



IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XLIII
May 19, 2021

NUMBER 24
Pages 2581 to 2764

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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)
441 IAC 79.1(1)“a”(1)	(Subparagraph)
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† SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 23 '20	Jan. 13 '21	Feb. 2 '21	Feb. 17 '21	Feb. 19 '21	Mar. 10 '21	Apr. 14 '21	July 12 '21
Jan. 6	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	**May 12**	June 2	July 7	Oct. 4
Apr. 2	Apr. 21	May 11	May 26	May 28	June 16	July 21	Oct. 18
Apr. 16	May 5	May 25	June 9	June 11	June 30	Aug. 4	Nov. 1
Apr. 30	May 19	June 8	June 23	**June 23**	July 14	Aug. 18	Nov. 15
May 12	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
June 23	July 14	Aug. 3	Aug. 18	**Aug. 18**	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
Aug. 18	Sep. 8	Sep. 28	Oct. 13	Oct. 15	Nov. 3	Dec. 8	Mar. 7 '22
Sep. 3	Sep. 22	Oct. 12	Oct. 27	**Oct. 27**	Nov. 17	Dec. 22	Mar. 21 '22
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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	**Dec. 8**	Dec. 29	Feb. 2 '22	May 2 '22
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Dec. 8	Dec. 29	Jan. 18 '22	Feb. 2 '22	Feb. 4 '22	Feb. 23 '22	Mar. 30 '22	June 27 '22
Dec. 22	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>
26	Friday, May 28, 2021	June 16, 2021
27	Friday, June 11, 2021	June 30, 2021
1	Wednesday, June 23, 2021	July 14, 2021

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****

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, June 8, at 9 a.m. in Room 103, State Capitol, Des Moines, Iowa. Instructions for participation by videoconference can be found here: www.legis.iowa.gov/committees/meetings/meetingsListComm?groupID=705. For more information, contact Jack Ewing at Jack.Ewing@legis.iowa.gov. The following rules will be reviewed:

NOTE: See also Supplemental Agenda to be published in the June 2, 2021, Iowa Administrative Bulletin.

CITY DEVELOPMENT BOARD[263]

ECONOMIC DEVELOPMENT AUTHORITY[261]“umbrella”

Waivers, amendments to ch 6 Notice **ARC 5620C** 5/19/21

ECONOMIC DEVELOPMENT AUTHORITY[261]

Targeted small businesses, 52.1, 52.2, 52.3(3), 55.2 to 55.7 Notice **ARC 5622C** 5/19/21

High quality jobs program—changing a maintenance period completion date, 187.3(1), 187.4(2)“d” Filed **ARC 5624C** 5/19/21

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Underground storage tanks, amendments to chs 134 to 136 Filed **ARC 5625C** 5/19/21

HISTORICAL DIVISION[223]

CULTURAL AFFAIRS DEPARTMENT[221]“umbrella”

Terminology—deaf and hard-of-hearing persons, 1.5(5) Notice **ARC 5610C** 5/5/21

HUMAN SERVICES DEPARTMENT[441]

Travel trailers—time frame for consideration as permanent place of habitation, 58.1 Filed **ARC 5596C** 5/5/21

Deaf and hard-of-hearing persons—terminology, amend chs 73, 78, 81, 82, 113 Notice **ARC 5619C** 5/19/21

Electronic visit verification, amendments to chs 73, 78, 83 Filed **ARC 5597C** 5/5/21

Home- and community-based services—individual placement and support supported employment, 77.25, 78.27, 79.1(2) Notice **ARC 5623C** 5/19/21

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]“umbrella”

Property and casualty insurance; self-study continuing education, 11.3(4)“b,” 11.5(7), 20.1,

20.2, 20.4 to 20.6, 20.11, 20.41, 20.43, 20.47(3), 20.71 Filed **ARC 5602C** 5/5/21

Long-term care insurance, amendments to chs 39, 72 Filed **ARC 5598C** 5/5/21

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella”

Penalties for citations; waivers; rule making, amendments to chs 1, 3, 5 Filed **ARC 5632C** 5/19/21

Boiler and pressure vessel special inspector commissions, 90.9 Notice **ARC 5595C** 5/5/21

MEDICINE BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Appointment of executive director, 1.3 Filed **ARC 5599C** 5/5/21

Waivers, 3.1, 3.4, 3.17, 8.11, 9.18, 10.6, 11.6, 13.21, 17.4(2), 17.5(13), 17.11, 17.30, 19.8,

20.8(12), 20.20, 20.25, 21.8, 23.1 Filed **ARC 5600C** 5/5/21

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Waterway speed zoning—East Okoboji, 40.31(2) Notice **ARC 5593C** 5/5/21

Deer hunting by residents—firearms, 106.7, 106.10(5) Filed **ARC 5601C** 5/5/21

NURSING BOARD[655]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Background checks for nursing students, 2.13 Notice **ARC 5615C** 5/5/21

Submission of waiver information, amendments to ch 15 Notice **ARC 5616C** 5/5/21

PAROLE BOARD[205]

CORRECTIONS DEPARTMENT[201]“umbrella”

Waivers, amendments to ch 16 Notice **ARC 5609C** 5/5/21

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA

COMPREHENSIVE[591]

Waivers, amendments to ch 16 Notice **ARC 5637C** 5/19/21

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Psychologists—standards of practice, supervised professional experience, waivers, amend
chs 240, 244; adopt ch 243 Notice **ARC 5617C** 5/5/21**PUBLIC EMPLOYMENT RELATIONS BOARD[621]**General procedures; impasse procedures; bargaining unit determination and representative
certifications; retention and recertification elections, amendments to chs 1, 2, 4, 5, 7, 15
Filed **ARC 5631C**..... 5/19/21**PUBLIC HEALTH DEPARTMENT[641]**State plumbing code—adoption of Uniform Plumbing Code, 2021 Edition, by reference,
amendments to ch 25 Filed **ARC 5626C**..... 5/19/21
State mechanical code—adoption of International Mechanical Code, 2021 Edition, by
reference, 61.1 to 61.5 Filed **ARC 5627C** 5/19/21
Radiation therapy standards—certificate of need applications, 203.3 Notice **ARC 5633C**..... 5/19/21**PUBLIC SAFETY DEPARTMENT[661]**Fire service training bureau—programs, services, fees, 53.2 Filed **ARC 5603C**..... 5/5/21
Firefighter training and certification, amendments to ch 251 Filed **ARC 5604C**..... 5/5/21**REAL ESTATE APPRAISER EXAMINING BOARD[193F]**

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]"umbrella"

Five-year review of rules, amendments to chs 1, 3 to 6, 8 to 12 Notice **ARC 5611C**..... 5/5/21**REVENUE DEPARTMENT[701]**Relief from joint and several liability for substantial understatement of tax attributable to
nonrequesting spouse or former spouse, 38.15 Notice **ARC 5613C**..... 5/5/21
Interest expense deduction adjustments, 40.85, 53.29, 59.31 Notice **ARC 5612C**..... 5/5/21
Broadband infrastructure grant exemption, 40.84, 53.28, 59.30 Filed **ARC 5606C**..... 5/5/21
School tuition organization tax credit, 42.32, 52.38 Notice **ARC 5636C** 5/19/21
Bundled transactions, adopt ch 216; amend ch 231 Filed **ARC 5605C**..... 5/5/21
Marketable food products for human consumption, 230.2(1) Notice **ARC 5614C**..... 5/5/21**TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]**Waivers, amendments to ch 9, 16 Notice **ARC 5635C** 5/19/21**TRANSPORTATION DEPARTMENT[761]**Holiday rest stops; promotion of Iowa agricultural products at interstate rest areas;
maintenance bureau, 105.2(4), 105.4, 105.5, 106.3, 106.4 Filed **ARC 5607C** 5/5/21
Motor vehicles operated by an automated driving system, adopt ch 380; amend chs 400, 524,
540 Notice **ARC 5621C** 5/19/21
Odometer disclosure statements, 400.52(3) Notice **ARC 5618C** 5/19/21**TREASURER OF STATE[781]**Waivers, amendments to ch 19 Notice **ARC 5634C** 5/19/21**UTILITIES DIVISION[199]**

COMMERCE DEPARTMENT[181]"umbrella"

Electric lines, 11.2, 11.3(3), 11.5(1)"d," 11.9(6) Filed **ARC 5628C**..... 5/19/21
Electric vehicle charging service, 20.20 Filed **ARC 5608C**..... 5/5/21
Rate cases, tariffs, and rate regulation election practice and procedure, ch 26 Filed **ARC 5629C**..... 5/19/21**VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]**Veterans trust fund, 14.2 to 14.4 Notice **ARC 5592C** 5/5/21**WORKERS' COMPENSATION DIVISION[876]**

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Payroll tax tables, 8.8 Filed **ARC 5630C**..... 5/19/21

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular, statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

Senator Waylon Brown
2415 Highway 218
Osage, Iowa 50461

Senator Jesse Green
2344 360th Street
Harcourt, Iowa 50544

Senator Robert Hogg
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Senator Pam Jochum
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Dubuque, Iowa 52001

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2202 Ogden Avenue
Rockwell City, Iowa 50579

Michael Boal
Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 18
Des Moines, Iowa 50319
Telephone: (515)281-5211

NOTE: See also the Advisory Notice on page 2764.

LABOR SERVICES DIVISION[875]

Boiler and pressure vessel special inspector commissions, 90.9 IAB 5/5/21 ARC 5595C	Dial: 312.626.6799 Meeting ID number: 879 7671 4785 Passcode: 430189	May 25, 2021 1 p.m. (If requested)
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NATURAL RESOURCE COMMISSION[571]

Waterway speed zoning—East Okoboji, 40.31(2) IAB 5/5/21 ARC 5593C	Via videoconference call Contact Greg Harson Email: gregory.harson@dnr.iowa.gov	May 26, 2021 6 p.m.
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NURSING BOARD[655]

Background checks for nursing students, 2.13 IAB 5/5/21 ARC 5615C	Board Office, Suite B 400 S.W. Eighth St. Des Moines, Iowa	May 25, 2021 9 to 10 a.m.
Submission of waiver information, amendments to ch 15 IAB 5/5/21 ARC 5616C	Board Office, Suite B 400 S.W. Eighth St. Des Moines, Iowa	May 25, 2021 10 to 11 a.m.

PAROLE BOARD[205]

Waivers, amendments to ch 16 IAB 5/5/21 ARC 5609C	Via conference call Contact Andrea Muelhaupt Email: andrea.muelhaupt@iowa.gov	May 25, 2021 9 to 10 a.m. (If requested)
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PROFESSIONAL LICENSURE DIVISION[645]

Psychologists—standards of practice, supervised professional experience, waivers, amend chs 240, 244; adopt ch 243 IAB 5/5/21 ARC 5617C	Via videoconference: idph.webex.com/idph/j.php?MTID=m89b81013fc5dafcb8e94ebc4c230b2e0 Meeting number: 187 971 8288 Password: PmhpNm8\$ Via telephone: 408.418.9388 Access code: 187 871 8288	May 25, 2021 10 to 11 a.m.
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REAL ESTATE APPRAISER EXAMINING BOARD[193F]

Five-year review of rules, amendments to chs 1, 3 to 6, 8 to 12 IAB 5/5/21 ARC 5611C	Small Conference Room, Third Floor 200 E. Grand Ave. Des Moines, Iowa	May 25, 2021 11 a.m. to 12 noon
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REVENUE DEPARTMENT[701]

Relief from joint and several liability for substantial understatement of tax attributable to nonrequesting spouse or former spouse, 38.15 IAB 5/5/21 ARC 5613C	Via video/conference Contact Kurt Konek Email: kurt.konek@iowa.gov	May 25, 2021 10:30 to 11:30 a.m. (If requested)
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REVENUE DEPARTMENT[701](cont'd)

Interest expense deduction adjustments, 40.85, 53.29, 59.31 IAB 5/5/21 ARC 5612C	Via video/conference call Contact Ben Clough Email: ben.clough@iowa.gov	May 25, 2021 1 to 2 p.m. (If requested)
School tuition organization tax credit, 42.32, 52.38 IAB 5/19/21 ARC 5636C	Via video/conference call Contact Michael Mertens Email: michael.mertens@iowa.gov	June 8, 2021 10 to 11 a.m. (If requested)
Marketable food products for human consumption, 230.2(1) IAB 5/5/21 ARC 5614C	Via video/conference call Contact Tim Reilly Email: tim.reilly@iowa.gov	May 25, 2021 2 to 3 p.m.

TRANSPORTATION DEPARTMENT[761]

Motor vehicles operated by an automated driving system, adopt ch 380; amend chs 400, 524, 540 IAB 5/19/21 ARC 5621C	Via conference call Contact Tracy George Email: tracy.george@iowadot.us	June 11, 2021 9 a.m. (If requested)
Odometer disclosure statements, 400.52(3) IAB 5/19/21 ARC 5618C	Via conference call Contact Tracy George Email: tracy.george@iowadot.us	June 10, 2021 10 to 11 a.m. (If requested)

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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 Workers' Compensation Division[876]
 Workforce Development Board and Workforce Development Center Administration Division[877]

ARC 5620C**CITY DEVELOPMENT BOARD[263]****Notice of Intended Action****Proposing rule making related to waivers and providing an opportunity for public comment**

The City Development Board hereby proposes to amend Chapter 6, “Waiver and Variance Rules,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 368.10.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 17A.9A.

Purpose and Summary

2020 Iowa Acts, House File 2389, amended Iowa Code section 17A.9A to remove references to “variances” and change how agencies report on rule waivers that are granted or denied. The proposed amendments to Chapter 6 update the rules to conform to the changes implemented by House File 2389.

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 263—Chapter 6.

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 Board no later than 4:30 p.m. on June 8, 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

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.

CITY DEVELOPMENT BOARD[263](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 **263—Chapter 6**, title, as follows:

~~WAIVER AND VARIANCE RULES~~

ITEM 2. Amend rule 263—6.1(17A) as follows:

263—6.1(17A) Definition. For purposes of this chapter, “~~a waiver or variance~~” means action by the board which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person or entity on the basis of the particular circumstances of that person or entity. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~

ITEM 3. Amend rule 263—6.4(17A), catchwords, as follows:

263—6.4(17A) Criteria for ~~waiver or variance~~.

ITEM 4. Amend rule 263—6.8(17A) as follows:

263—6.8(17A) Notice. The board shall acknowledge a petition upon receipt. The board shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law or who may be impacted by the requested waiver and provide a written statement to the board attesting that notice has been provided.

ITEM 5. Rescind rule 263—6.11(17A) and adopt the following new rule in lieu thereof:

263—6.11(17A) Submission of waiver information. Within 60 days of granting or denying a waiver, the board shall make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rule(s) for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the board's actions on waiver requests. If practicable, the report shall detail the extent to which granting a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself.

ITEM 6. Rescind rule **263—6.12(17A)**.

ITEM 7. Renumber rules **263—6.13(17A)** to **263—6.16(17A)** as **263—6.12(17A)** to **263—6.15(17A)**.

ARC 5622C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Notice of Intended Action

**Proposing rule making related to targeted small businesses
and providing an opportunity for public comment**

The Economic Development Authority (IEDA) hereby proposes to amend Chapter 52, “Iowa Targeted Small Business Certification Program,” and Chapter 55, “Targeted Small Business Financial Assistance Program,” 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, Iowa Code section 15.108 and 2013 Iowa Acts, House File 324.

Purpose and Summary

Pursuant to Iowa Code section 15.108, IEDA certifies targeted small businesses (TSBs) and provides technical and financial assistance to TSBs. TSBs are certified pursuant to Chapter 52 if they are 51 percent or more owned by a minority, woman, person with a disability, or service-disabled veteran and meet other criteria for certification. The Targeted Small Business Financial Assistance Program provides loans to TSBs pursuant to Chapter 55.

The proposed amendments to Chapter 52 make it clear that a business owner with targeted status must be an Iowa resident and that eligibility for certification or recertification of TSBs will be determined pursuant to the rules in effect on the date of application. The proposed amendments to Chapter 55 update the chapter to reflect current administration of the loan program, including removal of references to grants and loan guarantees. Additionally, the proposed amendments describe the role of the microloan service provider with which the IEDA was directed to contract to administer the program by 2013 Iowa Acts, House File 324.

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 June 8, 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

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—52.1(15)**, definition of “Targeted group person (TGP),” as follows:

“*Targeted group person*” or “*TGP*” means a person who is a minority, woman, person with a disability, or service-disabled veteran and is either an Iowa resident or a resident of a contiguous state who lives within 50 miles of the targeted small business the person owns, operates, and actively manages.

ITEM 2. Amend rule 261—52.2(15) as follows:

261—52.2(15) Certification. The authority is responsible for ascertaining that a small business is owned, operated, and actively managed by a targeted group person.

52.2(1) Regular certification. Before a small business can participate in the Iowa targeted small business program, it must be certified by the authority.

a. The authority shall review applications from small businesses to determine whether they are eligible to participate in the program pursuant to this chapter as in effect as of the date of application for certification.

b. Certification means the authority has determined that the business meets eligibility standards.

c. Applications for the targeted small business certification are available by contacting the authority or by visiting the authority’s website:

Iowa Economic Development Authority
~~200 East Grand Avenue~~
~~Des Moines, Iowa 50309~~
~~(515)725-3000~~
www.iowaeconomicdevelopment.com
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
515.348.6200
www.iowaeda.com

d. Applicants shall receive written notification of the authority’s decision.

52.2(2) Recertification. Certified businesses shall submit verification of continued eligibility to the authority at least every two years.

a. The application for recertification will be provided by the authority.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

- b.* Other documents will be requested to verify the continuing eligibility of the business.
- c.* The authority shall determine whether a certified business is eligible for recertification pursuant to this chapter as in effect as of the date of application for recertification.

52.2(3) to 52.2(7) No change.

ITEM 3. Amend subrule 52.3(3) as follows:

52.3(3) The information contained in the application may be reviewed by the applicant upon request to the ~~Iowa Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309; (515)725-3000~~ authority. Material to be added to a file may be sent to the authority.

ITEM 4. Rescind rule 261—55.2(15) and adopt the following **new** rule in lieu thereof:

261—55.2(15) Definitions. As used in this chapter, the following definitions shall apply:

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

“Disability” means the same as defined in Iowa Code section 15.102(10) *“b.”*

“Microloan service provider” means a service provider that has contracted with the authority to provide financial and technical assistance to targeted small businesses.

“Program” means the targeted small business financial assistance program established pursuant to this chapter.

“Review committee” means a committee established by the authority or microloan service provider to review program applications pursuant to subrule 55.3(8).

“Targeted small business” or *“TSB”* means a small business which is 51 percent or more owned, operated, and actively managed by one or more women, minority persons, service-disabled veterans, or persons with a disability provided the business meets all of the following requirements:

1. Is located in this state;
2. Is operated for profit;
3. Has an annual gross income of less than \$4 million computed as an average of the three preceding fiscal years.

ITEM 5. Rescind rule **261—55.3(15)**.

ITEM 6. Renumber rule **261—55.4(15)** as **261—55.3(15)**.

ITEM 7. Amend renumbered rule 261—55.3(15) as follows:

261—55.3(15) Loan and grant program Application and approval.

55.3(1) Application procedures. Application materials may be obtained from the ~~IDED business finance team, any small business development center (SBDC), or any of the business advocate service providers~~ authority or microloan service provider.

55.3(2) Maximum funding levels. In no case shall an award exceed \$50,000, ~~nor in the case of a loan shall the~~. The interest rate charged shall not exceed 5 percent per annum or be less than 0 percent per annum. ~~Under no circumstances shall the targeted small business financial assistance program fund 100 percent of a project. A targeted small business shall not receive a loan, grant, or loan guarantee or a combination of loans, grants, or loan guarantees under the program that provide provides more than 90 percent of the funding for a project. All applicants must invest at least 10 percent of the total project budget in cash.~~

55.3(3) Forms of financial assistance available Term. ~~The following types of financial assistance may be awarded under this program: loans, grants, loan guarantees or a combination of loans, grants and loan guarantees.~~

a. Direct loan. The term of a loan shall not exceed five years; ~~the interest rate shall not exceed 5 percent per annum.~~

b. Grant. Grant funds shall only be awarded in instances where the grant will leverage a significant amount of other financing, such as conventional or SBA financing packages. ~~In order to receive a grant, the applicant must demonstrate a minimum of 10 percent cash investment in the project.~~

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

~~c. — *Loan guarantee.* The program shall provide guarantees not to exceed 80 percent for loans of up to seven years made by qualified lenders.~~

55.3(4) *Eligible uses of funds.* ~~Awards of funds under this program~~ Program funds shall be used for legitimate business expenses, including, but not limited to, the following purposes: purchase of equipment and furnishings, inventory, purchase of and improvements to land and buildings and specific operating expenses.

55.3(5) *Ineligible uses of funds.* ~~Targeted small business financial assistance~~ Program funds shall not be used to refinance existing debt. ~~Existing~~ For the purposes of this subrule, existing debt in the context of this rule does not include interim financing for allowable program purposes intended as a bridge loan obtained after the date of the ~~targeted small business award~~ a program loan is approved. Neither shall the ~~department award~~ Program funds shall not be used to facilitate financing of a project which would consist solely of relocation of an existing business within Iowa. ~~IDED may waive this limitation if the business demonstrates to IDED that it faces unusual circumstances which make the relocation necessary for the business's continued viability.~~

55.3(6) *Threshold criteria.* Applicants for funds under the ~~targeted small business financial assistance~~ program must meet the following minimum criteria before their applications will be considered complete and eligible for ranking evaluation:

a. ~~If applying as a TSB, the business must be certified as a "targeted small business" by the department of inspections and appeals before applying for funding. In order to be certified as a targeted small business, a business owner must be a woman, a targeted minority, or a person with a disability and have established at least 51 percent ownership of the business, and be actively involved in the day-to-day management of the business. (The targeted small business owner must have the expertise or related experience in order to be considered actively involved in the day-to-day management of the business.)~~ The business must be eligible for certification as a targeted small business pursuant to 261—Chapter 52 at the time of application. The authority or microloan service provider will educate applicants about the benefits of such certification and encourage applicants to seek certification.

b. ~~After the TSB has been awarded a loan or grant or a loan guarantee, the TSB must continue to be a certified TSB for the life of the loan or grant. Failure to meet this requirement may result in the loan or grant being called and due within 30 days. This will include all principal, interest and any penalties that have been assessed. If recertification occurs within 30 days of the date of the notice, the original terms will be reinstated. An applicant must be a resident of Iowa for at least six months to be eligible to apply for assistance. Applicants may be asked to provide necessary documentation to prove legal residency.~~

c. All applicants shall comply with the requirements of 261—Chapter 172.

55.3(7) *Submittal process.* All applications and related informational materials shall be submitted on forms prescribed by IDED and in the manner prescribed by the authority or microloan service provider. Completed applications shall be submitted to: Targeted Small Business Financial Assistance Program, Bureau of Business Finance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

55.3(8) *Review process.* ~~All completed TSB applications are reviewed by the program manager on an ongoing basis.~~

a. Applications are reviewed for completeness. If additional information is required, the program manager authority or microloan service provider shall send the applicant notice to submit additional information. The applicant shall then have three weeks from the date of the IDED letter to submit the requested information. If the requested information is not provided by the deadline indicated in the notice, the application may be considered incomplete or ineligible.

b. The authority or microloan service provider will establish a committee of at least three individuals to review all applications.

~~Application requests are initially rated for funding by IDED staff. They are then reviewed on a monthly basis by the board. The board is an advisory committee established by 2007 Iowa Acts, House File 890, to assist the department in the evaluation of applications. The board is comprised of private sector representatives experienced in small business management and operation. The board membership~~

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

shall consist of seven members, including one each from the following populations: Latino, Black, Asian or Pacific Islander, Caucasian women, Native American, and a person with a disability as defined in Iowa Code section 15.102 as amended by 2007 Iowa Acts, House File 890. One of the members shall be a member of the economic development board appointed by the economic development board. A quorum is four members. It requires the vote of at least four board members to recommend action on an application to the director. The board may recommend to the director the approval, denial, or deferral of an application. If less than a quorum of the board is present at a meeting, an application will be forwarded to the director without a recommendation from the board.

55.3(9) *Rating factors Evaluation.* Applicants must score a minimum of 60 out of a possible 100 points in order to be recommended for funding. Points are awarded based on the information contained in the application. Applications are evaluated according to the following criteria:

a. Business plan (20 points possible). Factors considered include: Does the application contain significant information regarding the product or service to be offered? Has the applicant provided sufficient documentation to support/justify the cash flow assumptions, e.g., third-party documentation regarding market size, annual sales and competition?

b. Financial plan (20 points possible). Factors considered include: Does the application contain comprehensive two-year cash flow projections which show the viability of the business? Does the application provide completed personal financial information and information on other funding sources?

c. Financial need (20 points possible). Factors considered include: the applicant's personal liquid assets and the applicant's ability or inability to secure a loan from conventional sources (i.e., bank, savings and loan, credit union, SBA).

d. Marketing plan (5 points possible). Factors considered include: Does the application contain sufficient information to ascertain that the applicant fully understands who the customers are and how to effectively reach them?

e. Management expertise and related experience (20 points possible). Factors considered include: Does the applicant have education or work experience that is relevant to the proposed business? Does the application document previous business training or management experience?

f. Loan repayment (10 points possible). Factors considered include: Does the application document the business's ability to service its debt?

g. Nontraditional (5 points possible). Factors considered include: Is the proposed business category one in which TSBs have traditionally been underrepresented as owners?

h. Extra points (up to 5 points). Extra credit points may be awarded to applicants meeting the requirements described in 261 Chapter 171 for the award of extra points (e.g., project is in a blighted, brownfield or distressed area).

a. Applicant credit score and outstanding liabilities.

b. Source(s) of the applicant's income.

c. Debt service coverage ratio.

55.3(10) *Negotiations of funds awarded.*

a. The department authority reserves the right to negotiate the amount, term, interest rate, and other conditions of the loan or grant prior to award. The amount, term, interest rate, and other conditions may be negotiated by a microloan service provider on behalf of the authority.

b. The department authority or microloan service provider may decline to award funds to a business if there is a negative credit report (e.g., bankruptcy, foreclosure, tax liens, or unpaid or past due child support).

55.3(11) *Award process decision.* Upon approval by the director If an application is approved by the review committee, the applicant business will receive an award letter which shall state the amount of award, conditions of the award, any security agreements, and the amount of monthly loan repayments. If an application is denied by the review committee, the applicant will receive a denial letter stating the reason for denial.

55.3(12) *Contract.* Following notification of award, contracts are prepared for execution between the business owner and IDED. After execution of the contract, the business owner may request

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

disbursement of funds, on the form prescribed by IDED. The time frame between final award date and disbursement of funds will generally be one to two months.

~~55.3(13) Deferral process.~~ Applications may be deferred only one time by the loan review committee. If all additional information requested is received within the three-week time frame, the application will be considered on the following month's agenda. If information is not received in a timely manner, second consideration will be delayed by 30 days. No application will be held for over 60 days. If the request for additional information is not answered, the application will be denied.

~~55.3(14)~~ 55.3(12) Reapplication. Upon denial by the director, an An applicant whose application is denied by the review committee cannot resubmit an application for funding under the targeted small business financial assistance the program for 90 days (3 months) from the date of IDED's the denial letter.

~~55.3(15) Default.~~ When a loan is in default for a period of 60 days, the IDED shall notify the office of the attorney general and request appropriate action.

~~55.3(16) Misuse of funds.~~ A person receiving funds under the TSB financial assistance loan program may be subject to criminal penalties under Iowa Code section 15A.3 if it is determined that the person knowingly made a false statement in writing to procure economic development assistance from the state.

~~55.3(17) Comprehensive management assistance and entrepreneurial development.~~

~~a. Limitation.~~ Comprehensive management assistance and entrepreneurial development is limited to businesses or individuals that have been awarded TSB funding.

~~b. Use of funds.~~ Assistance is available only in the form of technical or professional assistance. This may be accomplished by use of department staff or department-contracted professional services in assisting the business to develop:

- ~~1. Management skills;~~
- ~~2. Inventory controls;~~
- ~~3. Financial controls;~~
- ~~4. Marketing plans;~~
- ~~5. Personnel assistance; or~~
- ~~6. Other related business assistance.~~

~~c. Determination of assistance.~~ The administrator for the division of business development shall have the authority to approve contracts for management assistance. The maximum of case management assistance shall not exceed \$2,500 per business or individual.

ITEM 8. Renumber rule ~~261—55.7(15)~~ as ~~261—55.4(15)~~.

ITEM 9. Amend renumbered rule ~~261—55.4(15)~~ as follows:

261—55.4(15) Monitoring and reporting for loan, grant, and loan guarantee programs.

~~55.4(1) Monitoring.~~ IDED The authority or microloan service provider reserves the right to monitor the recipient's records to ensure compliance with the terms of the award. The department retains the authority to authority or microloan service provider may request information on the condition of the business at any time during the life of the loan to determine the status of the project. ~~IDED Authority or microloan service provider~~ staff will contact the ~~loan or grant~~ recipient ~~within 90 days of the award and~~ as frequently as conditions may warrant during the life of the loan ~~or grant~~.

~~55.4(2) Management assistance.~~ The ~~department~~ authority or microloan service provider may require a program recipient to consult with designated small business service providers for assistance with various aspects of the management and operation of the business.

55.4(3) If the authority or microloan service provider determines that a borrower is in default, the authority may seek recovery of the loan plus interest or other penalties, negotiate alternative payment schedules, suspend or discontinue collection efforts and take other action as the authority deems necessary.

55.4(4) A person receiving funds under the program may be subject to criminal penalties under Iowa Code section 15A.3 if it is determined that the person knowingly made a false statement in writing to procure economic development assistance from the state.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

ITEM 10. Rescind rule 261—55.5(15) and adopt the following new rule in lieu thereof:

261—55.5(15) Disbursement of funds. An approved applicant shall acknowledge and agree to the terms proposed by the authority or microloan service provider prior to disbursement of funds. Requests for disbursement and loan documents shall be in the form and content specified by the authority.

ITEM 11. Rescind and reserve rule **261—55.6(15)**.

ITEM 12. Amend **261—Chapter 55**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 15.102 and ~~45.247~~ 15.108 and 2013 Iowa Acts, House File 324.

ARC 5619C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

**Proposing rule making related to deaf and hard-of-hearing persons and
providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 73, “Managed Care,” Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Chapter 81, “Nursing Facilities,” Chapter 82, “Intermediate Care Facilities for Persons with an Intellectual Disability,” and Chapter 113, “Licensing and Regulation of Foster Family Homes,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code chapter 249A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 249A.

Purpose and Summary

The proposed rule making replaces the term “deaf” with “deaf or hard of hearing” or “deaf and hard of hearing” and replaces the term “hearing-impaired” with “deaf or hard of hearing” throughout the Department’s rules as a result of 2020 Iowa Acts, House File 2585. This rule making covers the Department chapters affected by the legislation.

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 rule 441—1.8(17A,217).

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 June 8, 2021. Comments should be directed to:

HUMAN SERVICES DEPARTMENT[441](cont'd)

Nancy Freudenberg
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: appeals@dhs.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 subrule 73.21(2) as follows:

73.21(2) Outreach to members with special needs. The managed care organization shall provide enhanced outreach to members with special needs including, but not limited to, persons with psychiatric disabilities, an intellectual disability or other cognitive impairments, illiterate persons, non-English-speaking persons, and persons with visual impairments or who are deaf or hard of hearing impairments.

ITEM 2. Amend paragraph **78.1(16)“g”** as follows:

g. The information in paragraphs “b” through “f” shall be effectively presented to a blind, deaf, hard-of-hearing, or otherwise ~~handicapped~~ disabled individual and an interpreter shall be provided when the individual to be sterilized does not understand the language used on the consent form or used by the person obtaining consent. The individual to be sterilized may have a witness of the individual’s choice present when consent is obtained.

ITEM 3. Amend subparagraph **78.9(9)“c”(4)** as follows:

(4) Preexisting mental or physical disabilities such as deaf, hard of hearing, blind, hemiplegic, activity-limiting disease, sickle cell anemia, uncontrolled hypertension, uncontrolled diabetes, mental illness, or intellectual disability.

ITEM 4. Amend subparagraph **78.19(1)“d”(3)** as follows:

(3) Aural rehabilitation, the instruction given by a qualified speech pathologist in speech reading or lip reading to patients who have suffered a hearing loss or become hard of hearing (input impairment), constitutes a covered service if reasonable and necessary to the patient’s illness or injury. Group treatment is not covered. Audiological services related to the use of a hearing aid are not reimbursable.

ITEM 5. Amend subparagraph **78.34(9)“b”(17)** as follows:

(17) Telecommunications device for the deaf or hard of hearing.

ITEM 6. Amend subparagraph **78.37(9)“b”(17)** as follows:

(17) Telecommunications device for the deaf or hard of hearing.

ITEM 7. Amend subparagraph **78.41(4)“b”(17)** as follows:

(17) Telecommunications device for the deaf or hard of hearing.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 8. Amend subparagraph **78.43(5)“b”(17)** as follows:

(17) Telecommunications device for the deaf or hard of hearing.

ITEM 9. Amend subparagraph **78.46(2)“b”(17)** as follows:

(17) Telecommunications device for the deaf or hard of hearing.

ITEM 10. Amend subparagraph **81.13(10)“b”(2)** as follows:

(2) By arranging for transportation to and from the office of a medical practitioner specializing in the treatment of vision or ~~hearing~~ hearing impairment or the deaf or hard of hearing or the office of a professional specializing in the provision of vision or hearing assistive devices.

ITEM 11. Amend subparagraph **82.2(7)“a”(2)** as follows:

(2) The facility shall not segregate clients solely on the basis of their physical disabilities. It shall integrate clients who have ambulation deficits or who are deaf, hard of hearing, blind, or have seizure disorders with others of comparable social and intellectual development.

ITEM 12. Amend paragraph **113.7(1)“a”** as follows:

a. At least one UL (Underwriter's Laboratory)-approved smoke detector. On floors that are used for sleeping, the smoke detector shall be in a location where sleeping areas can be alerted. For ~~hearing-impaired~~ deaf or hard-of-hearing children, the foster parent shall install a smoke detector in the child's bedroom that will use an alternative means of waking the child.

ARC 5623C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to individual placement and support and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” and Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 249A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4.

Purpose and Summary

These proposed amendments implement the Individual Placement and Support (IPS) Supported Employment (SE) evidence-based model within the Home- and Community-Based Services (HCBS) Habilitation Supported Employment services. These amendments establish the provider qualifications and implementation criteria applicable to the IPS SE providers. These amendments also implement the outcome-based reimbursement methodology for IPS SE.

IPS is a model of supported employment for people with serious mental illness. IPS SE helps people living with behavioral health conditions work at regular jobs of their choosing. Although variations of supported employment exist, IPS is the only evidence-based practice of supported employment.

IPS research (27 randomized controlled trials) show IPS is more effective than alternate vocational approaches regardless of a variety of client background factors (e.g., ethnicity, gender, socioeconomic status, barriers to employment).

IPS is research-based. Efficacy and effectiveness are empirically validated through a body of rigorous research, replicated in a wide range of settings by multiple investigators. IPS has standardized practice

HUMAN SERVICES DEPARTMENT[441](cont'd)

guidelines. Its critical components are well defined in a “manualized” service approach, measured via a 25-item Fidelity Scale.

