).

(2) Following the third anniversary in which the requirements of this subrule were met, ~~have~~ obtain at least three hours of continuing education in stereotactically guided breast biopsy ~~system physics~~ during the ~~previous~~ immediately preceding the date of the facility's annual stereotactic biopsy inspection, or during the 36-month period ending on the last day of the calendar quarter preceding the inspection, or requalify by obtaining additional CME credits to reach 3 CME credits in the prior 36 months. The CMEs cannot be obtained by the performance of supervised procedures.

(3) If a stereotactic radiologic technologist performs only stereotactic procedures, the radiologic technologist must perform at least 100 stereotactic procedures during the prior 24 months- immediately preceding the date of the facility's annual stereotactic biopsy inspection, during the 24-month period ending on the last day of the previous calendar quarter, or any 24-month period between the two. In this case, all requirements for radiologic technologists must be met with the exception of 41.6(3) "b"(4)"1."

(4) Only 50 percent of the total required stereotactic continuing education hours may be obtained through presenting or acting as a trainer for a continuing education or training program.

(5) An Iowa permit to practice radiography must be in effect whenever stereotactic procedures are performed by the radiologic technologist.

ITEM 15. Amend subparagraph **41.7(7)"d"(1)** as follows:

(1) Conducting equipment performance monitoring functions, initially and then at least annually, to include:

1. Evaluation of biopsy unit assembly. Any failed items must be corrected within 30 days of the survey unless the medical physicist deems that the failure poses a serious injury risk to the patient, at which time the failure needs to be corrected before further procedures are performed.

2. Collimation.

- ~~Digital~~—X-ray field must not extend beyond the image receptor by more than 5 mm on any side.

- ~~Film screen~~—~~On all sides other than the chest wall side, the X-ray field must be within the image receptor. The chest wall side must not extend beyond the image receptor by more than 2 percent.~~

- Any failures must be corrected within 30 days of the survey.

3. Evaluation of focal spot.

- ~~Digital~~—Focal spot must not degrade from initial measurement. If reduction in lp/mm is found, focal spot must be corrected within 30 days of survey.

- ~~Film screen~~—~~Film screen must show 13 lp/mm parallel to the anode-cathode axis and 11 lp/mm perpendicular to the anode-cathode axis. Failure to meet the performance criteria must be corrected within 30 days of survey.~~

4. kVp accuracy/reproducibility. kVp accuracy/reproducibility must be accurate to within +/- 5% of nominal kVp setting. Failures must be corrected before further procedures are performed.

5. Half-value layer measurement. HVL shall be greater than kVp/100 (in units of mm Al). Failures must be corrected before further procedures are performed.

6. Exposure reproducibility. Exposure must be reproducible to within +/- 15% of mean exposure. Failures must be corrected before further procedures are performed.

7. Breast entrance exposure, average glandular dose. Average glandular dose must be less than 300 millirad (3 milliGray) per exposure of a 50 percent glandular/50 percent adipose ~~4.5~~ 4.2 centimeter breast. Failures must be corrected before further procedures are performed.

8. Image quality evaluation.

- ~~Digital~~—Phantom image must meet the criteria of 5 fibers, 4 speck groups and 3 masses for the ACR accreditation phantom or 3 fibers, 3 speck groups and 2.5 masses for the mini phantom unless otherwise stated by the phantom manufacturer.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

~~• Film screen—Phantom image must meet the criteria of 4 fibers, 3 speck groups and 3 masses for the ACR phantom or 2 fibers, 2 speck groups and 2 masses for the mini phantom unless otherwise stated by the phantom manufacturer. The background density must be within +/- .20 of the established aim, and the density differences must be within +/- .05 of the established aim.~~

- Failures must be corrected before further procedures are performed.

9. Artifact evaluation. Any significant black or white artifacts seen in the image detector field must be corrected within 30 days of the survey.

10. Digital field uniformity. For units with region of interest (ROI) capability, the SNR in each corner must be within +/- 15% of the SNR in the center. Failures must be corrected within 30 days of the survey.

11. Localization simulation (gelatin phantom) test. Localization accuracy must be within 1 mm of target, and the test must include a portion of the test “lesion” in the sample chamber. Failures must be corrected before further procedures are performed.

ITEM 16. Amend subrule 41.7(9) as follows:

**41.7(9) Safety standards.**

a. Proper safety precautions shall be maintained and shall include, but not be limited to, adequate shielding for patients, personnel and facilities. The equipment shall be operated only from a shielded position.

~~b. Equipment operators shall wear personnel monitors to monitor their radiation exposure.~~

~~e. b.~~ Annual inspections shall be conducted by an inspector from the agency to ensure compliance with these rules. Identified hazards shall be promptly corrected.

~~d. c.~~ Equipment shall be shockproof and grounded to protect against electrical hazards.

~~e. d.~~ Records of all ~~inspections, inspection reports and consultations~~ medical physicist surveys shall be maintained for at least seven years.

**ARC 6053C**

**PUBLIC HEALTH DEPARTMENT[641]**

**Notice of Intended Action**

**Proposing rule making related to prescription drug donation repository program and providing an opportunity for public comment**

The Public Health Department hereby proposes to amend Chapter 109, “Prescription Drug Donation Repository Program,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code chapter 135M.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 135M.

*Purpose and Summary*

These proposed amendments will update outdated citations within Chapter 109 and address an unintentional issue that occurred from some new wording in different legislation that was not intended to apply to the program covered by Chapter 108. The Department provided a waiver in 2019 to address the situation. The proposed amendment to the definition of “centralized repository” in Item 1 is a permanent solution that will remove the need for the waiver. Other amendments remove references to repealed Iowa Code chapters and a rescinded rule and update an Iowa Code citation.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department's waiver provisions contained in 641—Chapter 178.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on December 7, 2021. Comments should be directed to:

Susan Dixon  
Department of Public Health  
321 East 12th Street  
Des Moines, Iowa 50319  
Email: [susan.dixon@idph.iowa.gov](mailto:susan.dixon@idph.iowa.gov)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule ~~641—109.1(135M)~~, definitions of “Centralized repository” and “Physician,” as follows:

“*Centralized repository*” means ~~a distributor~~ an entity approved by the contractor and licensed pursuant to ~~657 IAC Chapter 17~~ applicable regulations of the Iowa board of pharmacy that accepts donated drugs, conducts a safety inspection of the drugs, and ships the donated drugs to a local repository to be dispensed in compliance with this chapter and federal and state laws, rules and regulations.

“*Physician*” means an individual licensed under Iowa Code chapter ~~148, 150, or 150A~~.

ITEM 2. Amend subrule 109.5(3) as follows:

**109.5(3)** Repositories shall destroy donated noncontrolled substances that are not suitable for dispensing and make a record of such destruction according to board of pharmacy ~~rule 657—8.8(124,155A)~~ 657—subrule 8.7(5). The destruction record shall be made in the same manner as prescribed for the record of return or destruction of a controlled substance in subrule 109.5(4).

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 3. Amend subrule 109.14(1) as follows:

**109.14(1)** The department may receive prescription drugs and supplies directly from the prescription drug donation repository contractor and dispense prescription drugs and supplies through licensed personnel during or in preparation for a disaster emergency proclaimed by the governor pursuant to Iowa Code section 29C.6 or during or in preparation for a public health disaster as defined in 2009 Iowa Code Supplement section 135.140, ~~subsection 6~~ 135.140(6).

**ARC 6052C**

## **PUBLIC SAFETY DEPARTMENT[661]**

### **Notice of Intended Action**

#### **Proposing rule making related to complaints and the filing and investigation thereof and requests for personal information and providing an opportunity for public comment**

The Public Safety Department hereby proposes to amend Chapter 35, “Complaints Against Employees,” and Chapter 80, “Public Records and Fair Information Practices,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code chapters 22 and 80F.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, 2021 Iowa Acts, Senate File 342, sections 17 through 22.

#### *Purpose and Summary*

This proposed rule making revises the definition of a complaint and the process to file a complaint to align with 2021 Iowa Acts, Senate File 342, sections 17 through 22, including requirements that written complaints be signed. This rule making also conforms the subsequent investigation of complaints and the release of personal information to the requirements of 2021 Iowa Acts, Senate File 342, sections 17 through 22.

#### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

#### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

#### *Waivers*

Pursuant to the provisions of rule 661—10.222(17A), the Department does not have authority to waive requirements established by statute. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the provisions of rule 661—10.222(17A).

#### *Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on December 7, 2021. Comments should be directed to:

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

Sarah Jennings  
Department of Public Safety  
Oran Pape State Office Building  
215 East 7th Street  
Des Moines, Iowa 50319  
Phone: 515.725.6185  
Email: [jennings@dps.state.ia.us](mailto:jennings@dps.state.ia.us)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 661—35.1(80) as follows:

**661—35.1(80) Definitions.** The following definitions apply to rules 661—35.1(80) through 661—35.3(80) ~~661—35.4(80)~~:

“Complaint” means an a formal written allegation by any person of a signed by the complainant, or a signed written statement by an officer receiving an oral complaint stating the complainant’s allegation regarding, but not limited to, breach of rules or orders, a violation of the law, or other misconduct by an employee of the department.

“Department” means the Iowa department of public safety.

“Employee” means any employee of the department.

ITEM 2. Amend rule 661—35.2(80) as follows:

**661—35.2(80) Filing a complaint.**

**35.2(1)** Any person may file a complaint against an employee or employees by:

*a.* Mailing a signed complaint in writing to the professional standards bureau, at the following address:

Professional Standards Bureau  
Iowa Department of Public Safety  
~~State Public Safety Headquarters~~ Oran Pape State Office Building  
215 East 7th Street  
Des Moines, Iowa 50319

Complaints in writing may be mailed or submitted to any office of the department.

*b.* Calling the professional standards bureau at (515)725-6270, or by calling any office of the department.

*c.* Completing the commendation/complaint form online on the website of the department.

NOTE: The complaint form may be found at the following location:  
[stateofiowa.seamlessdocs.com/f/PSB Complaint Form](http://stateofiowa.seamlessdocs.com/f/PSB%20Complaint%20Form).

**35.2(2)** The complainant should describe as specifically and completely as possible the nature of the complaint and the details of any incident or incidents which give rise to the complaint.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

**35.2(3)** Each complaint received will be recorded and investigated.

**35.2(4)** The complainant need not be identified if a statement is received as an oral complaint. Anonymous complaints will be accepted and investigated as thoroughly as possible.

ITEM 3. Adopt the following new rule 661—35.4(80):

**661—35.4(80) Investigation requirements of agency.**

**35.4(1)** *Recordkeeping and release of information.* The department shall keep confidential an officer's statement, recordings or transcripts of any interviews or disciplinary proceedings, and any complaints made against an officer unless otherwise provided by law or with the officer's written consent. Nothing in this rule prohibits the release of an officer's statement, recordings or transcripts of any interviews or disciplinary proceedings, and any complaints made against an officer to the officer or the officer's legal counsel upon the officer's request.

**35.4(2)** *Training of investigating employee.* The department shall provide training to any officer or supervisor who performs or supervises an investigation under Iowa Code section 80F.1, and shall maintain documentation of any related training. The Iowa law enforcement academy shall adopt minimum training standards consistent with this rule, including training standards concerning interviewing an officer subject to a complaint.

**35.4(3)** *Right of officer to personnel file and records.* Upon written request, the department shall provide to the requesting officer or the officer's legal counsel a copy of the officer's personnel file and training records regardless of whether the officer is subject to a formal administrative investigation at the time of the request.

This rule is intended to implement Iowa Code sections 80F.1(20) through 80F.1(22).

ITEM 4. Amend rule 661—80.15(22,80F) as follows:

**661—80.15(22,80F) Release of official photographs of or personal information about employees.**

**80.15(1)** An official photograph of or personal information about an employee of the department who is an officer as defined in Iowa Code section 80F.1 shall be released only if either of the following is true:

*a.* The employee has signed a written release giving permission to release the photograph or personal information; or

*b.* A request has been received to release the photograph or personal information pursuant to Iowa Code chapter 22.

**80.15(2)** A photograph of or personal information about any employee of the department shall not be released if its release could jeopardize an ongoing investigation or place the employee at risk.

**80.15(3)** An officer's personal information, including but not limited to the officer's home address, personal telephone number, personal electronic mail address, date of birth, social security number, and driver's license number, shall be confidential and redacted prior to a record's release to the public by the department.

**ARC 6056C**

**RACING AND GAMING COMMISSION[491]**

**Notice of Intended Action**

**Proposing rule making related to gambling games and horse racing and providing an opportunity for public comment**

The Racing and Gaming Commission hereby proposes to amend Chapter 5, "Track, Gambling Structure, and Excursion Gambling Boat Licensees' Responsibilities," Chapter 6, "Occupational and Vendor Licensing," Chapter 8, "Pari-Mutuel Wagering, Simulcasting and Advance Deposit Wagering," Chapter 10, "Thoroughbred and Quarter Horse Racing," Chapter 11, "Gambling Games," Chapter 13, "Sports Wagering," and Chapter 14, "Fantasy Sports Contests," Iowa Administrative Code.

## RACING AND GAMING COMMISSION[491](cont'd)

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 99D.7, 99E.3 and 99F.4.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 99D.7, 99E.3 and 99F.4.

*Purpose and Summary*

Item 1 corrects an outdated cross-reference to the Iowa Code.

Item 2 updates subrule 5.4(10), submission of gambling games taxes and fees, to be consistent with 2021 Iowa Acts, Senate File 619.

Item 3 updates subrule 5.4(12), problem gambling, to reflect current standards.

Item 4 clarifies standards for network security risk assessments and moves the risk assessment requirement timing for some licensees.

Item 5 clarifies which entities and vendors are included in the vendor license requirement.

Item 6 clarifies license eligibility for trainers and assistant trainers.

Item 7 updates the definition of “interstate simulcasting” to be consistent with 2021 Iowa Acts, House File 513.

Item 8 updates subparagraph 8.4(1)“d”(3) to be consistent with 2021 Iowa Acts, House File 513.

Item 9 updates subrule 8.5(3) to be consistent with 2021 Iowa Acts, House File 513.

Item 10 updates paragraph 8.5(4)“b” to be consistent with 2021 Iowa Acts, House File 513.

Item 11 creates consistency between advance deposit wagering operators and advance deposit sports wagering operators.