IPS was developed by practitioners in the fields of employment and psychiatry, including Deborah R. Becker, M.Ed, CRC; Robert E. Drake, MD, Ph.D; and Gary Bond, Ph.D, at the Dartmouth Psychiatric Research Center of Dartmouth Medical School in the late 1980s. The Dartmouth Psychiatric Research Center is now called The IPS Center at Westat in Lebanon, New Hampshire. The IPS Center started the International Learning Collaborative (ILC) in 2001 with three sites. As of 2020, there are 24 U.S. states or territories and six countries in the ILC. Westat leads the dissemination, quality control, research, and support of IPS nationally and globally.

Iowa currently has two qualified IPS providers, which have participated in an IPS pilot project since 2018 with funding for training and technical assistance provided by their mental health disability service regions. These two IPS providers initially received reimbursement through their regions for IPS outcomes and then through the Iowa Medicaid State Plan HCBS Habilitation Services program through an exception to policy (ETP). At the same time Iowa Medicaid began reimbursing these two providers for the IPS Model through an ETP, Iowa Vocational Rehabilitation Services (IVRS) adopted an IPS funding model that reimburses equal to Iowa Medicaid.

Fiscal Impact

The purpose of these proposed amendments is to implement the IPS SE evidence-based model. These amendments establish the provider qualifications and implementation criteria applicable to the IPS evidence-based practice model for approved supported employment providers. The IME currently reimburses for the IPS SE Model through an ETP for two IPS certified providers. The current IPS model reimbursement methodology is consistent with how the Department reimburses for traditional SE services within the habilitation program. This proposed rule making will change the IPS payment structure to an outcome-based reimbursement methodology and is expected to have a higher per-recipient cost than the current method. The cost impact will be low initially since only current IPS recipients will be impacted, but is expected to grow over time as more providers elect to participate. The initial cost for only IPS recipients is estimated at \$33,330 total and \$12,652 for the state share, but the cost could grow to \$1,105,203 total and \$419,535 for the state share if all those currently receiving the traditional SE model transition to IPS.

The fiscal impact cannot be determined because the degree to which providers/members will transition to IPS is not known. Based on the above, the annual state share cost is expected to be between \$12,652 and \$419,535, and likely closer to the low end at initial implementation. Participation in the IPS SE model has led to improved mental health, physical health, and overall functioning for job seekers, which in turn leads to reduced expenditures related to hospitalizations, emergency room visits, prescription drugs, and other Medicaid covered services and supports. These potential savings are not incorporated in the above cost estimates.

Jobs Impact

Adoption of these amendments is likely to increase the number of individuals with serious mental illness who are able to obtain and maintain employment. The adoption of these amendments may also create additional certified employment specialists (CES) positions within the SE provider community.

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 441—1.8(17A,217).

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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 June 8, 2021. Comments should be directed to:

Nancy Freudenberg
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: appeals@dhs.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. Adopt the following **new** definitions of “Certified employment specialist,” “Individual placement and support,” “IPS 25-item supported employment fidelity scale,” “IPS implementation,” “IPS reviewer,” “IPS team,” “IPS trainer,” “Prospective IPS team” and “Provisionally approved IPS team” in subrule **77.25(1)**:

“*Certified employment specialist*” or “*CES*” means a person who has demonstrated a sufficient level of knowledge and skill to provide integrated employment support services to a variety of client populations and has earned a CES certification through a nationally recognized accrediting body.

“*Individual placement and support*” or “*IPS*” means the evidence-based practice of supported employment that is guided by IPS practice principles outlined by the IPS Employment Center at Westat, and as measured by its most recently published 25-item supported employment fidelity scale available online at ipsworks.org/wp-content/uploads/2017/08/ips-fidelity-manual-3rd-edition-2-4-16.pdf. The IPS practice principles are:

1. Focus on competitive employment: Agencies providing IPS services are committed to competitive employment as an attainable goal for people with behavioral health conditions seeking employment. Mainstream education and specialized training may enhance career paths.

2. Zero exclusion criteria based on client choice: People are not excluded on the basis of readiness, diagnoses, symptoms, substance use history, psychiatric hospitalizations, homelessness, level of disability, or legal system involvement.

3. Integration of rehabilitation and mental health services: IPS programs are closely integrated with mental health treatment teams.

4. Attention to worker preferences: Services are based on each person’s preferences and choices, rather than providers’ judgments.

5. Personalized benefits counseling: Employment specialists help people obtain personalized, understandable, and accurate information about their social security, Medicaid, and other government entitlements.

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6. Rapid job search: IPS programs use a rapid job search approach to help job seekers obtain jobs directly, rather than providing lengthy preemployment assessment, training, and counseling. If further education is part of their plan, IPS specialists assist in these activities as needed.

7. Systematic job development: Employment specialists systematically visit employers, who are selected based on job seeker preferences, to learn about their business needs and hiring preferences.

8. Time-unlimited and individualized support: Job supports are individualized and continue for as long as each worker wants and needs the support.

“IPS 25-item supported employment fidelity scale” means the fidelity scale published by the IPS Employment Center at Westat, resulting in scores of exemplary fidelity, good fidelity, fair fidelity, or not supported employment.

“IPS implementation” means the process advocated by the IPS Employment Center at Westat, which consists of the following phases:

1. Formation of IPS team steering group and one-day meeting with the IPS trainer and team members.

2. Completion of the IPS Readiness Assessment developed by the IPS Employment Center at Westat and individual review with the IPS trainer.

3. Completion of a one-day IPS kick-off team training with the IPS trainer and team members.

4. Participation in individual team training and monthly consultations as follows:

- Two-and-a-half-day individual team training with the IPS trainer and team members.
- Virtual training by the IPS Employment Center at Westat for at least three people per team.
- Leadership training for two people per team at the IPS Employment Center at Westat.
- Virtual monthly technical assistance for two hours per month per team.

5. Participation in the International Learning Collaborative, including:

● Participation in the International Learning Collaborative annual conference by two people per state.

● Virtual monthly technical assistance calls with the IPS Center mentor assigned to the team.

● Participation in the prescribed data tracking and management activities.

6. Completion of one baseline fidelity review per IPS team, with two IPS reviewers on site for two days per review.

7. Evaluation and development of next steps, with an on-site half-day meeting for the IPS trainer and the team.

“IPS reviewer” means a person who is qualified to complete fidelity reviews of IPS services and is one of the following:

1. A person who has provided IPS services or has supervised an IPS team in Iowa which has obtained a fidelity score of “good” or better, has completed the IPS Employment Center at Westat’s training to become an IPS reviewer, and has shadowed one or more IPS fidelity reviews;

2. An existing IPS reviewer from a state which is a member of the IPS International Learning Collaborative;

3. An IPS reviewer contracted directly from the IPS Employment Center at Westat;

4. A CES with a bachelor’s degree who has completed the IPS Employment Center at Westat’s training to become an IPS reviewer and has shadowed one or more IPS fidelity reviews.

“IPS team” means, at a minimum, an IPS employment specialist, a behavioral health specialist, Iowa Vocational Rehabilitation Services (IVRS) counselor, and a case manager or care coordinator.

“IPS trainer” means a person who is qualified to provide training and technical assistance for IPS implementation and is one of the following:

1. A person who has provided IPS services or has supervised an IPS team in Iowa which has obtained a fidelity score of “good” or better, and has completed the IPS Employment Center at Westat’s training to become an IPS trainer;

2. An existing IPS trainer from a state which is a member of the IPS International Learning Collaborative;

3. An IPS trainer contracted directly from the IPS Employment Center at Westat;

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4. A CES with a bachelor's degree who has completed the IPS Employment Center at Westat's training to become an IPS trainer.

"Prospective IPS team" means a group that is forming an IPS team to deliver IPS services but who has not yet completed implementation phase 4a.

"Provisionally approved IPS team" means a group that has (1) formed a team to deliver IPS services, (2) completed implementation phase 4a, and (3) begun to deliver IPS services.

ITEM 2. Adopt the following new paragraph **77.25(10)"d"**:

d. Providers qualified to offer IPS services shall meet the following requirements:

(1) Providers shall meet the provider qualifications listed in this subrule.

(2) Providers shall be accredited to provide supported employment and have provided supported employment for a minimum of two years.

(3) Providers shall demonstrate adequate funding has been secured for the training and technical assistance required for IPS implementation. Adequate funding is defined as at least the amount required for the start-up of one IPS team to complete all phases of IPS implementation. Evidence of such funding shall be made available to the department at the time of enrollment. Evidence may include a written funding agreement or other documentation from the funder.

(4) Providers shall receive training and technical assistance throughout IPS implementation from an IPS trainer. Evidence of the IPS team's agreement for such training and technical assistance shall be made available to the department at the time of enrollment.

(5) Prospective IPS teams shall complete IPS implementation as defined in subrule 77.25(1) and as outlined by the IPS Center at Westat.

(6) Prospective IPS teams are provisionally approved until the IPS team has obtained at least a "fair" score on a baseline fidelity review completed by IPS reviewers.

(7) Provisionally approved IPS teams shall complete IPS implementation phases 1 through 4a within 12 months of enrolling.

(8) Upon completion of IPS implementation phase 4a, provisionally approved IPS teams shall deliver IPS services according to the IPS outcomes model.

(9) Upon completion of IPS implementation phase 7, IPS teams are qualified to deliver IPS services, subject to the following:

1. IPS teams must obtain a baseline fidelity review score of "fair" or better within 14 months of completion of IPS implementation phase 1. The fidelity review must be completed by IPS reviewers. The fidelity reviews shall be provided to the department upon receipt by the IPS team.

2. In the event an IPS team fails to achieve a fidelity score of "fair" or better, the IPS team shall receive technical assistance to address areas recommended for improvement as identified in the fidelity review. If the subsequent fidelity review results in a score of less than "fair" fidelity, the IPS team will be provisionally approved for no more than 12 months or until the fidelity score again reaches "fair" fidelity, whichever date is earliest.

3. IPS teams who do not achieve a "fair" fidelity score within 12 months from being provisionally approved will no longer be qualified to deliver IPS services until they again reach the minimum "fair" fidelity score.

ITEM 3. Adopt the following new definition of "Certified employment specialist" in subrule **78.27(1)**:

"Certified employment specialist" or *"CES"* means a person who has demonstrated a sufficient level of knowledge and skill to provide integrated employment support services to a variety of client populations and has earned a CES certification through a nationally recognized accrediting body.

ITEM 4. Amend subrule **78.27(1)**, definition of "Individual placement and support," as follows:

"Individual placement and support" or *"IPS"* means an evidence-based supported employment model that helps people with mental illness to seek and obtain the evidence-based practice of supported employment that is guided by IPS practice principles outlined by the IPS Employment Center at Westat, and as measured by its most recently published 25-item supported employment fidelity scale available

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online at ipsworks.org/wp-content/uploads/2017/08/ips-fidelity-manual-3rd-edition_2-4-16.pdf. The IPS practice principles are:

1. Focus on competitive employment: Agencies providing IPS services are committed to competitive employment as an attainable goal for people with behavioral health conditions seeking employment. Mainstream education and specialized training may enhance career paths.
2. Zero exclusion criteria based on client choice: People are not excluded on the basis of readiness, diagnoses, symptoms, substance use history, psychiatric hospitalizations, homelessness, level of disability, or legal system involvement.
3. Integration of rehabilitation and mental health services: IPS programs are closely integrated with mental health treatment teams.
4. Attention to worker preferences: Services are based on each person's preferences and choices, rather than providers' judgments.
5. Personalized benefits counseling: Employment specialists help people obtain personalized, understandable, and accurate information about their social security, Medicaid, and other government entitlements.
6. Rapid job search: IPS programs use a rapid job search approach to help job seekers obtain jobs directly, rather than providing lengthy preemployment assessment, training, and counseling. If further education is part of their plan, IPS specialists assist in these activities as needed.
7. Systematic job development: Employment specialists systematically visit employers, who are selected based on job seeker preferences, to learn about their business needs and hiring preferences.
8. Time-unlimited and individualized support: Job supports are individualized and continue for as long as each worker wants and needs the support.

ITEM 5. Reletter paragraphs 78.27(10)“d” to “f” as 78.27(10)“e” to “g.”

ITEM 6. Adopt the following **new** paragraph 78.27(10)“d”:

d. Individual placement and support (IPS).

(1) IPS shall include the following activities, which shall be described and documented in the member's employment plan:

1. Development of the career profile, including previous work experience, goals, preferences, strengths, barriers, skills, disclosure preferences, career advancement, education and plan for graduation.
2. Integration of IPS team members and the behavioral health team, including routine staffing meetings regarding IPS clients.
3. Addressing barriers to employment, which may be actual or perceived. Support may include addressing justice system involvement, a lack of work history, limited housing, child care, and transportation.
4. Rapid job search and systematic job development. CESs help members seek jobs directly, and do not provide extensive preemployment assessment and training or intermediate work experiences. The job process begins within 30 days of starting IPS services. This rapid job search is supported by CESs developing relationships with employers through multiple face-to-face meetings. CESs take time to learn about the employers' needs and the work environment while gathering information about job opportunities that might be a good fit for individuals they are working with.
5. Disclosure counseling, to assist the member in making an informed decision on disclosure of a disability to a prospective or current employer.
6. Identification and implementation of job accommodations and assistive technology supports.
7. Ongoing benefits counseling. The member must receive information on available work incentive programs, or referral to professional benefits counselors for a personalized work incentives plan for any state or federal entitlement.
8. Time-unlimited follow-along supports. These supports are planned for early in the employment process, are personalized, and follow the member for as long as the member needs support. The focus is supporting the member in becoming as independent as possible and involving family members, co-workers, and other natural supports. These supports can be provided on or off the job site and focus on the continued acquisition and development of skills needed to maintain employment.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(2) Units of service. Reimbursement is made for each outcome achieved for the member participating in the IPS supported employment model. Outcomes are as follows:

1. Outcome #1: Completed employment plan.
2. Outcome #2: First day of successful job placement.
3. Outcome #3: 45 days successful job retention.
4. Outcome #4: 90 days successful job retention.

ITEM 7. Amend subrule **79.1(2)**, provider category of “HCBS waiver service providers,” paragraph 19, as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
19. Supported employment:		
Individual placement and support	Fee schedule	Fee schedule in effect 7/1/21.
Individual supported employment	Fee schedule	Fee schedule in effect 7/1/16. Total monthly cost for all supported employment services not to exceed \$3,059.29 per month.
Long-term job coaching	Fee schedule	Fee schedule in effect 7/1/16. Total monthly cost for all supported employment services not to exceed \$3,059.29 per month.
Small-group supported employment (2 to 8 individuals)	Fee schedule	Fee schedule in effect 7/1/16. Maximum 160 units per week. Total monthly cost for all supported employment services not to exceed \$3,059.29 per month.

ARC 5637C

**PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD,
IOWA COMPREHENSIVE[591]**

Notice of Intended Action

Proposing rule making related to waivers and providing an opportunity for public comment

The Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby proposes to amend Chapter 16, “Waivers and Variances,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 455G.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 17A.9A.

Purpose and Summary

The purpose of this proposed rule making is to update the Board’s administrative rules in accordance with changes included in 2020 Iowa Acts, House File 2389, section 10. The changes call for removal of the word “variance” when the word is used in relation to “waiver.”

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 591—Chapter 16.

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 Board no later than 4:30 p.m. on June 8, 2021. Comments should be directed to:

James Gastineau
Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board
Wallace State Office Building
502 East 9th Street, Fifth Floor
Des Moines, Iowa 50319
Phone: 515.725.8450
Email: james.gastineau@dnr.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 **591—Chapter 16**, title, as follows:

WAIVERS AND VARIANCES

ITEM 2. Amend rule 591—16.1(17A) as follows:

591—16.1(17A) Definition. The term “waiver” as used in this chapter means a described waiver ~~or variance~~ from a specific rule or set of rules of this board applicable only to an identified person on the basis of the particular circumstances of that person.

ITEM 3. Amend rule 591—16.8(17A) as follows:

591—16.8(17A) Contents of petition. A petition for a waiver shall include the following information where applicable and known to the requester:

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA
COMPREHENSIVE[591](cont'd)

1. to 4. No change.
5. A history of any prior contacts between the petitioner and the board relating to the activity affected by the proposed waiver ~~or variance~~, including any notices of violation, contested case hearings, or investigative reports relating to the activity within the last five years.
6. No change.
7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the granting of a waiver ~~or variance~~.
8. to 11. No change.

ARC 5633C

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Proposing rule making related to radiation therapy standards and providing an opportunity for public comment

The Public Health Department hereby proposes to amend Chapter 203, “Standards for Certificate of Need Review,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 135.62(2)“e”(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 135.61(18)“m”(4) and 135.61(18)“g” to “j.”

Purpose and Summary

Rule 641—203.3(135) sets out radiation therapy standards for the purpose of writing and reviewing Certificate of Need applications for the initiation of external beam radiation therapy services or the purchase of associated equipment (e.g., a linear accelerator). The rules related to radiation therapy were originally promulgated in the late 1970s when the Certificate of Need program was implemented in Iowa. Based on research conducted on the history of rule 641—203.3(135), this rule has not been updated since it was written. The rule is outdated, and parts no longer apply in review of applications. The proposed amendments to the rule eliminate those portions that are completely outdated and are no longer needed or used, and update the remaining portions to modern radiation therapy standards.

After consultation with and approval from the State Health Facilities Council, a stakeholder group of individuals was created representing various health systems—University of Iowa Hospitals and Clinics, MercyOne, UnityPoint Health, Methodist Jennie Edmundson Hospital—and radiation therapy-related occupations including radiation physicists, health physicists, radiation oncologist (retired), and others involved in radiation oncology services. Additional participants included two attorneys who represent health facilities on Certificate of Need-related issues, a hospital president, the director of operations for the Iowa Cancer Registry, and the Iowa Hospital Association. The stakeholder group had several meetings from February 2020 through October 2020 to review the contents of the rule and propose changes/updates as needed. The State Health Facilities Council, pursuant to Iowa Code section 135.62(2)“e”(5), has the duty to review and approve, prior to promulgation, all rules adopted by the Department under this subchapter and is also fulfilling this role through this rule-making process.

Fiscal Impact

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

PUBLIC HEALTH DEPARTMENT[641](cont'd)

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 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 June 8, 2021. Comments should be directed to:

Rebecca Swift
Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: rebecca.swift@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 action is proposed:

Amend rule 641—203.3(135) as follows:

641—203.3(135) Radiation therapy ~~or radiotherapy~~ standards.**203.3(1) Purpose and scope.**

a. These standards ~~are measures of some of those~~ provide guidelines to assist the council in applying those criteria 1 (a to q) and 3 found in Iowa Code section 135.64 ~~sections 135.64(1) “a” to “r” and 135.64(3).~~ Criteria which are measured by a standard are cited in parentheses following each standard.

b. Certificate of need applications which are to be evaluated against these radiation therapy standards include:

(1) Proposals to commence or expand the kind or capacity of megavoltage radiation therapy services.

(2) Proposals to replace a megavoltage radiation therapy unit.

(3) Any other applications which relate to megavoltage radiation therapy.

203.3(2) Definitions.

a. — Radiation modality. The method of applying ionizing radiation in the treatment of patients with malignant disease. Externally applied modes.

Superficial X-ray therapy. The use of a conventional X-ray machine, which generates X-rays of up to 150 kilovolts (150 kv), to treat superficial lesions, such as skin cancer.

Orthovoltage X-ray therapy. The use of a conventional X-ray machine which generates X-rays between 150 kv up to and including 800 kvs. (These X-rays are of insufficient energy to avoid preferential bone absorption or to be “skin sparing”.)

Megavoltage therapy. The use of ionizing radiation in excess of one million electron volts. Energies above one million electron volts cause considerably less skin damage, increase depth dose markedly, and result in much less scatter from the therapeutic beam. Megavoltage machines are classified as follows:

1. — *Particle accelerators.* These machines use a supply of electrons, which are accelerated into high energy beams. These beams are either caused to strike a target resulting in high energy X-ray production, or are used themselves as the treatment beam. Particle accelerators generate from 4 million up to as many as 45 million electron volts. Most common particle accelerators are the linear accelerator and the betatron.

2. — *Isotope sources (gamma ray teletherapy units).*

Cobalt 60 units — emit gamma rays of approximately 1.2 million electron volts.

Cesium teletherapy units — utilize gamma rays of approximately 650 kv.

b. — Megavoltage therapy unit. A piece of megavoltage therapeutic radiologic equipment.

c. — Radiation therapy facility. A piece of megavoltage therapeutic radiologic equipment, the accompanying support equipment, and the physical space which houses the equipment.

d. — Treatment (procedure). All those radiation fields applied in a single patient visit. Interstitial/intracavitary treatment counts as one visit.

e. — Dosimetrist. A technologist who calculates, verifies, and develops maps for the dose distribution of radiation within the patient. The technologist is an essential member of the treatment planning team.

f. — Radiation therapist (radiation oncologist). A physician who is board certified or board eligible in therapeutic radiology or in general radiology and who devotes full time to the practice of radiation therapy.

g. — Radiation therapy technologist. An individual registered or eligible for registration by the American Board of Radiologic Technologists, or its equivalent, in radiation therapy.

h. — Transverse tomograms. A special diagnostic X-ray procedure to determine the depth of the tumors inside the body.

i. — Conjoint radiation oncology center (cancer center). A multi-institution, multidisciplinary network to provide radiation therapy for cancer patients. Each institution has an equal voice in decision making and direction of the work of the center. Integration of patient care management, common utilization of personnel and equipment, and a single system of records between center institutions assures optimal care regardless of entry portal. A common cancer registry of all patients treated by center hospitals is maintained.

j. — Simulator. Used to reproduce the geometry of the external beam treatment technique, and consists of an isocentrically mounted X-ray source with X-rays passing per a collimation system to reproduce the therapy beam.

k. — New patient. A patient receiving treatment for the first time at a given radiation therapy facility.

“Conjoint radiation oncology center” or “cancer center” means a multi-institution, multidisciplinary network to provide radiation therapy for cancer patients. Integration of patient care management, common utilization of personnel and equipment, and a single system of records between center institutions ensures optimal care regardless of entry portal.

“Dosimetrist” means a staff member who calculates, verifies, and develops treatment plans for the radiation dose distributions that will be delivered to patients. The dosimetrist is an essential member of the treatment planning team and works closely with radiation oncologists and radiation physicists.

“Megavoltage therapy” means the use of ionizing radiation in excess of one million electron volts. Energies above one million electron volts cause considerably less skin damage, increase depth dose

PUBLIC HEALTH DEPARTMENT[641](cont'd)

markedly, and result in much less scatter from the therapeutic beam. Megavoltage machines are classified as follows:

1. Electron accelerator. A machine such as a linear accelerator that uses a supply of electrons, which are accelerated into high energy beams. These electron beams are either caused to strike a target resulting in high energy X-ray production or are used themselves as the treatment beam. Electron accelerators generate over one million electron volts.

2. Heavy Particle Accelerator. A machine such as a cyclotron which produces beams of high energy particles such as protons, neutrons, pions, carbon ions, or other heavy ions with masses greater than that of an electron.

3. Isotope sources (gamma ray teletherapy units).

Cobalt 60 units—emit gamma rays of approximately 1.2 million electron volts.

“Megavoltage therapy unit” means a piece of megavoltage therapeutic radiologic equipment that provides megavoltage therapy.

“New occurrence” means a course of treatment for a new occurrence on a given patient at a given radiation therapy facility. First-time radiation therapy at a new facility is based on each round of treatment.

“Radiation modality” means the method of applying ionizing radiation in the treatment of patients with malignant disease using megavoltage external beam equipment.

“Radiation oncologist” means a physician authorized user trained in accordance with 641—subrule 41.3(5).

“Radiation therapy facility” or “facility” means the physical space which houses a megavoltage therapy unit and accompanying support equipment.

“Radiation therapy physicist” means an individual who works closely with radiation oncologists and is responsible for the safe and accurate delivery of radiation to patients. A radiation therapy physicist conducts quality control programs for the equipment and procedures, as well as calibrating the equipment. A radiation therapy physicist shall practice in accordance with 641—subrule 41.3(6).

“Radiation therapy technologist” means an individual who possesses an Iowa permit to practice as a radiation therapist in accordance with rule 641—42.7(136C).

“Service area” means the county in which the facility is located and any other counties from which the applicant expects to draw patients with a cancer diagnosis who are in need of radiation therapy treatment.

“Simulation” means the precise mock-up of a patient treatment with an apparatus that uses planar X-rays, magnetic resonance imaging device, or computed tomography scanner, which is used in reproducing the two-dimensional or three-dimensional internal or external geometry to the patient, for use in treatment planning and delivery.

“Superficial X-ray therapy” means the use of a conventional X-ray machine, which generates X-rays of up to 150 kilovolts (150 kv), to treat superficial lesions, such as skin cancer.

“Treatment” means radiation fields applied in a single patient visit fraction or delivery session.

203.3(3) Availability.

a. Minimum utilization. (Sections 135.64(1) “c,” “g,” “h”)

(1) ~~A megavoltage radiation therapy unit which is of relatively low energy, including small linear accelerators (4-10 MEVs), and cobalt units and cesium teletherapy units, should serve a population of at least 200,000 persons, and should treat at least 300 250 new patients occurrences annually within three years after initiation of the service.~~

(2) ~~A megavoltage radiation therapy unit which is of medium energy, including linear accelerators of 12-20 MEVs should only be placed in facilities which are currently treating with megavoltage radiation therapy a minimum of 500 new patients annually.~~

(3) ~~A megavoltage radiation therapy unit which is of high energy, including those linear accelerators of greater than 20 MEVs, should only be placed in facilities which are currently treating at least 750 new patients annually with megavoltage radiation therapy.~~

PUBLIC HEALTH DEPARTMENT[641](cont'd)

~~(4) (2) To determine the~~ The expected number of new patients occurrences needing megavoltage radiation therapy annually in a service area, ~~the following formula shall be applied~~ should be calculated as follows:

1. Multiply the service area population times .00304 0.00582 (3.04/1,000 5.82/1,000 population was the mean cancer incidence rate in 1976 2017 in Iowa as filed by the Surveillance, Epidemiology, and End Results (SEER) Program—SEER). A service area population is determined by each facility's catchment area as reported in the most recent patient origin study of the Iowa department of public health.

2. Multiply this product times .5 (50 percent of all new cancer patients require occurrences receive radiation therapy).

(3) The expected volume of utilization sufficient to support the need for a new megavoltage therapy unit should be calculated as follows: each unit shall provide a minimum of 5,000 treatments per annum. Megavoltage treatments should be projected by multiplying the number of projected new occurrences needing megavoltage therapy times 20, which will result in no fewer than 5,000 treatments per annum.

(4) Applicants shall account for other providers of radiation therapy in the service area including, but not limited to, factors such as technological capability and quality. Applicants shall address in their application other providers and the impact on those providers in the service area and compare technological capability and quality.

(5) Applicants should provide a map of the expected service area.

(5) (6) Institutions which form a conjoint oncology center should have at least 500 new patients occurrences annually who are amenable to megavoltage therapy.

b. Expansions. (Sections 135.64(1) "c," "d," "e," "g," "h")

(1) There should be no additional megavoltage units of comparable size approved unless each existing megavoltage unit of that size within 90 minutes travel time of the proposed unit is performing at least 6,000 treatments per annum.

(2) Proposed new small megavoltage units within 90 minutes travel time of other small units must identify an unserved population base of 200,000 apart from that 200,000 currently served by institutions in the service area.

(3) Megavoltage treatments per annum should be projected by multiplying the number of projected new patients needing megavoltage therapy times 20.

(4) There should be no additional megavoltage radiation therapy units of comparable size within 90 minutes surface travel time of existing units which would reduce the projected volume of treatments per annum in existing units of comparable size to less than 6,000 treatments per annum and which would result in less than 300 projected new patients per annum for that existing unit. The applicant will attempt and demonstrate that an attempt was made to determine with the cooperation of existing providers whether such a reduction would occur.

(5) New conjoint centers should be justified if more than 3,000 new patients are currently being treated by radiation therapy in an existing center.

c. Simulator availability. A simulator which can accurately reproduce the geometry of each external beam technique should be available for every two megavoltage units in should be available within a radiation oncology department.

203.3(4) Costs.

a. Financial feasibility. (Sections 135.64(1) "f," "i," "p")

(1) Megavoltage radiation therapy units should be depreciated over a period no shorter than that indicated by "Estimated Useful Lives of Depreciable Hospital Assets" published by the American Hospital Association. Associated remodeling should be depreciated according to generally accepted accounting principles and over a period no shorter than indicated in the above-named publication.

(2) Recognizing anticipated volume rate structure, and third party reimbursement, the applicant should present a breakeven analysis for the service. If the analysis shows breakeven will fail to occur after three years of the service's initiation, the applicant should demonstrate why operating a service with the revenues below costs appears desirable.

(3) Charges will be based on actual or projected yearly treatments, but not less than 6,000 treatments.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

~~b. — Cost effectiveness. (Section 135.64(1) “e”) Costs per unit of service should not exceed 10 percent of the state average unit cost for the service. If costs exceed 10 percent of that average the applicant shall demonstrate how the proposal represents the most cost effective way to deliver the service and explain why the project was chosen instead of alternative ways of meeting the need for the service.~~

203.3(5) 203.3(4) Accessibility. (Sections Iowa Code section 135.64(1) “c,” “d”)

~~a. — Travel distance shall be within 90 minutes auto travel time for the projected service area population.~~

~~b. Radiation therapy services should be provided regardless of ability to pay, in consideration of those programs available in the state which serve the medically indigent.~~

203.3(6) 203.3(5) Quality. (Sections Iowa Code section 135.64(1) “i,” “k”)

~~a. Minimum staffing requirements for radiation therapy facilities:~~

~~(1) Each facility shall have the services of at least one radiation therapists which should be staffed at a level of one therapist per 400 new cancer patients needing treatment oncologist.~~

~~(2) Each facility shall have the services of at least one radiation physieists which should be staffed at a level of one physieist per 800 new patients therapy physicist.~~

~~(3) Each facility shall have the services of radiation therapy technologists which should be staffed at a level of two technologists per megavoltage unit.~~

~~(4) Each facility should have the services of nurses.~~

~~(5) Each facility should have the services of dosimetrists which should be staffed at a level of one dosimetrist per 500 new patients at least one dosimetrist.~~

~~(6) Each facility should have the services of one radiation therapist or radiation technologist competent to operate a CT simulator.~~

~~b. — Reserved.~~

~~c. b. Each conjoint center shall have at least two cancer biologists available.~~

~~d. c. Each conjoint center shall have one radiation technologist available for each simulator.~~

~~e. — Replacement or development of orthovoltage treatment should not occur.~~

~~f. d. The long-range plans for radiation therapy services shall be submitted to the Iowa department of public health.~~

~~g. e. Multidisciplinary tumor boards should be established in all institutions housing megavoltage or orthovoltage machines.~~

~~h. f. A source of continuing education should exist within each conjoint center to reach participating community referral hospitals and physicians.~~

~~i. g. Each conjoint center should have a unified training program in radiation therapy for radiation therapists oncologists.~~

~~j. h. Each radiation therapy facility should offer psychosocial counseling services and nutritional counseling.~~

203.3(7) 203.3(6) Continuity. (Sections Iowa Code section 135.64(1) “g,” “h,” “i,” “k”)

~~a. The applicant should demonstrate that an attempt was made to solicit letters and establish referral agreements from area hospitals and physicians to indicate their willingness to participate in a cooperative endeavor to refer to the proposed service.~~

~~b. — A minimum of 75 percent of all radiation therapy procedures should be projected to be done on an outpatient basis. If the applicant believes that 75 percent is inappropriate for its facility, then documentation which shows how its facility is different and why it sufficiently justifies not meeting this 75 percent outpatient rate, shall be provided.~~

203.3(8) Acceptability. (Section 135.64(1) “e”) Facilities with radiation therapy services shall document a willingness to observe and respect the rights of patients as stated in the “Patients Bill of Rights” adopted by the American Hospital Association February 6, 1973, and reprinted in 1975. Provisions for counseling services shall be available.

REVENUE DEPARTMENT

Notice of Electric and Natural Gas Delivery Tax Rate Changes

Pursuant to the authority of Iowa Code sections 437A.4 and 437A.5, the Director of Revenue hereby gives notice of the changes to the electric and natural gas delivery tax rates. These rates will be used in conjunction with the number of kilowatt hours of electricity and the number of therms of natural gas delivered to consumers in calendar year 2020 by each taxpayer, for replacement taxes payable in the 2021-2022 fiscal year.

2020 ELECTRIC DELIVERY TAX RATES BY SERVICE AREA RATE CHANGES ONLY

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3209	Atlantic Municipal Utilities	0.00015586
3213	Bellevue Municipal Utilities	0.00007888
3236	Coggon Municipal Light Plant	0.00004374
3230	City of Fredericksburg	0.00000420
3258	Grand Junction Municipal Utilities	0.00000526
3263	Harlan Municipal Utilities	0.00139596
3274	Lamoni Municipal Utilities	0.00140260
3109	Lenox Mun. Light & Power	0.00058485
3112	Manning Municipal Electric	0.00034115
3309	Panora Municipal Electric Utility	0.00006300

CO. #	IOUs—ELECTRIC	DELIVERY TAX RATE
7206	Amana Society Service Co.	0.00060803

CO. #	RECs	DELIVERY TAX RATE
4319	Access Energy Coop (fka SE Power Coop)	0.00047950
4219	Calhoun County Electric Coop	0.00109354
4220	Cass Electric Coop	0.00004596
4287	Consumers Energy	0.00134019
4250	Farmers Electric Coop-Greenfield	0.00258206
4254	Freeborn-Mower Cooperative	0.00161385
4255	Glidden REC (Raccoon Valley)	0.00075399
4259	Grundy County REC	0.00068781
4265	Harrison County REC	0.00064288
4273	Iowa Lakes Electric Coop	0.00068661
4313	Pleasant Hill Community Line	0.00023188
4333	Tri-County Electric Coop (MiEnergy)	0.00092430
4353	Wright County REC (Prairie Energy)	0.00039701

REVENUE DEPARTMENT(cont'd)

**2020 NATURAL GAS DELIVERY TAX RATES BY SERVICE AREA
RATE CHANGES ONLY**

CO. #	MUNICIPAL GAS	DELIVERY TAX RATE
5241	Corning Municipal Utilities	0.00000765
5344	West Bend Municipal Utilities	0.00002714
5283	Manning Municipal Natural Gas	0.00011619
5215	Brighton Gas	0.00701487
5281	Manilla Municipal Gas	0.00045297
5238	Coon Rapids Municipal Gas	0.00004455
5306	Osage Municipal Gas	0.00002468
5275	Lamoni Municipal Gas	0.00097388
5349	Winfield Municipal Gas	0.00079637

CO. #	IOUs—GAS	DELIVERY TAX RATE
5289	MidAmerican Energy Gas	0.00641133
5335	United Cities Gas	0.01230380

ARC 5636C

REVENUE DEPARTMENT[701]

Notice of Intended Action

**Proposing rule making related to school tuition organization 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,” and Chapter 52, “Filing Returns, Payment of Tax, Penalty and Interest, 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 422.11S; 2020 Iowa Acts, House File 2641; 2019 Iowa Acts, House File 779; and 2018 Iowa Acts, Senate File 2417.

Purpose and Summary

This proposed rule making is primarily intended to implement statutory changes to the total school tuition organization tax credits that may be authorized each calendar year. 2020 Iowa Acts, House File 2641, provided a formula for an automatic increase to the total approved tax credits in future tax years if a certain threshold is met. This proposed rule making provides a process for the Department to administer this formula. The proposed rule making also implements the provision in 2020 Iowa Acts, House File 2641, which eliminated the cap on the percentage of total tax credits that could be approved each year.

REVENUE DEPARTMENT[701](cont'd)

for a corporation. Previously, not more than 25 percent of the total annual tax credits could be allocated to corporate taxpayers.

This proposed rule making also updates the rules to reflect recent legislative changes to the 2020 and 2021 tax credit caps and certain administrative terms, including the definition of “eligible student.” Finally, this proposed rule making clarifies that a taxpayer must take the credit in the tax year in which the contribution is made.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa beyond 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 June 8, 2021. Comments should be directed to:

Michael Mertens
Iowa Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.587.0458
Email: michael.mertens@iowa.gov

Public Hearing

If requested, a public hearing will be held on June 8, 2021, via video/conference call from 10 to 11 a.m. Persons who wish to participate in the video/conference call should contact Michael Mertens before 4:30 p.m. on June 7, 2021, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

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 701—42.32(422) as follows:

701—42.32(422) School tuition organization tax credit. ~~Effective for the tax year beginning on or after January 1, 2006, but beginning before January 1, 2007, a school tuition organization tax credit~~

REVENUE DEPARTMENT[701](cont'd)

~~is available which is equal to 65 percent of the amount of the voluntary cash contributions made by a taxpayer to a school tuition organization. For tax years beginning on or after January 1, 2007, the A~~ school tuition organization tax credit is available which is equal to 65 percent of the amount of voluntary cash or noncash contributions made by a taxpayer to a school tuition organization. There are numerous federal revenue regulations, rulings, court cases and other provisions relating to the determination of the value of a noncash contribution, and these are equally applicable to the determination of the amount of a school tuition organization tax credit ~~for tax years beginning on or after January 1, 2007.~~

42.32(1) Definitions. The following definitions are applicable to this rule:

“Certified enrollment” means the enrollment at schools served by school tuition organizations as of October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday, of the appropriate year.

“Contribution” means a voluntary cash or noncash contribution to a school tuition organization that is not used for the direct benefit of any dependent of the taxpayer or any other student designated by the taxpayer.

“Eligible student” means a student residing in Iowa who is a member of a household whose total annual income during the calendar year prior to the school year in which the student receives a tuition grant from a school tuition organization does not exceed an amount equal to ~~three~~ four times the most recently published federal poverty guidelines in the Federal Register by the United States Department of Health and Human Services.

“Qualified school” means a nonpublic elementary or secondary school in Iowa which is accredited under Iowa Code section 256.11, including a prekindergarten program for students who are five years of age by September 15 of the appropriate year, and adheres to the provisions of the federal Civil Rights Act of 1964 and Iowa Code chapter 216, and which is represented by only one school tuition organization.

“School tuition organization” means a charitable organization in Iowa that is exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code and that does all of the following:

1. to 5. No change.

“Tuition grant” means a grant to a student to cover all or part of the student’s tuition at a qualified school.

42.32(2) No change.

42.32(3) Participation forms. Each qualified school that is served by a school tuition organization must annually submit a participation form to the department by November 1. The following information must be provided with this participation form:

a. The certified enrollment of the qualified school as of October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday.

b. The name of the school tuition organization that represents the qualified school.

~~For the tax year beginning in the 2006 calendar year only, each qualified school served by a school tuition organization must submit to the department a participation form postmarked on or before August 1, 2006, which provides the certified enrollment as of the third Friday of September 2005, along with the name of the school tuition organization that represents the qualified school.~~

42.32(4) Authorization to issue tax credit certificates.

a. For calendar years 2006 through 2021. By December 1 of each year, the department will authorize school tuition organizations to issue tax credit certificates for the following tax calendar year. ~~For the tax year beginning in the 2006 calendar year only, the department, by September 1, 2006, will authorize school tuition organizations to issue tax credit certificates for the 2006 calendar year only.~~ The total amount of tax credit certificates that may be authorized is:

- (1) \$2.5 million for the 2006 calendar year,
- (2) \$5 million for the 2007 calendar year,
- (3) \$7.5 million for the 2008 through 2011 calendar years,
- (4) \$8.75 million for the 2012 and 2013 calendar years, ~~and~~
- (5) \$12 million for the 2014 and subsequent through 2018 calendar years~~;~~,
- (6) \$13 million for the 2019 calendar year, and
- (7) \$15 million for the 2020 and 2021 calendar years.

REVENUE DEPARTMENT[701](cont'd)

b. For calendar years 2022 and later. For 2022 and subsequent calendar years, the total authorized tax credits for a calendar year are computed according to a formula. By December 1 of each year, the department will make an initial authorization of tax credit certificates by school tuition organizations for the following calendar year. By February 1 following the initial authorization for a calendar year, the department will make a supplemental authorization of tax credit certificates by school tuition organizations for the same calendar year, if such supplemental authorization is available.

(1) Initial authorization. The initial authorization made by December 1 of each calendar year for the following calendar year will equal the sum of the previous calendar year's initial authorization and the supplemental authorization for that same calendar year, if any. The initial authorization for calendar year 2022 is \$15 million.

(2) Supplemental authorization. If the amount of tax credits issued by school tuition organizations for the preceding calendar year is equal to or greater than 90 percent of the initial authorization for the current calendar year, the department will, by February 1 following the initial authorization, make a supplemental authorization of tax credits equal to 10 percent of the initial authorization for the same calendar year. If the amount of tax credits issued by school tuition organizations for the preceding calendar year is less than 90 percent of the initial authorization for the current calendar year, the department will not make a supplemental authorization of tax credits for the same calendar year.

EXAMPLE 1: For the 2022 calendar year, the department will make an initial authorization of \$15 million in tax credit certificates by school tuition organizations by December 1, 2021. If at the close of the 2021 calendar year it is determined that the amount of tax credits issued by school tuition organizations in 2021 was at least \$13,500,000 (90 percent of \$15 million, the initial authorization for 2022), then the department will, by February 1, 2022, make a supplemental authorization of \$1.5 million ($\$15 \text{ million} \times 10\%$) in tax credit certificates by school tuition organizations for the 2022 calendar year. Therefore, the total authorized tax credits for 2022 will be \$16,500,000 ($\$15 \text{ million} + \1.5 million).

EXAMPLE 2: Assume the same facts as Example 1, which means the initial authorization of tax credits for calendar year 2023 is \$16,500,000. In determining the total authorized tax credits for the 2023 calendar year, if the amount of tax credits issued by school tuition organizations in 2022 was \$14,685,000 (89% of \$16,500,000, the initial authorization for 2023), then there will be no supplemental authorization of tax credits for 2023 and the total authorized tax credits for 2023 will remain \$16,500,000.

(3) Maximum total authorization. The total authorized tax credits for a calendar year cannot exceed \$20 million.

EXAMPLE 3: Assume that the total authorized tax credits for the 2025 calendar year is \$19,965,000. Therefore, the initial authorization for the 2026 calendar year will be \$19,965,000. If the amount of tax credits issued by school tuition organizations in 2025 is \$17,968,500 (90 percent of \$19,965,000, the initial authorization for 2026), the school tuition organizations would be eligible for a supplemental authorization of \$1,996,600 ($\$19,965,000 \times 10\%$), but that supplemental authorization would cause the total authorized tax credits for calendar year 2026 to exceed \$20 million. Therefore, the department will, by February 1, 2026, make a supplemental authorization of \$35,000 in tax credit certificates by school tuition organizations for the 2026 calendar year and the total authorized tax credits for 2026 will be \$20 million ($\$19,965,000 + \$35,000$).

b. c. Formula for determining tax credit. The amount of authorized tax credit certificates for each school tuition organization is determined by dividing the total amount of tax credit available by the total certified enrollment of all qualified participating schools. This result, which is the per-student tax credit, is then multiplied by the certified enrollment of each school tuition organization to determine the tax credit authorized to each school tuition organization.

EXAMPLE 4: For determining the authorized tax credits for the 2008 calendar year, if the certified enrollment of each qualified school in Iowa, as provided to the department by November 1, 2007, was 37,500, the per-student tax credit would be \$200 ($\$7.5 \text{ million} \div 37,500$). If a school tuition organization located in Scott County represents four qualified schools with a certified enrollment of 1,400 students, the school tuition organization would be authorized to issue \$280,000 ($\$200 \times 1,400$) of tax credit certificates for the 2008 calendar year. The department would notify this school tuition organization by December 1, 2007, of the authorization to issue \$280,000 of tax credit certificates

REVENUE DEPARTMENT[701](cont'd)

for the 2008 calendar year. This authorization would allow the school tuition organization to solicit contributions totaling \$430,769 (\$280,000 ~~divided by~~ \div 65%) during the 2008 calendar year which would be eligible for the tax credit.

EXAMPLE 5: For determining the authorized tax credits for the 2022 calendar year, if the certified enrollment of each qualified school in Iowa, as provided to the department by November 1, 2021, was 37,500, the per-student tax credit for the initial authorization would be \$400 (\$15 million \div 37,500). If a school tuition organization located in Scott County represents four qualified schools with a certified enrollment of 1,400 students, the school tuition organization would receive an initial authorization to issue \$560,000 ($\$400 \times 1,400$) of tax credit certificates for the 2022 calendar year. The department would notify this school tuition organization by December 1, 2021, of the initial authorization to issue \$560,000 of tax credit certificates for the 2022 calendar year. This initial authorization would allow the school tuition organization to solicit contributions totaling \$861,538 ($\$560,000 \div 65\%$) during the 2022 calendar year which would be eligible for the tax credit.

Assuming that the school tuition organizations later qualify for a \$1.5 million supplemental authorization for the 2022 calendar year as described in Example 1 above, the per-student tax credit for the supplemental authorization would be \$40 (\$1.5 million \div 37,500). The school tuition organization in Scott County representing four qualified schools with a certified enrollment of 1,400 students would receive a supplemental authorization to issue an additional \$56,000 ($\$40 \times 1,400$) of tax credit certificates for the 2022 calendar year. The department would notify this school tuition organization by February 1, 2022, of the supplemental authorization to issue \$56,000 of tax credit certificates for the 2022 calendar year. This supplemental authorization would allow the school tuition organization to solicit additional contributions of \$86,153 ($\$56,000 \div 65\%$) during the calendar year which would be eligible for the tax credit. In total, the Scott County school tuition organization would be allowed to issue \$616,000 ($\$560,000$ initial authorization + $\$56,000$ supplemental authorization) of tax credit certificates for the 2022 calendar year.

42.32(5) Issuance of tax credit certificates.

a. The school tuition organization shall issue tax credit certificates to each taxpayer who made a cash or noncash contribution to the school tuition organization. The tax credit certificate, ~~which will be~~ designed by the department, ~~will~~ shall contain the name, address and tax identification number of the taxpayer; the amount and date that the contribution was made; the amount of the credit; the tax year that the credit may be applied; the school tuition organization to which the contribution was made; and the tax credit certificate number.

b. ~~For tax years beginning on or after July 1, 2009, a tax credit certificate may be issued to corporation income taxpayers. For tax years beginning on or after January 1, 2013, a~~ A tax credit certificate may be issued to a partnership, limited liability company, S corporation, estate or trust. The amount of credit claimed by an individual shall be based on the pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, estate or trust.

42.32(6) Claiming the tax credit. The taxpayer must include the tax credit certificate with the tax return for which the credit is claimed. The tax credit shall be claimed in the tax year during which the contribution is made. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

a. No change.

b. Married taxpayers who file separate returns or file separately on a combined return must allocate the school tuition organization tax credit to each spouse in the proportion that each spouse's respective net income bears to the total combined net income. Nonresidents or part-year residents of Iowa, including those who are claiming a tax credit of a partnership, limited liability company, S corporation, estate, or trust of which they are a member, must determine the school tuition organization tax credit in the ratio of their Iowa source net income to their total 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 return, the school tuition organization tax credit must be allocated between the spouses in the ratio of each spouse's Iowa source net income to the combined Iowa source net income.

REVENUE DEPARTMENT[701](cont'd)

42.32(7) Reporting requirements. Each school tuition organization that issues tax credit certificates must report to the department, postmarked by January 12 of each ~~tax~~ calendar year, the following information:

- a. No change.
- b. The total number and dollar value of contributions received by the school tuition organization for the previous ~~tax~~ calendar year.
- c. The total number and dollar value of tax credit certificates issued by the school tuition organization for the previous ~~tax~~ calendar year.
- d. A list of each taxpayer who received a tax credit certificate for the previous ~~tax~~ calendar year, including the amount of the contribution and the amount of tax credit issued to each taxpayer for the previous ~~tax~~ calendar year. This list should also include the tax identification number of the taxpayer and the tax credit certificate number for each certificate.

e. to g. No change.

This rule is intended to implement Iowa Code section 422.11 S as amended by 2013 Iowa Acts, House File 625.

ITEM 2. Amend rule 701—52.38(422) as follows:

701—52.38(422) School tuition organization tax credit. ~~Effective for tax years beginning on or after July 1, 2009, a~~ A school tuition organization tax credit is available which is equal to 65 percent of the amount of the voluntary cash or noncash contribution made by a corporation taxpayer to a school tuition organization. ~~For tax years beginning on or after January 1, 2013, the credit is available for S corporations, partnerships, limited liability companies, estates and trusts where the income is taxed directly to the individual shareholders, partners, members or beneficiaries, an individual may claim the credit. The amount of credit claimed by an individual shall be based on the pro rata share of the individual's earnings of the S corporation, partnership, limited liability company, estate or trust. For information on the initial registration, participation forms and reporting requirements for school tuition organizations, see rule 701—42.32(422).~~

52.38(1) Amount of tax credit authorized—additional limitation for corporations.

a. Of the \$7.5 million of school tuition organization tax credits authorized for the 2009 through 2011 calendar years, no more than 25 percent, or \$1,875,000, can be authorized for corporation income tax taxpayers.

b. Of the \$8.75 million of school tuition organization tax credits authorized for the 2012 and 2013 calendar years, no more than 25 percent, or \$2,187,500, can be authorized for corporation income tax taxpayers.

c. Of the \$12 million of school tuition organization tax credits authorized for the 2014 ~~and subsequent~~ through 2018 calendar years, no more than 25 percent, or \$3 million, can be authorized for corporation income tax taxpayers.

d. Of the \$13 million of school tuition organization tax credits authorized for the 2019 calendar year, no more than 25 percent, or \$3,250,000, can be authorized for corporation income tax taxpayers.

e. Effective July 1, 2020, the prohibition against authorizing more than 25 percent of the total authorized tax credits for corporation income tax purposes was repealed. On or after July 1, 2020, of the total school tuition organization tax credits authorized for a year, any amount can be authorized for corporation income taxpayers.

52.38(2) Issuance of tax credit certificates. The school tuition organization shall issue tax credit certificates to each taxpayer who made a cash or noncash contribution to the school tuition organization. The tax credit certificate ~~will~~ shall contain the name, address and tax identification number of the taxpayer; the amount and date that the contribution was made; the amount of the credit; the tax year that the credit may be applied; the school tuition organization to which the contribution was made; and the tax credit certificate number.

52.38(3) Claiming the tax credit. The taxpayer must include the tax credit certificate with the tax return for which the credit is claimed. The tax credit shall be claimed in the tax year during which the contribution is made. Any credit in excess of the tax liability for the tax year may be credited to the tax

REVENUE DEPARTMENT[701](cont'd)

liability for the following five years or until used, whichever is the earlier. The taxpayer may not claim a deduction for charitable contributions for Iowa corporation income tax purposes for the amount of the contribution made to the school tuition organization.

This rule is intended to implement Iowa Code section 422.33.

ARC 5635C

**TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION,
IOWA[751]**

Notice of Intended Action

Proposing rule making related to waivers and providing an opportunity for public comment

The Iowa Telecommunications and Technology Commission hereby proposes to amend Chapter 9, “Requests for Waiver of Network Use by Certified Users,” and Chapter 16, “Uniform Waiver and Variance Rules,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 8D.3(3)“b.”

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 8D.9(2) and 17A.9A.

Purpose and Summary

2020 Iowa Acts, House File 2389, amended the waivers and variances provision of the Administrative Procedures Act (Iowa Code chapter 17A) by striking references to “variances” and changing reporting requirements for waivers from semiannually to within 60 days of the granting or denying of a waiver request. 2020 Iowa Acts, Senate File 2284, amended Iowa Code section 8D.9 to strike Regents institutions from the definition of “certified users” of the Iowa Communications Network. This proposed rule making implements these changes.

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 Commission for a waiver of the discretionary provisions, if any, pursuant to 751—Chapter 9.

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 Commission no later than 4:30 p.m. on June 8, 2021. Comments should be directed to:

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751](cont'd)

Mark Johnson
Iowa Telecommunications and Technology Commission
Grimes State Office Building
400 East 14th Street
Des Moines, Iowa 50319
Phone: 515.725.4608
Email: mark.johnson@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 751—9.1(8D), introductory paragraph, as follows:

751—9.1(8D) Request for waiver. A certified user is entitled to file a request for a waiver pursuant to Iowa Code section 8D.9(2). For the purposes of this chapter, “certified user” means an area education agency, or community college, ~~or regents institution,~~ that has certified with the commission that it is or will be a part of the network.

ITEM 2. Amend rule 751—9.6(8D) as follows:

751—9.6(8D) Hearing. At the commission meeting where the petition is considered, the petitioner and the commission staff will have an opportunity to present any relevant evidence to the commission bearing on the appropriateness of the petition. The hearing will be informal. The hearing will be mechanically recorded. The recording shall constitute the official record of the hearing. Either party may at its own expense have a certified court reporter present to record the hearing. In the event of an appeal, the appealing party shall, at its cost, be responsible for transcribing the record of the meeting for judicial review. ~~In the event the decision of the commission is subject to arbitration pursuant to Iowa Code section 679A.19, the commission shall have the record transcribed with the cost to be split evenly between the parties subject to the arbitration.~~

9.6(1) No change.

9.6(2) Decision. The commission members, the petitioner and the staff will be afforded an opportunity to ask questions regarding the information presented at the time of the meeting. At the close of the meeting, the commission will issue a decision that is dictated into the record or the matter will be taken under advisement to be discussed and decided at a subsequent public meeting. The commission's decision shall be reduced to writing and shall constitute final agency action. ~~In the event the decision is appealed by a regents institution, the resolution of the dispute shall be subject to the provisions of Iowa Code section 679A.19.~~

ITEM 3. Amend **751—Chapter 16**, title, as follows:

UNIFORM WAIVER AND VARIANCE RULES

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751](cont'd)

ITEM 4. Amend rules 751—16.1(17A,ExecOrd11) to 751—16.3(17A,ExecOrd11) as follows:

751—16.1(17A,ExecOrd11) Applicability. This chapter outlines a uniform process for the granting of waivers ~~or variances~~ from rules adopted by the commission. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the commission. This chapter shall not apply to rules that merely define the meaning of a statute or other provision of law or precedent if the commission does not possess delegated authority to bind the courts to any extent with its definition. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

16.1(1) Definitions.

“*Commission*” or “*Iowa telecommunications and technology commission*” means the Iowa telecommunications and technology commission established by Iowa Code chapter 8D operating the Iowa Communications Network.

“*Person*” means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any legal entity.

“*Waiver ~~or variance~~*” means an agency action which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

16.1(2) Authority.

a. A waiver ~~or variance~~ from rules adopted by the commission may be granted in accordance with this chapter if (1) the commission has authority to promulgate the rule from which waiver ~~or variance~~ is requested or has final decision-making authority over a contested case in which a waiver ~~or variance~~ is requested; and (2) no statute or rule otherwise controls the granting of a waiver ~~or variance~~ from the rule from which a waiver ~~or variance~~ is requested.

b. No waiver ~~or variance~~ may be granted from a requirement which is imposed by statute. Any waiver ~~or variance~~ must be consistent with statute.

751—16.2(17A,ExecOrd11) Commission discretion. The decision on whether the circumstances justify the granting of a waiver ~~or variance~~ shall be made at the discretion of the commission upon consideration of all relevant factors.

16.2(1) Criteria for waiver ~~or variance~~. The commission may, in response to a completed petition ~~or on its own motion~~, grant a waiver ~~or variance~~ from a rule, in whole or in part, as applied to the circumstances of a specified situation if the commission finds each of the following:

a. Application of the rule to the person at issue would result in hardship or injustice to that person; and

b. Waiver ~~or variance~~ on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and

c. Waiver ~~or variance~~ in the specific case would not prejudice the substantial legal rights of any person; and

d. Where applicable, substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver ~~or variance~~ is requested.

In determining whether a waiver should be granted, the commission shall consider the public interest, policies and legislative intent of the statute on which the rule is based. When the rule from which a waiver ~~or variance~~ is sought establishes administrative deadlines, the commission shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all affected persons.

16.2(2) Special waiver ~~or variance~~ rules not precluded. These uniform waiver ~~and variance~~ rules shall not preclude the commission from granting waivers ~~or variances~~ in other contexts including those described in Iowa Code section 8D.9 or on the basis of other standards if a statute or other commission rule authorizes the commission to do so and the commission deems it appropriate to do so.

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751](cont'd)

751—16.3(17A,ExecOrd11) Requester's responsibilities in filing a waiver ~~or variance~~ petition.

16.3(1) Application. All petitions for waiver ~~or variance~~ must be submitted in writing to the ICN main office location as listed in 751—subrule 1.6(1). If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

16.3(2) Content of petition. A petition for waiver ~~or variance~~ shall include the following information where applicable and known to the requester (for an example of a petition for waiver ~~or variance~~, see Exhibit A at the end of this chapter):

- a. A description and citation of the specific rule from which a waiver ~~or variance~~ is requested.
- b. The specific waiver ~~or variance~~ requested, including the precise scope and operative period that the waiver ~~or variance~~ will extend.
- c. The relevant facts that the petitioner believes would justify a waiver ~~or variance~~.
- d. A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver ~~or variance~~.
- e. A history of any prior contacts between the commission and the petitioner relating to the use of the network, other regulated activity, license, grant, loan or other financial assistance affected by the proposed waiver ~~or variance~~, including a description of each use of the network, license, grant, loan or other financial assistance held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the affected use of the network, regulated activity, license, grant or loan within the last five years.
- f. Any information known to the requester regarding the commission's treatment of similar cases.
- g. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver ~~or variance~~.
- h. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.
- i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver ~~or variance~~.
- j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the commission with information relevant to the waiver ~~or variance~~.

16.3(3) Burden of persuasion. When a petition is filed for a waiver ~~or variance~~ from a commission rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the commission should exercise its discretion to grant the petitioner a waiver ~~or variance~~.

ITEM 5. Amend rules 751—16.5(17A,ExecOrd11) to 751—16.11(17A,ExecOrd11) as follows:

751—16.5(17A,ExecOrd11) Commission responsibilities regarding petition for waiver ~~or variance~~.

16.5(1) Additional information. Prior to issuing an order granting or denying a waiver ~~or variance~~, the commission may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the commission may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting or a meeting over the network operated by the commission, between the petitioner and the commission's designee, a committee of the commission, or a quorum of the commission.

16.5(2) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (a) to any petition for a waiver ~~or variance~~ of rule filed within a contested case; (b) when the commission so provides by rule or order; or (c) when a statute so requires.

16.5(3) Ruling. An order granting or denying a waiver ~~or variance~~ shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

16.5(4) Conditions. The commission may condition the granting of the waiver ~~or variance~~ on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

16.5(5) and 16.5(6) No change.

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751](cont'd)

16.5(7) *Time for ruling.* The commission shall grant or deny a petition for a waiver ~~or variance~~ as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the commission shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

16.5(8) and 16.5(9) No change.

751—16.6(17A,ExecOrd11) Public availability. Subject to the provisions of Iowa Code section 17A.3(1) “e,” the commission shall maintain a record of all orders granting or denying waivers ~~and variances~~ under this chapter. All final rulings in response to requests for waivers ~~or variances~~ shall be indexed and available to members of the public at the ICN main office location as listed in 751—subrule 1.6(1).

751—16.7(17A,ExecOrd11) Voiding or cancellation. A waiver ~~or variance~~ issued by the commission pursuant to this chapter may be withdrawn, canceled, modified, declared void or revoked if, after appropriate notice and hearing, the commission issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver ~~or variance~~ order withheld or misrepresented material facts relevant to the propriety or desirability of granting the waiver ~~or variance~~; or
2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with all conditions contained in the order; or
4. The waiver ~~or variance~~ is contrary to the public health, safety and welfare in light of newly discovered evidence or changed circumstances.

751—16.8(17A,ExecOrd11) Violations. Violation of conditions in the waiver ~~or variance~~ approval is the equivalent of violation of the particular rule for which the waiver ~~or variance~~ is granted and is subject to the same remedies or penalties.

751—16.9(17A,ExecOrd11) Defense. After the commission issues an order granting a waiver ~~or variance~~, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

751—16.10(17A,ExecOrd11) Appeals. Granting or denying a request for waiver ~~or variance~~ is final agency action under Iowa Code chapter 17A. An appeal to district court shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

751—16.11(17A,ExecOrd11) ~~Summary reports~~ Submission of waiver information. ~~Semiannually, the commission shall prepare a summary report identifying~~ Within 60 days of granting or denying a waiver, the commission shall make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the commission’s actions on waiver requests. If practicable, the report shall detail the extent to which granting a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself. ~~Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.~~

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751](cont'd)

Exhibit A

Sample Petition (Request) for Waiver/~~Variance~~

BEFORE THE IOWA TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION

Petition by (insert name of petitioner)
for the waiver of (insert rule citation)
relating to (insert the subject matter).

}

PETITION FOR
WAIVER

Requests for waiver ~~or variance~~ from a commission rule shall include the following information in the petition for waiver ~~or variance~~ where applicable and known to the petitioner:

- a. Provide the petitioner's (person asking for a waiver ~~or variance~~) name, address, and telephone number.
- b. Describe and cite the specific rule from which a waiver ~~or variance~~ is requested.
- c. Describe the specific waiver ~~or variance~~ requested; include the exact scope and time period that the waiver ~~or variance~~ will extend.
- d. Explain the important facts that the petitioner believes justify a waiver ~~or variance~~. Include in your answer why (1) applying the rule will result in hardship or injustice to the petitioner; and (2) granting the waiver ~~or variance~~ to the petitioner is consistent with the public interest; and (3) granting the waiver ~~or variance~~ will not prejudice the substantial legal rights of any person; and (4) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver ~~or variance~~ is requested.
- e. Provide a history of prior contacts between the commission and petitioner relating to the use of the network, regulated activity, license, grant, loan or other financial assistance that would be affected by the waiver ~~or variance~~; include a description of each affected use of the network, license, grant, loan or other financial assistance held by the petitioner, any notices of violation, contested case hearings, or investigative reports relating to the affected use, regulated activity, license, grant or loan within the past five years.
- f. Provide information known to the petitioner regarding the commission's treatment of similar cases.
- g. Provide the name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver ~~or variance~~.
- h. Provide the name, address, and telephone number of any person or entity that would be adversely affected or disadvantaged by the granting of the waiver ~~or variance~~.
- i. Provide the name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver ~~or variance~~.
- j. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the commission with information relevant to the waiver ~~or variance~~.

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751](cont'd)

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner's signature

Date

Petitioner should note the following when requesting or petitioning for a waiver ~~or variance~~:

1. The petitioner has the burden of proving to the commission, by clear and convincing evidence, the following: (a) application of the rule to the petitioner would result in hardship or injustice to the petitioner; and (b) waiver ~~or variance~~ on the basis of the particular circumstances relative to the petitioner would be consistent with the public interest; and (c) waiver ~~or variance~~ in the specific case would not prejudice the substantial legal rights of any person; and (d) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver ~~or variance~~ is requested.

2. The commission may request additional information from or request an informal meeting with the petitioner prior to issuing a ruling granting or denying a request for waiver ~~or variance~~.

3. All petitions for waiver ~~or variance~~ must be submitted in writing to the ICN main office location as listed in 751—subrule 1.6(1). If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

ARC 5621C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

**Proposing rule making related to motor vehicles operated by an automated driving system
and providing an opportunity for public comment**

The Transportation Department hereby proposes to adopt new Chapter 380, “Motor Vehicles Operated by an Automated Driving System,” and amend Chapter 400, “Vehicle Registration and Certificate of Title,” Chapter 524, “For-Hire Intrastate Motor Carrier Authority,” and Chapter 540, “Transportation Network Companies,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 307.12 and 321.519.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 321.514 to 321.519.

Purpose and Summary

This proposed rule making newly establishes Chapter 380, as well as making other conforming changes to existing Chapters 400, 524 and 540. 2019 Iowa Acts, Senate File 302, enacted Iowa Code sections 321.514 to 321.519, authorizing operation of autonomous (driverless-capable) vehicles on Iowa roadways and providing the Department with rule-making authority to regulate such vehicles.

New Chapter 380 applies to regulation of driverless-capable vehicles in Iowa. A driverless-capable vehicle means a vehicle that is capable of performing the entire driving task within the automated driving system's operational design domain without intervention of a conventional human driver.

The following paragraphs further explain the proposed amendments:

Definitions. While many of the definitions applicable to driverless-capable vehicles can be found in Iowa Code section 321.514, there are a few definitions that require further clarification in the rules. For example, the term “driverless-capable vehicle” is further defined to mean a vehicle meeting the definition

TRANSPORTATION DEPARTMENT[761](cont'd)

of a level 3, 4 or 5 classification, which are classifications of higher-level automated vehicles widely recognized within the autonomous vehicle community. Chapter 380 also defines “operational design domain” as that document established by the vehicle manufacturer that is very important in assessing the capabilities and intended uses of a driverless-capable vehicle.

Identification and operational restrictions. The proposed rules incorporate a fundamental requirement in regulating driverless-capable vehicles in Iowa, namely the requirement to identify the vehicle as driverless-capable in the Department’s vehicle registration system. The rules also address operational restrictions for driverless-capable vehicles. The Department already has the authority to place operational restrictions on a vehicle registered in Iowa, for example, if the vehicle is unable to meet certain equipment standards. The proposed new chapter and amendments extend this authority to driverless-capable vehicles, especially for when the Department begins to see fully autonomous vehicles, with no human driver required to be present in the vehicle. There may be operational restrictions needed for a vehicle due to the intended design of the vehicle. One example of potential operational restrictions would be limiting the vehicle to operating during daylight hours only or only being operated on a certain roadway classification, such as a highway or a city street. Part of establishing any operational restrictions will include a review of the vehicle’s operational design domain or other necessary documentation to assess the vehicle’s operational capabilities. If the Department does issue a restricted registration, the Department will issue a certificate of restriction to be provided to the vehicle owner, which shall be carried in the vehicle and available for inspection by law enforcement upon request. These amendments also provide that if an applicant receives a software update or otherwise modifies the vehicle to make it driverless-capable after registration, the applicant is required to notify the Department within 30 days.

Driverless-capable vehicle networks. The proposed amendments address driverless-capable vehicle networks that may be operated by transportation network companies (e.g., Uber or Lyft) or other commercial carriers. These networks and carriers are already required to apply to the Department for operating authority, and the rules will require a network or carrier intending to operate driverless-capable vehicles in Iowa to notify the Department. The Department may also require additional documentation as part of the application process.

Driverless-capable vehicle testing permits. The provisions in this proposed rule making borrow from the few other states that allow driverless-capable vehicle testing, as well as the significant guidance issued by the American Association of Motor Vehicle Administrators (AAMVA). This rule making will help prepare Iowa if a driverless-capable vehicle manufacturer or entity seeks to test technology on Iowa roadways. Key provisions of the testing permit rule include the following:

- The new testing permit will be created and administered by the Motor Vehicle Division.
- The testing permit will be issued for one year but will be renewable.
- Required supporting documentation will include:
 - o The operational design domain.
 - o A testing plan and safety plan.
 - o Vehicle identification and type.
 - o A list of all drivers performing testing.
 - o Proof of meeting financial liability requirements pursuant to Iowa Code.
 - o A plan for notifying law enforcement within the testing vicinity of the intent to test driverless-capable vehicles.
- Testing driver qualification requirements, including a valid driver’s license and clean driving record, which align with the standards used by the Department to certify instructors for driver’s education and motorcycle rider education.
- Permit issuance, renewal and display provisions. Each permittee needs to have a valid permit issued by the Department prior to testing and will need to carry the permit in each test vehicle, which shall also be available for inspection by law enforcement.
- Provisions for routine and substantive permit updates. Routine changes would include changing the permittee name or address or deleting a test vehicle. These changes can essentially be made by providing

TRANSPORTATION DEPARTMENT[761](cont'd)

notification to the Department. To make a substantive update to the permit, an updated application is required.

- Suspension or revocation of the permit and appeal rights. The proposed rule authorizes the Department to revoke or suspend the permit if the Department finds that the permit was issued in conflict with the Iowa Code or rules, or for a violation of the Iowa Code or rules, if the permittee is involved in a contributive motor vehicle crash or violates motor vehicle laws. A permittee subject to a suspension or revocation will have an appeal right, which follows the Department's typical administrative appeals process.

- Reports, including authority to require a disengagement report, which means that there was an unintended failure of the automated driving system.

Vehicle registration and titling. The proposed rule making amends the existing chapter governing vehicle registration and titling to address that the applicant must indicate whether the vehicle the applicant is seeking to register is driverless-capable. In addition to requiring this information on the vehicle registration application, the Department will also have the internal ability to capture this information from the Department's vehicle identification system. Supporting documentation requirements for a vehicle registration application are also being changed to include the authority to require the operational design domain for the driverless-capable vehicle or any other documentation necessary to assess the driverless-capable vehicle's operational capabilities. Finally, the proposed amendments allow a driverless-capable vehicle indicator to be placed on the vehicle title or registration, which may also include whether any operational restrictions exist. This indicator may only appear in the electronic vehicle records system.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. There are no statutorily required fees for the testing permit, and vehicle identification and registration requirements for driverless-capable vehicles will be incorporated into the Department's existing vehicle registration process.

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 761—Chapter 11.

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on June 8, 2021. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Government and Community Relations
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

TRANSPORTATION DEPARTMENT[761](cont'd)

Public Hearing

If requested, a public hearing to hear oral presentations will be held on June 11, 2021, via conference call. Persons who wish to participate in the conference call should contact Tracy George before 4:30 p.m. on June 8, 2021, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

June 11, 2021
9 a.m.

Via conference call

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 Tracy George, the Department's rules administrator, and advise of specific needs.

The public hearing will be canceled without further notice if no oral presentation is requested.

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** 761—Chapter 380:

CHAPTER 380

MOTOR VEHICLES OPERATED BY AN AUTOMATED DRIVING SYSTEM

761—380.1(321) Applicability. This chapter applies to driverless-capable motor vehicles operated by an automated driving system and system-equipped driverless-capable vehicles, which shall be regulated exclusively by the department under Iowa Code section 321.519.

This rule is intended to implement Iowa Code sections 321.514 to 321.519.