Item 12 clarifies allowed coupled entries.

Item 13 clarifies allowable eligibility for claims.

Item 14 replaces subrule 11.5(3) relating to approval of variations to and bonus features or progressive wagers associated with gambling games to remove a provision with regard to 2021 Iowa Acts, Senate File 619.

Item 15 implements requirements for linking table game progressives.

Item 16 modifies who needs to maintain a reserve in sports wagering.

Item 17 clarifies when certain written reports relating to sports wagering are required.

Item 18 clarifies sports wagering ticket payout hours.

Item 19 clarifies signage requirements for designated sports wagering areas.

Item 20 clarifies certain advance deposit sports wagering account operation requirements.

Item 21 clarifies standards for advance deposit sports wagering system integrity and security risk assessments and moves the risk assessment requirement timing for some licensees.

Item 22 clarifies fantasy sports contest service provider reporting requirements.

Item 23 clarifies standards for fantasy sports wagering system integrity and security risk assessments and moves risk assessment requirement timing for some licensees.

Item 24 updates language in paragraph 14.10(2)“c” regarding financial reserves.

Item 25 clarifies certain account operation requirements in paragraph 14.13(1)“e.”

Item 26 clarifies certain account operation requirements in paragraph 14.13(1)“f.”

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

## RACING AND GAMING COMMISSION[491](cont'd)

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Commission no later than 4:30 p.m. on December 7, 2021. Comments should be directed to:

Barb Blake  
Iowa Racing and Gaming Commission  
1300 Des Moines Street  
Des Moines, Iowa 50309  
[barb.blake@iowa.gov](mailto:barb.blake@iowa.gov)

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

December 7, 2021  
9 a.m.

Commission Office, Suite 100  
1300 Des Moines Street  
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

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 Commission and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subparagraph **5.4(8)“b”(4)** as follows:

(4) Iowa resources, goods and services are utilized. Resources, goods, and services shall be considered to be made in Iowa, be provided by Iowans, or emanate from Iowa if one or more of the following apply:

1. to 6. No change.

7. Services beyond selling are provided by employees who are based in Iowa.

A facility shall be considered to have utilized a substantial amount of Iowa resources, goods, services and entertainment in compliance with Iowa Code sections 99D.9 and ~~99F.7(4)~~ 99F.7(5) if the facility demonstrates to the satisfaction of the commission that preference was given to the extent allowed by law and other competitive factors.

ITEM 2. Amend subrule 5.4(10) as follows:

**5.4(10) Taxes and fees.**

a. No change.

b. *Submission of gambling game taxes and fees.*

## RACING AND GAMING COMMISSION[491](cont'd)

(1) and (2) No change.

~~(3) Pursuant to Iowa Code section 99F.1(1), taxes from promotional play receipts that are received within the same gaming week but after the date when the limit set forth in the definition of “adjusted gross receipts” is exceeded, as determined by the administrator, will be credited to each facility in the next available gaming week within the same fiscal year.~~

*c. Calculation of promotional play receipts.* For the purpose of calculating the amount of taxes received from promotional play receipts during a fiscal year, the commission will consider promotional play receipts as taxed in proportion to total adjusted gross receipts for each gaming day.

*d. Submission of sports wagering net receipts taxes.*

(1) A tax is imposed on the sports wagering net receipts received each fiscal year from sports wagering. “Sports wagering net receipts” means the gross receipts less winnings paid to wagerers on sports wagering on a cash accounting basis. Voided and canceled transactions are not considered receipts for the purpose of this calculation. ~~Any offering used to directly purchase a wager shall be considered receipts for the purpose of this calculation.~~

(2) to (4) No change.

ITEM 3. Amend paragraph 5.4(12)“b” as follows:

*b.* The policies and procedures shall be developed in cooperation with the gambling treatment program and shall include without limitation the following:

(1) and (2) No change.

(3) Policies designed to prevent serving alcohol to intoxicated ~~casino~~ patrons on the gaming floor or wagering area;

(4) Steps for removing problem gamblers from the ~~casino; and~~ gaming floor or wagering area;

(5) Procedures for preventing reentry of problem gamblers;

(6) Procedures to prominently display problem gambling materials produced by the Iowa gambling treatment program throughout the facility with at least one display located in a high-traffic area of patrons; and

(7) Procedures for a licensee’s website to include a link to the commission’s website for individuals to self-exclude themselves pursuant to Iowa Code sections 99F.4(22) and 99D.7(23).

ITEM 4. Amend paragraph 5.4(21)“a” as follows:

*a.* The licensee shall biennially submit the results of an independent network security risk assessment to the administrator for review, subject to the following requirements:

(1) No change.

(2) The network security risk assessment shall be ~~conducted~~ completed no later than ~~90 days after the start of the licensee’s fiscal year~~ March 31 in each year an assessment is required.

(3) Results from the network security risk assessment shall be submitted to the administrator no later than 90 days after the assessment is ~~conducted~~ completed. Results shall include a remediation plan to address any risks identified during the risk assessment.

(4) The risk assessment shall be conducted in accordance with current and accepted industry standard review requirements for risk assessments.

(5) The risk assessment shall include a review of licensee controls. Review of controls shall include but not be limited to a comparison of licensee controls to industry standard and best practice controls, and an audit of the licensee processes for compliance with those controls.

(6) For licensees issued a license to conduct sports wagering pursuant to Iowa Code section 99F.7A, a risk assessment required by this subrule shall include any on-premises sports wagering authorized by the commission at that licensee’s place of business. A supplemental risk assessment for the sports wagering operations may be accepted in lieu of inclusion with the assessment of the licensee’s overall operations, at the discretion of the administrator, and providing that the supplemental assessment independently complies with the requirements in subparagraphs 5.4(21)“a”(1) to (5).

## RACING AND GAMING COMMISSION[491](cont'd)

ITEM 5. Amend subrule 6.14(1) as follows:

**6.14(1)** A vendor's license is required of any entity not licensed as a manufacturer or distributor that conducts operations on site at a facility or a vendor that provides geolocation security services to any licensee.

ITEM 6. Amend paragraph **6.23(2)“b”** as follows:

*b.* An applicant must be qualified, as determined by the commission representative, by reason of experience, background, and knowledge of racing. A trainer's license from another jurisdiction may be accepted as evidence of experience and qualifications. Evidence of qualifications may require ~~passing one~~ and, if an applicant has previously never been licensed as a trainer or assistant trainer, shall require four or more of the following:

- (1) A ~~Passing~~ written examination.
- (2) A ~~n~~ ~~Passing an~~ interview or oral examination.
- (3) A ~~Passing a~~ demonstration of practical skills in a “barn test” (horse racing only).
- (4) A minimum of two written statements from licensed trainers during the concurrent race meet attesting to the applicant's character and qualifications.
- (5) Proof the applicant has held a racing participant license of another type for a minimum of two years prior to application.

ITEM 7. Amend rule **491—8.1(99D)**, definition of “Interstate simulcasting,” as follows:

“*Interstate simulcasting*” means the telecast of live audio and visual signals of pari-mutuel racing sent to or received from a state outside the state of Iowa to an authorized racing or gaming facility for the purpose of wagering. For the purposes of this definition, “interstate” also includes foreign jurisdictions.

ITEM 8. Amend subparagraph **8.4(1)“d”(3)** as follows:

(3) Once simulcast authority has been granted by the commission or commission representative, it shall be the affirmative responsibility of the facility granted simulcast authority to obtain all necessary permission from other ~~states~~ jurisdictions and tracks to simulcast the pari-mutuel races. In addition, the burden of adhering to state and federal laws concerning simulcasting rests on the facility at all times.

ITEM 9. Amend subrule 8.5(3) as follows:

**8.5(3)** *Host state participation in merged pools.*

*a.* With the prior approval of the commission representative, a facility licensed to conduct pari-mutuel wagering may determine that one or more of its contests be utilized for pari-mutuel wagering at guest facilities in other ~~states~~ jurisdictions and may also determine that pari-mutuel pools in guest ~~states~~ jurisdictions be combined with corresponding wagering pools established by it as the host facility or comparable wagering pools established by two or more ~~states~~ jurisdictions.

*b. to d.* No change.

*e.* Any contract for interstate common pools entered into by the facility shall contain a provision to the effect that if, for any reason, it becomes impossible to successfully merge the bets placed in another ~~state~~ jurisdiction into the interstate common pool formed by the facility or if, for any reason, the commission representative or facility determines that attempting to effect transfer of pool data from the guest ~~state~~ jurisdiction may endanger the facility's wagering pool, the facility shall have no liability for any measure taken which may result in the guest's wagers not being accepted into the pool.

ITEM 10. Amend paragraph **8.5(4)“b”** as follows:

*b.* A facility wishing to participate in an interstate common pool may request that the commission representative approve a methodology whereby host facility and guest facility ~~states~~ jurisdictions with different takeout rates for corresponding pari-mutuel pools may effectively and equitably combine wagers from the different ~~states~~ jurisdictions into an interstate common pool.

ITEM 11. Amend subrule 8.6(3) as follows:

**8.6(3)** *Operation of an account.* The ADWO shall submit operating procedures with respect to licensee account holder accounts for commission approval. The submission shall include controls and reasonable methods that provide for the following:

## RACING AND GAMING COMMISSION[491](cont'd)

a. A written report to the commission for any incident where there is a violation of Iowa Code chapter 99D or 99F, a commission rule or order, or an internal control within 72 hours of detection. In addition to the written report, the ADWO shall provide immediate notification to the commission if an incident involves employee theft, criminal activity, or a violation of Iowa Code chapter 99D or 99F.

b. The segregation of incompatible functions so that no employee is in a position to perpetrate and conceal errors or irregularities in the normal course of the employee's duties.

c. User access controls for all sensitive and secure, physical and virtual, areas and systems within a wagering operation.

d. Treatment of problem gambling by:

(1) Identifying problem gamblers.

(2) Complying with the process established by the commission pursuant to Iowa Code section 99F.4(22) and 491—subrule 5.4(12).

(3) Cooperating with the Iowa gambling treatment program in creating and establishing controls.

(4) Including information on the availability of the gambling treatment program in a substantial number of the licensee's advertisements and printed materials.

e. Setoff winnings of customers who have a valid lien established under Iowa Code chapter 99F.

ITEM 12. Amend paragraph **10.6(2)“c”** as follows:

c. Coupling. There will be no coupled entries in any race. In races, excluding stakes races, that overfill, trainers must declare preference of runners with identical ownership at time of entry. Same-owner, second-choice horses will be least preferred. A trainer or owner or licensed designee may not enter more than three horses in a race unless the race is split or divided.

ITEM 13. Amend subparagraph **10.6(18)“a”(2)** as follows:

(2) Number of claims.

1. An ownership entity (sole owner, partnership or limited liability partnership, racing stable, corporation or limited liability corporation, or owner/trainer acting as an owner) shall not claim more than one horse in a race, ~~and an authorized agent or trainer acting on behalf of an ownership entity shall not submit more than two claims in a race with two separate ownership interests.~~ Any commonality of ownership prohibits more than one claim in a race by any of those entities.

2. ~~If an An authorized agent or trainer acting on behalf of an ownership entity submits shall not submit more than two claims in a race, the claims shall not be for the same horse with two separate ownership interests.~~

3. No change.

ITEM 14. Rescind subrule 11.5(3) and adopt the following **new** subrule in lieu thereof:

**11.5(3)** The administrator is authorized to approve variations of approved gambling games and bonus features or progressive wagers associated with approved gambling games, subject to the requirements of rule 491—11.4(99F). Features utilizing a controller or a system linked to gambling games that do not require direct monetary consideration and are not otherwise integrated within a slot machine game theme may be allowed as bonus features. Payouts from these bonus features may be included in winnings for the calculation of wagering tax adjusted gross receipts when the following conditions are met:

a. The only allowable nonmonetary consideration to be expended by a participant shall be active participation in a gambling game with a bonus feature or use of a player's club card, or both.

b. The actual bonus payout deductible in any month from all qualified system bonuses requiring no additional direct monetary consideration shall be:

(1) No more than 2 percent of the coin-in for all slot machines linked to any system bonuses for that month if slot machines linked to system bonuses exceed 20 percent of the total number of slot machines; or

(2) No more than 3 percent of the coin-in for all slot machines linked to any system bonuses for that month if slot machines linked to system bonuses are less than or equal to 20 percent of the total number of slot machines; or

(3) No more than 3 percent of the amount wagered on the qualifying bets for all table games linked to any system bonus for that month.

## RACING AND GAMING COMMISSION[491](cont'd)

*c.* The probability of winning a system bonus award shall be the same for all persons participating in the bonus feature.

ITEM 15. Adopt the following **new** subrule 11.7(10):

**11.7(10)** Wide area progressive table game systems. A wide area progressive table game system is a method of linking table game progressives, approved in accordance with subrule 11.5(3), by a secured data communication as part of a network that connects participating facilities. The purpose of a wide area progressive table game system is to offer a common progressive jackpot at all participating locations within Iowa or in multiple states. The operation of the wide area progressive table game system (multilink) is permitted, subject to the following conditions:

*a.* The provider of the multilink (provider) shall be an entity licensed as a manufacturer, a distributor, or an operator of gambling games within the state of Iowa or be the qualified parent company of an operator within the state of Iowa. No entity shall be licensed for the sole purpose of providing a multilink.

*b.* Prior to operation of a multilink, the provider shall submit to the administrator for review and approval information sufficient to determine the integrity and security of the multilink. The information must include, but is not limited to, the following:

(1) Central system site location, specifications, and operational procedures. Central site facilities must be monitored whenever the multilink is operational at any participatory licensee.

(2) Encryption and method of secured communication over the multilink and between facilities.

(3) Method and process for obtaining and updating contribution data from table games on the multilink.

(4) Jackpot contribution rates, including information sufficient to determine contributions to the jackpot are consistent across all entities participating in the multilink. Any subsequent changes to the contribution rate of a multilink jackpot must be submitted to the administrator for review and approval.

(5) Jackpot verification procedures.

*c.* Prior to inclusion in a multilink, a licensee shall submit to a gaming representative for review and approval information sufficient to determine the integrity of the multilink processes. The information must include, but is not limited to, the following:

(1) Rules of the game, in accordance with subrule 11.4(3).