761—380.2(321) Definitions. The definitions in Iowa Code section 321.514 are adopted and incorporated herein. In addition:

“*ADS-equipped vehicle*” means the same as a driverless-capable vehicle as defined in this chapter.

“*Conventional human driver*” means the same as defined in Iowa Code section 321.514 but does not include a driverless-capable vehicle user.

“*Driverless-capable vehicle*” as defined in Iowa Code section 321.514 means the vehicle meets one of the following classifications:

1. Level 3—conditional driving automation. The vehicle is capable of achieving the sustained and specific performance of the entire dynamic driving task as provided in the operational design domain. An SAE Level 3 vehicle must have a conventional human driver present in the vehicle capable of responding to a request to intervene issued by the automated driving system, as well as to dynamic driving task performance-relevant system failures in other vehicle systems.

2. Level 4—high driving automation. The vehicle is capable of achieving the sustained and specific performance of the entire dynamic driving task as provided in the operational design domain. An SAE Level 4 vehicle does not require a conventional human driver and does not require a driverless-capable vehicle user present in the vehicle or performing remote operation to respond to a

TRANSPORTATION DEPARTMENT[761](cont'd)

request to intervene issued by the automated driving system. A Level 4 vehicle is capable of fallback to a minimal risk condition without human intervention.

3. Level 5—full driving automation. The vehicle is capable of achieving the sustained and unconditional performance of the entire dynamic driving task. An SAE Level 5 vehicle is capable of performing all driving functions under all conditions. A Level 5 vehicle does not require a conventional human driver and does not require a driverless-capable vehicle user present in the vehicle. A Level 5 vehicle is capable of fallback to a minimal risk condition without human intervention.

“Driverless-capable vehicle user” means a natural person who does not control the in-vehicle accelerating, braking, steering, and transmission gear selection input devices in order to operate a motor vehicle and who is not otherwise expected to respond to a request to intervene issued by the automated driving system of a driverless-capable vehicle.

“Functional highway classifications” means the process by which streets and highways are grouped into classes, or systems, according to the character of service the street or highway is intended to provide, and may include but not be limited to a functional highway classification established under 23 CFR Section 470.105.

“Operational design domain” means the same as defined in Iowa Code section 321.514 and can be either a specific document or set of documents, including electronic documentation, defining the domain under which an automated driving system is designed to properly operate.

“Public highways” means the same as “street” or “highway” as defined in Iowa Code section 321.1.

“SAE” means society of automotive engineers, which is an international association reputed for its standards development efforts, including its efforts to standardize definitions of driving automation systems.

This rule is intended to implement Iowa Code sections 321.1 and 321.514 and 23 CFR Section 470.105.

761—380.3(17A) Information and addresses. Information and forms pertaining to driverless-capable vehicle testing permits and vehicle registration and operational restrictions issued by the department or a county treasurer for a driverless-capable vehicle may be obtained in the form and manner prescribed by the department by mail from the Motor Vehicle Division, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at (515)237-3264; by email at vsusto@iowadot.us; or on the department’s website at www.iowadot.gov.

This rule is intended to implement Iowa Code section 17A.3.

761—380.4(321) Identification of driverless-capable vehicles in registration. The classification level of a driverless-capable vehicle subject to registration under 761—Chapter 400 shall be listed in the department’s records system established under Iowa Code section 321.31.

This rule is intended to implement Iowa Code sections 321.20, 321.31, 321.515 and 321.519.

761—380.5(321) Operational restrictions. The department may impose operational restrictions on a driverless-capable vehicle as provided in rule 761—400.21(321) as a condition of registration of the vehicle.

This rule is intended to implement Iowa Code sections 321.515 and 321.519.

761—380.6(321) Identification of driverless-capable vehicle networks. A person seeking to operate a for-hire, driverless-capable vehicle network in Iowa, including an on-demand driverless-capable vehicle network, may be required to submit to the department the operational design domain or any other documentation required by the department to assess the operational capabilities for any driverless-capable vehicle to be used in the driverless-capable vehicle network as part of the application for the applicable permit under rule 761—524.3(325A) or 761—540.4(321N).

This rule is intended to implement Iowa Code sections 321.518 and 321.519.

TRANSPORTATION DEPARTMENT[761](cont'd)

761—380.7(17A,321) Driverless-capable vehicle testing permit. The department may issue a driverless-capable testing permit, valid for one year, to a manufacturer or other entity seeking to test one or more driverless-capable vehicles that meet the operation standards set forth in Iowa Code section 321.515. A testing permit is not required for a vehicle that meets all of the criteria set forth in Iowa Code section 321.515. However, if a driverless-capable vehicle does not meet the standards set forth in Iowa Code section 321.515(1) “b,” the department may issue a testing permit allowing operation of that vehicle within the terms of this rule. The department reserves the right to consult with any expert in the field of driverless-capable vehicle technology, including but not limited to any educational institution, in evaluating any application for a testing permit under this chapter.

380.7(1) Application. An application for a driverless-capable vehicle testing permit shall be made to the department on a form designated by the department, electronic or otherwise, and prescribed for that purpose. The form shall require all of the following:

- a. The full legal name and the federal employer identification number of the manufacturer or entity.
- b. The address of the manufacturer’s or entity’s principal place of business.
- c. If incorporated or otherwise organized, the manufacturer’s or entity’s state of incorporation or organization.
- d. The name, address, telephone number, and email address of the person submitting the application on behalf of the manufacturer or entity.
- e. A statement signed by the manufacturer’s or entity’s authorized representative confirming the manufacturer’s or entity’s agreement to comply with all applicable requirements of the Iowa Code, including Iowa Code sections 321.515 to 321.519, and this chapter.
- f. A statement signed by the manufacturer’s or entity’s authorized representative confirming that the vehicle or vehicles do not exceed the limits set forth in Iowa Code sections 321.454, 321.456, 321.457, and 321.463 and acknowledging that a separate permit would be required under Iowa Code chapter 321E and 761—Chapter 511 if otherwise applicable.
- g. The name and address of the manufacturer’s or entity’s agent for service of process in the state of Iowa.

380.7(2) Supporting documents. An application for a driverless-capable vehicle testing permit shall be accompanied by the following:

- a. Copy of the manufacturer’s or entity’s testing plan, including the goal of the proposed testing.
- b. Vehicle specific information for all vehicles to be included under the permit, including:
 - (1) Vehicle identification number.
 - (2) Vehicle year, if assigned by the manufacturer.
 - (3) Vehicle make, if assigned by the manufacturer.
 - (4) Vehicle model, if assigned by the manufacturer.
 - (5) License plate number and jurisdiction of issuance, if applicable.
 - (6) Driverless-capable vehicle classification level.
 - (7) Whether the vehicle is intended to be tested with or without a conventional human driver or driverless-capable vehicle user present in the vehicle.
 - (8) Vehicle type, for example, whether the vehicle is a passenger, commercial, low-speed, or unmanned vehicle, including any combination thereof.
- c. List of all drivers to perform testing for the manufacturer or entity under the permit subject to the driver qualification requirements under subrule 380.7(3), including:
 - (1) The person’s full name.
 - (2) The person’s date of birth.
 - (3) The person’s driver’s license number and jurisdiction or country of issuance.
 - (4) A certified copy of the person’s driving record if the person’s driver’s license was not issued by the state of Iowa.
- d. Summary of the training provided to owners, employees, contractors, or other persons designated by the manufacturer or entity as drivers of test vehicles.

TRANSPORTATION DEPARTMENT[761](cont'd)

e. List of each jurisdiction to which the manufacturer or entity has applied or been issued or been denied a testing permit.

f. Copy of or link to the manufacturer's or entity's voluntary safety self-assessment (VSSA) on file with the National Highway Traffic Safety Administration (NHTSA). If a VSSA is not on file or does not provide sufficient information, a copy of the manufacturer's or entity's safety plan for testing vehicles, including but not limited to a minimal risk condition component, shall be provided.

g. Copy of the operational design domain of any vehicle intended to be used as a test vehicle.

h. Routes to be used when testing the vehicle under the permit, including whether a human is intended to be controlling the vehicle, either inside or outside of the vehicle, on a particular route.

i. Evidence of the manufacturer's or entity's financial liability coverage required under Iowa Code section 321.516.

j. Copy of the manufacturer's or entity's plan for notifying local law enforcement within the testing vicinity of the intent to test driverless-capable vehicles under a permit issued under this chapter. The department reserves the right to consult with law enforcement in evaluating any notification plan submitted under this paragraph, and any failure to comply with the notification plan may result in a suspension or revocation of the testing permit under subrule 380.7(8).

k. Any other documents determined necessary by the department.

380.7(3) *Driver qualifications.* To be qualified to perform testing under the driverless-capable vehicle testing permit, a person must:

a. Hold a valid driver's license pursuant to Iowa Code section 321.174 that permits unaccompanied driving, other than a motorized bicycle license or a temporary restricted license.

b. Have a clear driving record for the previous two years. A clear driving record means the person has:

(1) Not been identified as a candidate for driver's license suspension under the habitual violator provisions of rule 761—615.13(321), the serious violation provisions of rule 761—615.17(321), or the equivalent provisions under the law of the person's jurisdiction or country of driver's license issuance.

(2) No driver's license suspensions, revocations, denials, cancellations, disqualifications, or bars.

(3) Not committed an offense that would result in driver's license suspension, revocation, denial, cancellation, disqualification, or bar.

(4) No record of a contributive motor vehicle accident that caused the death or serious injury of another person.

(5) No record of two or more contributive motor vehicle accidents in a two-year period.

c. Be an owner, employee, or contractor of or person designated by a manufacturer or entity to test driverless-capable vehicles on behalf of the manufacturer or entity.

380.7(4) *Issuance, renewal, and display of permit.* When all requirements are met, and the department is satisfied that all safety considerations have been addressed, the department may issue the driverless-capable vehicle testing permit.

a. A manufacturer or entity shall not test driverless-capable vehicles in Iowa without a valid permit issued under this chapter.

b. The permit may include operational restrictions as provided under rule 761—400.21(321) or as determined necessary by the department to protect the health, safety, and welfare of the public.

c. The manufacturer or entity shall make a copy of the permit and carry it in each driverless-capable motor vehicle being tested under the permit at all times. The copy may be in either a physical or an electronic format as prescribed by the department. The permit shall be available for display to any peace officer upon request.

d. The state of Iowa, the department, and any other permit-issuing authority assume no responsibility for the property of the permit holder. Permit holders shall hold permit-issuing authorities harmless of any damages that may be sustained by the traveling public, adjacent property owners or the streets or highways of this state on account of movements made under permit.

e. Testing a driverless-capable vehicle without a valid permit issued under this chapter or operating a driverless-capable vehicle outside the terms of the testing permit or this chapter may result in a violation of Iowa Code section 321.381 or 321.482.

TRANSPORTATION DEPARTMENT[761](cont'd)

f. A testing permit may be renewed. If more than one vehicle is included on the original permit, vehicles may be deleted from the renewal application. The application for renewal shall be submitted to the department within 60 days of the expiration date, unless otherwise approved by the department.

380.7(5) *Update to a driverless-capable vehicle testing permit.* To change the parameters of a testing permit issued under this chapter, other than a change of name or address of the manufacturer or entity that was issued the permit, or to delete a vehicle from the permit, an updated application and supporting documentation must be submitted to the department. The updated application shall include the permit number. Any testing or operation of a driverless-capable vehicle not listed on the permit shall not commence until a new permit or temporary permit has been issued and is carried in the vehicle.

380.7(6) *Change of name or address for a driverless-capable vehicle testing permit.* Notification of a name or address change shall be sent to the department within 30 days after the change. Notification shall include the permit number, old name or address and new name or address.

380.7(7) *Vehicle deletion.* A permittee may remove vehicles from the permit at any time after the permit is issued. Vehicles shall be deleted in the form and manner prescribed by the department.

380.7(8) *Suspension or revocation and reinstatement.* The department may suspend or revoke a driverless-capable vehicle testing permit if the permit has been issued in conflict with the statutes or rules governing the permit's issuance; for a violation of Iowa Code sections 321.515 to 321.519, 761—Chapter 400 or this chapter; or if a vehicle under the testing permit is involved in a contributive motor vehicle accident in any state or is in violation of any of the motor vehicle laws of this or any state. The suspension or revocation shall continue until the manufacturer or entity is no longer in violation. After revocation, a new permit may be issued upon application.

380.7(9) *Hearings.* A manufacturer or entity whose application for a driverless-capable vehicle testing permit has been suspended or revoked may contest the decision in accordance with Iowa Code chapter 17A and 761—Chapter 13. The request for a hearing shall be submitted in writing to the director of the motor vehicle division. The request shall include, as applicable, the manufacturer's or entity's name, permit number, complete address, and telephone number. The request must be submitted within 20 days after the date of the notice of suspension, revocation, or denial.

This rule is intended to implement Iowa Code sections 321.381, 321.482, 321.515 and 321.519.

761—380.8(321) Reporting. Each manufacturer or entity issued a driverless-capable vehicle testing permit under rule 761—380.7(17A,321) may be required to submit a disengagement report if requested by the department, which shall include but not be limited to a description of any unintended disengagement or failure of a test vehicle's automated driving system. The department may request any other report the department determines necessary to assess the progress of any testing. Any reports required by the department shall be provided to the department on a frequency and in a format determined by the department.

This rule is intended to implement Iowa Code sections 321.515 and 321.519.

ITEM 2. Adopt the following **new** definition of "Driverless-capable vehicle" in rule **761—400.1(321)**:

"*Driverless-capable vehicle*" means the same as defined in rule 761—380.2(321).

ITEM 3. Amend rule **761—400.1(321)**, definition of "ERT service provider," as follows:

"*ERT service provider*" means a person or entity authorized by the department under subrule ~~400.3(16)~~ 400.3(17) to submit electronic applications for certificate of title or registration of a vehicle on behalf of an end user to a county treasurer.

ITEM 4. Renumber subrule **400.3(16)** as **400.3(17)**.

ITEM 5. Adopt the following **new** subrule 400.3(16):

400.3(16) *Driverless-capable vehicle.* As provided in Iowa Code sections 321.20 and 321.515 and rule 761—400.21(321), the applicant shall indicate on the application whether the vehicle is a driverless-capable vehicle as defined in rule 761—380.2(321).

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 6. Amend rule **761—400.3(321)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.1, 321.8, 321.20, 321.23 to 321.26, 321.31, 321.34, 321.46, 321.105A, 321.109, 321.122, 321.515, 321.519, 322.19A and 423.26.

ITEM 7. Renumber subrule **400.4(10)** as **400.4(11)**.

ITEM 8. Adopt the following **new** subrule 400.4(10):

400.4(10) Driverless-capable vehicles. If an application is made for a driverless-capable vehicle, the department may require the application to be accompanied by all applicable documents identified in 761—subrule 380.7(2) or any other documentation the department may require to assess the vehicle's operational capabilities.

ITEM 9. Amend renumbered subrule 400.4(11) as follows:

400.4(11) Supporting document retained by county treasurer. All supporting documents, except those submitted pursuant to subrule ~~400.3(16)~~ 400.3(17), shall be retained by the county treasurer.

ITEM 10. Amend rule **761—400.4(321)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.20, 321.23, 321.24, 321.30, 321.31, 321.45 to 321.50, 321.67, 321.515, 321.519 and 322.3.

ITEM 11. Adopt the following **new** subrule 400.7(12):

400.7(12) Driverless-capable vehicle indicator, which may also indicate whether operational restrictions exist.

ITEM 12. Amend rule **761—400.7(321)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.24, 321.31, 321.40, 321.45, 321.52, 321.69, 321.71, 321.124, 321.515, 321.519 and 322G.12.

ITEM 13. Amend rule 761—400.21(321) as follows:

761—400.21(321) Registration of vehicles on a restricted basis. The department may register a vehicle which does not meet the equipment requirements of Iowa Code chapter 321, due to the particular use for which it is designed or intended, or which is a driverless-capable vehicle as defined in rule 761—380.2(321). Registration may be accomplished upon payment of the appropriate fees and after inspection and certification by the department that the vehicle is not in an unsafe condition.

400.21(1) to 400.21(4) No change.

400.21(5) When a vehicle registered in this state is modified to make it a driverless-capable vehicle as defined in rule 761—380.2(321), the person in whose name the vehicle is registered shall within 30 days notify the department upon a form prescribed by the department.

400.21(6) As provided in Iowa Code sections 321.515 and 321.519, the department may restrict the operations of a driverless-capable vehicle registered in this state or another state but which operates in this state. The restrictions may include but are not limited to the restrictions provided in subrules 400.21(1) and 400.21(2) and any operational restrictions based on a specific functional highway classification, weather conditions, days of the week, times of day, and other elements of operational design while the automated driving system is engaged. The department may require the vehicle owner to submit to the department the automated driving system's intended operational design domain for the vehicle on a form prescribed by the department or any other documentation the department requires to assess or inspect the vehicle's operational capabilities. The department may evaluate the automated driving system's intended operational design domain for the vehicle or any other documentation the department requires to assess the vehicle's operational capabilities, to establish restrictions. The department may establish additional operational restrictions to ensure safe operation of the vehicle. The department shall issue a certificate of restriction as provided in subrule 400.21(3) for any restriction established under this subrule, and the certificate shall be carried in the vehicle and made available for inspection by any peace officer upon request.

This rule is intended to implement Iowa Code sections 321.1, 321.23(4), 321.30(2), 321.101(1), and 321.234A and subsections 321.23(4), 321.30(2), and 321.101(1), 321.515 and 321.519.

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 14. Adopt the following **new** paragraph **524.3(3)“f”**:

f. All applicable documents identified in 761—subrule 380.7(2) and any other documentation, if required by the department, necessary to assess the operational capabilities of any driverless-capable vehicles the motor carrier intends to operate including for the purpose of determining whether to impose operational restrictions as authorized under rule 761—400.21(321).

ITEM 15. Amend **761—Chapter 524**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 321.515 and 321.519 and chapter 325A.

ITEM 16. Reletter paragraph **540.4(3)“j”** as **540.4(3)“k.”**

ITEM 17. Adopt the following **new** paragraph **540.4(3)“j”**:

j. All applicable documents identified in 761—subrule 380.7(2) and any other documentation, if required by the department, necessary to assess the operational capabilities of any driverless-capable vehicles the transportation network company intends to operate, including for the purpose of determining whether to impose operational restrictions as authorized under rule 761—400.21(321).

ITEM 18. Amend **761—Chapter 540**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 321.515 and 321.519 and chapter 321N.

ARC 5618C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

**Proposing rule making related to odometer disclosure statements
and providing an opportunity for public comment**

The Transportation Department hereby proposes to amend Chapter 400, “Vehicle Registration and Certificate of Title,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 307.12 and 321.71.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 321.71.

Purpose and Summary

The proposed amendment to Chapter 400 conforms subrule 400.52(3) with 2020 Iowa Acts, Senate File 2091, which amended Iowa Code section 321.71 related to odometer disclosure statements. Senate File 2091 became effective January 1, 2021.

Federal and Iowa law require odometer disclosure upon transfer of a vehicle to prevent odometer fraud and ensure that all parties are aware of the mileage on a vehicle. Prior to January 1, 2021, a vehicle seller was required to disclose the odometer mileage for any vehicle that was less than ten model years old when transferring the vehicle. However, federal regulations as adopted in Iowa Code section 321.71 now require odometer disclosure statements for the transfer of a vehicle that is less than 20 model years old, beginning with vehicles from the 2011 model year (49 CFR Section 580.17).

This requirement put into place the following scenarios:

1. For a vehicle transfer that occurs through December 31, 2030, any vehicle of model year 2011 or newer will require odometer disclosure.
2. For a vehicle transfer that occurs on or after January 1, 2031, any vehicle that is less than 20 model years old will require odometer disclosure. The model year formula for odometer statements will be the current year minus 20. For example, if the calendar year is 2033 and the car model year is 2013, the car is 20 model years old and therefore is not subject to odometer disclosure.

TRANSPORTATION DEPARTMENT[761](cont'd)

This requirement is for all transfers of vehicles, whether through sale at a licensed dealer, private sale, operation of law transfer, or other method. However, any vehicle that is currently exempt from odometer disclosure under federal or Iowa law based on any reason other than model year will remain exempt. This includes the provision in 49 CFR Section 580.17(a)(1) that exempts any vehicle having a gross vehicle weight rating of more than 16,000 pounds.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa as there is no fee associated with submitting a required odometer disclosure statement.

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 761—Chapter 11.

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on June 8, 2021. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Government and Community Relations
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

If requested, a public hearing to hear oral presentations will be held on June 10, 2021, via conference call from 10 to 11 a.m. Persons who wish to participate in the conference call should contact Tracy George before 4:30 p.m. on June 8, 2021, to facilitate an orderly hearing. A 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 Tracy George, the Department's rules administrator, and advise of specific needs.

The public hearing will be canceled without further notice if no presentation is requested.

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).

TRANSPORTATION DEPARTMENT[761](cont'd)

The following rule-making action is proposed:

Amend subrule 400.52(3) as follows:

400.52(3) A As required by 49 CFR Section 580.17, for vehicle transfers that occur through December 31, 2030, any vehicle that is model year 2011 or newer shall require an odometer disclosure statement. For vehicle transfers that occur on or after January 1, 2031, the model year formula for odometer disclosure statements shall be the current year minus ~~ten~~ 20. The resulting number represents the first model year for which a motor vehicle is exempt from the odometer statement requirements incident to a transfer.

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 May is 3.50%.

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 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 May 11, 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.

ARC 5634C**TREASURER OF STATE[781]****Notice of Intended Action****Proposing rule making related to waivers and providing an opportunity for public comment**

The Treasurer of State hereby proposes to amend Chapter 19, “Waiver and Variance Rules,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 17A.9A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 17A.9A.

Purpose and Summary

This proposed rule making amends Chapter 19 to implement Iowa Code section 17A.9A. The changes call for deletion of the word “variance” when the word is used in relation to “waiver.”

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

This rule making does not provide for a waiver of its terms.

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 Office of the Treasurer of State no later than 4:30 p.m. on June 8, 2021. Comments should be directed to:

Karen Austin
Office of the Treasurer of State
State Capitol, Room 114
1007 East Grand Avenue
Des Moines, Iowa 50319
Email: karen.austin@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

TREASURER OF STATE[781](cont'd)

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 **781—Chapter 19**, title, as follows:

WAIVER AND VARIANCE RULES

ITEM 2. Amend rule 781—19.1(17A) as follows:

781—19.1(17A) Definition. For purposes of this chapter, a “waiver” or “variance” means action by the agency which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~

ITEM 3. Amend rule 781—19.4(17A) as follows:

781—19.4(17A) Criteria for waiver or variance. In response to a petition completed pursuant to rule 781—19.6(17A), the agency may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the agency finds, based on clear and convincing evidence, all of the following:

1. to 4. No change.

ITEM 4. Amend rule 781—19.12(17A) as follows:

781—19.12(17A) Summary reports Submission of waiver information. ~~Semiannually~~ Within 60 days of granting or denying a waiver, the agency shall prepare a summary report make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the agency's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

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:

June 1, 2020 — June 30, 2020	2.75%
July 1, 2020 — July 31, 2020	2.75%
August 1, 2020 — August 31, 2020	2.75%
September 1, 2020 — September 30, 2020	2.50%
October 1, 2020 — October 31, 2020	2.75%
November 1, 2020 — November 30, 2020	2.75%
December 1, 2020 — December 31, 2020	2.75%

USURY(cont'd)

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%

ARC 5624C**ECONOMIC DEVELOPMENT AUTHORITY[261]****Adopted and Filed****Rule making related to high quality jobs program**

The Economic Development Authority hereby amends Chapter 187, “Contracting,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 15 and 15E.

Purpose and Summary

Pursuant to rules 261—187.3(15) and 261—187.4(15), participants in the High Quality Jobs Program (Program) must seek approval from the Economic Development Authority Board to amend the maintenance period completion date specified in Program agreements. It is as of that date that the Authority determines whether a business is in compliance with the job maintenance obligations required by the Program. The Authority intends to amend these rules to allow greater flexibility for businesses impacted by the COVID-19 pandemic that would otherwise be temporarily in default of their job maintenance obligations.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 24, 2021, as **ARC 5439C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Authority on April 16, 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

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 Authority 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).

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

Effective Date

This rule making will become effective on June 23, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 187.3(1) as follows:

187.3(1) Projects shall be completed by the project completion date and maintained through the end of the maintenance date. The contract will establish the duration of the project period and maintenance period. Requests to change the project completion date and the maintenance period completion date shall follow the process for an amended award or contract as described in rule 261—187.4(15). A business that was in compliance with its maintenance obligations as of March 1, 2020, but not in compliance during the COVID-19 impacted period described below, may request, and the director may approve, a change to the maintenance period completion date if the business demonstrates to the authority's satisfaction that it failed to comply because of the COVID-19 pandemic. The business shall describe the impact of the pandemic on its ability to comply in such form and content acceptable to the authority. For the purposes of this subrule, "COVID-19 impacted period" means the period between March 2, 2020, and June 30, 2021. The board shall have the authority to extend the COVID-19 impacted period beyond June 30, 2021, if the board determines such extension is justified by continued widespread impacts on the ability of businesses participating in the program to comply with maintenance obligations because of COVID-19.

ITEM 2. Amend paragraph **187.4(2)"d"** as follows:

d. ~~Exception~~ Exceptions. Notwithstanding paragraph 187.4(2)"c," the director may approve contract amendments for the targeted industries internship program consistent with Iowa Code section 15.106C, or a change to the maintenance period completion date for a business impacted by the COVID-19 pandemic as described in subrule 187.3(1), without board approval.

[Filed 4/19/21, effective 6/23/21]

[Published 5/19/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/19/21.

ARC 5625C

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Rule making related to underground storage tanks

The Environmental Protection Commission hereby amends Chapter 134, "Underground Storage Tank Licensing and Certification Programs," Chapter 135, "Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks," and Chapter 136, "Financial Responsibility for Underground Storage Tanks," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 455B.474.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 455B.474 and 455B.474A.

Purpose and Summary

The purpose of this rule making is to conform Chapters 134, 135, and 136 to recently enacted federal rules promulgated by the U.S. Environmental Protection Agency (EPA). The Commission must adopt

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rules consistent with EPA's rules in order for the Department of Natural Resources (Department) to maintain its delegated state program.

Specifically, this rule making adopts the 2015 federal Underground Storage Tank (UST) rule revisions contained in 40 Code of Federal Regulations Parts 280 and 281. These amendments also update and remove outdated provisions, clean up language, and revise leaking underground storage tank (LUST) rules to be consistent with current risk evaluation processes.

The federal UST rule revisions improve upon the 1988 federal UST regulations by increasing emphasis on properly operating and maintaining UST equipment. The revisions will help prevent and detect UST petroleum releases, which are a leading source of groundwater contamination, often resulting in expensive cleanups. The primary provisions of the federal rule that have been incorporated into the amendments include:

- Regulation of certain tanks that were deferred by the 1988 regulations (i.e., emergency power generator tanks, airport hydrant fuel distribution systems, and field-constructed tanks);
- Disallowing flow restrictors in vent lines for new installations or when replacing equipment;
- Requiring the closure of internally lined tanks that fail a lining inspection and cannot be repaired;
- Requiring a demonstration that equipment is compatible with the fuel stored (addressing biofuel compatibility);
- Monthly and annual facility walkthrough inspections;
- Annual release detection equipment testing;
- Spill prevention equipment testing every three years;
- Overfill prevention equipment inspection every three years; and
- Containment sump testing every three years of sumps used for piping interstitial monitoring.

Other revisions are adopted as part of the Department's five-year rules review process. At the request of multiple stakeholders, Chapter 134 is being amended. New federal testing requirements have been added, and it has been clarified which licensees must perform the federal tests and by when they must be performed. Compliance inspector certification criteria were expanded to allow more persons to qualify. Licensure training time frames were relaxed to add more flexibility to the process. This change in particular will alleviate some industry concerns about inconsistent licensure class schedules impacting business.

Additionally, stakeholder-supported amendments have been made to the license fees in Chapter 134. The fee for compliance inspector certification has been lowered, although this may not be obvious at first. Previously, a compliance inspector had to also be a licensed installer, so two license fees were always owed for an initial certification: \$150 for compliance inspector and \$200 for installer, for a total of \$350. That requirement has been removed. Under the adopted amendments, a compliance inspector will be a stand-alone license class, subject to a single initial \$200 fee. Therefore, this amendment will produce \$150 in savings for many UST professionals. The biennial renewal fee has been changed as well. Previously, a compliance inspector had to renew biennially both the inspector certification (\$50) and the installer license (\$200) for a total renewal fee of \$250. The new biennial renewal will be a single fee of \$200. This amendment will produce another \$50 in ongoing savings. Similarly, the UST compliance company initial and biennial license fee has been raised from \$50 to \$200. This amendment will make this fee consistent with the \$200 fee assessed for all other Chapter 134 license classes (installers, installation inspectors, liners, testers, removers, and groundwater professionals).

Other five-year rules review process amendments include removing outdated or unused regulations and references. And, finally, some provisions have been updated to reflect what the Department has learned over the last 20 years of the risk-based corrective action (RBCA) evaluation process, remediation methods, tank temporary closure requirements, and tank system corrosion protection.

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Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 16, 2020, as **ARC 5316C**. Three virtual public hearings were held at 1 p.m. on January 6, 2021; January 7, 2021; and January 8, 2021.

Three members of the public attended the meetings. Oral and written comments were received from FUEL Iowa. Written comments were also received from Tanknology, Petroleum Marketers Management Insurance Company (PMMIC), and Kwik Trip, Inc. Comments related primarily to Chapter 134 (licensing requirements) but also to operator training requirements under Chapter 135. Two meetings with the commenters were held on January 21, 2021, and January 25, 2021, to determine what additional rule modifications were necessary to address their concerns.

Kwik Trip, Inc. and Tanknology recommended reconsideration of the years of experience required for an individual licensed as a tester of UST systems. In addition, Tanknology recommended a change to the rule regarding the responsibilities of testers to allow testers to complete cleaning and repairs of equipment tested. FUEL Iowa asked for a change to the licensing of testers, specifically that the date be removed which places restrictions on persons who can conduct the prescribed periodic testing.

FUEL Iowa and PMMIC expressed appreciation to the Department for collaboration in revising the rules, and both are supportive of the majority of the changes. Both entities referenced Iowa Code section 455B.474A, noting that the rules adopted by the Commission are to be consistent with and shall not exceed the federal regulations relating to the regulation of USTs. Both entities recommended changes to operator training provisions, specifically, removing a passing grade requirement for the training examination and relying on vendor-led training and examination criteria. FUEL Iowa and PMMIC emphasized the need to continue collaboration in implementing the new regulations and in the development of forms to ensure these also do not contain requirements more stringent than federal regulations. PMMIC also proposed changes regarding use of consistent terms throughout the rules. Additionally, PMMIC recommended a change in the passing grade for the compliance inspector examination.

Several changes have been made from the Notice in response to public comments:

- Rule 567—134.7(455B) [Item 13] was amended to lower the passing grade threshold and to correct the terminology from “license” to “certification” and “licensed” to “certified.” This necessitated other changes to make the grade threshold and terminology consistent [Items 16, 19, 21, 24, 25, 28, 66, and 67].
- A redundant sentence proposed in paragraph 134.24(3)“c” of the Notice [Item 28] was not adopted [Item 30].
- Subrules 134.25(1) and 134.25(2) [Item 32] were modified to expand qualification criteria for testers, to allow testers to perform repairs, and to remove the date restriction.
- Clarification was added to Class C operator training in subparagraph 135.4(7)“b”(1) [Item 67].
- Subrules 135.4(8) and 135.4(9) were reverted back to the original language (i.e., no amendments were adopted regarding operator training and examination requirements) [former Items 69 and 73 in the Notice].

In addition to changes made in response to the comments by the public, other changes have been made from the Notice to remove unused language, to correct citations and terminology, and to make language consistent with federal rule provisions. These are as follows:

- Rule 567—134.17(455), regarding definitions, [Item 26] was modified by removing references to the Board and correcting the definition of “OSHA.”
- References to “credit” were stricken from the continuing education section under rule 567—134.19(455B) [Item 28].
- An item was added to correct a rule citation in subparagraph 135.3(8)“e”(1) [Item 55].
- Subrule 135.4(2) [Item 59] was modified to be consistent with the federal rule, clarifying that corrosion protection for a metal UST system must be maintained until the UST system is permanently closed.

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- Subrule 135.4(12) [Item 75] was modified to be consistent with the federal rule regarding frequency of monitoring double-walled spill equipment and containment sumps.
- Paragraph 135.5(4)“h” [Item 93] was modified to be consistent with the federal rule in citing an EPA standard for testing procedures.
- Paragraph 135.5(5)“b” [Item 94] was modified to be consistent with the federal rule in citing an EPA standard for testing procedures.
- Iowa Code citation corrections were made under paragraph 135.12(10)“b” and subparagraph 135.12(10)“b”(9) [Items 140 and 141].

The details of these changes from the Notice can be viewed in the responsiveness summary for this rule making on the Department’s UST regulations web page at www.iowadnr.gov/Environmental-Protection/Land-Quality/Underground-Storage-Tanks/UST-LUST-Regulations.

Adoption of Rule Making

This rule making was adopted by the Commission on April 20, 2021.

Fiscal Impact

This rule making has no meaningful fiscal impact to the State of Iowa. A copy of the fiscal impact statement is available from the Department upon request. The Department anticipates a minimal reduction, perhaps \$2,400, in license revenue due to the changes to the licensing fees in Chapter 134. There will be a fiscal impact to industry, but it cannot be uniformly determined. EPA estimates an average annual compliance cost of \$715 per facility. However, the Department and stakeholders jointly estimate an annual cost per facility between \$1,147 and \$4,053 depending on a facility’s size, equipment, location, and frequency of inspections. The amendments to license certification, qualifications, and fees in Chapter 34 will provide a \$150 one-time and \$50 ongoing cost savings to some licensed UST professionals. Additional amendments may provide a cost savings to UST owners and operators who hire licensed UST professionals. For instance, amendments that allow service technicians to complete certain containment equipment testing, rather than requiring that a licensed UST professional complete the testing, may reduce associated costs. More information about these estimates is included in the Department’s fiscal impact statement. The Department believes that costs to comply with the new regulations may decline with time. For example, the first cycle of testing will identify faulty equipment at some facilities which will require repair or replacement. The fixed or newer equipment is expected to be durable and operable through subsequent testing cycles. Additionally, with time it is expected new testing technologies will be developed that are more efficient and economical.

Jobs Impact

Both minor positive and minor negative impacts on private sector jobs and employment opportunities in the State are anticipated as a result of this rule making. Additionally, if the proposed rule making were not adopted, facilities would be required to comply with federal standards and separate state standards. Therefore, the effect on jobs could be considered neutral. 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.

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

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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 June 23, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rule **567—134.1(455G)**, parenthetical implementation statute, as follows:

567—134.1(455G 455B) Definition.

ITEM 2. Amend rule 567—134.2(455G) as follows:

567—134.2(455G 455B) Certification requirements.

134.2(1) A groundwater professional must be certified as provided in ~~134.3(455G)~~ rule 567—134.3(455B) before engaging in activities described in ~~134.1(455G)~~ rule 567—134.1(455B), except that a person engaging in activities described in ~~134.1(455G)~~ rule 567—134.1(455B) need not be certified if that person is under direct supervision of a certified groundwater professional when engaging in such activities.

134.2(2) No change.

134.2(3) In order to be certified as a groundwater professional, the applicant must complete the two-day risk-based correction action (RBCA) course or department-approved course and pass a certification examination offered or authorized by the department.

a. An applicant who fails an initial examination may take a second examination.

b. Failure of the second examination will result in termination of the application. A person may reapply for groundwater professional certification. The applicant must complete a regularly scheduled course of instruction before retaking the certification examination.

c. Professional engineers who qualify for an exemption from taking the certification examination under subrule 134.3(6) must attend the RBCA initial course of instruction or department-approved course in order to be certified.

ITEM 3. Amend rule **567—134.3(455G)**, parenthetical implementation statute, as follows:

567—134.3(455G 455B) Certification procedure.

ITEM 4. Amend subrule 134.3(1) as follows:

134.3(1) Application. Application for certification shall be made by completing a form provided by the department and submitting evidence of meeting the requirements found in rule ~~567—134.2(455G 455B)~~ (i.e., copy of certificate, license, description of experience and training).

ITEM 5. Amend subrule 134.3(6) as follows:

134.3(6) Exemption from examination. The department may provide for an exemption from the certification examination requirements for a professional engineer registered pursuant to Iowa Code chapter 542B upon submission of sufficient proof of exemption to the ~~Iowa comprehensive petroleum underground storage tank fund board as provided in Iowa Code section 455G.18(8)~~ department. The person must be qualified in the field of geotechnical, hydrological, environmental, groundwater, or hydrogeological engineering. A groundwater professional exempted under this provision must meet the continuing education requirements of subrule 134.3(5).

ITEM 6. Amend rule **567—134.4(455G)**, parenthetical implementation statute, as follows:

567—134.4(455G 455B) Suspension, revocation and denial of certification.

ITEM 7. Amend subrule 134.4(1), introductory paragraph, as follows:

134.4(1) General policy. It is the policy of the department to enforce standards of professional and ethical conduct which are generally accepted within the professions which qualify persons for

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certification in Iowa as groundwater professionals. The department intends to rely on written standards of professional and ethical conduct and competency which are applicable to persons who qualify for certification by virtue of certification by or membership in a professional organization ~~or state licensure as provided in Iowa Code section 455G.18(2).~~

ITEM 8. Amend paragraph **134.4(2)“d”** as follows:

d. Insufficient proof of qualifications required under rule ~~134.2(455G)~~ 567—134.2(455B).

ITEM 9. Amend paragraph **134.4(2)“g”** as follows:

g. Default on an obligation owed to or collected by the state as provided in Iowa Code section ~~421.17(34)“e.”~~ 421.17(27)“e.”

ITEM 10. Amend paragraph **134.4(3)“f”** as follows:

f. Material misstatement of facts or misrepresentation of information required to be provided pursuant to Iowa Code ~~chapters 455G and chapter~~ chapter 455B, division IV, part 8.

ITEM 11. Amend rule ~~567—134.5(455G)~~ as follows:

567—134.5(~~455G~~ 455B) Penalty. A groundwater professional who fails to obtain certification with the department of natural resources as required in this chapter is subject to a civil penalty of \$50. A groundwater professional who knowingly or intentionally makes a false statement or misrepresentation which results in a mistaken classification of a site shall be guilty of a serious misdemeanor and shall have the groundwater professional certification revoked.

ITEM 12. Amend **567—Chapter 134**, Part A, implementation sentence, as follows:

These rules are intended to implement Iowa Code section ~~455G.18~~ 455B.474(9).

ITEM 13. Amend rule ~~567—134.7(455B)~~ as follows:

567—134.7(~~455B~~ 455B) Certification requirements for UST compliance inspectors.

134.7(1) A person retained by an owner or operator of a UST facility for the purpose of establishing compliance with ~~the annual~~ a UST compliance inspection required by the department under rule ~~567—135.20(455B)~~ must hold a current UST compliance inspector certification issued by the department.

134.7(2) Inspector certification will be issued by the department only to a person who:

~~1. a. Is an Iowa-licensed UST installer or installation inspector under 591—Chapter 15, except that the requirement as set forth under 591—subrule 15.3(4) shall not be applicable to a certified UST compliance inspector.~~ Satisfies one of the following:

(1) Is an Iowa-licensed UST installer;

(2) Is an Iowa-licensed installation inspector;

(3) Has participated on a minimum of 50 on-site compliance inspections with an Iowa-certified compliance inspector;

(4) Has two years of experience working with petroleum equipment, including installations, maintenance, or testing; or

(5) Has other relevant experience approved by the department.

~~2. b. Attends the required training approved by the department as provided in rule 567—134.10(455B).~~

(1) Temporary exception to required training. An applicant may be issued a certification without the required training if all other requirements of Part B of this chapter are satisfied and the required training is not offered within 60 days of the date of application. The applicant must attend required training within one year or, if training is not offered within one year, when required training is next offered. If an applicant receives a certification under this temporary exception, the individual must attend required training, if offered, before renewal of the certification.

(2) If an applicant receives a certification under a temporary training exception pursuant to paragraph 134.7(2)“a,” all compliance inspection activities must be conducted under the supervision of a trained Iowa-certified compliance inspector. Supervision does not require the trained Iowa-certified

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compliance inspector to be on site for compliance inspections conducted by the inspector who has not completed the required training. The trained Iowa-certified compliance inspector must co-sign compliance inspections conducted by the inspector who has not completed the required training.

~~3. c.~~ Achieves a passing grade of ~~85~~ 75 percent on a certification examination administered or approved by the department as provided in rule 567—134.10(455B).

4. d. Submits an accurate and complete application.

~~5. e.~~ Is not found to be in violation of this chapter and has not had a certification revoked by the department pursuant to rule 567—134.16(455B) ~~or by the underground storage tank fund board pursuant to 591—Chapter 15.~~

ITEM 14. Rescind and reserve rule **567—134.8(455B)**.

ITEM 15. Amend subrule 134.9(3) as follows:

134.9(3) Training and certification fees. An initial nonrefundable application fee of ~~\$150~~ \$200 in the form of a check or money order payable to the Department of Natural Resources must accompany the initial application for certification and ~~\$50~~ \$200 for each renewal application. The ~~\$150~~ \$200 application fee covers the cost of the certification examination. The department will assess an additional fee for each training course based upon the cost of administration.

ITEM 16. Amend rule 567—134.10(455B) as follows:

567—134.10(455B) Training and certification examination.

134.10(1) Prior to taking the compliance inspector examination, the applicant must:

~~a. Complete the U.S. EPA UST Web-based training modules: “Introduction to the Underground Storage Tanks (UST) Program” and “Basic UST Inspector Training” with a minimum passing grade of 85 percent.~~

~~b. Attend~~ attend the department’s inspector training course or designated approved course.

134.10(2) to 134.10(4) No change.

134.10(5) To receive a passing grade on the examination, the applicant for certification must achieve a minimum score of ~~85~~ 75 percent. An applicant who fails an initial examination may take a second examination.

134.10(6) No change.

ITEM 17. Amend subrule 134.11(1) as follows:

134.11(1) *Renewal period.* Certification shall be for a two-year period and must be renewed by January 1 of each odd-numbered year, ~~beginning January 1, 2009.~~ Applications for renewal must be submitted on a form provided by the department and no later than ~~60~~ 30 days prior to the expiration date. If a certified inspector fails to renew the certification by the expiration date, the department may grant, upon a showing of good cause, a 30-day grace period during which the applicant may submit the application and payment of the renewal fee as provided in subrule 134.9(3).

ITEM 18. Amend subrule 134.11(3) as follows:

134.11(3) *Minimum inspections.* In order to renew certification, an inspector must have conducted at least ~~25~~ 12 compliance inspections ~~each year in the past two years.~~

ITEM 19. Amend rule 567—134.13(455B) as follows:

567—134.13(455B) Licensed Certified company. A company employing certified UST compliance inspectors shall be registered with the department as a licensed certified UST compliance company. A company shall lose its license certification if it fails to employ at least one certified inspector or if it employs uncertified individuals to do compliance inspections required by the department. The ~~annual license~~ initial and biennial renewal certification fee is ~~\$50~~ \$200.

ITEM 20. Amend rule **567—134.14(455B)**, catchwords, as follows:

567—134.14(455B) Compliance inspection Responsibilities of compliance inspectors.

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ITEM 21. Amend subrule 134.14(1) as follows:

134.14(1) Inspection process. The inspector shall record the inspection on a form provided by the department and conduct the inspection to address all items contained on the inspection form. The department may approve an alternative inspection form if requested by the inspector. The completed inspection form must be maintained by the inspector or ~~licensed~~ certified company for five years. Upon completion of the site inspection, the inspector shall send an inspection report to the owner and operator within ten business days, except for the notice of a potential suspected or confirmed release as provided in paragraph "b." At a minimum, the report shall satisfy the following:

a. to d. No change.

ITEM 22. Amend subrule 134.14(3) as follows:

134.14(3) Any evidence of violations or deficiencies observed during the inspection must be photographed using a digital camera ~~with at least a 1-2 megapixel resolution~~. The digital photographs must be submitted as part of the electronic inspection report and maintained by the inspector for five years as part of the inspector's records.

ITEM 23. Amend subrule 134.14(5) as follows:

134.14(5) Inspection technical requirements. An inspector of a UST system must check for compliance with the technical standards of 567—Chapter 135 following the department's guidance. The inspection of a UST system currently in operation shall include, but not be limited to, the following:

a. to g. No change.

Any problems observed during the inspection must be photographed using a digital camera ~~with at least a 1-2 megapixel resolution~~.

ITEM 24. Amend rule 567—134.15(455B) as follows:

567—134.15(455B) Disciplinary actions.

134.15(1) The department may impose disciplinary actions which may include, but are not limited to, notices of deficiency, probationary notices, suspension of a certification ~~or license~~ and, pursuant to 567—134.16(455B), revocation of a certification ~~or license~~.

134.15(2) No change.

134.15(3) The department may suspend the certification of a certified inspector or ~~licensed~~ certified company for good cause, and based on a single act or omission or repeated acts or omissions. The suspension may require the certified inspector to take remedial measures intended to correct or prevent future acts and omissions. Good cause includes, but is not limited to:

a. to f. No change.

134.15(4) The suspension of a company ~~license~~ certification or inspector certification shall prevent the company or person from engaging in activities for which certification ~~or licensure~~ is required.

134.15(5) No change.

134.15(6) A certified inspector or ~~licensed~~ certified company shall immediately surrender the certificate or license, as applicable, to the department as of the effective date of a suspension order. The department may reinstate the certification ~~or license~~ if it is determined the person has satisfied the terms of the suspension order and the certification has not expired.

ITEM 25. Amend rule 567—134.16(455B) as follows:

567—134.16(455B) Revocation of inspector certification or company license certification.

134.16(1) The department may revoke the inspector certification or company ~~license~~ certification for one or more of the following:

a. to c. No change.

d. Acts or omissions warranting suspension after having certification ~~or license~~ previously suspended.

e. The revocation of a certification as an installer or installation inspector under ~~591—Chapter 15~~ rule 567—134.24(455B) or 567—134.27(455B).

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134.16(2) A certified inspector or ~~licensed~~ certified company shall immediately surrender certification or ~~licensing~~ documents after the effective date of a revocation decision.

ITEM 26. Amend rule ~~567—134.17(455B)~~, definitions of “Deductible,” “In the aggregate,” “Modification,” “OSHA,” “Removal,” “Self-insured retention,” “Underground storage tank professional” and “Underground storage tank system,” as follows:

“*Deductible*” means the portion of a claim paid by insureds on the policy issued by the board.

“*In the aggregate*” means for all claims or suits in a single year seeking damages ~~under an insurance policy issued by the board.~~

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

“*OSHA*” means the Occupational Safety and Health Act Administration.

“*Removal*” means the process of removing and disposing of an underground storage tank system no longer in service or the process of abandoning an underground storage tank system in place, in accordance with rule ~~567—135.9(455B)~~ ~~567—135.15(455B)~~.

“*Self-insured retention*” means the portion of a claim paid by insureds who self-insure a portion of their risk as part of a policy issued by the board. Expenses included as a part of the self-insured retention are the cost of claims settlements or suits, the cost of adjusting, legal fees, court costs and any other investigative cost associated with the claim.

“*Underground storage tank professional*” or “*UST professional*” means an individual licensed by the department under Part C of this chapter. The licensing program includes underground storage tank system installation, installation inspection, UST system testing, tank lining, cathodic protection installation/inspection, and UST removal. The license issued will list the type of work the individual is licensed to perform.

“*Underground storage tank system*” or “*UST system*” means a tank or tanks and associated piping intended to contain and dispense ~~petroleum products regulated substances~~ and for which proof of financial responsibility is, ~~or on a date definite will be required to be maintained pursuant to the Federal Resource Conservation and Recovery Act, 40 CFR 280, and the regulations in effect on December 31, 1994, adopted pursuant to that Act or successor Acts or amendments required.~~

ITEM 27. Amend rule ~~567—134.18(455B)~~ as follows:

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

ITEM 28. Amend rule ~~567—134.19(455B)~~ as follows:

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

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

- a. UST installers ~~and installation inspectors~~;
- b. UST removers;

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- c. UST testers;
- d. Cathodic protection testers; ~~and~~
- e. UST liners; and
- f. Installation inspectors.

134.19(2) to 134.19(4) No change.

134.19(5) *Environmental liability insurance.* All license holders, including licensed companies, are required to have environmental liability insurance with minimum liability of \$1 million per occurrence, as well as in the aggregate. ~~Current license holders shall have 45 days from August 19, 2009, to upgrade their environmental liability insurance.~~

- a. to d. No change.

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

- a. *Examination requirements for all license holders.*

(1) A passing grade of not less than ~~85~~ 75 percent is required on the Iowa examination.

(2) to (4) No change.

- b. to d. No change.

134.19(7) *Continuing education.* Each person licensed under Part C of this chapter shall complete a department-approved refresher course every two years, except for licensed cathodic protection testers. Cathodic protection testers shall maintain NACE or STI certification or another certification approved by the department. Beginning with the first application for license renewal, each UST professional shall provide evidence to the department, prior to submission of the application for renewal, that at least ~~42 credit~~ eight hours of department-approved continuing education have been satisfactorily completed since the last license was issued or renewed. The department may limit the number of ~~credits~~ hours granted for similar courses during a renewal period. The requirement for continuing education may be met only by those continuing education offerings which have been approved by the department.

- a. to c. No change.

ITEM 29. Amend subrule 134.20(1) as follows:

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

ITEM 30. Amend subrule 134.24(3) as follows:

134.24(3) *Responsibilities of installers.* A licensed installer shall be on site during the performance of all work, including subcontracted work, for which the owner/operator has contracted to have completed by the installer. The licensed installer is responsible for all UST-related work at the site and must ensure that the performance of the work and the finished work conform to industry standards and codes and manufacturers' requirements.

a. *Notification.* The licensed installer is responsible for ensuring that all local installation permits and notice requirements are satisfied. ~~Tank~~

b. *Work performed.* UST system installation includes all work associated with the placement of the tanks, ~~pipes~~ piping, pumps, dispensers, gauging systems, monitoring systems, corrosion protection, containment sumps, spill and overfill devices, and ancillary systems which, if installed incorrectly, could cause or delay detection of a leak. ~~Tank installation~~ Installation specifically includes excavation, equipment placement, backfilling, piping, electrical work, testing calibration, and start-up. Tank installation also includes installation of the appropriate equipment to meet National Emissions Standards for Hazardous Air Pollutants (NESHAP) requirements (40 CFR § 63.6580, Subpart ZZZZ), including submerged fill and vapor balance systems (Stage 1 vapor recovery) and the testing of those systems.

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c. Testing of UST equipment. Spill prevention equipment, containment sumps and UDC at new installations must be tested to ensure the equipment is liquid-tight before the UST system is placed into service. Acceptable test methods include vacuum, pressure or liquid testing used in accordance with requirements developed by the manufacturer, a code of practice such as PEI RP1200 or methods determined by the department to be no less protective of human health and the environment than the requirements listed in this subrule.

d. Proof of training. Installers shall have on their person at all times while on a UST job site a 40-hour general site worker program identification card or any valid refresher card that complies with OSHA standards.

ITEM 31. Amend subrule 134.24(4) as follows:

134.24(4) Documentation of work performed. Installing a new UST system or upgrading a UST system requires an installer to submit ~~a copy of DNR Form 148~~ the department forms and testing documents applicable to the installation, signed by the owner, to the department no later than 30 days after the final third-party inspection or 30 days after completion if no inspection is required. Each licensed installer responsible for the new system installation or the upgrading of an existing system shall sign DNR Form 148 as required by 567—paragraph 135.3(3)“e.” Secondary containment testing performed at installation or to meet periodic testing requirements shall be recorded on the department’s Secondary Containment Testing form. Test results shall be dated and signed by the licensed installer who performed the test.

ITEM 32. Amend rule 567—134.25(455B) as follows:

567—134.25(455B) Testers.

134.25(1) Licensure and certification. A tester of underground storage tank systems shall apply for licensing as a tester and note on the license application the systems and method(s) of testing the tester will use, except that a person engaging in testing described in paragraph 134.25(2)“b” need not be licensed if that person is under the supervision of an individual licensed under Chapter 134, Part B or Part C, when conducting those tests. In addition to the licensing requirements listed under rule 567—134.19(455B), a tester shall provide documentation of ~~at least two years of relevant experience, documentation of manufacturer certification for past testing, and proof of current certification for future work.~~ the following:

a. Current manufacturer certification(s) for equipment being used for testing; and

b. Experience as documented by at least one of the following:

(1) One year of relevant experience.

(2) Completion of a minimum of 80 on-site tests with an Iowa-licensed tester.

(3) Other relevant experience as approved by the department.

134.25(1) 134.25(2) Renewal qualifications. To be eligible for license renewal, a tester shall fulfill the department’s continuing education requirements in rule 567—134.19(455B) and shall maintain manufacturer certification or notify the department within 30 days if the certification is lost.

134.25(2) 134.25(3) Documentation of work performed Responsibilities of testers. ~~A copy of the test results shall be attached to DNR Form 148 when testing is done in connection with a new installation or the upgrading of an existing underground storage tank system.~~ The licensed tester is responsible for testing tanks, lines, leak detection systems, or monitoring systems as required by 567—Chapter 135 and this chapter. An owner, operator or an employee of an owner or operator performing leak detection or cathodic protection monitoring, as required by 567—Chapter 135, is not a tester.

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

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

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

b. A licensed tester may also perform periodic testing of spill prevention equipment and overfill devices, containment sumps and UDC as required by 567—Chapter 135. Spill prevention equipment, containment sumps and UDC at new installations must be tested to ensure the equipment is liquid-tight before the UST system is placed into service. Acceptable methods include vacuum, pressure or liquid testing used in accordance with requirements developed by the manufacturer, a code of practice such as PEI RP1200 or methods determined by the department to be no less protective of human health and the environment than the requirements listed in this subrule.

c. An individual licensed under Chapter 134, Part B or Part C, is not required to conduct periodic testing of spill prevention equipment, containment sumps, and UDC as required by 567—subrule 135.4(12).

~~134.25(3)~~ **134.25(4)** *Exception to inspection requirement.* Installation inspectors are not required for the testing of underground storage tank systems, lines, leak detection, and cathodic protection as required by 567—Chapter 135 after the system has been put into service.

134.25(5) *Documentation of work performed.* A copy of the test results shall be attached to DNR Form 148 when testing is done in connection with a new installation or the upgrading of an existing underground storage tank system. The test results shall identify the tanks and piping tested, the test method employed, and the results of the test. Periodic testing shall be recorded on the department's Secondary Containment Testing form. Test results shall be dated and signed by the licensed tester who performed the tests.

ITEM 33. Amend rule 567—134.27(455B), introductory paragraph, as follows:

567—134.27(455B) Installation inspectors. In addition to the licensing requirements listed under rule 567—134.19(455B), an installation inspector shall provide documentation of at least ~~one year~~ two years of experience with underground storage installations, testing, inspecting, or design; documentation of manufacturer certification for past work; and proof of current certification for future work. An engineer who intends to apply for licensure as an installation inspector and who has met the requirements in Iowa to be a registered professional engineer (P.E.) may be exempt from the educational requirement so long as UST installation is in the scope of the engineer's P.E. license and regular practice as provided for in rule 567—134.19(455B). Engineers, however, are not exempt from fulfilling the examination requirement.

ITEM 34. Amend paragraph **134.27(2)“c”** as follows:

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

ITEM 35. Amend subrule 134.27(3) as follows:

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

a. An inspection shall occur before the tanks or piping are installed.

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b. An inspection shall occur before the covering of tank or piping, when all tanks and piping are exposed. The inspector shall witness testing of the primary and secondary piping and testing of the secondary containment, including sumps, under-dispenser containment (UDC), and secondary containment leak detection equipment.

c. A final inspection shall occur when all components are operational and the system has been covered, but before actual operation.

d. Whenever secondary containment (such as sumps or UDC) is installed, at least one inspection is required after the equipment is installed and before the system is backfilled.

ITEM 36. Rescind paragraph **135.1(3)“a”** and adopt the following new paragraph in lieu thereof:

a. The requirements of this chapter apply to all owners and operators of a UST system as defined in rule 567—135.2(455B) except as otherwise provided in paragraphs 135.1(3) “b” and “c.”

(1) Previously deferred UST systems. Airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and UST systems that store fuel solely for use by emergency power generators must meet the requirements of these rules as follows:

1. Airport hydrant fuel distribution systems and UST systems with field-constructed tanks must meet the requirements in rule 567—135.21(455B).

2. UST systems that store fuel solely for use by emergency power generators installed on or before November 28, 2007, must meet the requirements in rule 567—135.5(455B) by October 13, 2021.

3. UST systems that store fuel solely for use by emergency power generators installed after November 28, 2007, must meet all applicable requirements of this chapter at installation.

(2) Any UST system listed in paragraph 135.1(3) “c” must meet the requirements of subrule 135.1(4).

ITEM 37. Amend paragraph **135.1(3)“b,”** introductory paragraph, as follows:

b. Exclusions. The following UST systems are excluded from the requirements of this chapter:

ITEM 38. Amend paragraph **135.1(3)“c”** as follows:

c. Deferrals Partial exclusions. Rules 567—135.3(455B), 567—135.4(455B), 567—135.5(455B), ~~567—135.6(455B)~~ 567—135.6(455B), 567—135.15(455B) and ~~567—135.9(455B)~~ 567—135.21(455B) do not apply to any of the following types of UST systems:

(1) to (3) No change.

(4) ~~Airport hydrant fuel distribution systems; and~~ Aboveground storage tanks associated with:

1. Airport hydrant fuel distribution systems regulated under rule 567—135.21(455B); and

2. UST systems with field-constructed tanks regulated under rule 567—135.21(455B).

~~(5) UST systems with field-constructed tanks.~~

ITEM 39. Rescind paragraph **135.1(3)“d.”**

ITEM 40. Reletter paragraph **135.1(3)“e”** as **135.1(3)“d.”**

ITEM 41. Amend subrule 135.1(4) as follows:

135.1(4) ~~Interim prohibition for deferred UST systems~~ Installation requirements for partially excluded UST systems.

a. ~~No person may~~ Owners and operators must install a UST system listed in 135.1(3) “e” ~~for the purpose of subparagraphs 135.1(3) “c”(1) to 135.1(3) “c”(3) storing regulated substances unless the UST system~~ (whether of single- or double-wall construction) that meets the following requirements:

(1) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;

(2) Is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(3) Is constructed or lined with material that is compatible with the stored substance.

b. ~~Notwithstanding paragraph “a” of this subrule, 135.1(4) “a,”~~ a UST system without corrosion protection may be installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life. Owners and operators must maintain

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records that demonstrate compliance with the requirements of this paragraph for the remaining life of the tank.

NOTE: ~~The National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," may be used as guidance for complying with 135.1(4)"b."~~ The following codes of practice may be used as guidance for complying with this subrule.

- NACE International Standard RP-02-85, Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection";
- NACE International Standard Practice SP 0169, "Control of External Corrosion on Metallic Buried, Partially Buried, Underground or Submerged Metallic Piping Systems";
- American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; or
- Steel Tank Institute Recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems."

ITEM 42. Amend the following definitions in rule **567—135.2(455B)**:

"Asbestos-cement pipe" (AC refers to asbestos-cement) means a pipe or conduit constructed of asbestos fiber, and Portland cement, ~~and water~~, which can be used to transport water.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended.

"Certified groundwater professional" means a person certified pursuant to ~~1995~~ Iowa Code section ~~455G.18~~ 455B.474 and ~~567—~~Chapter 134, Part A.

"Chemicals of concern" means the compounds derived from petroleum-regulated substances which are subject to evaluation for purposes of applying risk-based corrective action decision making. These compounds are benzene, ethylbenzene, toluene, and xylenes (BTEX) and naphthalene, benzo(a)pyrene, benz(a)anthracene, and chrysene. (NOTE: ~~Measurement of~~ Concentration values for these last four constituents ~~may be done~~ are determined by a conversion method from total extractable hydrocarbons, see subrule 135.8(3).)

"Drinking water well" means any groundwater well used as a source for drinking water by humans and groundwater wells used primarily for the final production of food or medicine for human consumption ~~in facilities routinely characterized with the Standard Industrial Codes (SIC) group 283 for drugs and 20 for foods.~~

"Free product" refers to a regulated substance that is present as a light nonaqueous phase liquid (e.g., liquid not dissolved in water).

"Motor fuel" means ~~petroleum or a petroleum-based substance that is~~ a complex blend of hydrocarbons typically used in the operation of a motor engine, such as motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine blend containing one or more of these substances (for example, motor gasoline blended with alcohol).

"Owner" means:

1. In the case of a UST system in use on July 1, 1985, or brought into use after that date, any person who owns a UST system used for storage, use, or dispensing of regulated substances; and
2. In the case of any UST system in use before July 1, 1985, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

"Owner" Owner does not include a person or institution, who, without participating in the management or operation of the underground storage tank or the tank site or engaging in petroleum production, refining or marketing, holds indicia of ownership primarily to protect that person's security interest in the underground storage tank or the tank site property, prior to obtaining ownership or control through debt enforcement, debt settlement, or otherwise.

"Pipe" or *"piping"* means a hollow cylinder or tubular conduit that is constructed of nonearthen materials and that routinely contains and conveys regulated substances ~~from the underground tank(s) to the dispenser(s) or other end-use equipment.~~ Such piping includes any elbows, couplings, unions, valves,

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~~or other in-line fixtures that contain and convey regulated substances from the underground tank(s) to the dispenser(s). This definition does not include vent, vapor recovery, or fill lines.~~

"Regulated substance" means an element, compound, mixture, solution or substance which, when released into the environment, may present substantial danger to the public health or welfare or the environment. Regulated substance includes:

1. and 2. No change.

3. Any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under subtitle C), and

4. Petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). The term "regulated substance" includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons ~~derived from crude oil through processes of separation, conversion, upgrading, and finishing~~, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or a leak has occurred into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

"Replace" or *"replacement"* means the installation of a new underground tank system or component, including dispensers, in substantially the same location as an existing tank system or component ~~in lieu of that tank system or component~~.

"Site assessment investigation" means an investigation conducted by a registered certified groundwater professional to determine relevant site historical data, the types, amounts, and sources of petroleum contaminants present, hydrogeological characteristics of the site, full vertical and horizontal extent of the contamination in soils and groundwater, direction and rate of flow of the contamination, ranges of concentration of the contaminants by analysis of soils and groundwater, the vertical and horizontal extent of the contamination exceeding department standards, and the actual or potential threat to public health and safety and the environment.

"Tier 2 site assessment" means the process of assessing risk to actual and potential receptors by using site-specific ~~field data~~ contaminant concentrations and designated Tier 2 exposure and fate and transport models to determine the applicable target level(s).

"Under-dispenser containment (UDC)" means containment underneath a dispenser ~~that will~~ system designed to prevent leaks from the dispenser and piping within or above the UDC from reaching soil or groundwater. ~~Such containment must:~~

- ~~Be intact and liquid-tight on its sides and bottom and at any penetrations;~~
- ~~Be compatible with the substance conveyed by the piping; and~~
- ~~Allow for visual inspection and monitoring and access to the components in the containment system.~~

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. This term does not include any:

a. Farm or residential tank of 1100 gallons or less capacity used for storing motor fuel for noncommercial purposes. Iowa Code section ~~455B.471~~ 455B.473(4) requires those tanks existing prior to July 1, 1987, to be registered. Tanks installed on or after July 1, 1987, must comply with all 567—Chapter 135 rules;

b. Tank used for storing heating oil for consumptive use on the premises where stored;

c. Septic tank;

d. Pipeline facility (including gathering lines) ~~regulated under:~~

(1) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et seq.) Which is regulated under 49 U.S.C. Chapter 601, or

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(2) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.), or Which is an intrastate pipeline facility regulated under state laws as provided in 49 U.S.C. Chapter 601 and which is determined by the Secretary of Transportation to be connected to a pipeline, or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline;

(3) Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in “d”(1) or “d”(2) of this definition;

- e.* Surface impoundment, pit, pond, or lagoon;
- f.* Storm-water or wastewater collection system;
- g.* Flow-through process tank;
- h.* Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
- i.* Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term “underground storage tank” or “UST” does not include any pipes connected to any tank which is described in paragraphs “a” through ~~“j”~~ “i” of this definition.

ITEM 43. Rescind the definitions of “Class A operator,” “Class B operator,” “Class C operator,” “Dispenser,” “Repair” and “Secondary containment tank” in rule **567—135.2(455B)**.

ITEM 44. Adopt the following **new** definitions of “Airport hydrant fuel distribution system,” “Biodiesel,” “Class A operator,” “Class B operator,” “Class C operator,” “Containment sump,” “Dispenser,” “Dispenser system,” “Ethanol,” “Field-constructed tank,” “Light, nonaqueous-phase liquid,” “Over-excavation,” “Repair,” “Replaced,” “Secondary containment,” “Temporary closure,” “Training program” and “Underground storage tank professional” in rule **567—135.2(455B)**:

“*Airport hydrant fuel distribution system*” or “*airport hydrant system*” means a UST system which fuels aircraft and operates under high pressure with large diameter piping that typically terminates into one or more hydrants (fill stands). The airport hydrant system begins where fuel enters one or more tanks from an external source such as a pipeline, barge, rail car, or other motor fuel carrier.

“*Biodiesel*” means a renewable fuel comprised of mono-alkyl esters of long-chain fatty acids derived from vegetable oils or animal fats, that is blended with petroleum-based diesel fuel, which meets the standards provided in Iowa Code section 214A.2.

“*Class A operator*” means the individual who has primary responsibility to operate and maintain the UST system in accordance with applicable requirements. The Class A operator typically manages resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements under this chapter.

“*Class B operator*” means the individual who has day-to-day responsibility for implementing applicable regulatory requirements established by the department. The Class B operator typically implements in-field aspects of operation, maintenance, and associated record keeping for the UST systems.

“*Class C operator*” means the individual responsible for initially addressing emergencies presented by a spill or release from a UST system. The Class C operator typically controls or monitors the dispensing or sale of regulated substances.

“*Containment sump*” means a liquid-tight container that protects the environment by containing leaks and spills of regulated substances from piping, dispensers, pumps and related components in the containment area. Containment sumps may be single-walled or secondarily contained and located at the top of the tank (tank top or submersible turbine pump sump), underneath the dispenser (under-dispenser containment sump), or at other points in the piping run (transition or intermediate sump).

“*Dispenser*” means equipment located above ground that dispenses regulated substances from the UST system.

“*Dispenser system*” means the dispenser and the equipment necessary to connect the dispenser to the underground storage tank system.

“*Ethanol*” means ethyl alcohol that is to be blended with gasoline if it meets the standards provided in Iowa Code section 214A.2.

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“Field-constructed tank” means a tank constructed in the field. For example, a tank constructed of concrete that is poured in the field or a steel or fiberglass tank primarily fabricated in the field is considered field-constructed.

“Light, nonaqueous-phase liquid” or *“LNAPL”* refers to an organic compound that is immiscible with, and lighter than water (e.g., crude oil, gasoline, diesel fuel, heating oil).

“Over-excavation” refers to the excavation of subsurface materials outside the excavation zone for the purpose of removing contaminated substances.

“Repair” means to restore to proper operating condition a tank, pipe, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment or other UST system component that has caused a release of product from the UST system or has failed to function properly.

“Replaced” means:

1. For a tank: to remove a tank and install another tank.
2. For piping: to remove 50 percent or more of piping and install other piping, excluding connectors, connected to a single tank. For tanks with multiple piping runs, this definition applies independently to each piping run.

“Secondary containment” or *“secondarily contained”* means a release prevention and release detection system for a tank or piping. This system has an inner and outer barrier with an interstitial space monitored for leaks. This term includes containment sumps when used for interstitial monitoring of piping.

“Temporary closure” means a regulated tank or UST system that has been out of operation for three months or more.

“Training program” means any program that provides information to and evaluates the knowledge of a Class A, Class B, or Class C operator through testing, practical demonstration, or another approach acceptable to the department regarding requirements for UST systems that meet the requirements of subrules 135.4(6) to 135.4(12).

“Underground storage tank professional” or *“UST professional”* means an individual licensed by the department under 567—Chapter 134, Part C. The licensing program includes underground storage tank system installation, installation inspection, UST system testing, tank lining, cathodic protection installation/inspection, and UST removal. The license issued will list the type of work the individual is licensed to perform.

ITEM 45. Amend subrule 135.3(1) as follows:

135.3(1) Performance standards for new UST systems. In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems must meet the following requirements. The UST system must be secondarily contained in accordance with subrule 135.3(9).

a. Tanks. Each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

- (1) The tank is constructed of fiberglass-reinforced plastic; or

NOTE: The following ~~industry~~ codes of practice may be used to comply with subparagraph 135.3(1)“a”(1): Underwriters Laboratories Standard 1316, ~~“Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures”~~; or Underwriters Laboratories of Canada ~~CAN4-S615-M83 S615, “Standard for Reinforced Plastic Underground Tanks for Petroleum Products”~~; or American Society of Testing and Materials Standard D4021-86, ~~“Standard Specification for Glass Fiber Reinforced Polyester Underground Petroleum Storage Tanks.”~~ Flammable and Combustible Liquids.”

- (2) The tank is constructed of steel and cathodically protected in the following manner:

1. The tank is coated with a suitable dielectric material;
2. Field-installed cathodic protection systems are designed by a corrosion expert;

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3. Impressed current systems are designed to allow determination of current operating status as required in paragraph 135.4(2) "c." This shall be accomplished by providing the rectifier with ampere and voltage meters that can be read by the owner and operator for comparison to the design standard set by the corrosion expert or a device that can warn the owner and operator when changes in ampere and voltage occur outside the design standard set by the corrosion expert; and

4. Cathodic protection systems are operated and maintained in accordance with subrule 135.4(2) or according to guidelines established by the department; or and

5. Impressed current systems must be designed not to cause stray current that can damage other underground structures (metal electrical conduits, water lines, gas lines, etc.); or

NOTE: The following codes and standards may be used to comply with 135.3(1) "a"(2): Steel Tank Institute "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks"; Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks"; Underwriters Laboratories of Canada CAN4-S603-M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," and CAN4-GO3.1-M85, "Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids," and CAN4-S631-M84, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems"; or National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids." The following codes of practice may be used to comply with subparagraph 135.3(1) "a"(2):

- Steel Tank Institute "Specification STI-P3® Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks";

- Underwriters Laboratories Standard 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks";

- Underwriters Laboratories of Canada S603, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," and S603.1, "Standard for External Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids," and S631, "Standard for Isolating Bushings for Steel Underground Tanks Protected with External Corrosion Protection Systems";

- Steel Tank Institute Standard F841, "Standard for Dual Wall Underground Steel Storage Tanks";

or

- NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Systems by Cathodic Protection," and Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids."