(2) Controls and procedures which govern the process of determining and verifying jackpots on a multilinked table game.

(3) The process to report jackpots to the multilink provider.

(4) The process to pay the jackpot to the winner or winners.

*d.* The provider of the multilink shall, upon request, supply reports and information to the administrator which detail the contributions and economic activity of the system, subject to the following requirements:

(1) Aggregate and detail reports that show both the economic activity of the entire multilink, as well as details of each table game on the multilink.

(2) Upon invoicing a facility, details regarding each machine at the facility and each table game's contribution to the multilink for the period of the invoice shall be supplied, as well as any other details required by the administrator.

*e.* Concurrent jackpots which occur before the multilink jackpot meters show reset and updated jackpot amounts will be deemed to have occurred simultaneously. Each winner shall receive the full amount shown on the system jackpot meter.

*f.* The provider must suspend play on the multilink if a communication failure of the system cannot be corrected within 24 consecutive hours.

*g.* A meter that shows the amount of the jackpot must be conspicuously displayed at the table games to which the jackpot applies. Jackpot meters may show amounts that differ from the actual system jackpot, due to delays in communication between sites and the central system, but meters shall not display an incorrect amount for an awarded jackpot.

## RACING AND GAMING COMMISSION[491](cont'd)

*h.* In calculating adjusted gross receipts, a facility may deduct only its pro rata share of the present value of any system jackpots awarded. Such deduction shall be listed on the detailed accounting records supplied by the provider. A facility's pro rata share is based on the amount wagered in conjunction with the rules for that table game progressive from that facility's table games on the multilink compared to the total amount wagered in conjunction with the rules for that table game progressive on the whole system for the time period between awarded jackpots.

*i.* In the event a facility ceases operations and a progressive jackpot is awarded subsequent to the last day of the final month of operation, the facility may not file an amended wagering tax submission or make a claim for a wagering tax refund based on its contributions to that particular progressive prize pool.

*j.* Any jackpot on the multilink shall be paid immediately upon verification of the jackpot. The responsibility for the immediate payment rests with the facility in which the jackpot is awarded, but is subject to reimbursement requirements from the provider, in accordance with the collection procedures agreed to between the provider and the facility.

*k.* A reserve shall be established and maintained by the provider in an amount not less than the present value of all multilink jackpots offered by the provider and the present value of one additional reset (start amount) for each multilink jackpot offered by the provider.

(1) Upon becoming aware of an event of noncompliance with the terms of the reserve requirement mandated by this paragraph, the provider must immediately notify the administrator.

(2) On a quarterly basis, the provider must deliver to the administrator a calculation of system reserves required under this paragraph. The calculation shall come with a certification of financial compliance signed by a duly authorized financial officer of the provider, on a form prescribed by the administrator, validating the calculation.

*l.* Multilinks to be offered in conjunction with jurisdictions in other states within the United States are permitted. Multistate multilinks are subject to the requirements of this subrule; in addition, any multistate plans or controls are subject to administrator review and approval.

ITEM 16. Rescind subrule 13.2(6) and adopt the following **new** subrule in lieu thereof:

**13.2(6) Reserve.** A reserve in the form of cash or cash equivalents segregated from operational funds, an irrevocable letter of credit, payment processor reserves and receivables, a bond, or a combination thereof shall be maintained in the amount necessary to cover the outstanding vendor sports wagering liability and advance deposit sports wagering liability. An accounting of this reserve shall be made available for inspection to the commission upon request.

*a.* The method of reserve shall be submitted to and approved by the administrator prior to implementation.

*b.* Reserve calculation shall include the following: patron accounts, future wagers liability, unpaid wagers and pending withdrawals.

*c.* If, at any time, the licensee's total reserve is less than the amount required by the reserve calculation, the licensee shall notify the commission of this deficiency within 72 hours.

*d.* The controller or an employee of higher authority shall file a monthly attestation to the commission that the reserve funds have been safeguarded pursuant to this subrule.

ITEM 17. Amend subrule 13.2(7) as follows:

**13.2(7) Internal controls.** Licensees and advance deposit sports wagering operators shall submit a description of internal controls to the administrator. The submission shall be made at least 30 days before sports operations are to commence unless otherwise approved by the administrator. All internal controls must be approved by the administrator prior to commencement of sports operations. The operator shall submit to the administrator any changes to the internal controls previously approved at least 15 days before the changes are to become effective unless otherwise directed by the administrator. It shall be the affirmative responsibility and continuing duty of each licensee and advance deposit sports wagering operator and their employees to follow and comply with all internal controls. The submission shall include controls and reasonable methods that provide for the following:

*a. to d.* No change.

## RACING AND GAMING COMMISSION[491](cont'd)

~~e. To report within 72 hours, in writing, where an employee or customer is detected violating a provision of~~ Written notification to the commission for any incident involving criminal activity, Iowa Code chapter 99F, a commission rule or order, or an internal controls control within 72 hours of detection. In addition to the written report, the ~~licensee or advance deposit sports wagering operator shall provide immediate notification to the commission if an incident involves employee theft, criminal activity, Iowa Code chapter 99F violations or sports wagering receipts~~ a written report detailing the violation as required by the administrator.

~~f. and g. No change.~~

~~h. Treatment of problem gambling by:~~

~~(1) to (3) No change.~~

~~(4) Making available to customers, patrons, and bettors~~ Including information on the availability of the gambling treatment program in a substantial number of the Iowa gambling treatment program the licensee's advertisements and printed materials.

~~i. No change.~~

ITEM 18. Adopt the following **new** subrule 13.2(12):

**13.2(12) Ticket payouts.** A method shall be available for players to collect at any time during the facility's hours of operation winnings from wagers made in person at a facility. Winnings required to be reported on Internal Revenue Service Form W-2G are exempt from this requirement.

ITEM 19. Amend rule 491—13.4(99F) as follows:

**491—13.4(99F) Designated sports wagering area.** A floor plan identifying the designated sports wagering area, including the location of any ~~wagering kiosks~~ device used to assist in the placement, resolution or collection of any sports wager, shall be filed with the administrator for review and approval. Modification to a previously approved plan must be submitted for approval at least ten days prior to implementation. ~~A sign shall denote that the area is not accessible to persons under the age of 21.~~ Designated wagering areas shall contain conspicuous signage which denotes that an individual must be at least 21 years of age to wager on sports. Exceptions to this rule must be approved in writing by the administrator. The sports wagering area is subject to compliance with 491—subrule 5.4(7).

ITEM 20. Amend subrule 13.5(3) as follows:

**13.5(3) Operation of an account.** The advance deposit sports wagering operator or a licensee shall submit controls, approved by the commission, that include the following for operating an account:

~~a. to f. No change.~~

~~g. Process to immediately notify a player and lock an account in following an unusual login attempt. In the event that suspicious activity is detected, an account shall be locked.~~ A multifactor authentication process must be employed for the account to be unlocked.

~~h. Process for players to easily and prominently impose limitations or notifications for wagering parameters including, but not limited to, deposits and wagers. Upon receipt, any self-imposed limitations must be employed correctly and immediately as indicated to the player. Self-imposed limitations must be applied automatically, take effect immediately, and be implemented as indicated by the player. No changes can be made reducing the severity of the self-imposed limitations for at least 24 hours.~~

~~i. Process for players to easily and prominently self-exclude from wagering for a specified period of time or and indefinitely and easily and obviously direct participants, via a link, to exclude themselves pursuant to Iowa Code section 99F.4(22). Upon receipt, any self-exclusion limitations must be employed correctly and immediately as indicated to the player. Self-exclusions must be applied automatically, take effect immediately, and be implemented as indicated by the player. No changes can be made to reduce the severity of the self-exclusion limitations for at least 24 hours. In the event of indefinite self-exclusion, the advance deposit sports wagering operator or licensee must ensure that the players are player is paid in full for their the player's account balance within a reasonable time provided that the advance deposit sports wagering operator or licensee acknowledges that the funds have cleared. Players must be easily and obviously directed via a link to exclude themselves pursuant to Iowa Code section 99F.4(22). This control does not supersede the requirements set forth in Iowa Code section 99F.4(22).~~

## RACING AND GAMING COMMISSION[491](cont'd)

*j.* and *k.* No change.

ITEM 21. Amend paragraph **13.6(3)“a”** as follows:

*a.* A system integrity and security risk assessment shall be performed annually on the advance deposit sports wagering system.

(1) No change.

(2) The system integrity and security risk assessment shall be ~~conducted~~ completed no later than ~~90 days after the start of the licensee’s fiscal year~~ March 31 of each year.

(3) Results from the risk assessment shall be submitted to the administrator no later than 30 days after the assessment is ~~conducted~~ completed. Results shall include a remediation plan to address any risks identified during the risk assessment.

(4) The risk assessment shall be conducted in accordance with current and accepted industry standard review requirements for risk assessments.

(5) The risk assessment shall include a review of licensee controls. Review of controls shall include but not be limited to a comparison of licensee controls to industry standard and best practice controls, and an audit of the licensee processes for compliance with those controls.

ITEM 22. Amend paragraph **14.8(3)“a”** as follows:

*a.* Criminal or disciplinary proceedings commenced against the service provider or its employees in connection with its operations;

ITEM 23. Amend subparagraph **14.8(4)“c”(1)** as follows:

(1) A system integrity and security risk assessment shall be performed annually on the fantasy sports contest system.

1. No change.

2. The system integrity and security risk assessment shall be ~~conducted~~ completed no later than ~~90 days after the start of the licensee’s fiscal year~~ March 31 of each year. Results shall include a remediation plan to address any risks identified during the risk assessment.

3. Results from the risk assessment shall be submitted to the administrator no later than 30 days after the assessment is ~~conducted~~ completed.

4. The risk assessment shall be conducted in accordance with current and accepted industry standard review requirements for risk assessments.

5. The risk assessment shall include a review of licensee controls. Review of controls shall include but not be limited to a comparison of licensee controls to industry standard and best practice controls, and an audit of the licensee processes for compliance with those controls.

ITEM 24. Amend paragraph **14.10(2)“c”** as follows:

*c.* If, at any time, the licensee’s total ~~available cash and cash equivalent~~ reserve is less than the amount required by the reserve calculation, the licensee shall notify the commission of this deficiency within ~~48~~ 72 hours.

ITEM 25. Amend paragraph **14.13(1)“e”** as follows:

*e.* A process for players to easily ~~and prominently~~ impose limitations or notifications for deposits and monetary participation in a contest. ~~Upon receipt, any self-imposed limits must be employed correctly and immediately as indicated to the player.~~ Limitations must be applied automatically, take effect immediately, and be implemented as indicated by the player. No changes can be made reducing the severity of the self-imposed limitations for at least 24 hours.

ITEM 26. Amend paragraph **14.13(1)“f”** as follows:

*f.* A process for players to easily ~~and prominently~~ self-exclude for a specified period of time ~~or and indefinitely and easily and obviously~~ direct participants, via a link, to exclude themselves pursuant to Iowa Code section 99F.4(22). ~~Upon receipt, any self-exclusion limits must be employed correctly and immediately as indicated to the player.~~ Self-exclusions must be applied automatically, take effect immediately, and be implemented as indicated by the player. No changes can be made to reduce the severity of the self-exclusion limitations for at least 24 hours. In the event of indefinite self-exclusion, the licensee must ensure that the player is paid in full for the player’s account balance within a reasonable

RACING AND GAMING COMMISSION[491](cont'd)

time provided that the licensee acknowledges that the funds have cleared. Players must be easily and obviously directed via a link to exclude themselves pursuant to Iowa Code section 99F.4(22). This control does not supersede the requirements set forth in Iowa Code section 99F.4(22).

## REVENUE DEPARTMENT

### Interest Rates

Starting January 1, 2022, the interest rate for taxpayers with overdue payments will be:

- 5.0% annually
- 0.4% monthly
- 0.013699% daily

Iowa Code section 421.7 specifies the procedures for calculating the Department's annual and monthly interest rates. The annual rate is based on the average monthly prime rate during the preceding 12-month period, October through September. Iowa law requires that this average be rounded to the nearest whole percent and two percentage points to be added to it. The prime rate averaged 3.25 percent over the past 12 months. Rounded to the nearest whole percent, this average is 3.0 percent. Adding two percentage points results in the annual rate of 5.0 percent. The monthly rate is the annual rate divided by 12, rounded to the nearest one-tenth of a percentage point. The daily rate for 2022 is the annual rate divided by 365.

**ARC 6032C**

## REVENUE DEPARTMENT[701]

### Notice of Intended Action

#### **Proposing rule making related to income limit for child and dependent care or early childhood development tax credit and providing an opportunity for public comment**

The Revenue Department hereby proposes to amend Chapter 42, "Adjustments to Computed Tax and Tax Credits," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 422.68.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 422.12C and 2021 Iowa Acts, Senate File 619, sections 2 through 4.

#### *Purpose and Summary*

This proposed rule making is intended to implement statutory changes to the income limit for a taxpayer to qualify for the Child and Dependent Care Credit or the Early Childhood Development Credit. 2021 Iowa Acts, Senate File 619, increases the income limit to qualify for the credits from \$45,000 to \$90,000 for tax years beginning on or after January 1, 2021.

The proposed rule making clarifies that a taxpayer who claims the Child and Dependent Care Credit cannot also claim the Early Childhood Development Credit. The rule making also clarifies that the percentage of the federal Child and Dependent Care Credit the taxpayer can claim is based on the taxpayer's all-source net income. The rule making also explains how nonresidents and part-year residents should calculate the amount of the Early Childhood Development Credit available to them.

REVENUE DEPARTMENT[701](cont'd)

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa beyond that of the legislation it is intended to implement.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on December 7, 2021. Comments should be directed to:

Kurt Konek  
Department of Revenue  
Hoover State Office Building  
P.O. Box 10457  
Des Moines, Iowa 50306  
Phone: 515.587.0440  
Email: [kurt.konek@iowa.gov](mailto:kurt.konek@iowa.gov)

*Public Hearing*

If requested, a public hearing at which persons may present their views orally or in writing will be held as follows:

December 9, 2021  
11 a.m. to 12 noon

Via video/conference call

Persons who wish to participate in the video/conference call should contact Kurt Konek before 4:30 p.m. on December 8, 2021, to facilitate an orderly hearing. A video link or conference call number will be provided to participants prior to the hearing.