(3) The tank is constructed of a steel-fiberglass-reinforced plastic-composite steel and clad or jacketed with a noncorrodible material; or

NOTE: The following industry codes may be used to comply with subparagraph 135.3(1) "a"(3): Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks," or the Association for Composite Tanks ACT-100, "Specification for the Fabrication of FRP Clad Underground Storage Tanks."

- Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks";

- Steel Tank Institute ACT-100® Specification F894, "Specification for External Corrosion Protection of FRP Underground Storage Tanks";

- Steel Tank Institute ACT-100-U® Specification F961, "Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks"; or

- Steel Tank Institute Specification F922, "Steel Tank Institute Specification for Permatank®."

(4) The tank is constructed of metal without additional corrosion protection measures provided that:

1. The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life; and

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2. Owners and operators maintain records that demonstrate compliance with the requirements of paragraph 135.3(1) "a"(4)"1" for the remaining life of the tank; or

(5) The tank construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than subparagraphs 135.3(1) "a"(1) to (4).

b. Piping. The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified ~~below~~: in this rule. This includes piping for remote tank fill locations.

All piping must have secondary containment, installed according to manufacturer's specifications, and be compatible with the product stored and the environment to which it will be exposed. Piping must maintain its original specifications and structural integrity. Piping whose structural integrity has degraded must be replaced. All piping installations must meet National Fire Prevention Association Standard 30 and Standard 30A or the International Fire Code as adopted by the Iowa state fire marshal in 661—Chapter 221, "Flammable or Combustible Liquids."

(1) The piping is constructed of ~~fiberglass-reinforced plastic~~ a noncorrodible material; or

NOTE: The following codes ~~and standards of practice~~ may be used to comply with subparagraph 135.3(1) "b"(1): Underwriters Laboratories Subject 971, "UL Listed Non-Metal Pipe"; Underwriters Laboratories Standard 567, "Pipe Connectors for Flammable and Combustible and LP Gas"; Underwriters Laboratories of Canada Guide ULC-107, "Glass Fiber Reinforced Plastic Pipe and Fittings for Flammable Liquids"; and Underwriters Laboratories of Canada Standard CAN 4-S633-M81, "Flexible Underground Hose Connectors."

- Underwriters Laboratories Standard 971, "Nonmetallic Underground Piping for Flammable Liquids"; or

- Underwriters Laboratories of Canada Standard S6660, "Standard for Nonmetallic Underground Piping for Flammable and Combustible Liquids."

(2) The piping is constructed of steel and cathodically protected in the following manner:

1. The piping is coated with a suitable dielectric material;

2. Field-installed cathodic protection systems are designed by a corrosion expert;

3. Impressed current systems are designed to allow determination of current operating status as required in paragraph 135.4(2) "c"; and

4. Cathodic protection systems are operated and maintained in accordance with subrule 135.4(2) or guidelines established by the department; or

NOTE: The following codes ~~and standards of practice~~ may be used to comply with subparagraph 135.3(1) "b"(2): National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"; American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage Systems"; American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; and National Association of Corrosion Engineers Standard RP-01-69, "Control of External Corrosion on Submerged Metallic Piping Systems."

- American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems";

- Underwriters Laboratories Subject 971A, "Outline of Investigation for Metallic Underground Fuel Pipe";

- Steel Tank Institute Recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems";

- NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems";

- NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection"; or

- National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code."

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(3) The piping is constructed of metal without additional corrosion protection measures provided that:

1. The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operating life; and

2. Owners and operators maintain records that demonstrate compliance with the requirements of paragraph 135.3(1)“b”(3)“1” for the remaining life of the piping; or

~~NOTE: National Fire Protection Association Standard 30, “Flammable and Combustible Liquids Code”; and National Association of Corrosion Engineers Standard RP-01-69, “Control of External Corrosion on Submerged Metallic Piping Systems,” may be used to comply with 135.3(1)“b”(3).~~

(4) The piping construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in subparagraphs 135.3(1)“b”(1) to (3).

c. Spill and overfill prevention equipment.

(1) Except as provided in subparagraph ~~(2)~~ 135.3(1)“b”(2), to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use the following spill and overfill prevention equipment:

1. Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and

2. Overfill prevention equipment that will:

- Automatically shut off flow into the tank when the tank is no more than 95 percent full; or
- Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank (not allowed for suction product delivery systems, for tanks with stage 1 vapor recovery or when product delivery is by pumping) or triggering a high-level alarm; or

- Restrict flow 30 minutes prior to overfilling, alert the transfer operator with a high-level alarm one minute before overfilling, or automatically shut off the flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.

(2) Owners and operators are not required to use the spill and overfill prevention equipment specified in subparagraph ~~(4)~~ 135.3(1)“b”(1) if:

1. Alternative equipment is used that is determined by the department to be no less protective of human health and the environment than the equipment specified in ~~subparagraph (4)“1”~~ paragraph 135.3(1)“b”(1)“1” or “2” ~~of this paragraph~~; or

2. The UST system is filled by transfers of no more than 25 gallons at one time.

(3) Flow restrictors used in vent lines may not be used to comply with paragraph 135.3(1)“c”(1)“2” when overfill prevention is installed or replaced.

(4) Spill and overfill prevention equipment must be periodically tested or inspected in accordance with subrule 135.4(12).

(5) Spill prevention equipment must be kept free of any liquid and debris. Any liquid or debris must be removed prior to product delivery.

d. Installation. ~~All tanks and piping~~ The UST system must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer’s instructions. The UST system installation shall be conducted by an installer licensed by the department under 567—Chapter 134, Part C, and in accordance with 567—subrules 134.24(3) and 134.24(4).

NOTE: Tank and piping system installation practices and procedures described in the following codes may be used to comply with the requirements of paragraph 135.3(1)“d”: ~~American Petroleum Institute Publication 1615, “Installation of Underground Petroleum Storage System”; Petroleum Equipment Institute Publication RP100, “Recommended Practices for Installation of Underground Liquid Storage Systems”; or American National Standards Institute Standard 831.3, “Petroleum Refinery Piping,” and American National Standards Institute Standard 831.4, “Liquid Petroleum Transportation Piping System.”~~

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- American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System";

- Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"; or

- National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code," and 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages."

e. Certification of installation. All owners and operators must ensure that ~~one or more of~~ the following methods of certification, testing, ~~or~~ and inspection is ~~are~~ used to demonstrate compliance with paragraph 135.3(1) "*d*" ~~of this subrule~~ by providing a certification of compliance on the UST ~~notification registration~~ form in accordance with subrule 135.3(3).

(1) ~~The installer has been certified by the tank and piping manufacturers; or~~

(2) (1) The installer ~~has been certified or~~ is licensed by the department as provided in 567—Chapter 134, Part C; ~~or and~~

(3) (2) The installation has been inspected ~~and certified~~ by a ~~registered professional engineer with education and experience in UST system installation; or~~ licensed installation inspector as required by 567—Chapter 134, Part C.

(4) ~~The installation has been inspected and approved by an inspector certified or licensed by the Iowa comprehensive petroleum underground storage tank fund board; or~~

(5) ~~All work listed in the manufacturer's installation checklists has been completed; or~~

(6) ~~The owner and operator have complied with another method for ensuring compliance with paragraph "d" that is determined by the department to be no less protective of human health and the environment.~~

f. Dispenser systems. Each UST system must be equipped with under-dispenser containment (UDC) for any new or replaced dispenser system.

(1) A dispenser system is considered new when both the dispenser and the equipment needed to connect the dispenser to the underground storage tank system are installed at a location where there previously was no dispenser (new UST system or new dispenser location at an existing UST system). The equipment necessary to connect the dispenser to the underground storage tank system includes check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are underneath the dispenser and connect the dispenser to the underground piping.

(2) UDC shall be installed whenever an existing dispenser system is removed and replaced with another dispenser and the equipment used to connect the dispenser to the underground storage tank system is replaced. This equipment includes flexible connectors or risers or other transitional components that are beneath the dispenser and connect the dispenser to the piping. UDC is not required when only the emergency shutoff or shear valves or check valves are replaced.

(3) UDC shall be installed beneath the dispenser whenever ten feet or more of piping is repaired or replaced within ten feet of a dispenser.

(4) UDC must be liquid-tight on its sides, bottom, and at any penetrations. UDC must allow for visual inspection and access to the components in the containment system or be periodically monitored for leaks from the dispenser system.

ITEM 46. Amend subrule 135.3(2) as follows:

135.3(2) Upgrading of existing UST systems. Owners and operators must permanently close any UST system that does not meet the new UST system performance standards or has not been upgraded in accordance with paragraphs 135.3(2) "*b*" through "*d*." This subrule does not apply to previously deferred UST systems. Upgrading is no longer allowed for UST systems not upgraded by December 22, 1998.

a. Alternatives allowed. Not later than December 22, 1998, all existing UST systems ~~must~~ had to comply with one of the following requirements:

(1) New UST system performance standards under 135.3(1);

(2) The upgrading requirements in paragraphs "*b*" through "*d*" below; or

(3) Closure requirements under rule 567—135.15(455B), including applicable requirements for corrective action under rules 567—135.7(455B) to 567—135.12(455B).

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Replacement or upgrade of a tank system on a petroleum contaminated site classified as a high or low risk in accordance with subrule rule 567—135.12(455B) shall be a double wall tank or a tank equipped with a secondary containment system with monitoring of the space between the primary and secondary containment structures in accordance with paragraph 135.5(4) “g.” ~~or other approved tank system or methodology approved by the Iowa comprehensive petroleum underground storage tank fund board.~~

b. Tank upgrading requirements. Steel tanks ~~must~~ had to be upgraded to meet one of the following requirements in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory:

(1) *Interior lining.* ~~A tank may be~~ Tanks upgraded by internal lining if must meet the following:

1. The lining is was installed in accordance with the requirements of subrule 135.4(4), and
2. Within ten years after lining, and every five years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.

3. If the internal lining is no longer performing in accordance with original design specifications and cannot be repaired in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory, the lined tank must be permanently closed in accordance with rule 567—135.15(455B).

(2) *Cathodic protection.* ~~A tank may be~~ Tanks upgraded by cathodic protection ~~if the cathodic protection system meets~~ meet the requirements of paragraphs 135.3(1) “a” (2) “2,” “3,” and “4” and the integrity of the tank is was ensured using one of the following methods:

1. The tank is was internally inspected and assessed to ensure that the tank is was structurally sound and free of corrosion holes prior to installing the cathodic protection system; or

2. The tank ~~has~~ had been installed for less than ten years and is monitored monthly for releases in accordance with 135.5(4) “d” through “h” “i”; or

3. The tank ~~has~~ had been installed for less than ten years and ~~is~~ was assessed for corrosion holes by conducting two tightness tests that meet the requirements of paragraph 135.5(4) “c.” The first tightness test must ~~be~~ have been conducted prior to installing the cathodic protection system. The second tightness test must ~~be~~ have been conducted between three and six months following the first operation of the cathodic protection system; or

4. The tank is was assessed for corrosion holes by a method that is determined by the department to prevent releases in a manner that is no less protective of human health and the environment than paragraphs 135.3(2) “b” (2) “1” to “3.”

(3) *Internal lining combined with cathodic protection.* ~~A tank may be~~ Tanks upgraded by both internal lining and cathodic protection if must have met the following:

1. The lining is was installed in accordance with the requirements of subrule 135.4(4); and

2. The cathodic protection system was installed within six months of lining installation and meets the requirements of paragraphs 135.3(1) “a” (2) “2,” “3,” and “4.”

NOTE: ~~The following codes and standards may be used to comply with subrule 135.3(2): American Petroleum Institute Publication 1631, “Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks”; National Leak Prevention Association Standard 631, “Spill Prevention, Minimum 10-Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection”; National Association of Corrosion Engineers Standard RP-02-85, “Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems”; and American Petroleum Institute Publication 1632, “Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems.”~~ regarding paragraph 135.3(2) “b”: The following historical codes of practice were listed as options for complying with paragraph 135.3(2) “b”:

- American Petroleum Institute Publication 1631, “Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks”;

- National Leak Prevention Association Standard 631, “Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection”;

- National Association of Corrosion Engineers Standard RP-02-85, “Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems”; and

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- American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems."

NOTE regarding paragraph 135.3(2) "b"(1)"2": The following codes of practice may be used to comply with the periodic lining inspection requirement of this subrule:

- American Petroleum Institute Recommended Practice 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks";
- National Leak Prevention Association Standard 631, Chapter B, "Future Internal Inspection Requirements for Lined Tanks";
- Ken Wilcox Associates Recommended Practice, "Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera"; or
- Underwriters Laboratories (UL) 1856 Underground Fuel Tank Internal Retrofit Systems.

c. Piping upgrading requirements. Metal piping that routinely contains regulated substances and is in contact with the ground must be cathodically protected in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and must meet the requirements of paragraphs 135.3(1) "b"(2) "2," "3," and "4."

NOTE: The codes and standards of practice listed in the note following subparagraph 135.3(1) "b"(2) may be used to comply with this requirement.

d. Spill and overfill prevention equipment. To prevent spilling and overfilling associated with product transfer to the UST system, all existing UST systems must comply with new UST system spill and overfill prevention equipment requirements specified in paragraph 135.3(1) "c."

ITEM 47. Amend subrule 135.3(3) as follows:

135.3(3) Notification Registration and notification requirements.

a. Except as provided in paragraph 135.3(3) "b," the owner of an underground storage tank existing on or before July 1, 1985, shall complete and submit to the department a copy of the ~~notification registration~~ form provided by the department ~~by May 1, 1986.~~

b. The owner of an underground storage tank system taken out of operation between January 1, 1974, and July 1, 1985, shall complete and submit to the department a copy of the ~~notification registration~~ form provided by the department ~~by May 8, 1986,~~ unless the owner knows the tank has been removed from the ground. For purposes of this subrule, "owner" means the person who owned the tank immediately before the discontinuation of the tank's use.

c. An owner or operator who brings into use an underground storage tank system after July 1, 1985, shall complete and submit to the department a copy of the ~~notification registration~~ form provided by the department within 30 days of ~~installing the tank in the ground~~ the final installation inspection required in 567—paragraph 134.27(2) "c" by a licensed installation inspector. The owner or operator shall not allow the deposit of any regulated substance into the tank without prior approval of the department or until the ~~tank has been issued a tank permanent~~ registration tag and annual tank tag have been attached to the tank fill pipe and the tank system is covered by an approved financial responsibility mechanism in accordance with 567—Chapter 136.

d. All owners and operators of new UST systems must provide UST system details and a site diagram, and certify in the notification registration form compliance with the following requirements:

- (1) Installation of tanks and piping under paragraph 135.3(1) "e";
- (2) Cathodic protection of steel tanks and piping under paragraphs 135.3(1) "a" and "b";
- (3) Financial responsibility under 567—Chapter 136, Iowa Administrative Code;
- (4) Release detection methods under subrules 135.5(2) and 135.5(3);
- (5) Class A, B and C operator certification under subrule 135.4(6);
- (6) NESHAP Stage 1 vapor recovery.

e. All owners and operators of new UST systems must ensure that the licensed installer certifies in the notification registration form that the methods used to install the tanks and piping comply with the requirements in paragraph 135.3(1) "d."

f. Exemption from reporting requirement. Paragraphs 135.3(1) "a" to "c" do not apply to an underground storage tank for which notice was given pursuant to Section 103, Subsection c, of the

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Comprehensive Environmental Response, Compensation and Liabilities Act of 1980. (42 U.S.C. Subsection 9603(c))

g. Reporting fee. The ~~notice~~ registration form submitted by the owner to the department under paragraphs 135.3(1) “a” to “c” shall be accompanied by a fee of \$10 for each tank included in the ~~notice~~ form.

h. Notification requirement for installing a tank. A person installing an underground storage tank and the owner or operator of the underground storage tank must notify the department of their intent to install the tank 30 days prior to installation. Notification shall be on a form provided by the department.

i. Notification requirements for a person who acquires, sells, installs, modifies or repairs a ~~tank~~ UST system.

(1) A person, company or lending institution that assumes ownership or operation of a regulated underground storage tank must submit notification to the department on a form provided by the department within 30 days of acquisition and prior to tank operation. The owner must include copies of training certificates for the Class A and Class B operators (135.4(6)) and proof of financial responsibility required in 567—Chapter 136. The new owner is responsible for any current and back tank management fees that have not been previously paid.

(2) A person who sells, installs, modifies, or repairs a tank used or intended to be used in Iowa shall notify, in writing, the purchaser and the owner or operator of the tank of the obligations specified in paragraphs 135.3(3) “c” and “j” and the financial assurance requirements in 567—Chapter 136. The notification must include the prohibition on depositing a regulated substance into tanks which have not been registered and issued tags by the department, or tanks which do not have financial assurance as required in 567—Chapter 136. A standard notification form supplied by the department may be used to satisfy this requirement.

j. It is unlawful for a person to deposit or accept a regulated substance in an underground storage tank that has not been registered and issued permanent or annual tank management tags in accordance with rule 567—135.3(455B). It is unlawful for a person to deposit or accept a regulated substance into an underground storage tank if the person has received notice from the department that the underground storage tank is subject to a delivery prohibition or if there is a “red tag” attached to the UST fill pipe or fill pipe cap as provided in subrule 135.3(8).

(1) The department may provide written authorization to receive a regulated substance when there is a delay in receiving tank tags or at new tank installations to allow for testing the tank system.

(2) The department may provide known depositors of regulated substances lists of underground storage tank sites that have been issued tank tags, those that have not been issued tank tags, and those subject to a delivery prohibition pursuant to subrule 135.3(8). These lists do not remove the requirement for depositors to verify that current tank tags are affixed to the fill pipe prior to delivering product. Regulated substances cannot be delivered to underground storage tanks without current tank tags or those displaying a delivery prohibition “red tag” as provided in subrule 135.3(8).

(3) A person shall not ~~accept or~~ deposit a regulated substance in an underground storage tank after receiving written or oral notice from the department that the tank is not covered by an approved form of financial responsibility in accordance with 567—Chapter 136.

k. If an owner or operator fails to register an underground storage tank within 30 days after installation ~~or obtain annual renewal tags by April 1, pursuant to paragraph 135.3(3) “c,”~~ the owner or operator shall pay an additional \$250 per tank late fee upon registration of the tank ~~or application for tank tag renewal.~~ The imposition of this fee does not preclude the department from assessing an additional administrative penalty in accordance with Iowa Code section 455B.476.

ITEM 48. Amend subrule 135.3(4) as follows:

135.3(4) Farm and residential tanks.

a. The owner or operator of a farm or residential tank of 1100 gallons or less capacity used for storing motor fuel for noncommercial purposes is subject to the requirements of this subrule.

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b. Farm and residential tanks, installed before July 1, 1987, ~~shall be reported on a notification form by July 1, 1989, but owners or operators are not required to pay a registration fee~~ are required to be registered with the department.

c. Farm and residential tanks ~~that were~~ installed on or after July 1, 1987, ~~shall~~ must be in compliance with all the underground storage tank regulations.

ITEM 49. Rescind paragraph **135.3(5)“b”** and adopt the following new paragraph in lieu thereof:

b. The owner or operator of tanks over 1,100-gallon capacity must submit a tank management fee form and fee payment of \$65 per tank by January 15 of each year.

(1) An additional \$250 per tank late fee must be paid if the tank management fee is not paid by March 1.

(2) The owner or operator must submit written proof that the tanks are covered by an approved form of financial responsibility in accordance with 567—Chapter 136.

(3) Upon proper payment of the fee and acceptable proof of financial responsibility, and a determination there are no outstanding compliance violations, a one-year renewal tag will be issued for the period from April 1 to March 31.

(4) If there are outstanding compliance violations, the annual tank tags may be withheld until the violations are corrected.

(5) The department shall refund a tank management fee if the tank is permanently closed prior to April 1 for that year.

ITEM 50. Amend paragraph **135.3(5)“d”** as follows:

d. A person who conveys or deposits a regulated substance shall inspect the underground storage tank to determine the existence or absence of a ~~current permanent~~ registration tag, a current annual tank management fee renewal tag, or a delivery prohibition “red tag” as provided in subrule 135.3(8). ~~If the tag a current annual renewal tag, or a silver permanent tag for regulated tanks less than 1,100 gallons is not affixed to the fill pipe or fill pipe cap or if a delivery prohibition “red tag” is displayed, the person shall not deposit the substance in the tank.~~

ITEM 51. Amend subrule 135.3(6) as follows:

135.3(6) ~~Petroleum~~ Previously unregistered petroleum underground storage tank registration amnesty program tanks.

a. A petroleum underground storage tank required to be registered under subrules 135.3(3) and 135.3(4), which has not been registered ~~prior to July 1, 1988, may~~ shall be registered under the following conditions:

(1) ~~a.~~ The tank registration fee under paragraph 135.3(3) “g” shall accompany the registration.

(2) ~~b.~~ The storage tank management fee ~~and any late fees~~ under subrule 135.3(5) and paragraph 135.3(3) “k” shall be paid for past years in which the tank should have been registered.

~~b.—If a tank is registered under this subrule on or prior to October 1, 1989, penalties under Iowa Code section 455B.477 shall be waived.~~

c. The department may waive the late fee(s).

ITEM 52. Rescind and reserve subrule **135.3(7)**.

ITEM 53. Amend subparagraph **135.3(8)“a”(1)** as follows:

(1) Annual ~~registration~~ renewal tag and tank management fee process. Owners and operators shall certify to the following on a form prepared by the department when applying for annual tank tags pursuant to subrule 135.3(5):

1. to 5. No change.

ITEM 54. Adopt the following new subparagraphs **135.3(8)“b”(11) to (14)**:

(11) The owner or operator has failed to provide documentation of Class A or B operator training.

REINSTATEMENT CRITERION: The owner or operator must submit a copy of the certificates of training for Class A and B operators.

(12) The owner or operator has failed to install required secondary containment.

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REINSTATEMENT CRITERION: The owner or operator must document secondary containment has been installed as provided in subrule 135.3(9).

(13) The owner or operator has failed to pay the annual tank management fee.

REINSTATEMENT CRITERION: The owner or operator must pay the current and any previous unpaid tank management fees in addition to any late fees as provided in paragraph 135.3(5)“b.”

(14) When tanks are no longer in use or in temporary closure.

REINSTATEMENT CRITERION: The owner or operator must provide a completed Return to Service form along with required documents.

ITEM 55. Amend subparagraph **135.3(8)“e”(1)** as follows:

(1) Prior to imposing a delivery prohibition response action under paragraph 135.3(8)“b” above, the department will provide notice to the owner or operator or, if notice to the owner or operator cannot be confirmed, to a person in charge at the UST facility of the basis for the finding and the intent to initiate a delivery prohibition response action. Notice may be by verbal contact, by facsimile, or by regular or certified mail to the UST facility address or the owner’s or operator’s last-known address. The owner and operator will be given a minimum of one business day to provide documentation that the finding is inaccurate or that reinstatement criteria in subparagraphs 135.3(8)“b”(1) through (5) have been satisfied. Additional days and the opportunity for a telephone or in-person conference may be provided the owner and operator to contest the factual basis for a finding under subparagraphs 135.3(8)“b”(6) through ~~(10)~~ (14). Additional procedural due process may be afforded the owner and operator on a case-by-case basis sufficient to satisfy Constitutional due process standards.

If insufficient information is submitted to change the finding, the department will notify the owner or operator and a person in charge at the UST facility of the final decision to impose the delivery prohibition response action.

ITEM 56. Amend paragraph **135.3(8)“f”** as follows:

f. Delivery prohibition procedure. Upon oral or written notice that the delivery prohibition response action has been imposed, the owner or operator and any person in charge of the UST facility shall be notified that they are not authorized to receive any further delivery of regulated substances until conditions for reinstatement of eligibility are satisfied. ~~Owners and operators are required to immediately remove and return to the department the current annual tank management fee tags or the tank registration tags if there are no tank management fee tags.~~ Owners and operators are required to provide the department with names and contact information for all persons who convey or deposit regulated substances to the USTs. The department will attempt to notify known persons who convey or deposit regulated substances to the USTs that they are not authorized to deliver to the USTs until further notice by the department as provided in paragraph 135.3(3)“j” and subrule 135.3(5).

~~If the tank tags are not returned within three business days, the~~ The department shall visit the site, ~~remove the tags,~~ and affix a “red tag” to the fill pipes or fill pipe caps of all affected USTs. It is unlawful for any person to deposit or accept a regulated substance into a UST that has a “red tag” affixed to the fill pipe or fill pipe cap. The department may allow the owner and operator to dispense and sell the remainder of existing fuel unless the department determines there is an immediate risk of a release or other risk to human health, safety or the environment. The department shall confirm in writing the basis for the delivery prohibition response action, contacts made prior to the action, and steps the owner or operator must take to reinstate fuel delivery.

ITEM 57. Rescind subrule 135.3(9) and adopt the following **new** subrule in lieu thereof:

135.3(9) Secondary containment requirements for UST system installations. All new and replacement underground storage tank systems and appurtenances used for the storage and dispensing of petroleum products shall have secondary containment in accordance with this subrule. The secondary containment provision includes the installation of containment sumps.

a. Tanks and piping installed or replaced after November 28, 2007, must have secondary containment that is designed, installed, and maintained according to the performance standards in subrule 135.3(1) and paragraph 135.5(3)“b.”

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(1) The secondary containment may be manufactured as an integral part of the primary containment or constructed as a separate containment system.

(2) At a minimum, the secondary containment must:

1. Contain regulated substances leaked from the UST system until detected and removed.

2. Prevent the release of regulated substances into the environment at any time during the operational life of the underground storage tank system.

3. Be checked for evidence of a release from the tank at least every 30 days as provided in paragraph 135.5(2) "a."

b. Testing and inspection. Containment sumps shall be liquid-tight and must be inspected and tested in accordance with the following:

(1) Inspections for secondary containment sumps (spill catchment basins, turbine sumps, transition or intermediate sumps, and under-dispenser containment).

1. Inspections for secondary containment sumps shall consist of visual inspection by an Iowa-licensed installer or Iowa-certified compliance inspector every two years.

2. Containment sumps must be intact (no cracks or perforations) and liquid-tight, including sides and bottom.

3. Containment sumps must be maintained and kept free of debris, liquid, and ice at all times.

4. Regulated substances leaked or spilled into any containment sumps shall be immediately removed.

(2) Secondary containment sumps used for interstitial monitoring of piping shall be tested upon installation and periodically in accordance with subrule 135.4(12).

ITEM 58. Amend paragraph **135.4(1)"a"** as follows:

a. Owners and operators must ensure that releases due to spilling or overfilling do not occur. The owner and operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.

NOTE: The transfer procedures described in National Fire Protection Association ~~Publication~~ Standard 385, "Standard for Tank Vehicles for Flammable and Combustible Liquids," or American Petroleum Institute Recommended Practice 1007, "Loading and Unloading of MC 306/DOT 406 Cargo Tank Motor Vehicles," may be used to comply with paragraph 135.4(1) "a." Further guidance on spill and overfill prevention appears in American Petroleum Institute ~~Publication 1621, "Recommended Practice 1621 for Bulk Liquid Stock Control at Retail Outlets,"~~ and ~~National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code."~~

ITEM 59. Amend subrule 135.4(2) as follows:

135.4(2) Operation and maintenance of corrosion protection. All owners and operators of ~~steel~~ metal UST systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented ~~for as long as~~ until the UST system is ~~used to store regulated substances~~ permanently closed or undergoes a change in service in accordance with subrule 135.15(2):

a. No change.

b. All UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

(1) No change.

(2) *Inspection criteria.* The criteria that are used to determine that cathodic protection is adequate as required by this subrule must be in accordance with a code of practice developed by a nationally recognized association.

NOTE: ~~National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems,"~~ The following codes of practice may be used to comply with subparagraph 135.4(2) "b"(2).

• NACE International Test Method TM 0101, "Measurement Techniques Related to Criteria for Cathodic Protection of Underground Storage Tank Systems";

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- NACE International Test Method TM0497, “Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems”;
 - Steel Tank Institute Recommended Practice R051, “Cathodic Protection Testing Procedures for STI-P3® USTs”;
 - NACE International Standard Practice SP 0285, “External Control of Underground Storage Tank Systems by Cathodic Protection”; or
 - NACE International Standard Practice SP 0169, “Control of External Corrosion on Underground or Submerged Metallic Piping Systems.”
- c. and d. No change.
- e. When an impressed current cathodic protection system is failing cathodic protection for the time periods given below, owners and operators must take the following actions:
- (1) For impressed current cathodic protection systems that have been inoperative for 0 to 90 days after failing a corrosion protection test or after discovering the system is not operating, all of the following must be completed:
1. Power must be restored to an inoperative corrosion protection system. A damaged or failed corrosion protection system must be repaired by a cathodic protection tester. A corrosion expert must approve any modifications to the system that are outside of the original design.
 2. The corrosion protection system must be retested within six months of repair.
 3. A copy of the test and any repairs must be kept as part of the cathodic protection records.
 4. A copy of the new design standards must be kept as part of the cathodic protection records.
- (2) For impressed current corrosion protection systems that have been inoperative for 90 to 365 days or repaired 90 to 365 days after failing a corrosion protection test, all of the following must be completed:
1. Notify the department.
 2. Power must be restored to an inoperative corrosion protection system.
 3. The corrosion protection system must be repaired, tested and returned to service under the supervision of a corrosion expert.
 4. A precision tightness test must be conducted on the entire UST system.
 5. The corrosion protection system must be retested within six months of the repair or power being restored.
 6. A copy of the test and any repairs must be kept as part of the cathodic protection records.
 7. A copy of the new design standards must be kept as part of the cathodic protection records.
 8. If determined the tank is not suitable for corrosion protection, the tank must be permanently closed in accordance with subrule 135.15(2).
- (3) If the impressed current corrosion protection system has been inoperative for more than 365 days or was not repaired for more than 365 days after failing a corrosion protection test, all of the following must be completed:
1. Notify the department.
 2. Immediately empty and stop using the tank system.
 3. An internal inspection of the steel tank must be conducted according to a national standard (e.g., API 1631). If the UST fails the internal inspection, the UST owner must permanently close the tank in accordance with subrule 135.15(2).
 4. All metal piping and buried metal components (e.g., flex connectors, couplings) that routinely contain product must be inspected by a UST professional or cathodic protection tester. If the metallic components have no visible corrosion and have passed a line tightness test (unless the piping is exempt from leak detection, e.g., Safe or European Suction) then the cathodic protection system may be repaired or replaced under the supervision of a corrosion expert. Metallic components that show visible corrosion must be replaced.
 5. A precision test must be conducted on the entire UST system following repair or replacement of the cathodic protection system.
 6. The corrosion protection system must be retested within six months of repair.
 7. A copy of the tests and any repairs must be kept as part of the cathodic protection records.

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8. A copy of the new design standards must be kept as part of the cathodic protection records.

(4) If the impressed current cathodic protection system has been inoperable for more than 365 days and cannot or will not be brought back into immediate use, the tank system must be permanently closed in accordance with rule 567—135.15(2).

ITEM 60. Amend subrule 135.4(3) as follows:

135.4(3) Compatibility. Owners and operators must use a UST system made of or lined with materials that are compatible with the substance stored in the UST system.

a. Owners and operators must notify the department at least 30 days prior to switching to a regulated substance containing greater than 10 percent ethanol, greater than 20 percent biodiesel, or any other regulated substance identified by the department.

b. Owners and operators must have a UST installer licensed under 567—Chapter 134, Part C, submit the department's checklist for equipment compatibility for the UST system to the department.

NOTE: Owners and operators storing alcohol blends may use the following codes to comply with the requirements of subrule 135.4(3): American Petroleum Institute Publication ~~Recommended Practice 1626~~, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations"; and American Petroleum Institute Publication ~~1627~~, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Filling Stations."

ITEM 61. Amend subrule 135.4(4) as follows:

135.4(4) Repairs ~~allowed and replacement~~. Owners and operators of UST systems must ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances. The repairs must meet the following requirements:

a. Repairs to UST systems must be properly conducted in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

NOTE: The following codes and standards may be used to comply with paragraph 135.4(4) "a": National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"; American Petroleum Institute Publication 2200, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines"; American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks"; and National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection."

- National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";

- International Fire Code;

- American Petroleum Institute Recommended Practice 2200, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines";

- American Petroleum Institute Recommended Practice 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks";

- National Fire Protection Association Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair";

- National Leak Prevention Association Standard 631, Chapter A, "Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks";

- Steel Tank Institute Recommended Practice R972, "Recommended Practice for the Addition of Supplemental Anodes to STI-P3® Tanks";

- NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection"; or

- Fiberglass Tank and Pipe Institute Recommended Practice T-95-02, "Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks."

b. Repairs to fiberglass-reinforced plastic tanks may be made by the manufacturer's authorized representatives or in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

c. Piping and fittings.

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(1) Metal pipe sections and fittings that have released product as a result of corrosion or other damage must be replaced. Fiberglass Noncorrodible pipes and fittings may be repaired in accordance with the manufacturer's specifications.

(2) Any replacement of ten feet or more of piping shall have secondary containment.

(3) If 50 percent or more of any piping run is removed, the entire piping run must be removed and replaced with secondarily contained piping and interstitial monitoring.

(4) All piping replacements requiring secondary containment shall be constructed with transition or intermediate containment sumps.

d. Repaired Repairs to secondary containment areas of tanks and piping used for interstitial monitoring and to containment sumps used for interstitial monitoring of piping must have the secondary containment tested for tightness according to the manufacturer's instructions, a code of practice developed by a nationally recognized association or independent testing laboratory, or according to requirements established by the department within 30 days following the date of completion of the repair. All other repairs to tanks and piping must be tightness tested in accordance with paragraphs 135.5(4) "c" and 135.5(5) "b" within 30 days following the date of the completion of the repair except as provided in subparagraphs (1) to (3) below:

(1) The repaired tank is internally inspected in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory; or

(2) The repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in paragraphs 135.5(4) "d" through "h" "i"; or

(3) Another test method is used that is determined by the department to be no less protective of human health and the environment than those listed above.

NOTE regarding paragraph 135.4(4) "d": The following codes of practice may be used to comply with paragraph 135.4(4) "d":

- Steel Tank Institute Recommended Practice R012, "Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks"; or

- Fiberglass Tank and Pipe Institute Protocol, "Field Test Protocol for Testing the Annular Space of Installed Underground Fiberglass Double and Triple-Wall Tanks with Dry Annular Space."

- Petroleum Equipment Institute Publication RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities."

e. Within six months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with paragraphs 135.4(2) "b" and "c" to ensure that it is operating properly.

f. Within 30 days following any repair to spill or overfill prevention equipment, the repaired spill or overfill prevention equipment must be tested or inspected, as appropriate, in accordance with subrule 135.4(1) to ensure it is operating properly.

g. Installation of any new or replacement turbine pumps involving the direct connection to the tank shall have secondary containment.

~~h.~~ UST system owners and operators must maintain records of each repair for the remaining operating life of until the UST system that demonstrate compliance with the requirements of this subrule is permanently closed or undergoes a change-in-service pursuant to subrule 135.15(2).

i. Repairs or replacements to a UST system must be conducted by an Iowa-licensed UST professional whose license is issued for that specific work.

ITEM 62. Amend subrule 135.4(5) as follows:

135.4(5) Reporting and record keeping. Owners and operators of UST systems must cooperate fully with inspections, monitoring and testing conducted by the department, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to Section 9005 of Subtitle I of the Resource Conservation and Recovery Solid Waste Disposal Act, as amended.

a. Reporting. Owners and operators must submit the following information to the department:

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(1) Notification for all UST systems (135.3(3)), which includes certification of installation for new UST systems (135.3(1)“e”);

(2) Notification of equipment replacement or addition of new equipment;

~~(2)~~ (3) Reports of all releases including suspected releases (135.6(1)), spills and overfills (135.6(4)), and confirmed releases (135.7(2));

~~(3)~~ (4) Corrective actions planned or taken including initial abatement measures (135.7(3)), initial site characterization (567—135.9(455B)), free product removal (135.7(5)), investigation of soil and groundwater cleanup and corrective action plan (567—135.8(455B) to 567—135.12(455B)); ~~and~~

(4) (5) A notification before permanent closure or change-in-service (135.15(2));

(6) Notification of any change in ownership;

(7) Notification of any change in Class A or Class B operators;

(8) Notification of any loss of financial responsibility (i.e., insurance);

(9) Notification prior to UST systems switching to certain regulated substances.

b. *Record keeping.* Owners and operators must maintain the following information:

(1) A corrosion expert’s analysis of site corrosion potential if corrosion protection equipment is not used (135.3(1)“a”(4); (135.3(1)“b”(3)).

(2) Documentation of operation of corrosion protection equipment (135.4(2));

(3) Documentation of UST system repairs ~~(135.4(4)“f”~~ 135.4(4)“h”);

(4) ~~Recent~~ Documentation of compliance with release detection requirements (135.5(6)); ~~and~~

(5) Results of the site investigation conducted at permanent closure ~~(135.15(5)).~~ (135.15(3));

(6) Cathodic protection system testing results (135.4(2));

(7) Class A, B and C operator training certificates (135.4(6));

(8) Secondary containment test results (135.3(9));

(9) Documentation of periodic walkthrough inspections (135.4(13));

(10) Documentation of compatibility for UST systems (135.4(3));

(11) Documentation of compliance for spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping (135.4(12)).

c. *Availability and maintenance of records.* Owners and operators must keep the records required either:

(1) No change.

(2) At a readily available alternative site and be provided for inspection to the department ~~upon~~ within two business days of department request.

NOTE: In the case of permanent closure records required under subrule 135.15(5), owners and operators are also provided with the additional alternative of mailing closure records to the department if they cannot be kept at the site or an alternative site as indicated above.

ITEM 63. Amend paragraph **135.4(6)“b”** as follows:

b. A facility may not operate ~~after December 31, 2011~~, unless operators have been designated and trained as required in this rule, or unless otherwise agreed upon by the department based on a finding of good cause for failure to meet this requirement and a plan for designation and training at the earliest practicable date.

ITEM 64. Amend paragraph **135.4(6)“g”** as follows:

g. Designated operators must successfully complete required training under subrule 135.4(9) ~~no later than December 31, 2011~~.

ITEM 65. Amend paragraph **135.4(6)“i”** as follows:

i. When a facility is found to be out of compliance, the department may require ~~the owner and operator to retrain~~ that the designated UST system Class A, B, or C operator be retrained under a plan approved by the department. The retraining must occur within ~~60~~ 30 days from departmental notice for Class A and Class B operators and within 15 days for Class C operators.

ITEM 66. Amend paragraph **135.4(7)“a”** as follows:

a. *Class A operator.*

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(1) Class A operators have the primary responsibility to operate, ~~and maintain, and have~~ knowledge of the regulatory requirements for the underground storage tank system and facility. The Class A operator's responsibilities include managing resources and personnel to achieve and maintain compliance with regulatory requirements under this chapter in the following ways:

1. Class A operators assist the owner by ensuring that underground storage tank systems are properly installed and expeditiously repaired and inspected; financial responsibility is maintained; and records of system installation, modification, inspection and repair are retained and made available to the department and ~~licensed~~ certified compliance inspectors. The Class A operator shall properly respond to and report emergencies caused by releases or spills from UST systems, ensure that the annual tank management fees are paid, and ensure that Class B and Class C operators are properly trained.

2. and 3. No change.

(2) Department-licensed installers, installation inspectors, and department-certified compliance inspectors may perform Class A operator duties when employed or contracted by the tank owner to perform these functions so long as they are properly trained and designated as Class A operators pursuant to subrules 135.4(9) through 135.4(11). Class A operators who are also ~~licensed~~ certified compliance inspectors under 567—Chapter 134, Part ~~C~~ B, may perform in-house facility inspections of the UST system, but shall not perform department-mandated compliance inspections pursuant to rule 567—135.20(455B). Compliance inspections of a UST facility required by rule 567—135.20(455B) must be completed by a third-party compliance inspector ~~licensed~~ certified under 567—Chapter 134, Part B.

(3) and (4) No change.

ITEM 67. Amend paragraph **135.4(7)“b”** as follows:

b. Class B operator.

(1) A Class B operator ~~implements~~ is knowledgeable of the applicable underground storage tank regulatory requirements and standards and implements them in the field or at the tank facility. A Class B operator oversees and implements the day-to-day aspects of operation, maintenance, and record keeping for the underground storage tanks at facilities within four hours of travel time from the Class B operator's principal place of business. A Class B operator's responsibilities include, but are not limited to:

1. to 8. No change.

9. Training and documenting Class C operators to make sure at least one Class C operator is on site during operating hours. Class B operators shall be familiar with Class C operator responsibilities and may provide ~~required~~ training for Class C operators.

(2) Department-licensed installers, installation inspectors, and department-certified compliance inspectors may perform Class B operator duties when employed or contracted by the tank owner to perform these functions so long as they are properly trained and designated as Class B operators under subrules 135.4(9) through 135.4(11). Class B operators who are also ~~licensed~~ certified compliance inspectors under 567—Chapter 134, Part ~~C~~ B, may perform in-house facility inspections of the UST system, but cannot perform department-mandated compliance inspections pursuant to rule 567—135.20(455B). Compliance inspections of a UST facility pursuant to rule 567—135.20(455B) must be completed by a third-party compliance inspector ~~licensed~~ certified under 567—Chapter 134, Part B.

(3) No change.

ITEM 68. Amend subparagraph **135.4(7)“c”(1)** as follows:

(1) ~~Within six months after October 14, 2009, written~~ Written basic operating instructions, emergency contact names and telephone numbers, and basic procedures specific to the facility shall be provided to all Class C operators and readily available on site.

ITEM 69. Amend subparagraph **135.4(8)“b”(8)** as follows:

(8) ~~Discussion of the benefits of monthly or frequent inspections and content and use of inspection checklists.~~ Requirements of 30-day and annual walkthrough inspections. Training materials for operators shall include the department's "Iowa UST Operator Inspection Checklist" or a checklist template similar to the department's document.

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ITEM 70. Adopt the following **new** subparagraph **135.4(8)“b”(19)**:

(19) Requirements for facilities that operate unstaffed at any time.

ITEM 71. Rescind paragraph **135.4(8)“c”** and adopt the following **new** paragraph in lieu thereof:

c. Class C operators. To be certified as a Class C operator, an individual must complete a department-approved training course. A Class A or Class B operator who has completed a department-approved training course may provide the Class C training. Class C operator training must include at a minimum:

- (1) A general overview of the department's UST program and purpose;
- (2) Groundwater protection goals;
- (3) Public safety;
- (4) UST system overview;
- (5) Administrative requirements; and
- (6) Action to be taken in response to an emergency condition due to a spill or release from a UST system.

Training must include written procedures for the Class C operator, including notification instructions necessary in the event of emergency conditions. The written instructions and procedures must be readily available on site. A Class A or Class B operator may provide additional on-site Class C training specific to the operator's UST system.

ITEM 72. Amend paragraph **135.4(9)“b”** as follows:

b. Transferability to another UST site. Class A and Class B operators may transfer to other UST facilities in Iowa provided the operator is properly designated by the facility owner as a Class A or Class B operator according to 567—subrule 134.4(13) 135.4(11). Class A and Class B operators transferring from other states shall seek prior approval of training qualifications, unless the department has preapproved the out-of-state program as substantially equivalent to the requirements of this chapter.

ITEM 73. Amend subrule 135.4(10) as follows:

135.4(10) Timing of UST operator training.

a. An owner shall ensure that Class A, Class B, and Class C operators are trained ~~as soon as practicable after October 14, 2009, contingent upon availability of~~ by approved training providers, ~~but not later than December 31, 2011, except as provided in paragraph 135.4(6)“b.”~~ before an operator assumes duties of that class of operator.

b. When a Class A or Class B operator is replaced, a new operator must be trained prior to assuming duties for that class of operator. A copy of the certificate of training must be submitted to the department within 30 days of assuming duties.

c. Class C operators must be trained before assuming the duties of a Class C operator. ~~Within six months after October 14, 2009, written~~ Written basic operating instructions, emergency contact names and telephone numbers, and basic procedures specific to the facility shall be provided to all Class C operators and readily available on site. A Class C operator may be briefed on these procedures concurrent with annual safety training required under Occupational Safety and Health Administration regulations, 29 CFR, Part 1910.

ITEM 74. Amend paragraph **135.4(11)“b”** as follows:

b. A copy of the certificates of training for Class A and Class B operators shall be on file and readily available for inspection in accordance with subrule 135.4(5). Records verifying completion of training or retraining of Class A, Class B, and Class C operators must identify name of trainee, date trained, operator training class completed, and list the name of the trainer or examiner and the training company name, address, and telephone number. Owners and operators must maintain these records for as long as Class A, Class B, and Class C operators are designated.

ITEM 75. Adopt the following **new** subrules 135.4(12) and 135.4(13):

135.4(12) Periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment.

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a. Owners and operators of UST systems with spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping must meet these requirements to ensure the equipment is operating properly and will prevent releases to the environment:

(1) Spill prevention equipment (such as a catchment basin, spill bucket, or other spill containment device) and containment sumps used for interstitial monitoring of piping must prevent releases to the environment by meeting one of the following:

1. The equipment is double walled and the integrity of both walls is periodically monitored at a frequency of not less than the frequency of the walkthrough inspections described in subrule 135.4(13). If owners and operators discontinue periodic monitoring of this equipment, they must begin meeting paragraph 135.4(12) "a"(1)"2" and conduct a test within 30 days of discontinuing periodic monitoring of this equipment; or

2. The spill prevention equipment and containment sumps used for interstitial monitoring of piping are tested at least once every three years to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the following criteria:

- Requirements developed by the manufacturer (Note: Owners and operators may use this option only if the manufacturer has developed requirements); or

- A code of practice developed by a nationally recognized association or independent testing laboratory; or

- Requirements determined by the department to be no less protective of human health and the environment than the requirements listed in this subrule.

(2) Overfill prevention equipment must be inspected at least once every three years. At a minimum, the inspection must ensure that overfill prevention equipment is set to activate at the correct level specified in paragraph 135.3(1) "c" and will activate when regulated substance reaches that level. Inspections must be conducted in accordance with one of the following criteria:

- Requirements developed by the manufacturer (Note: Owners and operators may use this option only if the manufacturer has developed requirements); or

- A code of practice developed by a nationally recognized association or independent testing laboratory; or

- Requirements determined by the department to be no less protective of human health and the environment than the requirements listed in this subrule.

b. Owners and operators must begin meeting these requirements as follows:

(1) For UST systems in use on or before June 23, 2021, the initial spill prevention equipment test and overfill prevention equipment inspection must be conducted not later than October 13, 2021.

(2) For UST systems brought into use after June 23, 2021, these requirements apply at installation.

c. Owners and operators must maintain records as follows for spill prevention equipment and overfill prevention equipment:

(1) All records of testing or inspection must be maintained for three years; and

(2) For spill prevention equipment and containment sumps used for interstitial monitoring of piping not tested every three years, documentation showing that the prevention equipment is double-walled and the integrity of both walls is periodically monitored must be maintained for as long as the equipment is periodically monitored.

NOTE: The following code of practice may be used to comply with this section: Petroleum Equipment Institute Publication RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities."

135.4(13) Periodic operation and maintenance walkthrough inspections. Conduct inspections to properly operate and maintain UST systems.

a. Conduct a walkthrough inspection every 30 days that, at a minimum, checks the following equipment as specified below (Exception: spill prevention equipment at UST systems receiving deliveries at intervals greater than every 30 days may be checked prior to each delivery):

(1) Spill prevention equipment: visually check for damage; remove liquid or debris; check for and remove obstructions in the fill pipe; check the fill cap to make sure it attaches securely on the fill

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pipe and gasket is in good condition; and, for double-walled spill prevention equipment with interstitial monitoring, check for a leak in the interstitial area, and

(2) Release detection equipment: check to make sure the release detection equipment is operating with no alarms or other unusual operating conditions present, and ensure records of release detection testing are reviewed and current.

b. Conduct a walkthrough inspection annually, at a minimum, checking the following equipment as specified below:

(1) Containment sumps: visually check for damage, leaks to the containment area, or releases to the environment; remove liquid (in contained sumps) or debris; and, for double-walled sumps with interstitial monitoring, check for a leak in the interstitial area, and

(2) Handheld release detection equipment: check devices such as tank gauge sticks or groundwater bailers for operability and serviceability;

c. Conduct operation and maintenance walkthrough inspections according to a standard code of practice developed by a nationally recognized association or independent testing laboratory that checks equipment comparable to paragraphs 135.4(13) "a" and "b"; or

NOTE regarding paragraph 135.4(13) "c": the following code of practice may be used to comply with paragraph 135.4(13) "c": Petroleum Equipment Institute Recommended Practice RP 900, "Recommended Practices for the Inspection and Maintenance of UST Systems."

d. Conduct operation and maintenance walkthrough inspections developed by the department that checks equipment comparable to paragraphs 135.4(13) "a" and "b."

e. Owners and operators must maintain records (in accordance with subrule 135.4(5)) of operation and maintenance walkthrough inspections for 12 consecutive months. Records must include a list of each area checked, whether each area checked was acceptable or needed action taken, a description of actions taken to correct an issue, and delivery records if spill prevention equipment is checked less frequently than every 30 days due to infrequent deliveries.

ITEM 76. Amend paragraph **135.5(1)"a"** as follows:

a. Owners and operators of ~~new and existing~~ UST systems must provide a method, or combination of methods, of release detection that:

(1) Can detect a release from any portion of the tank and the connected underground piping that routinely contains product;

(2) Is installed, ~~and calibrated, operated, and maintained~~ in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and

(3) Beginning October 13, 2021, is operated and maintained, and electronic and mechanical components are tested for proper operation, in accordance with one of the following:

1. Manufacturer's instructions;

2. A code of practice developed by a nationally recognized association or independent testing laboratory; or

3. Requirements determined by the department to be no less protective of human health and the environment than the two options listed above.

(4) A test of the proper operation must be performed at least annually and, at a minimum, as applicable to the facility, cover the following components and criteria:

1. Automatic tank gauge and other controllers: test alarm; verify system configuration; test battery backup;

2. Probes and sensors: inspect for residual buildup; ensure floats move freely; ensure shaft is not damaged; ensure cables are free of kinks and breaks; test alarm operability or running condition and communication with controller;

3. Automatic line leak detector: test operation to meet criteria in paragraph 135.5(5) "a" by simulating a leak;

4. Vacuum pumps and pressure gauges: ensure proper communication with sensors and controller; and

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5. Handheld electronic sampling equipment associated with groundwater and vapor monitoring: ensure proper operation.

NOTE regarding subparagraphs 135.5(1)“a”(3) and (4): The following code of practice may be used to comply with subparagraphs 135.5(1)“a”(3) and (4): Petroleum Equipment Institute Publication RP1200, “Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities.”

~~(3)~~ (5) Meets the performance requirements in subrule 135.5(4) or 135.5(5), with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods conducted in accordance with paragraphs 135.5(4)“b,” “c,” and “d” and 135.5(5)“b” after December 22, 1990, and 135.5(5)“a” after September 22, 1991, except for methods permanently installed prior to those dates, paragraphs 135.5(5)“a” and “b” must be capable of detecting the leak rate or quantity specified for that method with a probability of detection of 0.95 and a probability of false alarm of 0.05.

ITEM 77. Amend paragraph **135.5(1)“b”** as follows:

b. When a release detection method operated in accordance with the performance standards in subrule 135.5(4) and or 135.5(5) indicates a release may have occurred, owners and operators must notify the department in accordance with rule 567—135.6(455B).

ITEM 78. Rescind paragraph **135.5(1)“c”** and adopt the following **new** paragraph in lieu thereof:

c. When an owner and operator continually show the inability to conduct leak detection with the method being used, the department may require the owner and operator to find an alternative leak detection method. If the owner and operator cannot demonstrate compliance with leak detection, delivery prohibition in accordance with subrule 135.3(8) may be enforced.

ITEM 79. Amend paragraph **135.5(1)“d”** as follows:

d. Any existing UST system that cannot apply a method of release detection that complies with the requirements of this rule must complete the closure procedures in rule 567—135.15(455B) by the date on which release detection is required for that UST system under paragraph “e.” For previously deferred UST systems described in rules 567—135.1(455B) and 567—135.21(455B), this requirement applies after the effective dates described in subrule 135.1(3) and paragraph 135.21(1)“a.”

ITEM 80. Amend paragraph **135.5(2)“a”** as follows:

a. Tanks. Tanks must be monitored at least every 30 days for releases using one of the methods listed in paragraphs 135.5(4)“d” to “h” “i” except that:

(1) UST systems that meet the performance standards in 135.3(1) or 135.3(2), and the monthly inventory control requirements in 135.5(4)“a” or “b,” may use tank tightness testing (conducted in accordance with 135.5(4)“c”) at least every five years until December 22, 1998, or until ten years after the tank is installed or upgraded under 135.3(2)“b,” whichever is later; Tanks installed after November 28, 2007, must use interstitial monitoring of the secondary containment as the primary leak detection method in accordance with paragraph 135.5(4)“g.”

~~(2) UST systems that do not meet the performance standards in 135.3(1) or 135.3(2) may use monthly inventory controls (conducted in accordance with 135.5(4)“a” or “b”) and annual tank tightness testing (conducted in accordance with 135.5(4)“c”) until December 22, 1998, when the tank must be upgraded under 135.3(2) or permanently closed under 135.15(2); and~~

~~(3)~~ (2) Tanks installed on or before November 28, 2007, with capacity of 550 gallons or less may use weekly and tanks with a capacity of 551 to 1,000 gallons that meet the tank diameter criteria in paragraph 135.5(4)“b” may use manual tank gauging (conducted in accordance with paragraph 135.5(4)“b”).

ITEM 81. Amend paragraph **135.5(2)“b”** as follows:

b. Piping. Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one of the following requirements:

(1) Pressurized piping. Underground piping that conveys regulated substances under pressure must:

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1. Be equipped with an automatic line leak detector conducted in accordance with paragraph 135.5(5)“a”; and

2. Have an annual line tightness test conducted in accordance with paragraph 135.5(5)“b” or have monthly monitoring conducted in accordance with paragraph 135.5(5)“c.” Piping installed after November 28, 2007, must use interstitial monitoring of the piping secondary containment in accordance with paragraph 135.5(5)“d.”

(2) *Suction piping.* Underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every three years and in accordance with paragraph 135.5(5)“b,” or use a monthly monitoring method conducted in accordance with paragraph 135.5(5)“c.” Remote fill is considered suction piping. No release detection is required for suction piping that is designed and constructed to meet the following standards:

1. to 5. No change.

(3) Piping installed or replaced must meet one of the following:

1. Pressurized piping must be monitored for releases at least every 30 days in accordance with paragraph 135.5(5)“d” and be equipped with an automatic line leak detector.

2. Suction piping must be monitored for releases at least every 30 days. No release detection is required for suction piping that meets paragraphs 135.5“b”(2)“1” through 135.5“b”(2)“5.”

ITEM 82. Rescind subrule 135.5(3) and adopt the following **new** subrule in lieu thereof:

135.5(3) Requirements for hazardous substance UST systems. Owners and operators of hazardous substance UST systems must have containment that meets the following requirements and monitor these systems pursuant to paragraph 135.5(4)“g” at least every 30 days:

a. Secondary containment systems must be designed, constructed and installed to:

(1) Contain regulated substances leaked from the primary containment until they are detected and removed;

(2) Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

(3) Be checked for evidence of a release at least every 30 days.

b. Double-walled tanks must be designed, constructed, and installed to:

(1) Contain a leak from any portion of the inner tank within the outer wall; and

(2) Detect the failure of the inner wall.

c. External liners (including vaults) must be designed, constructed, and installed to:

(1) Contain 100 percent of the capacity of the largest tank within its boundary;

(2) Prevent the interference of precipitation or groundwater intrusion with the ability to contain or detect a release of regulated substances; and

(3) Surround the tank completely (i.e., it is capable of preventing lateral as well as vertical migration of regulated substances).

d. Underground piping must be equipped with secondary containment that satisfies the requirements of this subrule (e.g., trench liners, jacketing of double-walled pipe). In addition, underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector in accordance with paragraph 135.5(5)“a”;

e. For hazardous substance UST systems installed on or before November 28, 2007, other methods of release detection may be used if owners and operators:

(1) Demonstrate to the department that an alternate method can detect a release of the stored substance as effectively as any of the methods allowed in paragraphs 135.5(4)“b” to “i” can detect a release;

(2) Provide information to the department on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the UST site; and

(3) Obtain approval from the department to use the alternate release detection method before the installation and operation of the new UST system.

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ITEM 83. Amend paragraph **135.5(4)“a”** as follows:

a. Inventory control. Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis in the following manner:

(1) to (5) No change.

(6) The measurement of any water level in the bottom of the tank is made to the nearest 1/8 of an inch at least once a month.

NOTE: Practices described in the American Petroleum Institute ~~Publication~~ Recommended Practice 1621, “Recommended Practice for Bulk Liquid Stock Control at Retail Outlets,” may be used, where applicable, as guidance in meeting the requirements of ~~subrule 135.5(4), paragraph “a,” subparagraphs (1) to (6)~~ 135.5(4) “a”(1) to 135.5(4) “a”(6).

ITEM 84. Rescind paragraph **135.5(4)“b”** and adopt the following new paragraph in lieu thereof:

b. Manual tank gauging. Manual tank gauging must meet the following requirements:

(1) Tank liquid level measurements are taken at the beginning and end of the test period during which no liquid is added to or removed from the tank;

(2) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;

(3) The equipment is capable of measuring the level of product over the full range of the tank’s height to the nearest 1/8 of an inch;

(4) A release is suspected and subject to the requirements of rule 567—135.6(455B) if the variation between the beginning and ending measurements exceeds the weekly or monthly standards in the following table. Immediately contact the department if these standards are exceeded.

Nominal Tank Capacity	Minimum Duration of Test	Weekly Standard (one test)	Monthly Standard (four-test average)
550 gallons or less	36 hours	10 gallons	5 gallons
551-1,000 gallons (when tank diameter is 64 inches)	44 hours	9 gallons	4 gallons
551-1,000 gallons (when tank diameter is 48 inches)	58 hours	12 gallons	6 gallons
551-1,000 gallons (also requires annual tank tightness testing)	36 hours	13 gallons	7 gallons
1,001-2,000 gallons (also requires annual tank tightness test)	36 hours	26 gallons	13 gallons

(5) Only those tanks of 550 gallons or less nominal capacity or tanks of 551 to 1,000 gallons nominal capacity with diameters of 64 inches or 48 inches may use this as the sole method of release detection. Other tanks of 551 to 2,000 gallons may use this method in place of inventory control in paragraph 135.5(4) “a.” Tanks of greater than 2,000 gallons nominal capacity may not use this method to meet the requirements of this rule.

ITEM 85. Amend paragraph **135.5(4)“c”** as follows:

c. Tank tightness testing. Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon-per-hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

The tank tightness test procedure must be certified by a third party and meet US EPA testing procedures. The testing procedures are found in Standard Test Procedures for Evaluating Leak Detection Methods: Volumetric Tank Tightness Testing Methods (EPA /530/UST-90/004) March 1990 or

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as revised by EPA or *Non-Volumetric Tank Tightness Testing Methods* (EPA /530/UST-90/005) March 1990 or as revised by EPA.

ITEM 86. Amend paragraph **135.5(4)“d”** as follows:

d. Automatic tank gauging. Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following requirements:

(1) The automatic product level monitor test can detect a 0.2 gallon-per-hour leak rate from any portion of the tank that routinely contains product; ~~and~~

(2) ~~Inventory~~ The automatic tank gauging equipment must meet the inventory control (or ~~another other~~ test of equivalent performance) ~~is conducted in accordance with the requirements of paragraph 135.5(4)“a-”;~~

(3) The leak test must be performed according to manufacturer specifications;

(4) The automatic tank gauging equipment must be certified by a third party and meet US EPA testing procedures in *Standard Test Procedures for Evaluating Leak Detection Methods: Automatic Tank Gauging Systems* (ATGS) (EPA /530/UST-90/006) March 1990 or as revised by US EPA; and

(5) The test must be performed with the system operating in one of the following modes:

1. In-tank static testing conducted at least once every 30 days; or

2. Continuous in-tank leak detection operating on an uninterrupted basis or operating within a process that allows the system to gather incremental measurements to determine the leak status of the tank at least once every 30 days.

ITEM 87. Amend subparagraph **135.5(4)“e”(6)** as follows:

(6) In the UST excavation zone, the site is assessed to ensure compliance with the requirements in subparagraphs 135.5(4)“e”(1) ~~to through~~ (4) and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product; ~~and~~

ITEM 88. Amend subparagraph **135.5(4)“e”(7)** as follows:

(7) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering; ~~and~~

ITEM 89. Adopt the following **new** subparagraph **135.5(4)“e”(8)**:

(8) The vapor product detector must be certified by a third party and meet US EPA testing procedures in *Standard Test Procedures for Evaluating Leak Detection Methods: Vapor-Phase Out-of-Tank Product Detectors* (EPA/530/UST-90/008) March 1990 or as revised by US EPA.

ITEM 90. Amend subparagraph **135.5(4)“f”(7)** as follows:

(7) Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in subparagraphs 135.5(4)“f”(1) ~~to through~~ (5) and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product; and

ITEM 91. Amend paragraph **135.5(4)“g”** as follows:

g. Interstitial monitoring. Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:

(1) For secondary containment systems, the sampling or testing method must be able to detect a ~~release~~ leak through the inner wall in any portion of the tank that routinely contains product:

1. Continuously, by means of an automatic leak sensing device that signals to the operator the presence of any regulated substance in the interstitial space; or

2. Monthly, by means of a procedure capable of detecting the presence of any regulated substance in the interstitial space.

3. The interstitial space shall be maintained and kept free of liquid, debris or anything that could interfere with leak detection capabilities.

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NOTE: ~~The provisions outlined in the Steel Tank Institute's "Standard for Dual Wall Underground Storage Tanks" may be used as guidance for aspects of the design and construction of underground steel double-walled tanks.~~

(2) For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release leak between the UST system and the secondary barrier:

1. The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least 10^{-6} cm/sec for the regulated substance stored) to direct a release leak to the monitoring point and permit its detection;

2. The barrier is compatible with the regulated substance stored so that a release leak from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;

3. to 6. No change.

(3) For tanks with an internally fitted liner, an automated device can detect a release leak between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.

ITEM 92. Reletter paragraph 135.5(4)“h” as 135.5(4)“i.”

ITEM 93. Adopt the following new paragraph 135.5(4)“h”:

h. Statistical inventory reconciliation. Release detection methods based on the application of statistical principles to inventory data that test for the loss of product must meet the following requirements:

(1) Use a leak threshold that does not exceed one-half the minimum detectible leak rate;

(2) The statistical test must be able to detect at least a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product; and

(3) The report by the SIR company must be a quantitative result with a calculated leak rate and include the leak threshold (leak rate at which a leak is declared), the calculated leak rate (leak rate calculated from the inventory records) and minimum detectable leak rate (minimum leak rate that can be determined from the inventory records).

1. A “pass” means that the calculated leak rate for the data set is less than the leak threshold and the minimum detectable leak rate is less than or equal to the certified performance standard;

2. A “fail” means the calculated leak rate for the data set is equal to or greater than the leak threshold;

3. An “inconclusive” means the minimum detectable leak rate exceeds the certified performance standard and the calculated leak rate is less than the leak threshold. If for any other reason the test result is not a “pass” or “fail,” the result is “inconclusive”;

(4) Owners and operators must notify the department in accordance with rule 567—135.6(455B) when a monthly SIR report of “fail” occurs or two consecutive inconclusive results occur.

(5) Owners and operators must assure the SIR analytical results are complete and available to the department upon request.

(6) The statistical inventory reconciliation method must be certified by a third party and meet US EPA testing procedures in *Standard Test Procedures for Evaluating Release Detection Methods: Statistical Inventory Reconciliation* (EPA 510-B-19-004) May 2019 or as revised by EPA.

ITEM 94. Amend paragraphs 135.5(5)“a” to “c” as follows:

a. Automatic line leak detectors. Methods which alert the operator to the presence of a leak in pressurized piping by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 pounds per square inch line pressure within one hour. An annual test of the operation of the leak detector must be conducted in accordance with ~~the manufacturer's requirements.~~ paragraph 135.5(1) “a.”

b. Line tightness testing. A periodic test of piping may be conducted only if it can detect a 0.1 gallon-per-hour leak rate at one and one-half times the operating pressure. The line leak detection method must be certified by a third party and meet US EPA testing procedures in *Standard Test Procedures for Evaluating Release Detection Methods: Pipeline Release Detection* (EPA 510-B-19-005) May 2019 or as revised by EPA.

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c. Applicable tank methods. ~~Any~~ Except as described in paragraph 135.5(2) "a," any of the methods in paragraphs 135.5(4) "e" through "h" "i" may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

ITEM 95. Amend subparagraph **135.5(5)"d"(1)** as follows:

(1) Leak detection shall be conducted:

1. ~~Continuously~~ Continuously, by means of an automatic leak sensing device that signals to the operator the presence of any regulated substance in the interstitial space or containment sump; or
2. No change.

ITEM 96. Amend paragraphs **135.5(6)"a"** and **"b"** as follows:

a. All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be maintained for five years, or for another reasonable period of time determined by the department, from the date of installation. Records of site assessments required for vapor monitoring under subparagraph 135.5(4) "e"(6) and groundwater monitoring under subparagraph 135.5(4) "f"(7) must be maintained for as long as the methods are used. Records of site assessments must be signed by a professional engineer or professional geologist, or equivalent licensed professional with experience in environmental engineering, hydrogeology, or other relevant technical discipline acceptable to the department;

b. The results of any sampling, testing, or monitoring must be maintained for at least one year, or for another reasonable period of time determined by the department, ~~except that the results of tank tightness testing conducted in accordance with 135.5(4) "e" must be retained until the next test is conducted; and~~ as follows:

(1) The results of tank tightness testing conducted in accordance with paragraph 135.5(4) "c" must be retained until the next test is conducted; and

(2) The results of annual operation tests conducted in accordance with subparagraphs 135.5(1) "a"(3) and (4), must be maintained for three years. At a minimum, the results must list each component tested, indicate whether each component tested meets criteria in subparagraphs 135.5(1) "a"(3) and (4), or needs to have action taken, and describe any action taken to correct an issue; and

(3) The results of tank tightness testing, line tightness testing, and vapor monitoring using a tracer compound placed in the tank system conducted in accordance with paragraph 135.21(2) "f" must be retained until the next test is conducted; and

ITEM 97. Amend paragraphs **135.6(1)"b"** and **"c"** as follows:

b. Unusual operating conditions observed by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, ~~or an unexplained presence of water in the tank, or liquid in the interstitial space of secondarily contained systems), unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced; and:~~

(1) The system equipment or component is found not to be releasing regulated substances to the environment;

(2) Any defective system equipment or component is immediately repaired or replaced; and

(3) For secondarily contained systems, except as provided for in paragraph 135.5(4) "g"(2)"4," any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed.

c. Monitoring results, including investigation of an alarm, from a release detection method required under subrules 135.5(2) and 135.5(3) that indicate a release may have occurred unless:

(1) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result; or

(2) The leak is contained in the secondary containment and:

1. Except as provided for in paragraph 135.5(4) "g"(2)"4," any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed; and

2. Any defective system equipment or component is immediately repaired or replaced;

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~~(2) (3)~~ In the case of inventory control, a second month of data does not confirm the initial result, or the investigation determines no release has occurred; or

(4) The alarm was investigated and determined to be a non-release event (for example, from a power surge or caused by filling the tank during release detection testing).

ITEM 98. Amend paragraph **135.6(3)“a”** as follows:

a. System test. Owners and operators must conduct tests (according to the requirements for tightness testing in paragraphs 135.5(4)“c” and 135.5(5)“b”) ~~that determine whether a leak exists in that portion of the tank that routinely contains product, or the attached delivery piping or both~~ or, as appropriate, secondary containment testing described in paragraph 135.4(4).

(1) The test must determine whether:

1. A leak exists in that portion of the tank that routinely contains product, or the attached delivery piping; or

2. A breach of either wall of the secondary containment has occurred.

~~(1) (2)~~ Owners If the system test confirms a leak into the interstice or a release, owners and operators must repair, replace, ~~or~~ upgrade, or close the UST system ~~and~~. In addition, owners and operators must begin corrective action in accordance with rule 567—135.9(455B) if the test results for the system, tank, or delivery piping indicate a ~~leak~~ release exists.

~~(2) (3)~~ Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate a ~~leak~~ release exists and if environmental contamination is not the basis for suspecting a release.

~~(3) (4)~~ Owners and operators must conduct a site check as described in paragraph 135.6(3)“b” ~~of this subrule~~ if the test results for the system, tank, and delivery piping do not indicate a ~~leak~~ release exists but environmental contamination is the basis for suspecting a release.