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

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 and advise of their specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

## REVENUE DEPARTMENT[701](cont'd)

ITEM 1. Amend rule 701—42.15(422) as follows:

**701—42.15(422) Child and dependent care credit.** ~~Effective for tax years beginning on or after January 1, 1990, there~~ There is a child and dependent care credit which is refundable to the extent the amount of the credit exceeds the taxpayer's income tax liability less other applicable income tax credits. If a taxpayer claims the child and dependent care credit, the taxpayer cannot claim the early childhood development credit described in rule 701—42.31(422).

**42.15(1) Computation of the Iowa child and dependent care credit.** The Iowa child and dependent care credit is computed as a percentage of the child and dependent care credit which is allowed for federal income tax purposes under Section 21 of the Internal Revenue Code. ~~For taxpayers whose federal child and dependent care credit is limited to their federal tax liability, the Iowa credit shall be computed based on the lesser amount for tax years beginning on or after January 1, 2012, but before January 1, 2015. For tax years beginning on or after January 1, 2015, the Iowa credit is computed without regard to whether or not the federal credit was limited to the taxpayer's federal tax liability. In addition, for tax years beginning on or after January 1, 2015, the Iowa credit will be allowed even if the taxpayer's federal adjusted gross income is below \$0. The credit is computed so that taxpayers with lower adjusted gross incomes (net incomes in tax years beginning on or after January 1, 1991) net incomes are allowed higher percentages of their federal child care credit than taxpayers with higher adjusted gross incomes (net incomes) net incomes.~~ The following is a schedule showing the percentages of federal child and dependent care credits allowed on the taxpayers' Iowa returns on the basis of the federal adjusted gross incomes (or net incomes) net incomes of the taxpayers for tax years beginning on or after January 1, 1993.

| <u>*Federal Adjusted Gross Income (Net Income for Tax Years Beginning on or after January 1, 1993) Net income</u> | <u>Percentage of Federal Child and Dependent Care Credit Allowed for 1993 through 2005 Iowa Returns federal credit allowed for tax years beginning on or after January 1, 2006, and before January 1, 2021</u> | <u>Percentage of Federal Credit Allowed for 2006 and Later Tax Years federal credit allowed for tax years beginning on or after January 1, 2021</u> |
|---|--|---|
| Less than \$10,000  | 75%  | 75%   |
| \$10,000 or more but less than \$20,000   | 65%  | 65%   |
| \$20,000 or more but less than \$25,000   | 55%  | 55%   |
| \$25,000 or more but less than \$35,000   | 50%  | 50%   |
| \$35,000 or more but less than \$40,000   | 40%  | 40%   |
| \$40,000 or more but less than \$45,000   | No Credit 30%  | 30%   |
| \$45,000 or more but less than \$90,000   | No Credit  | No Credit 30%   |
| \$90,000 or more  | No Credit  | No Credit   |

\*Note that in the case of married taxpayers who have filed joint federal returns and elect to file separate returns or to file separately on the combined return form for Iowa purposes, the taxpayers must determine the child and dependent care credit by the schedule provided in this rule on the basis of the their combined federal adjusted gross income of the taxpayers or their combined net income for tax years beginning on or after January 1, 1991 net incomes. The credit determined from the schedule must be allocated between the married taxpayers in the proportion that each spouse's federal adjusted gross income relates to the combined federal adjusted gross income of the taxpayers or in the proportion that each spouse's net income relates to the combined net income of the taxpayers in the case of tax years beginning on or after January 1, 1991.

**42.15(2) Examples of computation of the Iowa child and dependent care credit.** The following are examples of computation of the child and dependent care credit and the allocation of the credit between spouses in situations where married taxpayers have filed joint federal returns and are filing separate Iowa returns or are filing separately on the combined Iowa return form. ~~For tax years beginning on or after January 1, 1991, the taxpayers' net incomes are used to compute the Iowa child and dependent care credit~~

## REVENUE DEPARTMENT[701](cont'd)

~~and allocate the credit between spouses in situations where the taxpayers file separate Iowa returns or separately on the combined return form.~~

~~EXAMPLE A: A married couple has filed a joint federal return on which they showed a federal adjusted gross income of \$40,000 or a combined net income of \$40,000 on their state return for the tax year beginning January 1, 2007. Both spouses were employed. They had a federal child and dependent care credit of \$600 which related to expenses incurred for care of their two small children. One of the spouses had a federal adjusted gross income of \$30,000 or a net income of \$30,000 and the second spouse had a federal adjusted gross income of \$10,000 or a net income of \$10,000.~~

The taxpayers' Iowa child and dependent care credit was \$180 since they were entitled to an Iowa child and dependent care credit of 30 percent of their federal credit of \$600. If the taxpayers elect to file separate Iowa returns, the \$180 credit would be allocated between the spouses on the basis of each spouse's net income as it relates to the combined net income of both spouses as shown below:

$$\$180 \times \frac{\$30,000}{\$40,000} = \$135 \quad \text{child and dependent care credit for spouse with } \$30,000 \text{ net income } \text{for } 2007$$

$$\$180 \times \frac{\$10,000}{\$40,000} = \$45 \quad \text{child and dependent care credit for spouse with } \$10,000 \text{ net income } \text{for } 2007$$

~~EXAMPLE B: A married couple filed a joint federal return for 2007 and filed their 2007 Iowa return using the married filing separately on the combined return form filing status separately on a combined return. Both spouses were employed. They had a federal child and dependent care credit of \$800 which related to expenses incurred for care of their children. One spouse had a net income of \$25,000 and the other spouse had a net income of \$12,500, so their combined net income was \$37,500.~~

The taxpayers' Iowa child and dependent care credit was \$320, since they were entitled to an Iowa credit of 40 percent of their federal credit of \$800. The \$320 credit is allocated between the spouses on the basis of each spouse's Iowa net income as it relates to the combined Iowa net income of both spouses as shown below:

$$\$320 \times \frac{\$25,000}{\$37,500} = \$213 \quad \text{child and dependent care credit for spouse with } \$25,000 \text{ Iowa net income } \text{for } 2007$$

$$\$320 \times \frac{\$12,500}{\$37,500} = \$107 \quad \text{child and dependent care credit for spouse with } \$12,500 \text{ Iowa net income } \text{for } 2007$$

**42.15(3) Computation of the Iowa child and dependent care credit for nonresidents and part-year residents.** Nonresidents and part-year residents who have ~~incomes~~ income from Iowa sources in the tax year may claim child and dependent care credits on their Iowa returns. The percentage of the federal credit allowed is determined based on the nonresident or part-year resident's all-source net income. If the nonresident or part-year resident's all-source net income is \$90,000 or higher, the taxpayer will not qualify for the Iowa child and dependent care credit regardless of the amount of the taxpayer's Iowa-source income. To compute the amount of child and dependent care credit that can be claimed on the Iowa return by a nonresident or part-year resident, the following formula shall be used:

REVENUE DEPARTMENT[701](cont'd)

|  |   |   |   |  |
|--|---|---|---|--|
| Federal child and<br>dependent care credit | × | Percentage of federal<br>child and dependent<br>credit allowed on Iowa<br>return from table in<br>subrule 42.15(1)<br>based on all-source<br>net income | × | *Iowa net income<br><hr/> Federal adjusted gross<br>income or all-source<br>All-source net<br>income |
|--|---|---|---|--|

\*Iowa net income for purposes of determining the child care credit that can be claimed on the Iowa return by a nonresident or part-year resident taxpayer is the total of the Iowa source incomes ~~Iowa-source income~~ less the ~~Iowa-source~~ Iowa-source adjustments to income as computed on line 26 of the Form ~~Schedule~~ Schedule IA 126.

In cases where married taxpayers are nonresidents or part-year residents of Iowa and are filing separate Iowa returns or are filing separately on the combined Iowa return form, the child and dependent care credit allowable on the Iowa return should be allocated between the spouses in the ratio of the Iowa net income of each spouse to the combined Iowa net income of the taxpayers.

**42.15(4) Example of computation of the Iowa child and dependent care credit for nonresidents and part-year residents.** The following is an example of the computation of the Iowa child and dependent care credit for nonresidents and part-year residents.

A married couple lives in Omaha, Nebraska. One of the spouses worked in Iowa and had wages and other income from Iowa sources or an Iowa Iowa-source net income of \$15,000. That spouse had an all-source all-source net income of ~~\$18,000~~ \$20,000. The second spouse had an Iowa Iowa-source net income of \$10,000 and an all-source all-source net income of ~~\$12,000~~ \$15,000. The couple had a combined Iowa-source net income of \$25,000 and a combined all-source net income of \$35,000. The taxpayers had a federal child and dependent care credit of \$800 which related to expenses incurred for the care of their two young children. The taxpayers' Iowa child and dependent care credit is calculated below for the 2007 tax year:

|  |   |  |   |  |
|--|---|--|---|--|
| Federal<br>child and<br>dependent<br>care credit | × | Percentage<br>of federal<br>child and<br>dependent<br>credit<br>allowed on<br>Iowa<br>return | = | Iowa Iowa-source net<br>income<br><hr/> All-source All-source<br>net<br>income |
| \$800  | × | 50%<br>40%   | = | \$400<br>\$320   |
|  |   |  | × | $\frac{\$25,000}{\$30,000}$<br>$\frac{\$35,000}{\$35,000}$                     |
|  |   |  | = | \$333<br>\$229   |

The \$333 ~~\$200~~ credit is allocated between the spouses as shown below for the 2007 tax year:

|                       |   |                             |   |                |  |
|-----------------------|---|-----------------------------|---|----------------|--|
| $\frac{\$333}{\$229}$ | × | $\frac{\$10,000}{\$15,000}$ | = | \$133<br>\$137 | for spouse with Iowa<br>source Iowa-source net income<br>of \$10,000 <u>\$15,000</u> |
| $\frac{\$333}{\$229}$ | × | $\frac{\$15,000}{\$10,000}$ | = | \$200<br>\$92  | for spouse with Iowa<br>source Iowa-source net income<br>of \$15,000 <u>\$10,000</u> |
|                       |   | <hr/>                       |   | \$25,000       |  |

This rule is intended to implement Iowa Code section 422.12C as amended by 2014 Iowa Acts, Senate File 2337 2021 Iowa Acts, Senate File 619.

## REVENUE DEPARTMENT[701](cont'd)

ITEM 2. Amend rule 701—42.31(422) as follows:

**701—42.31(422) Early childhood development tax credit.** ~~Effective for tax years beginning on or after January 1, 2006, taxpayers~~ Taxpayers may claim a tax credit equal to 25 percent of the first \$1,000 of expenses paid to others for early childhood development for each dependent three to five years of age. The credit is available only to taxpayers whose net income is less than ~~\$45,000~~ \$90,000. If a taxpayer claims the early childhood development tax credit, the taxpayer cannot claim the child and dependent care credit described in rule 701—42.15(422). The early childhood development tax credit is refundable to the extent that the credit exceeds the taxpayer's income tax liability. ~~For the tax year beginning in the 2006 calendar year only, amounts paid for early childhood development expenses in November and December of 2005 shall be considered paid in 2006 for purposes of computing the credit.~~

For married taxpayers who elect to file separately on a combined form or elect to file separate returns for Iowa tax purposes, the combined net income of the taxpayers must be less than ~~\$45,000~~ \$90,000 to be eligible for the credit. If the combined net income is less than ~~\$45,000~~ \$90,000, the early childhood development tax credit shall be prorated to each spouse in the proportion that each spouse's respective net income bears to the total combined net income.

Nonresidents and part-year residents who have income from Iowa sources in the tax year may claim the early childhood development tax credit on their Iowa returns. If the taxpayer's all-source net income is \$90,000 or higher, the taxpayer will not qualify for the credit. Nonresidents or part-year residents of Iowa must determine the early childhood development tax credit in the ratio of their Iowa-source net income to their all-source net income. In addition, if nonresidents or part-year residents of Iowa are married and elect to file separate returns or to file separately on a combined Iowa return, the early childhood development tax credit must be allocated between the spouses in the ratio of each spouse's Iowa-source net income to their combined Iowa-source net income.

**42.31(1) Expenses eligible for the credit.** The following expenses qualify for the early childhood development tax credit, to the extent they are paid during the time period that a dependent is either three, four, or five years of age:

*a.* Expenses for services provided by a preschool, as defined in Iowa Code section 237A.1. The preschool may only provide services for periods of time not exceeding three hours per day.

*b.* Books that improve child development, including textbooks, music books, art books, teacher editions, and reading books.

*c.* Expenses paid for instructional materials required to be used in a child development or educational lesson activity. These materials include, but are not limited to, paper, notebooks, pencils, and art supplies. In addition, software and toys which are directly and primarily used for educational or learning purposes are considered instructional materials.

*d.* Expenses paid for lesson plans and curricula.

*e.* Expenses paid for child development and educational activities outside the home. These activities include, but are not limited to, drama, art, music, and museum activities, including the entrance fees for such activities.

**42.31(2) Expenses not eligible for the credit.** The following expenses do not qualify for the early childhood development tax credit:

*a.* Any expenses, including expenses paid to a preschool, once a dependent reaches the age of six.

*b.* Expenses relating to food, lodging, membership fees, or other nonacademic expenses relating to child development and educational activities outside the home.

*c.* Expenses related to services, materials, or activities for the teaching of religious tenets, doctrines, or worship, in cases where the purpose of the teaching is to inculcate the religious tenets, doctrines, or worship.

This rule is intended to implement Iowa Code section 422.12C as amended by 2021 Iowa Acts, Senate File 619.

**ARC 6033C****REVENUE DEPARTMENT[701]****Notice of Intended Action****Proposing rule making related to optional designation of funds by taxpayers and providing an opportunity for public comment**

The Revenue Department hereby proposes to amend Chapter 43, “Assessments and Refunds,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 422.12K and 422.68 and sections 422.12D and 422.12L as enacted by 2021 Iowa Acts, Senate File 619, sections 77 and 78.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 422.12E, 422.12H, and 422.12K and sections 422.12D and 422.12L as enacted by 2021 Iowa Acts, Senate File 619, sections 77 and 78.

*Purpose and Summary*

This proposed rule making is intended to implement statutory changes to Iowa Code sections 422.12D and 422.12L as enacted by 2021 Iowa Acts, Senate File 619, sections 77 and 78. Additionally, this proposed rule making removes obsolete language and makes a number of changes to improve the clarity of the rule.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa beyond that of the legislation it is intended to implement.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on December 7, 2021. Comments should be directed to:

Kurt Konek  
Department of Revenue  
Hoover State Office Building  
P.O. Box 10457  
Des Moines, Iowa 50306  
Phone: 515.587.0440  
Email: [kurt.konek@iowa.gov](mailto:kurt.konek@iowa.gov)

## REVENUE DEPARTMENT[701](cont'd)

*Public Hearing*

If requested, a public hearing at which persons may present their views orally or in writing will be held as follows:

December 10, 2021  
1 to 2 p.m.

Via video/conference call

Persons who wish to participate in the video/conference call should contact Kurt Konek before 4:30 p.m. on December 9, 2021, to facilitate an orderly hearing. A video link or conference call number will be provided to participants prior to the hearing.

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

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 and advise of their specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend rule 701—43.4(68A,422,456A) as follows:

**701—43.4(68A,422,456A) Optional designations of funds by taxpayer.****43.4(1) Iowa fish and game protection fund.**

*a.* The A taxpayer filing an individual income tax return may designate an amount a checkoff of \$1 or more to be donated to the Iowa fish and game protection fund. The donation must be \$1 or more, and the designation must be made on the original return for the current year. The donation is allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, and other state agencies have been satisfied. The designation to the fund is irrevocable and cannot be made on an amended return. If the amount of refund claimed overpayment shown on the original return or the payment remitted with the return is adjusted by the department insufficient to pay the amount designated to the Iowa fish and game protection fund, the amount of the designation credited to the fund may be adjusted will be reduced accordingly. The designation to the fund is irrevocable and cannot be made on an amended return.

EXAMPLE A: Overpayment as shown on the original return is \$50. \$25 is designated to the fund. Due to an error on the return, only \$20 is an overpayment. The taxpayer would not receive any refund, and all \$20 of the overpayment would be credited to the fund.

EXAMPLE B: Overpayment as shown on the original return is \$50. \$25 is designated to the fund. Due to an error on the return, no overpayment occurred, but instead the taxpayer owes \$20. No money would be credited to the fund in this instance.

EXAMPLE C: Amount shown due on the return is \$30. \$20 is designated to the fund. A \$50 payment was made with the return. Due to an error on the return, the taxpayer owes \$40. Only \$10 would be credited to the fund in this situation.

*b.* A designation to the Iowa fish and game protection fund may be allowed only after the taxpayer's obligations to the department of revenue, the child support recovery unit of the department of

## REVENUE DEPARTMENT[701](cont'd)

human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, and other state agencies are satisfied.

c. On or before January 31 of the year following each year in which returns with the Iowa fish and game protection fund checkoff are due, the department of revenue shall certify the amount designated to the Iowa fish and game protection fund and report this amount to the state treasurer.

~~43.4(2) Iowa election campaign fund.~~ For tax years beginning before January 1, 2017, a person with a tax liability of \$1.50 or more on the Iowa individual income tax return may direct or designate that a \$1.50 contribution be made to a specific political party or that the contribution be made to the Iowa election campaign fund to be shared by all political parties as clarified further in this paragraph. In the case of married taxpayers filing a joint Iowa individual return with a tax liability of \$3.00 or more, each spouse may direct or designate that a \$1.50 contribution be made to a specific political party or that a \$1.50 contribution be made to the Iowa election campaign fund as a contribution to be shared by all political parties. The designation or direction of a contribution to a political party or to the election campaign fund is irrevocable and cannot be changed on an amended return. The designation to a political party or the election campaign fund is allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts and other state agencies are satisfied. Note that for purposes of this subrule, "political party" means a party as defined in Iowa Code section 43.2.

In a tax year beginning before January 1, 2017, when there are two political parties for purposes of the Iowa election campaign fund, all undesignated contributions to the fund made on individual income tax returns for that tax year are to be divided equally between the two parties. In a tax year beginning before January 1, 2017, where there are more than two political parties for purposes of the Iowa election campaign fund, all undesignated contributions to the fund made on income tax returns for that tax year are to be divided among the political parties on the basis of the number of registered voters for a particular political party on December 31 of that tax year to the total number of registered voters on December 31 of that tax year that have declared an affiliation with any of the recognized political parties.

Thus, if there were 400,000 registered voters for "x" political party, 500,000 registered voters for "y" political party, and 100,000 registered voters for "z" political party on December 31 of a tax year beginning before January 1, 2017, where there were three recognized political parties, 40 percent of the undesignated political contributions on that year's returns would be paid to "x" political party since 40 percent of the registered voters with an affiliation to a political party on December 31 had an affiliation with party "x" on that day.

~~43.4(3)~~ 43.4(2) State fair foundation fund checkoff.

a. A taxpayer filing a state an individual income tax return can may designate a checkoff of \$1 or more to be donated to the foundation fund of the Iowa state fair foundation. If the overpayment shown on the return or the payment made remitted with the filing of the return is not sufficient insufficient to cover pay the amount designated to the foundation fund checkoff, the amount credited to the foundation fund checkoff will be reduced accordingly. The designation to the foundation fund checkoff is irrevocable and cannot be made on an amended return.

b. A designation to the Iowa state fair foundation fund checkoff may be allowed only after obligations of the taxpayer taxpayer's obligations to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, and the Iowa fish and game protection fund checkoff are satisfied.

c. On or before January 31 of the year following the each year in which returns with the Iowa state fair foundation fund checkoff are due, the department of revenue shall transfer the total amount designated to the Iowa state fair foundation fund.

~~43.4(4) Limitation of checkoffs on the individual income tax return.~~ For tax years beginning on or after January 1, 2019, no more than four checkoffs are allowed on the individual income tax return. The

## REVENUE DEPARTMENT[701](cont'd)

~~election campaign fund checkoff is not considered for purposes of limiting the number of checkoffs on the income tax return.~~

~~For tax years beginning on or after January 1, 2017, when the same four checkoffs have been provided on the income tax return for two consecutive years, the two checkoffs for which the least amount has been contributed in the aggregate for the first year and through March 15 of the second tax year will be repealed.~~

~~If more checkoffs are enacted in the same session of the general assembly than there is space for inclusion on the individual income tax return form, the earliest enacted checkoffs for which there is space will be included on the income tax return form, and all other checkoffs enacted during that session of the general assembly are repealed. If the same session of the general assembly enacts more checkoffs on the same day than there is space for inclusion on the individual income tax form, the director of revenue shall determine which checkoffs shall be included on the individual income tax form.~~

~~43.4(5)~~ **43.4(3)** *Child abuse prevention program fund checkoff.*

~~a. A taxpayer filing an individual income tax return can may designate a checkoff of \$1 or more to be donated to the child abuse prevention program fund. If the refund due overpayment shown on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the child abuse prevention program fund, the amount credited to the child abuse prevention program fund will be reduced accordingly. Once the taxpayer has designated a contribution to the child abuse prevention program fund on an individual income tax return filed with the department of revenue, the taxpayer cannot amend that designation. The designation to the child abuse prevention program fund is irrevocable and cannot be made on an amended return.~~

~~b. A designation to the child abuse prevention program fund checkoff may be allowed only after obligations of the taxpayer taxpayer's obligations to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa fish and game protection fund checkoff, and the state fair foundation fund checkoff are satisfied.~~

~~c. On or before January 31 of the year following the each year in which Iowa income tax returns with contributions to the child abuse prevention program fund checkoff are due, the department of revenue shall transfer the total amount designated to the child abuse prevention program fund.~~

~~43.4(6)~~ **43.4(4)** *Joint veterans trust fund and volunteer fire fighter preparedness fund checkoff.*

~~a. A taxpayer filing an individual income tax return can may designate a checkoff of \$1 or more to be donated jointly to the joint veterans trust fund and volunteer fire fighter preparedness fund. If the refund due overpayment shown on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the joint veterans trust fund and volunteer fire fighter preparedness fund, the amount credited to the joint veterans trust fund and volunteer fire fighter preparedness fund will be reduced accordingly. Once the taxpayer has designated a contribution to the joint veterans trust fund and volunteer fire fighter preparedness fund on an individual income tax return filed with the department of revenue, the taxpayer cannot amend that designation. The designation to the veterans trust fund and volunteer fire fighter preparedness fund is irrevocable and cannot be made on an amended return.~~

~~b. A designation to the joint veterans trust fund and volunteer fire fighter preparedness fund checkoff may be allowed only after obligations of the taxpayer taxpayer's obligations to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa fish and game protection fund checkoff, the state fair foundation fund checkoff, and the child abuse prevention program fund checkoff are satisfied.~~

~~c. On or before January 31 of the year following the each year in which Iowa income tax returns with contributions to the joint veterans trust fund and volunteer fire fighter preparedness fund checkoff~~

REVENUE DEPARTMENT[701](cont'd)

are due, the department of revenue shall transfer one-half of the total amount designated to the veterans trust fund, and the remaining one-half ~~will be transferred~~ to the volunteer fire fighter preparedness fund.

**43.4(5) Limitation of checkoffs on the individual income tax return.**

*a.* Only four checkoffs may be included on the individual income tax return for a given tax year. For tax years beginning on or after January 1, 2017, if the same four checkoffs have been listed on the individual income tax return for two consecutive years, the two checkoffs that, in the aggregate, have received the lowest contribution amounts are repealed effective December 31 after the end of the second tax year and will be removed from the individual income tax return. To determine contribution amounts, the department will consider the contributions made to each fund for the first tax year and contributions made to each fund up to and including March 15 after the end of the second tax year. The department will notify the Iowa Code editor of the checkoffs that are repealed under this paragraph by July 1 after the end of the second tax year.

EXAMPLE: Checkoffs A, B, C, and D are included on the individual income tax return for tax years 2021 and 2022. Taxpayers will begin filing their 2021 tax returns in January 2022. To determine which two checkoffs received the lowest contribution amounts, the department will review the contributions received in the period January 1, 2022, through March 15, 2023 (March 15 after the end of the second tax year).

*b.* If the general assembly, in the same legislative session, enacts more checkoffs than may be included on the individual income tax form, only the earliest enacted checkoffs will be listed on the form. The department will determine which enacted checkoffs will be included on the form pursuant to Iowa Code section 3.7. If it is indeterminable which checkoffs were first enacted under Iowa Code section 3.7, the director of revenue shall determine the checkoffs that will be included on the individual income tax form. The department will notify the Iowa Code editor of any checkoffs that must be repealed under this paragraph by September 1 of any applicable year.

This rule is intended to implement Iowa Code sections 422.12D, 422.12E, 422.12H, 422.12J, 422.12K and 422.12L; 2016 Iowa Acts, House File 2459, ~~and~~; 2017 Iowa Acts, House File 242; 2019 Iowa Acts, House File 779; and 2021 Iowa Acts, Senate File 619.

## TREASURER OF STATE

### Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions Katie Averill, Superintendent of Banking Jeff Plagge, and Auditor of State Rob Sand has established today the following rates of interest for public obligations and special assessments. The usury rate for November is 3.25%.

#### INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

|                                 |              |
|---------------------------------|--------------|
| 74A.2 Unpaid Warrants .....     | Maximum 6.0% |
| 74A.4 Special Assessments ..... | Maximum 9.0% |

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Financial Institutions as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to

## TREASURER OF STATE(cont'd)

provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective November 9, 2021, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

## TIME DEPOSITS

|                            |              |
|----------------------------|--------------|
| 7-31 days .....            | Minimum .05% |
| 32-89 days .....           | Minimum .05% |
| 90-179 days .....          | Minimum .05% |
| 180-364 days .....         | Minimum .05% |
| One year to 397 days ..... | Minimum .05% |
| More than 397 days .....   | Minimum .05% |

These are minimum rates only. All time deposits are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

## 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, 2020 — December 31, 2020   | 2.75% |
| January 1, 2021 — January 31, 2021     | 2.75% |
| February 1, 2021 — February 28, 2021   | 3.00% |
| March 1, 2021 — March 31, 2021         | 3.00% |
| April 1, 2021 — April 30, 2021         | 3.25% |
| May 1, 2021 — May 31, 2021             | 3.50% |
| June 1, 2021 — June 30, 2021           | 3.75% |
| July 1, 2021 — July 31, 2021           | 3.50% |
| August 1, 2021 — August 31, 2021       | 3.50% |
| September 1, 2021 — September 30, 2021 | 3.25% |
| October 1, 2021 — October 31, 2021     | 3.25% |
| November 1, 2021 — November 30, 2021   | 3.25% |
| December 1, 2021 — December 31, 2021   | 3.50% |

**ARC 6042C****ECONOMIC DEVELOPMENT AUTHORITY[261]****Adopted and Filed****Rule making related to brownfield and grayfield redevelopment**

The Economic Development Authority (IEDA) hereby amends Chapter 65, “Brownfield and Grayfield Redevelopment,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 15.106A and section 15.293B as amended by 2021 Iowa Acts, Senate File 619.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, 2021 Iowa Acts, Senate File 619.

*Purpose and Summary*

2021 Iowa Acts, Senate File 619, amends Iowa Code section 15.293B relating to the Redevelopment Tax Credit Program for Brownfields and Grayfields. The amended statute increases the maximum program allocation to \$15 million. 2021 Iowa Acts, Senate File 619, also authorizes the IEDA to award any tax credits in the next annual application period if the tax credits (1) have been revoked, including any credits revoked in the five years prior to enactment of the legislation, (2) were not awarded because the registered projects were not timely completed, or (3) were not awarded because the registered projects did not meet the requirements of the program or the agreement (Iowa Code section 15.293B(5A)“a” as enacted by 2021 Iowa Acts, Senate File 619). Senate File 619 states that tax credits awarded pursuant to Iowa Code section 15.293B(5A)“a” shall not be counted against the maximum allocation under Iowa Code section 15.119.

This rule making amends Chapter 65 to reflect the changes made to the statute by 2021 Iowa Acts, Senate File 619. In addition, subrule 65.8(5) is amended to conform to a statutory amendment made in 2019.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 11, 2021, as **ARC 5850C**. No public comments were received. One change from the Notice has been made in Item 4, paragraph 65.11(8)“b,” to align the listed date with the corresponding text in 2021 Iowa Acts, Senate File 619, as it will appear in the 2022 Iowa Code.

*Adoption of Rule Making*

This rule making was adopted by the IEDA on October 22, 2021.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa beyond that of the legislation implemented.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the IEDA for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on December 22, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rule **261—65.2(15)**, definition of “Board,” as follows:

*“Board”* means the members of the economic development authority board appointed by the governor and in whom the powers of the authority are vested pursuant to 2011 Iowa Code Supplement section 15.102 15.105.

ITEM 2. Amend subrule 65.8(5) as follows:

**65.8(5) Project completion.** A registered project shall be completed within 30 months of the date the project was registered unless the authority provides additional time to complete the project. ~~A project will not be provided more than 12 months of additional time.~~ If the registered project is not completed within the time required, the project is not eligible to claim a tax credit pursuant to this chapter.

ITEM 3. Amend paragraph **65.11(4)“e”** as follows:

*e. Maximum credit total.* ~~For the fiscal year beginning July 1, 2009, the maximum amount of tax credits issued by the authority shall not exceed \$1 million. For the fiscal year beginning July 1, 2011, the maximum amount of tax credits issued by the authority shall be an amount determined by the board but not in excess of \$5 million. For the fiscal year beginning July 1, 2013 2021, and for each subsequent fiscal year, the maximum amount of tax credits issued allocated to the program by the authority shall be an amount determined by the board but not in excess of the amount established pursuant to Iowa Code section 15.119 as amended by 2021 Iowa Acts, Senate File 619. Tax credits awarded pursuant to paragraph 65.11(8) “b” shall not be counted against the allocation determined by the board pursuant to this paragraph.~~

ITEM 4. Amend subrule 65.11(8) as follows:

**65.11(8) Tax credit carryover.**

*a.* If the maximum amount of tax credits available has not been issued at the end of the fiscal year, the remaining tax credit amount may be carried over to a subsequent fiscal year or the authority may prorate the remaining credit amount among other eligible applicants.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

b. Tax credits revoked under subrule 65.8(4) including tax credits revoked up to five years prior to July 1, 2021, and tax credits not awarded under subrules 65.8(5) and 65.8(6), may be awarded in the next annual application period established in Iowa Code section 15.293B(1) “c.”

ITEM 5. Amend **261—Chapter 65**, implementation sentence, as follows:

These rules are intended to implement ~~2014~~ Iowa Code Supplement sections 15.291 to 15.295 and 2021 Iowa Acts, Senate File 619.

[Filed 10/22/21, effective 12/22/21]

[Published 11/17/21]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 11/17/21.

**ARC 6054C**

## **INSPECTIONS AND APPEALS DEPARTMENT[481]**

**Adopted and Filed**

### **Rule making related to evaluation of tenants in assisted living programs**

The Inspections and Appeals Department hereby amends Chapter 69, “Assisted Living Programs,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 231C.3(1).

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 231C.3(1).

#### *Purpose and Summary*

The Iowa Board of Nursing revised its rules related to nursing practice for registered nurses/licensed practical nurses effective March 31, 2021 (**ARC 5481C**, IAB 9/9/21). The Iowa Board of Nursing clarified that an initial assessment of a patient shall only be provided by a registered nurse and shall not be provided by a licensed practical nurse via the delegation process. This amendment to Chapter 69 removes the reference to “a licensed practical nurse via nurse delegation” from the list of professionals who may complete a tenant’s initial assessment to maintain consistency with the approved scope of practice for licensed practical nurses.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 22, 2021, as **ARC 5920C**. No public comments were received. No changes from the Notice have been made.

#### *Adoption of Rule Making*

This rule making was adopted by the Department on October 27, 2021.

#### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

#### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

## INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on December 22, 2021.

The following rule-making action is adopted:

Amend subrule 69.22(1) as follows:

**69.22(1) *Evaluation prior to occupancy.*** A program shall evaluate each prospective tenant's functional, cognitive and health status prior to the tenant's signing the occupancy agreement and taking occupancy of a dwelling unit in order to determine the tenant's eligibility for the program, including whether the services needed are available. The cognitive evaluation shall utilize a scored, objective tool. When the score from the cognitive evaluation indicates moderate cognitive decline and risk, the Global Deterioration Scale (GDS) shall be used at all subsequent intervals, if applicable. If the tenant subsequently returns to the tenant's mildly cognitively impaired state, the program may discontinue the GDS and revert to a scored cognitive screening tool. The evaluation shall be conducted by a health care professional; or a human service professional; ~~or a licensed practical nurse via nurse delegation.~~

[Filed 10/27/21, effective 12/22/21]

[Published 11/17/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/17/21.

**ARC 6036C**

**NURSING BOARD[655]****Adopted and Filed****Rule making related to licensed practical nurses at opioid treatment medication units**

The Board of Nursing hereby amends Chapter 6, "Nursing Practice for Registered Nurses/Licensed Practical Nurses," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 147.76.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 152.

NURSING BOARD[655](cont'd)

### *Purpose and Summary*

Board rules currently require that health care clinics that utilize licensed practical nurses (LPNs) must have another provider (a registered nurse (RN), an advanced registered nurse practitioner, or a physician) physically present in the proximate area at all times.

In May of 2021, the Board received a petition for waiver of the proximate-area requirement for opioid treatment medication units, which are often staffed by LPNs. After review of opioid treatment programs and medication units and the tasks performed in the unit by LPNs, the Board granted the waiver and amended the rule to add an exception for these facilities.

This rule making adds new subparagraph 6.3(11)“F”(2) to allow LPNs to work in opioid treatment medication units without having another provider physically present in the proximate area so long as an RN assesses the LPN’s competency and is available at all times for consultation. The Board believes opioid treatment programs and medication units provide critical services in response to the opioid crisis and LPNs may safely treat patients without having another provider physically present in the proximate area so long as an RN is available at all times for consultation. This rule making also eliminates now-superfluous language within subparagraph 6.3(11)“F”(1).

### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 14, 2021, as **ARC 5778C**. A public hearing was held on August 3, 2021, at 10 a.m. at the Board’s office, 400 S.W. Eighth Street, Suite B, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

### *Adoption of Rule Making*

This rule making was adopted by the Board on October 13, 2021.

### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

### *Jobs Impact*

This rule making will likely have a positive impact on jobs. During waiver proceedings, the Board was informed that it is not always feasible to have an RN physically present, and thus, these units could not remain open during periods when an RN could not be present. By eliminating the proximate-area requirement for these units, they will remain open and operational with opportunities for LPN staffing.

### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 655—Chapter 15.

### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

### *Effective Date*

This rule making will become effective on December 22, 2021.

NURSING BOARD[655](cont'd)

The following rule-making action is adopted:

Amend paragraph **6.3(11)“F”** as follows:

*f.* Health care clinics, except:

(1) The licensed practical nurse shall be permitted to conduct height, weight and hemoglobin screening and record responses to health questions asked in a standardized questionnaire under the supervision of a registered nurse in a Women, Infants and Children (WIC) clinic. A registered nurse employed by or under a contract ~~to~~ with the WIC agency will assess the competency of the licensed practical nurse to perform these functions and ~~will~~ must be available for consultation. The licensed practical nurse is responsible for ~~performing under the scope of practice for licensed practical nurses and~~ requesting registered nurse consultation as needed. ~~This exception to the proximate area requirement is limited to WIC clinics and to the services permitted in this subrule.~~

(2) ~~Reserved.~~ The licensed practical nurse shall be permitted to provide care, including but not limited to dispensing medications such as methadone, buprenorphine, and naltrexone, in opioid treatment program facilities and opioid treatment medication units. A registered nurse employed by or under a contract with the opioid treatment program or opioid treatment medication unit will assess the competency of the licensed practical nurse to dispense medications and must be available for consultation at all times. The licensed practical nurse is responsible for requesting registered nurse consultation as needed.

[Filed 10/19/21, effective 12/22/21]

[Published 11/17/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/17/21.

**ARC 6040C**

## **REAL ESTATE COMMISSION[193E]**

**Adopted and Filed**

### **Rule making related to waivers, licensure, and education requirements**

The Real Estate Commission hereby amends Chapter 1, “Administration,” Chapter 3, “Broker License,” Chapter 4, “Salesperson License,” Chapter 5, “Licensees of Other Jurisdictions and Reciprocity,” and Chapter 16, “Prelicense Education and Continuing Education,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 543B.9.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, 2020 Iowa Acts, House Files 2627 and 2389.

#### *Purpose and Summary*

These amendments implement changes required by 2020 Iowa Acts, House Files 2389 and 2627. These amendments are also a result of the rolling five-year review of administrative rules outlined in Iowa Code section 17A.7(2). These amendments include:

- Removal of the term “variance” when it is used to mean a waiver, as required by 2020 Iowa Acts, House File 2389, section 10, which amended Iowa Code section 17A.9A;
- Addition of a new rule 193E—5.12(543B) to set forth the procedures for licensure by verification for applicants who are licensed in other jurisdictions, as required by 2020 Iowa Acts, House File 2627;

## REAL ESTATE COMMISSION[193E](cont'd)

- Changes in Chapters 3 and 4 regarding the use of criminal convictions in licensure decisions, as set forth in 2020 Iowa Acts, House File 2627;
- Changes regarding the terms “classroom” to “live education” and “computer-based” to “distance learning” for consistency with the definitions outlined in rule 193E—16.1(543B);
- A general cleanup of Chapters 1, 3, 4, 5, and 16.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 30, 2021, as **ARC 5736C**. A public hearing was held on July 23, 2021, at 9 a.m. at the Commission’s Office, 200 East Grand Avenue, Suite 350, Des Moines, Iowa. No one attended the public hearing. Comments were received via email asking for clarification, but there was no opposition to the proposed amendments. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Commission on August 12, 2021.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, there is a potential positive impact on jobs, because individuals who may have been ineligible for licensure may become eligible for licensure as a result of this rule making.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 193—Chapter 5.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on December 22, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rule 193E—1.2(543B) as follows:

**193E—1.2(543B) Correspondence and communications.** Correspondence and communications with the commission shall be addressed or directed to the commission office at ~~1918 S.E. Hulsizer~~ 200 E. Grand Avenue, Suite 350, Ankeny Des Moines, Iowa 50024 50309. The facsimile number is ~~(515)281-7414~~ (515)725-9032. Contact information is available from the commission’s ~~Web site~~ website located at <http://www.state.ia.us/irec/plb.iowa.gov/board/real-estate-sales-brokers>.

## REAL ESTATE COMMISSION[193E](cont'd)

ITEM 2. Amend rule 193E—1.4(543B) as follows:

**193E—1.4(543B) Custodian of records, filings, and requests for public information.** Unless otherwise specified by the rules of the department of commerce or the professional licensing and regulation division, the commission is the principal custodian of its own agency orders, statements of law or policy issued by the commission, legal documents, and other public documents on file with the commission.

**1.4(1)** No change.

**1.4(2)** Records, documents and other information may be gathered, stored, and available in electronic format. Information, various forms, documents, and the license law and rules may be reviewed or obtained at any time by the public from the commission's ~~Web site~~ website located at <http://www.state.ia.us/iree/plb.iowa.gov/board/real-estate-sales-brokers>.

**1.4(3)** and **1.4(4)** No change.

ITEM 3. Amend rule 193E—1.5(543B) as follows:

**193E—1.5(543B) Waiver ~~or variance~~ from rules.** Persons who wish to seek waivers from commission rules should consult the uniform rules for the professional licensing and regulation division at 193—Chapter 5.

ITEM 4. Amend rule 193E—3.1(543B) as follows:

**193E—3.1(543B) General requirements for broker license.** An applicant for a broker license must meet all requirements of Iowa Code section 543B.15.

**3.1(1)** and **3.1(2)** No change.

**3.1(3)** An applicant for a real estate broker's license who has been convicted of ~~forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or another similar offense, or of any crime involving moral turpitude, a disqualifying criminal offense~~ in a court of competent jurisdiction in this state or in any other state, territory, or district of the United States, or in any foreign jurisdiction, may be denied a license by the commission on the grounds of the conviction as provided by Iowa Code section 272C.15 and rule 193—15.2(272C). "Conviction" is defined in Iowa Code section 543B.15(3) and rule 193E—2.1(543B).

**3.1(4)** No change.

**3.1(5)** As required by Iowa Code section 543B.15(7) and 193E—subrule 16.3(1), an applicant for licensure as a real estate broker shall complete at least ~~72 classroom~~ 60 live instruction hours of commission-approved real estate education within 24 months prior to taking the broker examination. This education shall be in addition to the required salesperson prelicense ~~course~~ courses. ~~Effective January 1, 2005, and thereafter, all persons applying for a broker license within their first renewal term must complete the 36-hour salesperson postlicense courses, including 12 hours of Developing Professionalism and Ethical Practices, 12 hours of Buying Practices and 12 hours of Listing Practices, before a broker license can be issued.~~

**3.1(6)** No change.

ITEM 5. Amend rule 193E—3.2(543B) as follows:

**193E—3.2(543B) License examination.** Examinations for licensure as a real estate broker shall be conducted by the commission or its authorized representative.

**3.2(1)** No change.

**3.2(2)** Requests for waiver ~~or variance~~. An examinee must meet the requirements set out in Iowa Code section 543B.15. Requests for waiver ~~or variance~~ of commission rules or of the qualifications for licensure as permitted by Iowa Code section 543B.15 shall be submitted in writing and as provided by the commission's rules regarding waivers ~~and variances~~, which can be found in the uniform rules for the professional licensing and regulation bureau at 193—Chapter 5. The commission will consider each case on an individual basis. The commission may require additional supporting information. If

## REAL ESTATE COMMISSION[193E](cont'd)

the applicant's experience or prelicense education is found to be less than equivalent to the statutory requirement, the commission may suggest methods of satisfying the deficiency. If a waiver is granted, the applicable examination must be passed before the end of the sixth month following the date of the waiver.

**3.2(3)** Evidence of completion of prelicense education required. An examinee shall be required to show evidence at the examination site that required prelicense education has been completed. If the commission has granted a waiver ~~or variance~~ of prelicense education, the letter granting the waiver ~~or variance~~ will serve as evidence of completion. Persons planning to qualify under rule 193E—5.3(543B) or 193E—5.12(543B) must obtain written authorization from the commission to show at the examination site.

**3.2(4)** and **3.2(5)** No change.

ITEM 6. Amend rule 193E—4.1(543B) as follows:

**193E—4.1(543B) General requirements for salesperson license.** A person who is licensed under and employed by or otherwise associated with a real estate broker or firm is a “salesperson” as defined in Iowa Code section 543B.5(20) and rule 193E—2.1(543B).

**4.1(1)** to **4.1(6)** No change.

**4.1(7)** An applicant for a real estate salesperson license who has been convicted of ~~forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or another similar offense, or of any crime involving moral turpitude,~~ a disqualifying criminal offense in a court of competent jurisdiction in this state or in any other state, jurisdiction, territory, or district of the United States, or in any foreign jurisdiction, may be denied a license by the commission on the grounds of the conviction as provided by Iowa Code section 272C.15 and rule 193—15.2(272C). “Conviction” is defined in Iowa Code section 543B.15(3) and rule 193E—2.1(543B).

**4.1(8)** No change.

**4.1(9)** Salesperson prelicense education requirements. As required by Iowa Code section 543B.15(8) and 193E—Chapter 16, the required course of study for the salesperson licensing examination shall consist of 60 ~~classroom~~ live instruction or ~~computer-based~~ distance learning hours of real estate principles and practices. To be eligible to take the examination, the applicant must complete the 60 ~~classroom~~ live education or ~~computer-based~~ distance learning hours of real estate principles and practices during the 12 months prior to taking the examination. The applicant must also provide evidence of successful completion of the following courses: 12 hours of Developing Professionalism and Ethical Practices, 12 hours of Buying Practices and 12 hours of Listing Practices. The applicant must complete all the required prelicense education during the 12 months prior to the date of application.

ITEM 7. Amend rule 193E—4.2(543B) as follows:

**193E—4.2(543B) License examination.** Examinations for licensure as a real estate salesperson shall be conducted by the commission or its authorized representative.

**4.2(1)** No change.

**4.2(2)** *Requests for waiver ~~or variance~~.* An examinee must meet the requirements set out in Iowa Code section 543B.15. Requests for waiver ~~or variance~~ of the qualifications for licensure as required by Iowa Code section 543B.15 shall be submitted in writing and as provided by the commission's rules regarding waivers ~~and variances~~, which can be found in the uniform rules for the professional licensing and regulation bureau at 193—Chapter 5. The commission will consider each case on an individual basis. The commission may require additional supporting information. If the applicant's prelicense education is found to be less than equivalent to the statutory requirement, the commission may suggest methods of satisfying the deficiency. If a waiver ~~or variance~~ is granted, the applicable examination must be passed before the end of the sixth month following the date of the waiver.

**4.2(3)** *Evidence of completion of prelicense education required.* An examinee shall be required to show evidence at the examination site that 60 ~~classroom~~ live education or ~~computer-based~~ distance learning hours of real estate principles and practices have been completed. If the commission has granted

## REAL ESTATE COMMISSION[193E](cont'd)

a waiver or variance of prelicense education, the letter granting the waiver or variance will serve as evidence of completion. Persons planning to qualify under rule 193E—5.3(543B) or 193E—5.12(543B) must obtain written authorization from the commission to show at the examination site.

**4.2(4)** No change.

ITEM 8. Amend rule 193E—5.1(543B) as follows:

**193E—5.1(543B) Licensees of other jurisdictions.** As provided in Iowa Code section 543B.21, a nonresident of this state may be licensed as a real estate broker or a real estate salesperson upon complying with all requirements of Iowa law and with all the provisions and conditions of Iowa Code chapter 543B and commission rules relative to resident brokers or salespersons.

**5.1(1)** A person licensed in another state or jurisdiction making application in Iowa by reciprocity or as provided in rule 193E—5.3(543B) or 193E—5.12(543B) may qualify for a salesperson license in Iowa.

**5.1(2)** A person licensed as a broker or broker associate in another state or jurisdiction making application in Iowa by reciprocity or as provided in rule 193E—5.3(543B) or 193E—5.12(543B) may qualify for the same type of broker or broker associate license in Iowa. The person must have met all requirements for an Iowa broker license as provided in rule 193E—3.1(543B). If the person does not meet the requirements, the person shall meet, at a minimum, the requirements for an Iowa salesperson license as provided in 193E—Chapter 4 and shall only qualify for a salesperson license.

**5.1(3)** No change.

ITEM 9. Amend rule 193E—5.11(543B) as follows:

**193E—5.11(543B) License discipline reporting required.** If a nonresident an Iowa licensee has a real estate license disciplined, suspended or revoked by any other state or jurisdiction, that disciplinary action will be considered prima facie evidence of violation of Iowa Code section 543B.29 or 543B.34 or both, and a hearing may be held to determine whether similar disciplinary action should be taken against the Iowa licensee. Failure to notify the commission within 15 days of an adverse action taken by another state or jurisdiction shall be cause for disciplinary action.

ITEM 10. Adopt the following new rule 193E—5.12(543B):

**193E—5.12(543B) Licensure by verification.** A person licensed in another state or jurisdiction may qualify for an Iowa salesperson or broker license through verification by making application as provided in rule 193—14.4(272C). In addition to all requirements provided by rule 193—14.4(272C), an applicant for a license through verification shall also submit to the commission proof of passing the Iowa portion of the salesperson or broker real estate examination.

**5.12(1) Temporary licenses.** Applicants who satisfy all requirements for a license by verification under this rule except for passing the Iowa portion of the salesperson or broker real estate examination may be issued a temporary license that is valid for a period of three months and may be renewed once for an additional period of three months. The applicant must submit proof of passing the Iowa portion of the salesperson or broker real estate examination before the temporary license expires.

**5.12(2) License terms.** Once the applicant submits proof of passing the Iowa portion of the salesperson or broker real estate examination before the temporary license expires, a license will be issued for a three-year term, counting the remaining portion of the year issued as a full year. Licenses expire on December 31 of the third year of the license term.

ITEM 11. Rescind subrule **16.3(1)**.

ITEM 12. Renumber subrules **16.3(2)** to **16.3(4)** as **16.3(1)** to **16.3(3)**.

ITEM 13. Amend renumbered subrule 16.3(1) as follows:

**16.3(1) Required course of study** ~~beginning January 1, 2020. Beginning January 1, 2020, the~~ The required course of study to take the broker examination shall consist of at least 60 ~~classroom~~ live

REAL ESTATE COMMISSION[193E](cont'd)

instruction hours. Approved courses shall be completed within 24 months prior to the applicant’s taking the broker examination and shall include the following subjects:

|   |          |
|---|----------|
| Contract Law and Contract Writing .....                                   | 6 hours  |
| Iowa Real Estate Trust Accounts. ....                                     | 6 hours  |
| Principles of Appraising and Market Analysis. ....                        | 6 hours  |
| Real Estate Law and Agency Law .....                                      | 6 hours  |
| Real Estate Finance .....   | 6 hours  |
| Federal and State Laws Affecting Iowa Practice .....                      | 6 hours  |
| Real Estate Office Organization, Administration and Human Resources ..... | 12 hours |
| Real Estate Technology and Data Security.....                             | 6 hours  |
| Ethics and Safety Issues for Brokers.....                                 | 6 hours  |

[Filed 10/20/21, effective 12/22/21]

[Published 11/17/21]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 11/17/21.

**ARC 6055C**

**STATE PUBLIC DEFENDER[493]**

**Adopted and Filed**

**Rule making related to claims and fees for indigent adoption services**

The State Public Defender hereby amends Chapter 12, “Claims for Indigent Defense Services,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 13B.4.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapters 13B and 815 and 2021 Iowa Acts, House Files 743 and 861.

*Purpose and Summary*

The purpose of these amendments is to implement the procedure for submission of claims by attorneys appointed to represent an indigent party who files an adoption petition to adopt a child who was the subject of a termination of parental rights proceeding pursuant to Iowa Code chapter 232. These amendments also set the attorney fee limitations for the number of hours of attorney time which may be claimed for those services without securing a court order to exceed the maximum number of hours. These amendments are in response to the enactment of 2021 Iowa Acts, House File 743. Also, these amendments conform the administrative rules of the Office of the State Public Defender to the enactment of 2021 Iowa Acts, House File 861, section 24, which provides a \$3-per-hour across-the-board increase in the hourly rates paid to private attorneys who accept court appointments to represent indigent clients.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 22, 2021, as **ARC 5919C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the State Public Defender on October 27, 2021.

STATE PUBLIC DEFENDER[493](cont'd)

*Fiscal Impact*

Legislative enactment of the \$3-per-hour rate increase is estimated to increase annual costs to the Indigent Defense Fund by approximately \$1,500,000 beginning FY 2022. In addition, the enactment by the Legislature of House File 743, providing for court-appointed attorneys for indigent adoptive parents of a child who has been subject to a termination of parental rights under Iowa Code chapter 232, is likely to result in an additional charge to the Indigent Defense Fund in the amount of \$660 to \$1,320 per adoption, but the number of adoptions that will be of the type covered by House File 743 is unknown.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Office of the State Public Defender for a waiver of the discretionary provisions, if any, pursuant to 493—Chapter 6.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on December 22, 2021.

The following rule-making actions are adopted:

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

**12.1(1)** The state public defender will pay from the indigent defense fund attorney fees and costs for the following types of cases: commitment of sexually violent predators under Iowa Code chapter 229A; contempt; postconviction relief proceedings to the extent authorized under Iowa Code chapter 822; juvenile justice under Iowa Code section 232.141(3)(c); guardians ad litem for children in juvenile court under Iowa Code chapter 600 or respondents under Iowa Code chapter 600A; filing by an indigent party of an adoption petition under Iowa Code section 600.3 to adopt a child who was the subject of a termination of parental rights proceeding under Iowa Code chapter 232; fees for appellate attorneys under Iowa Code section 814.11; fees to attorneys under Iowa Code section 815.7; fees for court-appointed counsel under Iowa Code section 815.10; violation of probation or parole under Iowa Code chapter 908; indigent's right to transcript on appeal under Iowa Code section 814.9; indigent's application for transcript in other cases under Iowa Code section 814.10; and special witnesses for indigents under Iowa Code section 815.4.

ITEM 2. Amend subrule 12.4(1) as follows:

**12.4(1)** Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 1999, and before July 1, 2006:

STATE PUBLIC DEFENDER[493](cont'd)

|                 |                          |           |
|-----------------|--------------------------|-----------|
| Attorney time:  | Class A felonies         | \$60/hour |
|                 | Class B felonies         | \$55/hour |
|                 | All other criminal cases | \$50/hour |
|                 | All other cases          | \$50/hour |
| Paralegal time: |                          | \$25/hour |

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2006, and before July 1, 2007:

|                 |                          |           |
|-----------------|--------------------------|-----------|
| Attorney time:  | Class A felonies         | \$65/hour |
|                 | All other criminal cases | \$60/hour |
|                 | All other cases          | \$55/hour |
| Paralegal time: |                          | \$25/hour |

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2007, and before July 1, 2019:

|                 |                          |           |
|-----------------|--------------------------|-----------|
| Attorney time:  | Class A felonies         | \$70/hour |
|                 | Class B felonies         | \$65/hour |
|                 | All other criminal cases | \$60/hour |
|                 | All other cases          | \$60/hour |
| Paralegal time: |                          | \$25/hour |

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2019, and before July 1, 2021:

|                 |                          |           |
|-----------------|--------------------------|-----------|
| Attorney time:  | Class A felonies         | \$73/hour |
|                 | Class B felonies         | \$68/hour |
|                 | All other criminal cases | \$63/hour |
|                 | All other cases          | \$63/hour |
| Paralegal time: |                          | \$25/hour |

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2021:

|                        |                                 |                  |
|------------------------|---------------------------------|------------------|
| <u>Attorney time:</u>  | <u>Class A felonies</u>         | <u>\$76/hour</u> |
|                        | <u>Class B felonies</u>         | <u>\$71/hour</u> |
|                        | <u>All other criminal cases</u> | <u>\$66/hour</u> |
|                        | <u>All other cases</u>          | <u>\$66/hour</u> |
| <u>Paralegal time:</u> |                                 | <u>\$25/hour</u> |

ITEM 3. Amend subrule 12.6(2) as follows:

**12.6(2) *Juvenile cases.*** The state public defender establishes attorney fee limitations for the number of hours of attorney time that may be claimed for the following categories of juvenile and adoption cases:

STATE PUBLIC DEFENDER[493](cont'd)

|  |          |
|--|----------|
| Delinquency (through disposition)                                  | 20       |
| Child in need of assistance (CINA) (through disposition)           | 20       |
| Termination of parental rights (TPR) (through disposition)         | 30       |
| Juvenile court review and other postdispositional court hearings   | 5        |
| Judicial bypass hearings   | 3        |
| Juvenile commitment hearings                                       | 3        |
| Juvenile petition on appeal  | 10       |
| Motion for further review after petition on appeal                 | 5        |
| <u>Representation of adopting party in adoption following Iowa</u> | <u>5</u> |
| <u>Code chapter 232, termination of parental rights</u>            |          |

Nothing in this subrule is intended to in any manner diminish, increase, or modify the state public defender's authority to review any and all claims for services as authorized by the Iowa Code.

The fee limitations are applied separately to each case, as that term is defined in rule 493—7.1(13B,815).

For example, in a juvenile proceeding in which the attorney represents a parent whose four children are the subject of four child in need of assistance petitions, if the court handles all four petitions at the same time or the incident that gave rise to the child in need of assistance action is essentially the same for each child, the fee limitation for the attorney representing the parent is 20 hours for all four proceedings, not 20 hours for each one.

For a child in need of assistance case that becomes a termination of parental rights case, the fee limitations shall apply to each case separately. For example, the attorney could claim up to 20 hours for the child in need of assistance case and up to 30 hours for the termination of parental rights case.

In a delinquency case, if the child has multiple petitions alleging delinquency and the court handles the petitions at the same time, the fee limitation for the proceeding is the fee limitation for one delinquency.

In a juvenile case in which a petition on appeal is filed, the appointed trial attorney does not need to obtain a new appointment order to pursue a petition on appeal. The claim, through the filing of a petition on appeal, must be submitted on a Juvenile form. If an appellate court orders full briefing, the attorney fee claim for services subsequent to an order requiring full briefing must be submitted on an Appellate form and is subject to the rules governing appeals.

[Filed 10/27/21, effective 12/22/21]

[Published 11/17/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/17/21.

**ARC 6035C**

## **UTILITIES DIVISION[199]**

**Adopted and Filed**

### **Rule making related to regulation updates**

The Utilities Board hereby amends Chapter 8, "Civil Penalties," Chapter 9, "Restoration of Agricultural Lands During and After Pipeline Construction," Chapter 17, "Assessments," and Chapter 38, "Local Exchange Competition," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 476.2.

UTILITIES DIVISION[199](cont'd)

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapters 476, 477C and 479.

*Purpose and Summary*

The Board commenced this rule making to update its administrative rules following the Governor's signature to and approval of 2021 Iowa Acts, House File 693, and to reinsert subparagraph 9.5(4)"d"(6), which was stricken in a recent rule making.

On October 18, 2021, the Board issued an order adopting amendments. The order is available on the Board's electronic filing system, [efs.iowa.gov](https://efs.iowa.gov), under Docket No. RMU-2021-0008.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 28, 2021, as **ARC 5813C**. An oral presentation was held on September 14, 2021, at 11:30 a.m. in the Board Hearing Room, 1375 East Court Avenue, Des Moines, Iowa. No stakeholder objected to or expressed concern regarding the amendments during the oral presentation.

During the written comment period, the Iowa Association of Municipal Utilities submitted a written response, stating it had "no comments" on the proposed amendments; the Iowa Communications Alliance submitted a comment, expressing support for the Board's proposed changes in Chapters 17 and 38 and took no position on the proposed changes in Chapters 8 and 9; the Iowa Farm Bureau submitted a comment in support of the amendment in Chapter 9 and took no position on the remaining proposed amendments; the Office of Consumer Advocate, a division of the Iowa Department of Justice, submitted a comment stating it had no objections to the proposed changes; Interstate Power and Light submitted a comment in which it stated it was not opposed to the proposed amendments; and MidAmerican Energy Company submitted a statement indicating it had no specific comments to the proposed amendments.

No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Board on October 18, 2021.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Chapter-specific waiver provisions are unnecessary because any person may apply for waiver of any Board rule under rule 199—1.3(17A,474,476), which provides procedures for requesting a waiver of the rules in Chapters 8, 9, 17, and 38.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on December 22, 2021.

## UTILITIES DIVISION[199](cont'd)

The following rule-making actions are adopted:

ITEM 1. Amend subrule 8.1(5) as follows:

**8.1(5)** Pursuant to Iowa Code section 479.31 and in accordance with 49 CFR 190.223 as amended through July 1, 2021, for a violation of the permit requirements for a pipeline or underground gas storage facility.

ITEM 2. Adopt the following **new** subparagraph **9.5(4)“d”(6)**:

(6) Before completing permanent tile repairs, all tile lines shall be examined visually by televising on both sides of the trench over the full extent of the working easement to check for tile that might have been damaged or misaligned by construction equipment. If tile lines are found to be damaged, they must be repaired to operate as well after construction as before construction.

ITEM 3. Amend subrule 17.2(9) as follows:

**17.2(9)** Industry direct assessments and remainder assessments for gas and electric utilities exempted from rate regulation by the board and for providers of telecommunications service required to register with the board pursuant to Iowa Code section 476.95A that are exempted from rate regulation under Iowa Code chapter 476 shall be computed at one-half of the rate used in computing industry direct assessments and remainder assessments for other persons.

ITEM 4. Amend subrule **38.1(2)**, definition of “Competitive local exchange service provider,” as follows:

“*Competitive local exchange service provider*” means any person, including a municipal utility, that provides local exchange services, other than a local exchange carrier or a non-rate-regulated wireline provider of local exchange services under an authorized certificate of public convenience and necessity within a specific geographic area described in maps filed with and approved by the board as of September 30, 1992.

[Filed 10/18/21, effective 12/22/21]

[Published 11/17/21]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 11/17/21.

**ARC 6044C**

**UTILITIES DIVISION[199]**

**Adopted and Filed**

**Rule making related to inspections of natural gas pipelines**

The Utilities Board hereby amends Chapter 10, “Intrastate Gas Pipelines and Underground Gas Storage,” and Chapter 19, “Service Supplied by Gas Utilities,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 476.2.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapters 476 and 479.

*Purpose and Summary*

Federal regulations require the Utilities Board, as an agent of the federal Pipeline and Hazardous Materials Safety Administration, to update its rules every two years so that the Board staff applies the current federal regulations during inspections of natural gas pipelines. This rule making updates the natural gas standards accordingly and updates other provisions in Chapters 10 and 19 that are outdated, inconsistent, or incompatible with statutes and other administrative rules.

## UTILITIES DIVISION[199](cont'd)

On October 25, 2021, the Board issued an order adopting amendments. The order is available on the Board's electronic filing system, [efs.iowa.gov](https://efs.iowa.gov), under Docket No. RMU-2021-0008.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 30, 2021, as **ARC 5744C**. An oral presentation was held on August 19, 2021, at 10 a.m. in the Board Hearing Room, 1375 East Court Avenue, Des Moines, Iowa.

The Board conducted an oral presentation attended by the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; Interstate Power and Light Company (IPL); MidAmerican Energy Company (MidAmerican); Black Hills/Iowa Gas Utility Company, LLC, d/b/a Black Hills Energy (Black Hills); Iowa Association of Municipal Utilities; and Iowa Farm Bureau (Farm Bureau). No participant objected to or otherwise opposed any of the amendments.

During the written comment period, OCA submitted a comment expressing support for the amendments as published in the Notice of Intended Action and suggested the Board make a minor amendment to paragraph 10.2(5)“d” to which the Board agreed. Black Hills, IPL, and MidAmerican filed a joint comment in which they stated they supported certain amendments and did not oppose the remaining amendments. Farm Bureau filed a comment expressing its support for the changes to the definition of “affected person.”

The amendments adopted by the Board are identical to those published in the Notice; however, in response to public comments, the Board has adopted an additional amendment that was not contained in the Notice. Specifically, the Board adopted changes to paragraph 10.2(5)“d” in new Item 3 to ensure consistency with similar changes the Board recently adopted in paragraphs 11.4(5)“c” and 13.2(5)“d.”

*Adoption of Rule Making*

This rule making was adopted by the Board on October 25, 2021.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

No waiver provision is included in the amendments because the Board has a general waiver provision in rule 199—1.3(17A,474,476) that provides procedures for requesting a waiver of the rules in Chapters 10 and 19.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on December 22, 2021.

The following rule-making actions are adopted:

## UTILITIES DIVISION[199](cont'd)

ITEM 1. Amend subrule 10.1(3) as follows:

**10.1(3) Definitions.** Technical terms not defined in this chapter shall be as defined in the appropriate standard adopted in rule 199—10.12(479). For the administration and interpretation of this chapter, the following words and terms shall have the following meanings:

“*Affected person*” means any person with a ~~recorded~~ legal right or recorded interest in the property, including but not limited to a landowner, a contract purchaser of record, a ~~tenant-occupying person~~ possessing the property under a recorded lease, a record lienholder, and a record encumbrancer of the property. ~~The term also includes persons in possession of or residing on the property and persons with unrecorded interests in the property that have been identified through a good-faith effort of the pipeline company.~~

“*Amendment of permit*” means that changes to the pipeline permit or pipeline require the filing of a petition to amend an existing pipeline permit as described in rule 199—10.9(479).

“*Approximate right angle*” means within 5 degrees of a 90 degree angle.

“*Board*” means the utilities board within the utilities division of the department of commerce.

“*CFR*” means the Code of Federal Regulations, which contains the general administrative rules adopted by federal departments and agencies, in effect as of December 22, 2021, unless a separate effective date is identified in a specific rule.

“*County inspector*” means a professional engineer licensed under Iowa Code chapter 542B who is familiar with agricultural and environmental inspection requirements and has been employed by a county board of supervisors to do an on-site inspection of a proposed pipeline for compliance with 199—Chapter 9 and Iowa Code chapter 479.

“*Multiple line crossing*” means a point at which a proposed pipeline will either cross over or under an existing pipeline.

“*Negotiating*” means contact between a pipeline company and a person with authority to negotiate an easement that involves the location, damages, compensation, or other matter that is prohibited by Iowa Code section 479.5(5). Contact for purposes of obtaining addresses and other contact information from a landowner or tenant is not considered negotiation.

“*Permit*” means a new, amended, or renewal permit issued by the board.

“*Person*” means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

“*Pipeline*” means any pipe, pipes, or pipelines used for the intrastate transportation or transmission of any solid, liquid, or gaseous substance, except water.

“*Pipeline company*” means any person engaged in or organized for the purpose of owning, operating, or controlling pipelines for the intrastate transportation or transmission of any solid, liquid, or gaseous substance, except water.

“*Underground storage*” means storage of natural gas in a subsurface stratum or formation of the earth.

ITEM 2. Amend subrule 10.2(2) as follows:

**10.2(2) Facilities.** A pipeline company shall be responsible for all negotiations and compensation for a suitable facility to be used for each informational meeting, including but not limited to a building or facility which is in substantial compliance with any applicable requirements of the Americans with Disabilities Act Standards for Accessible Design, including both the Title III regulations at 28 CFR Part 36, Subpart D, and the 2004 Americans with Disabilities Act Accessibility Guidelines at 36 CFR Part 1191, Appendices B and D ~~(as amended through April 1, 2020)~~, where such a building or facility is reasonably available.

ITEM 3. Amend paragraph **10.2(5)“d”** as follows:

*d.* The pipeline company shall file prior to the informational meeting an affidavit that describes the good-faith effort the pipeline company undertook to locate the addresses of all affected persons. The affidavit shall be signed by a corporate officer or an attorney representing the pipeline company.

## UTILITIES DIVISION[199](cont'd)

ITEM 4. Amend subrule 10.12(1) as follows:

**10.12(1)** All pipelines, underground storage facilities, and equipment shall be designed, constructed, operated, and maintained in accordance with the following standards:

- a. 49 CFR Part 191, "Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports," ~~as amended through April 1, 2020.~~"
- b. 49 CFR Part 192, "Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards," ~~as amended through April 1, 2020.~~"
- c. 49 CFR Part 199, "Drug and Alcohol Testing," ~~as amended through April 1, 2020.~~"
- d. ASME B31.8 - 2016, "Gas Transmission and Distribution Piping Systems."
- e. 199—Chapter 9, "Restoration of Agricultural Lands During and After Pipeline Construction."
- f. At railroad crossings, 199—42.7(476), "Engineering standards for pipelines."

Conflicts between the standards established in paragraphs 10.12(1) "a" through "f" or between the requirements of rule 199—10.12(479) and other requirements which are shown to exist by appropriate written documentation filed with the board shall be resolved by the board.

ITEM 5. Adopt the following **new** definition of "CFR" in subrule **19.1(3)**:

"CFR" means the Code of Federal Regulations, which contains the general administrative rules adopted by federal departments and agencies, in effect as of December 22, 2021, unless a separate effective date is identified in a specific rule.

ITEM 6. Amend paragraph **19.2(3)"a"** as follows:

a. The tariff shall be filed electronically using the board's electronic filing system. The filed tariff shall be ~~printed, typewritten or otherwise capable of being reproduced on 8½- × 11-inch sheets of durable white paper so as to result in a clear and permanent record. The sheets of the tariff should be ruled or spaced to set off a border on the left side suitable for binding. In the case of utilities subject to regulation by any federal agency, the format of sheets of tariff as paper so customers may reproduce copies of the tariff. A tariff filed with the board may be the same format as is required by the a federal agency provided that the rules of the board as to title page; identity of superseding, replacing or revision sheets; identity of amending sheets; identity of the filing utility, issuing official, date of issue, effective date; and the words "Gas Tariff Filed with Board" shall apply in the modification of the federal agency format for the purposes of filing with this board. Pursuant to 199—subrule 14.5(5), tariffs filed electronically shall be formatted in accordance with this rule.~~

ITEM 7. Amend paragraph **19.2(5)"g"** as follows:

g. *Reports to federal agencies.* Copies of reports submitted to the U.S. Department of Transportation pursuant to 49 CFR Part 191, Part 192, or Part 199, ~~as amended through May 1, 2019,~~ shall be filed with the board no later than ten days following the submission. Utilities operating in other states shall provide to the board data for Iowa only.

ITEM 8. Amend subrule 19.5(2) as follows:

**19.5(2)** *Standards incorporated by reference.*

a. The design, construction, operation, and maintenance of gas systems and liquefied natural gas facilities shall be in accordance with the following standards where applicable:

- (1) 49 CFR Part 191, "Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports," ~~as amended through May 1, 2019.~~"
- (2) 49 CFR Part 192, "Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards," ~~as amended through May 1, 2019.~~"
- (3) 49 CFR Part 193, "Liquefied Natural Gas Facilities: Federal Safety Standards," ~~as amended through May 1, 2019.~~"
- (4) 49 CFR Part 199, "Drug and Alcohol Testing," ~~as amended through May 1, 2019.~~"
- (5) ASME B31.8 - 2016, "Gas Transmission and Distribution Piping Systems."
- (6) NFPA 59-2018, "Utility LP-Gas Plant Code."
- (7) At railroad crossings, rule 199—42.7(476), "Engineering standards for pipelines."
- b. The following publications are adopted as standards of accepted good practice for gas utilities:

## UTILITIES DIVISION[199](cont'd)

- (1) ANSI Z223.1/NFPA 54-2018, "National Fuel Gas Code."
- (2) NFPA 501A-2017, "Standard for Fire Safety Criteria for Manufactured Home Installations, Sites, and Communities."

ITEM 9. Amend rule **199—19.11(476)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section ~~476.6(15)~~ 476.6(11).

ITEM 10. Amend paragraph **19.14(3)"a"** as follows:

~~a. An application fee of \$125 must be included with the application to cover the administrative costs of accepting and processing a filing. In addition, each applicant may be billed an hourly rate for actual time spent by the board reviewing the application.~~ For actual time spent reviewing the application, the board will directly assess the applicant as set forth in 199—Chapter 17. Iowa Code section 476.87(3) requires the board to allocate the costs and expenses reasonably attributable to certification and dispute resolution to applicants and participants to the proceeding.

[Filed 10/26/21, effective 12/22/21]

[Published 11/17/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/17/21.