ITEM 99. Amend subparagraph **135.6(4)“a”(2)** as follows:

(2) Spill, overfill or any aboveground release of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under CERCLA (40 CFR 302) ~~as of September 13, 1988.~~

ITEM 100. Amend subrule 135.7(3), introductory paragraph, as follows:

135.7(3) *Initial abatement measures* ~~and site check.~~

ITEM 101. Amend subrule 135.7(5), introductory paragraph, as follows:

135.7(5) *Free product assessment and removal.* The free product assessment and removal requirements in this chapter are primarily concerned with a regulated substance that is present as a light nonaqueous phase liquid (LNAPL) in a monitoring well, boring, excavation, or other location at a thickness of more than 0.01 ft. At sites where investigations under subparagraph 135.7(3)“a”(6) indicate 0.01 ft. or more of free product, owners and operators must immediately initiate a free product recovery assessment and submit a report in accordance with paragraph 135.7(5)“d” and initiate interim free product removal while continuing, as necessary, any actions initiated under subrules 135.7(2) to 135.7(4) and 135.7(3), or preparing for actions required under rules 567—135.8(455B) to 567—135.12(455B). Owners and operators must immediately begin interim free product removal by bailing or by installation and maintenance of passive skimming equipment until an alternative removal method is required by or approved by the department. A certified groundwater professional must initially determine the frequency of bailing and proper installation and maintenance of the skimming equipment based on a determination of the recharge rate of the free product. The department may approve implementation of this interim removal process by persons not certified as groundwater professionals. For approval a certified groundwater professional must submit (1) sufficient documentation establishing that the bailing or skimming system has been adequately designed and tested, and (2) a written plan for regular maintenance, reporting and supervision by a certified groundwater professional. Interim free product recovery reports must be submitted to the department on a monthly basis and on forms provided by the department. In meeting the requirements of this subrule, owners and operators must:

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ITEM 102. Amend subparagraphs **135.7(5)“d”(9)** and **(10)** as follows:

(9) Free product plume definition and map. The extent of free product ~~in groundwater~~ must be assessed. ~~The~~ If monitoring wells are used to define the free product plume, the number and location of wells and separation distance between the wells used to define the free-product plume must be based on the receptors present and the site hydrology and geology. A minimum of five monitoring wells are required to construct the plume map. The boundary of the plume may be determined by half the distance between wells with free product and wells with no free product. If the groundwater professional can adequately define the plume using other technology as specified in approved by the department guidance, fewer than five wells may be used. The boundary of the plume may be determined by linear interpolation consistent with the methods described in 135.10(2)“f”(3) to define the boundary of the plume; and

(10) The estimated volume of free product present, how the volume was calculated, recoverable volume and estimated recovery time; and

ITEM 103. Adopt the following new subparagraph **135.7(5)“d”(11)**:

(11) Identification of all water lines, regardless of construction material, within the area of free product. A water line shall be considered within the area of free product if it is located within the boundary of the free product plume as defined by wells unless it can be demonstrated that no LNAPL exists within 10 feet (horizontally or vertically) of the water line and the LNAPL is not migrating nor is likely to migrate. Water lines within the area of free product must be relocated unless there is no other option and the department has approved an alternate plan of construction. See paragraph 135.12(3)“c.”

ITEM 104. Amend paragraph **135.7(5)“f”** as follows:

f. Termination of free product recovery activities. Owners and operators may propose to the department to terminate free product recovery activities when significant amounts of hydrocarbons are not being recovered. The department will consider proposals to terminate free product recovery when the amount of product collected from a monitoring well is equal to or less than 0.1 gallon each month for a year unless another plan is approved by the department. When free product activities have been terminated, owners and operators must inspect the monitoring wells monthly for at least a year unless another schedule is approved by the department. The department must be notified and may require that free product recovery activities be reinitiated if during the monthly well inspections it is determined the product thickness in a monitoring well exceeds 0.02 ~~feet~~ ft. The monthly well inspection records must be kept available for review by the department.

ITEM 105. Amend paragraph **135.8(1)“a”** as follows:

a. Tier 1. The purpose of a Tier 1 assessment is to identify sites which do not pose whether a site poses an unreasonable risk to public health and safety or the environment based on limited site data. The objective is to determine maximum concentrations of chemicals of concern at the source of a release(s) in soil and groundwater. The Tier 1 assessment assumes worst-case scenarios in which actual or potential receptors could be exposed to these chemicals at maximum concentrations through certain soil and groundwater pathways. The point of exposure is assumed to be the source showing maximum concentrations. Risk-based screening levels (Tier 1 levels) contained in the Tier 1 Look-Up Table have been derived from models which use conservative assumptions to predict exposure to actual and potential receptors. (These models and default assumptions are contained in Appendix A.) If Tier 1 levels are not exceeded for a pathway, that pathway may not require further assessment. If the maximum concentrations exceed a Tier 1 level, the options are to conduct a more extensive Tier 2 assessment, apply an institutional control, or in limited circumstances excavate contaminated soil to below Tier 1 levels. If all pathways clear the Tier 1 levels, it is possible for the site to obtain a no action required classification.

ITEM 106. Amend subrule 135.8(3) as follows:

135.8(3) Chemicals of concern. Soil and groundwater samples from releases of petroleum regulated substances must always be analyzed for the presence of benzene, ethylbenzene, toluene, and xylenes. In addition, if the release is suspected to include any petroleum regulated substance other than gasoline or gasoline blends, or if the source of the release is unknown, the samples must be tested for the presence of Total Extractable Hydrocarbons (TEH). Appendices A and B and department Tier 2 guidance define

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a method for converting TEH values to a default concentration for naphthalene, benzo(a)pyrene, benz(a)anthracene and chrysene and conversion back to a representative TEH value. These default values must be used in order to apply Tier 2 modeling to these constituents in the absence of accurate laboratory analysis. ~~At Tier 2 and Tier 3, owners and operators have the option of analyzing for these specific constituents and applying them to the specific target levels in Appendices A and B instead of using the TEH conversion method if an approved laboratory and laboratory technique are used.~~

ITEM 107. Amend subrule 135.9(1), introductory paragraph, as follows:

135.9(1) General. The main objective of a Tier 1 site assessment is to reasonably determine the highest concentrations of chemicals of concern which would be associated with any suspected or confirmed release and an accurate identification of applicable receptors. ~~In addition, the~~ The potential source of a release, nature of the substance released, site stratigraphy, depth to groundwater, and other appropriate factors must be considered when selecting the sample types, sample locations, and measurements methods. The placement and depth of borings and the construction of monitoring wells must be sufficient to determine the sources of all releases, the vertical extent of contamination, an accurate description of site stratigraphy, and a reliable determination of groundwater flow direction.

ITEM 108. Amend paragraphs **135.9(1)“b”** and **“c”** as follows:

b. Pathway clearance. ~~If field data~~ contaminant concentrations for an individual pathway ~~does do~~ not exceed the applicable Tier 1 levels or if a pathway is incomplete, no further action is required to evaluate the pathway unless otherwise specified in these rules. If the ~~field data~~ contaminant concentrations for a pathway ~~exceeds~~ exceed the applicable Tier 1 level(s) in the “Iowa Tier 1 Look-up Table,” the response is to conduct further assessment under Tier 2 or Tier 3 unless an effective institutional control is approved. In limited circumstances excavation of contaminated soils may be used as an option to obtain pathway clearance. If further site assessment indicates site data exceeds an applicable Tier 1 level(s) for a previously cleared pathway or the conditions justifying a determination of pathway incompleteness change, that pathway must be reevaluated as part of a Tier 2 or Tier 3 assessment.

c. Chemical group clearance. ~~If field data~~ concentrations for all chemicals of concern within a designated group of chemicals is are below the Tier 1 levels, no further action is required as to the group of chemicals unless otherwise specified in these rules. Group one consists of benzene, ethylbenzene, toluene, and xylenes (BTEX). Group two consists of naphthalene, benzo(a)pyrene, benz(a)anthracene and chrysene; TEH default values are incorporated into the Iowa Tier 1 Look-Up Table and Appendix A for group two chemicals.

ITEM 109. Amend paragraph **135.9(3)“n”** as follows:

n. A Tier 1 site assessment in accordance with the department’s Tier 1 guidance. The Tier 1 report shall be submitted on forms and in a format prescribed by this guidance. ~~The Tier 1 data analysis shall be performed by using computer software developed by the department or by using the computer software’s hard-copy version.~~

ITEM 110. Amend paragraph **135.9(7)“e”** as follows:

e. Soil gas samples. To establish that the soil gas measurement is representative of the highest expected levels, a groundwater professional must obtain two soil gas samples taken at least two weeks apart. ~~One of the samples must be taken below the typical frostline depth during a seasonal period of lowest groundwater elevation~~ One of the samples should be collected beneath the frost line depth during a seasonal period of lowest groundwater elevation.

ITEM 111. Amend paragraph **135.9(7)“h”** as follows:

h. Soil excavation. Excavation of contaminated soils for the purpose of removing soils contaminated above the Tier 1 levels is permissible as an alternative to conducting a Tier 2 assessment. Adequate field screening methods must be used to identify maximum concentrations during excavation. At a minimum, one soil sample must be taken for field screening every 100 square feet of the base and each sidewall. Soil samples must be taken for laboratory analysis at least every 400 square feet of the base and each sidewall of the excavated area to confirm that remaining concentrations are below Tier 1

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levels. If the base or a sidewall of the excavation is less than 400 square feet, a minimum of one sample must be analyzed for each sidewall and the base.

ITEM 112. Rescind paragraph **135.9(11)“g.”**

ITEM 113. Amend paragraph **135.10(1)“a”** as follows:

a. *Guidance.* The Tier 2 site assessment shall be conducted in accordance with the department's "Tier 2 Site Assessment Guidance" and these rules. The site cleanup report shall be submitted on forms and in a format prescribed by this guidance. The Tier 2 data analysis shall be performed by using computer software or online application developed by the department ~~or by using the computer software's hard-copy version.~~

ITEM 114. Rescind subparagraph **135.10(2)“f”(3).**

ITEM 115. Amend paragraphs **135.10(2)“g”** and **“h”** as follows:

g. *Modeled simulation line.* The simulation line represents the predicted maximum extent of groundwater contamination and distribution of contaminant concentrations between the source(s) and actual or potential receptor locations. The model calculates the simulation line using maximum concentrations at the source(s) and predicting the amount of dispersion and degradation. Modeled data in the simulation line are compared with actual ~~field data~~ contaminant concentrations to verify the predictive validity of the model and to make risk classification decisions.

h. *Modeled site-specific target level (SSTL) line.* The modeled SSTL line represents acceptable levels of contaminant concentrations at points between and including the source(s) and an applicable point(s) of exposure or other point(s) of compliance (ex. a potential receptor point of exposure). The SSTL line is calculated by assuming an applicable target level concentration at the point(s) of exposure or point(s) of compliance and modeling back to the source to determine the maximum concentrations at the source (SSTL) that must be achieved to meet the target level at the point of exposure or compliance. Comparison of ~~field data~~ contaminant concentrations from actual samples to this SSTL line is used to determine a risk classification and determine appropriate corrective action response.

ITEM 116. Rescind paragraph **135.10(2)“m.”**

ITEM 117. Amend subparagraphs **135.10(3)“a”(2)** and **(3)** as follows:

(2) Granular bedrock. Granular bedrock is bedrock which is determined to act as a granular aquifer and for which monitoring wells do not exist at the source ~~as of August 15, 1996~~. For purposes of this rule, a granular aquifer is one that shows no extraordinary variations or inconsistencies in groundwater elevations across the site, groundwater flow, hydraulic conductivities, or total dissolved solid concentrations among monitoring wells. Although the extent of contamination can be defined in granular bedrock, groundwater transport modeling cannot be used because ~~there are no~~ monitoring wells shall not be installed at the source if soil contamination is present. If soil contamination above a Tier 1 level is not identified or an overexcavation of contaminated soil has successfully removed all soil contamination greater than a Tier 1 level, then monitoring wells can be installed in the source area and the site can be evaluated as exempt granular bedrock.

(3) Exempt granular bedrock. Exempt granular bedrock is bedrock which is determined to act as a granular aquifer as provided in subparagraph (2) and for which monitoring wells exist at the source as of August 15, 1996. Sites in exempt granular bedrock shall be evaluated using ~~the normal regular~~ Tier 1 ~~or and~~ Tier 2 procedures in this rule. ~~Nongranular bedrock is not exempt from this subrule even if groundwater monitoring wells exist at the source.~~

NOTE: Nongranular bedrock is subject to special bedrock assessment procedures even if groundwater monitoring wells exist at the source, because the flow is not predictable by the Tier 2 model.

ITEM 118. Amend paragraph **135.10(3)“b”** as follows:

b. *Exempt soil pathways.* The soil vapor to enclosed space pathway and the soil to ~~plastic~~ water lines pathway shall be assessed under the ~~normal~~ regular Tier 2 procedures in subrules 135.10(7) and 135.10(9) respectively. In all cases, the ~~normal~~ assessment must comply with the policy of avoiding a preferential pathway to groundwater consistent with subrule 135.8(5) and this subrule.

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ITEM 119. Amend subparagraph **135.10(3)“g”(2)** as follows:

(2) Groundwater well receptor evaluation for granular and nongranular bedrock designations. All drinking and non-drinking water wells within 1,000 feet of the source must be identified and tested for chemicals of concern. All public water supply systems within one mile of the source must be identified and raw water tested for chemicals of concern. ~~If no drinking water wells are located within 1,000 feet of the source, all the~~ All area within 1,000 feet of the source is considered a potential receptor point of exposure.

ITEM 120. Amend subparagraph **135.10(3)“i”(2)** as follows:

(2) High risk classification. A site designated as granular or nongranular bedrock shall be classified high risk for this pathway if the highest groundwater elevation is ~~higher than~~ within three feet ~~below~~ of the bottom of a water line as provided in subparagraph 135.10(8)“a”(1), risk classification cannot be determined as provided in rule 567—135.12(455B) due to limitations on placement of monitoring wells, and water lines exist within 200 feet of a monitoring well which exceeds the Tier 1 level.

ITEM 121. Amend subparagraph **135.10(3)“j”(1)** as follows:

(1) Point of compliance. The monitoring well closest to the surface water body must be used as the point of compliance to evaluate impacts to designated use segments as described in subrule 135.10(10) and for general use segments that fail the visual inspection criteria of paragraph 135.10(10)“b.” If the surface water criteria is are exceeded for a designated use segment, an allowable discharge concentration must be calculated and met at the point of compliance. For general use segments failing the visual inspection criteria, the acutely toxic target level must be met at the point of compliance.

ITEM 122. Amend subparagraphs **135.10(3)“k”(1)** and **(2)** as follows:

(1) Groundwater ingestion pathway. For high risk sites, where soil exceeds the soil leaching to groundwater Tier 1 level for actual receptors, soil excavation or other active remediation of soils must be conducted in accordance with department guidance to reduce soil concentrations to below the soil leaching Tier 1 level. Corrective action other than monitoring of groundwater is required at sites designated as nongranular bedrock if the actual receptor has been or is likely to be impacted. Corrective action other than monitoring of groundwater is required at sites designated as granular bedrock if the actual receptor has been impacted or the sentry well required by subparagraph 135.10(3)“g”(4) has been impacted above Tier 1 levels. Acceptable corrective action for impacted or vulnerable groundwater wells may include active remediation, technological controls, institutional controls, well plugging, relocation, and well reinstallation with construction measures sufficient to prevent contaminant infiltration to the well and to prevent formation of a preferential pathway.

(2) Groundwater ingestion pathway high risk monitoring. For high risk sites designated as nongranular or granular bedrock, if the soil concentrations do not exceed the soil leaching to groundwater Tier 1 levels or have been reduced to this level by corrective action, and corrective action of groundwater is not required as in subparagraph 135.10(3)“k”(1), these sites shall be subject to groundwater monitoring as provided in paragraph 135.10(3)“l.” Corrective action other than monitoring of groundwater is required at sites designated as granular bedrock if groundwater concentrations exceed the applicable target level less than 200 feet from an actual receptor. Reevaluation of the potential for impact to actual receptors is required at sites designated as nongranular bedrock if concentrations from monitoring wells ~~increases~~ increase more than 20 percent of the previous samples.

ITEM 123. Amend subparagraphs **135.10(3)“m”(1)** and **(2)** as follows:

(1) Groundwater in nongranular bedrock designations. Exit monitoring requires that samples from all groundwater monitoring wells must not exceed the applicable target levels for annual sampling for three consecutive years. If soil contamination above a Tier 1 level is not identified or if an overexcavation has successfully removed all soil contamination greater than a Tier 1 level and monitoring wells are installed in the source area, exit monitoring criteria are met when two consecutive samples collected at least six months apart from all monitoring wells show concentrations less than the lowest target level.

(2) Groundwater in granular bedrock designations. Exit monitoring must be met in two ways: A monitoring well between the source and the receptor must not exceed applicable target levels for

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three sampling events, and samples must be separated by at least six months; and the three most recent consecutive groundwater samples from a monitoring well between the source and the receptor with detected levels of contamination must show a steady or declining trend and meet the following criteria: The first of the three samples must be ~~more~~ greater than detection limits, concentrations cannot increase more than 20 percent from the first of the three samples to the third sample; concentrations cannot increase more than 20 percent ~~of~~ from the previous sample; and samples must be ~~separated by~~ collected at least six months apart.

ITEM 124. Amend paragraph **135.10(4)“j”** as follows:

j. Use of institutional controls. ~~The use of institutional~~ Institutional controls may be used to obtain no action required pathway classification. If the pathway is complete and the concentrations exceed the applicable Tier 1 level(s) for actual receptors, the drinking or non-drinking water well must be properly plugged in accordance with 567—Chapters 39 and 49 and the institutional control must prohibit the use of a protected groundwater source (if one exists) within the actual or modeled plume as provided in paragraphs 135.10(2)“j” and 135.10(2)“k.” If the Tier 1 level is exceeded for potential receptors, the institutional control must prohibit the use of a protected groundwater source within the actual or modeled plume, whichever is greater. If concentrations exceed the Tier 1 level for drinking water wells and the groundwater is a protected groundwater source, the owner or operator must provide notification of the site conditions on a department form to the department water supply section, or if a county has delegated authority, then the designated county authority responsible for issuing private water supply construction permits or regulating non-public water well construction as provided in 567—Chapters 38 and 49.

ITEM 125. Amend paragraph **135.10(6)“g,”** introductory paragraph, as follows:

g. Pathway evaluation and classification. Upon completion of ~~analysis evaluation of field data~~ analytical results of appropriate samples and modeled data, the pathway must be classified high risk, low risk or no further action as provided in rule 567—135.12(455B).

ITEM 126. Amend paragraph **135.10(8)“d”** as follows:

d. Pathway evaluation and classification. Upon completion of ~~analysis evaluation of field data~~ analytical results of appropriate samples and modeled data, the pathway must be classified high risk, low risk or no further action as provided in rule 567—135.12(455B). The water quality inside the water lines is not a criterion for clearance of this pathway.

ITEM 127. Amend paragraph **135.10(9)“d”** as follows:

d. Pathway classification. Upon completion of ~~analysis evaluation of field data~~ analytical results of appropriate samples, the pathway must be classified high risk, low risk or no further action as provided in rule 567—135.12(455B). Measurements of water quality inside the water lines may be required, but are not allowed as criteria to clear this pathway.

ITEM 128. Amend paragraph **135.10(10)“e”** as follows:

e. Target levels. Determining target levels for this pathway involves a two-step process.

(1) Groundwater modeling as provided in subrule 135.10(2) must be used to calculate the projected concentrations of chemicals of concern at the point of compliance. If the modeled concentrations or field data at the point of compliance exceed surface water criteria for designated use segments, an allowable discharge concentration must be calculated. If the projected concentrations and ~~field data~~ actual concentrations at the point of compliance do not exceed surface water criteria, no further action is required to assess this pathway.

(2) The department water quality section will calculate the allowable discharge concentration using information provided by the certified groundwater professional on a department form. Required information includes, at a minimum, the site location and a discharge flow rate calculated according to the department’s Tier 2 guidance. The allowable discharge concentration is the target level which must be met adjacent to the surface water body which is the point of compliance.

(3) The target level at the point of exposure/compliance for general use segments subject to evaluation is the acutely toxic levels established by the department under 567—Chapter 61 and ~~subrule~~ subrule 567—subrule 62.8(2). If the modeled concentrations of ~~field data~~ contaminant concentrations at

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the point of exposure/compliance exceed the acutely toxic levels, modeling must be used to determine site classifications and corrective action in accordance with rule 567—135.12(455B).

ITEM 129. Amend paragraph **135.10(10)“f”** as follows:

f. Pathway evaluation and classification. Upon completion of ~~analysis of field data~~ evaluation of analytical results of appropriate samples and modeled data, the pathway must be classified high risk, low risk or no further action as provided in rule 567—135.12(455B).

(1) For general use segments, as defined in 567—subrule 61.3(1), if the groundwater professional determines there is no sheen or residue present or if the site is not the source of the sheen or residue or if the sheen does not consist of petroleum-regulated substances, no further action is required for assessment of this pathway. If a petroleum-regulated substance sheen is present, the pathway is high risk and subject to classification in accordance with rule 567—135.12(455B).

(2) For designated use segments, as provided in 567—subrules 61.3(1) and 61.3(5), if projected concentrations of chemicals of concern and ~~field data~~ actual contaminant concentrations at the point of compliance do not exceed the target level adjacent to the surface water, and the groundwater professional determines there is no sheen or residue present, no further action is required for assessment of this pathway.

ITEM 130. Rescind paragraph **135.10(11)“f.”**

ITEM 131. Reletter paragraphs **135.10(11)“g”** and **“h”** as **135.10(11)“f”** and **“g.”**

ITEM 132. Amend subrule 135.12(1) as follows:

135.12(1) General. 1995 Iowa Code section 455B.474(1)“d”(2) provides that sites shall be classified as high risk, low risk and no action required. Risk classification is accomplished by comparing actual ~~field data~~ contaminant concentrations to the concentrations that are predicted by the use of models. ~~Field data~~ Concentrations must be compared to the simulation model which uses the maximum concentrations at a source and predicts at what levels actual or potential receptors could be impacted in the future. ~~Field data~~ Concentrations must also be compared to the site-specific target level line which assumes a target level concentration at the point of exposure and is used to predict the reduction in concentration that must be achieved at the source in order to meet the applicable target level at the point of exposure. These models not only predict concentrations at points of exposure or a point of compliance at a source but also predict a distribution of concentrations between the source and the point of exposure which may also be points of compliance. The comparison of ~~field data~~ contaminant concentrations with these distribution curves primarily is considered for purposes of judging whether the modeled data is reasonably predictive and what measures such as monitoring are prudent to determine the reliability of modeled data and actual ~~field data~~ contaminant concentrations.

For the soil vapor to enclosed space and soil to water line pathways, there are no horizontal transport models to use for predicting future impacts. Therefore, for these pathways, sites are classified as high risk, low risk or no action required based on specified criteria below and in rule 567—135.10(455B).

ITEM 133. Amend subrule 135.12(2), introductory paragraph, as follows:

135.12(2) High risk classification. Except as provided below, sites shall be classified as high risk if, for any pathway, any actual ~~field data exceeds~~ contaminant concentrations exceed the site-specific target level line at any point for an actual receptor.

ITEM 134. Amend paragraphs **135.12(3)“a”** and **“b”** as follows:

a. Objectives. The primary objectives of corrective action in response to a high risk classification are both ~~short-term~~ short-term and long-term. The short-term goal is to eliminate or reduce the risk of exposure at actual receptors which have been or are imminently threatened with exposure above target levels. The longer term goal is to prevent exposure to actual receptors which are not currently impacted or are not imminently threatened with exposure. To achieve these objectives, it is the intent of these rules that concentrations of applicable chemicals of concern be reduced by active remediation to levels below the site-specific target level line at all points between the source(s) and the point(s) of exposure as well as to undertake such interim corrective action as necessary to eliminate or prevent exposure until concentrations below the SSTL line are achieved. If it is shown that concentrations at all applicable points

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have been reduced to below the SSTL line, the secondary objective is to establish that the ~~field data~~ actual chemical concentrations can be reasonably relied upon to predict future conditions at points of exposure rather than reliance on the modeled data. Reliance on ~~field data~~ actual contaminant concentrations is achieved by establishing through monitoring that concentrations within the contaminant plume are steady or declining. ~~Use of institutional control~~ Institutional controls and technological controls may be used to sever pathways or control the risk of receptor impacts.

b. For the groundwater to water line and soil to water line receptors, these objectives are achieved by active remediation, replacement or relocation of high risk water line receptors ~~from areas within the actual plume plus some added site-specific distance to provide a safety factor to areas outside the site-specific target level line. In areas of free product, all water lines regardless of construction material must be relocated unless there is no other option and the department has approved an alternate plan of construction in the actual and modeled plume areas.~~ If water lines and gaskets are replaced in an area of contamination, they must be replaced with water line materials and gasket materials of appropriate construction in accordance with current department standards set forth in 567—Chapter 43 and with no less than nitrile or FKM gaskets or as otherwise approved by the department. ~~If a service line is replaced and remains in a contaminated area, a backflow preventer shall be installed to prevent impacts to the larger water distribution system.~~

ITEM 135. Reletter paragraphs **135.12(3)“c”** to **“i”** as **135.12(3)“d”** to **“j.”**

ITEM 136. Adopt the following new paragraph **135.12(3)“c”**:

c. In areas of free product, all water lines, regardless of construction material, must be relocated unless there is no other option and the department has approved an alternate plan of construction. Refer to subparagraph 135.7(5)“d”(11). If a service line remains in the area of LNAPL, a backflow preventer shall be installed to prevent impacts to the larger water distribution system.

ITEM 137. Amend subrule 135.12(4) as follows:

135.12(4) Low risk classification. A site shall be classified as low risk if none of the pathways are high risk and if any of the pathways are low risk. A pathway shall be classified low risk if it meets one of the following conditions:

a. For actual and potential receptors, if the modeled data and the actual ~~field data~~ concentrations are less than the site-specific target level line, and any of the ~~field data is~~ actual concentrations are greater than the simulation line.

b. For potential receptors, if any actual ~~field data exceeds~~ concentrations exceed the site-specific target level line at any point.

c. For the soil leaching to groundwater ingestion pathway where modeling predicts that the Tier 1 levels for potential receptors would be exceeded in groundwater at applicable potential receptor points of compliance and the soil concentration exceeds the soil leaching to groundwater site-specific target level but groundwater concentrations are currently below the Tier 1 level for potential receptors, the site shall be initially classified as low risk and subject to monitoring under subparagraph 135.12(5)“d”(2). If at any time during the three-year monitoring period, groundwater concentrations exceed the Tier 1 level for potential receptors, the site shall be classified as high risk requiring soil remediation in accordance with ~~135.12(3)“e.”~~ paragraph 135.12(3)“d.”

ITEM 138. Amend paragraphs **135.12(6)“b”** to **“e”** as follows:

b. For initial classification, groundwater pathways shall be classified as no action required if the ~~field data is~~ contaminant concentrations are below the site-specific target level line and all ~~field data is~~ concentrations are at or less than the simulation line, and confirmation monitoring has been completed successfully. Confirmation sampling for groundwater is a second sample which confirms the no action required criteria.

c. A groundwater pathway shall be reclassified from high risk to no action required if all ~~field data is~~ contaminant concentrations are below the site-specific target level and if exit monitoring criteria have been met. Exit monitoring criteria means that the three most recent consecutive groundwater samples from all monitoring wells must show a steady or declining trend and the most recent samples are below

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the site-specific target level. Other criteria include the following: The first of the three samples for the source well and transition well must be more than detection limits; concentrations cannot increase more than 20 percent from the first of the three samples to the third sample; concentrations cannot increase more than 20 percent of the previous sample; and samples must be separated by at least six months.

d. A low risk site shall be reclassified as “no action required” if ~~field data is~~ contaminant concentrations are below the site-specific target level and if exit monitoring criteria have been met pursuant to paragraph 135.12(6)“c” or if the site has maintained less than the applicable target level for four consecutive sampling events separated by at least six months as defined in the monitoring plan regardless of exit monitoring criteria and guidance.

e. Confirmation sampling for soil gas and indoor vapor. For the enclosed space pathways, confirmation sampling is required to reasonably establish that the soil gas and indoor vapor samples represent the highest expected levels. A groundwater professional must obtain two samples taken at least two weeks apart. ~~One of the samples must be taken during a seasonal period of lowest groundwater elevation and soil gas samples must be taken below the frost line~~ One of the samples should be collected beneath the frost line depth during a seasonal period of lowest groundwater elevation.

ITEM 139. Amend paragraph **135.12(9)“d”** as follows:

d. Review. A CADR submitted by a groundwater professional shall be accepted by the department and shall be primarily relied upon by the department to determine the corrective action response requirements of the site. However, if within 90 days of receipt of a CADR, the department identifies material information in the CADR that is inaccurate or incomplete, and if based upon information in the report the appropriate corrective action response cannot be reasonably determined by the department based on industry standards, the department may reject the report and require modifications. If the department does not reject the report within 90 days of receipt, the report shall be deemed approved as submitted unless changes to the report are requested by the groundwater professional. The department shall work with the groundwater professional and the owner or operator to correct any materially inaccurate information or to obtain the additional information necessary to determine the appropriate corrective action response as soon as practicable. ~~However, from July 1, 2010, through June 30, 2011, the department shall have 120 days to notify the certified groundwater professional when a report is not accepted based on material information that is found to be inaccurate or incomplete.~~

ITEM 140. Amend paragraph **135.12(10)“b,”** introductory paragraph, as follows:

b. No further action certificate. When the no action required site classification has been determined based on a recommendation of the certified groundwater professional as provided in subrules 135.9(11), 135.10(11) and 135.12(12) 135.12(6) (see also 2009 Iowa Code Supplement section 455B.474(1)“*h*”(1) and (3) as amended by 2010 Iowa Acts, House File 2531, section 174 455B.474(1)“a”(8)(a) and (c)), the department shall issue a no further action certificate.

ITEM 141. Amend subparagraph **135.12(10)“b”(9)** as follows:

(9) The owner or operator or other persons conducting corrective action shall be responsible for recording the no further action certificate with the county recorder and return a file-stamped copy to the department within 30 days of the issue date. At its discretion, the department may record the no further action certificate with the appropriate county recorder as authorized in 2009 Iowa Code Supplement section 455B.474(1)“*h*”(3) as amended by 2010 Iowa Acts, House File 2531, section 174 455B.474(1)“a”(8)(c).

ITEM 142. Amend subrule 135.12(11) as follows:

135.12(11) Expedited corrective action. An owner, operator or responsible party of a site at which a release of regulated substance is suspected to have occurred may carry out corrective actions at the site so long as the department receives notice of the expedited cleanup activities ~~within~~ prior to 30 calendar days of their commencement; the owner, operator, or responsible party complies with the provisions of these rules; and the corrective action does not include active treatment of groundwater other than:

a. As previously approved by the department; or

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- b. Free product recovery pursuant to subrule 135.7(5).
- c. ~~Soil excavation~~ overexcavation. When undertaking ~~excavation~~ overexcavation of contaminated soils, adequate field screening methods must be used to identify maximum concentrations during excavation. At a minimum one soil sample must be taken for field screening every 100 square feet of the base and each sidewall. Soil samples must be taken for laboratory analysis at least every 400 square feet of the base and each sidewall of the excavated area to confirm remaining concentrations are below Tier 1 levels. If the excavation is less than 400 square feet, a minimum of one sample must be analyzed for each sidewall and the base. The owner or operator must maintain adequate records of the excavation area to document compliance with this procedure unless submitted to the department and must provide it to the department upon request.

ITEM 143. Amend rule 567—135.14(455B) as follows:

567—135.14(455B) Action levels. The following corrective action levels apply to petroleum-regulated substances as regulated by this chapter. These action levels shall be used to determine if further corrective action under rules 567—135.6(455B) through 567—135.12(455B) or rule 567—135.15(455B) is required as the result of tank closure sampling under subrule 135.15(3) or other analytical results submitted to the department. The contaminant concentrations must be determined by laboratory analysis as stated in rule 567—135.16(455B). Final cleanup determination is not limited to these contaminants. The contamination corrective action levels are:

	Soil (mg/kg)	Groundwater (ug/L)
Benzene	0.54	5
Toluene	3.2	1,000
Ethylbenzene	15	700
Xylenes	52	10,000
Total Extractable Hydrocarbons— <u>Diesel</u>	3,800	1,200
<u>Total Extractable Hydrocarbons—Waste Oil</u>		<u>400</u>

ITEM 144. Amend rule **567—135.15(455B)**, catchwords, as follows:

567—135.15(455B) Out-of-service UST systems, temporary closure, and permanent closure.

ITEM 145. Rescind subrule 135.15(1) and adopt the following new subrule in lieu thereof:

135.15(1) Out-of-service UST systems and temporary closure.

a. UST systems not meeting either the performance standards in subrule 135.3(1) for new UST systems or the upgrading requirements in subrule 135.3(2) by December 22, 1998, must be permanently closed according to subrule 135.15(2). The tanks cannot be brought back into use.

b. When a UST system in compliance with new tank standards is out of service for less than three months, owners and operators must:

(1) Continue operation and maintenance of corrosion protection in accordance with subrule 135.4(2);

(2) Continue operation and maintenance of any release detection in accordance with rule 567—135.5(455B) unless the system is empty. The UST system is empty when all materials have been removed using commonly employed practices. No more than 2.5 centimeters (1 inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, may remain in the system;

(3) Comply with rules 567—135.6(455B) to 567—135.12(455B) if a release is suspected or confirmed;

(4) Maintain financial responsibility (e.g., insurance) in accordance with 567—Chapter 136. If at any time financial responsibility coverage is or will be terminated, a site check for contamination must be completed before coverage is terminated. A site check must use the closure-in-place sampling

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procedures in paragraphs 135.15(3) “b” and “d” or the Tier 1 site assessment in rule 567—135.9(455B). If the tanks are located in a contaminated area with active monitoring and remediation, the tank owner may request the department waive the site check providing justification.

(5) Continue to pay the tank management fee as required in subrule 135.3(5).

(6) Continue to have compliance inspections conducted as required in rule 567—135.20(455B).

c. When a UST system is out of service for three months or more, an owner must submit a notification of temporary closure form to the department. Owners and operators must complete the requirements in paragraph 135.15(1) “b” for temporary closure and certify the following:

(1) The UST system is empty of all regulated substances (e.g., receipt of product removal).

(2) Vent lines are open and functioning.

(3) All other piping, pumps, accesses, and ancillary equipment are capped and locked.

(4) The corrosion protection system is being maintained in accordance with subrule 135.4(2). Include documentation that electricity is being maintained to operate the impressed current cathodic protection system if present.

(5) For lined tanks, provide a copy of the last internal inspection.

(6) Provide proof of financial responsibility (e.g., insurance) according to 567—Chapter 136.

d. When a tank system is temporarily closed for more than 12 months, the owner must remain in compliance with the department’s temporary closure requirements in paragraph 135.15(1) “c.” The department may provide an extension to the 12-month temporary closure period. Owners and operators must complete a site check in accordance with paragraph 135.6(3) “b” before such an extension can be applied for.

e. If a tank system is temporarily closed for more than 12 months, but the tank system has not been temporarily closed according to the requirements of paragraph 135.15(1) “c,” or the owner or operator has failed to maintain out-of-service requirements in paragraph 135.15(1) “b,” the UST system must be permanently closed in accordance with subrule 135.15(2).

f. Prior to returning a temporarily closed tank back into service, the owner or operator must complete and submit the department’s return-to-service form signed by a licensed installer and provide the following documentation. The tank system cannot be operated or receive fuel until current tank tags have been issued.

(1) Documentation that the tanks were temporarily closed in accordance with subrule 135.15(1).

(2) Where applicable, documentation that corrosion protection has been maintained continuously in accordance with subrule 135.4(2). The owner or operator must provide an inspection log of the cathodic protection system and the inspection report of the cathodic protection system completed by an Iowa-licensed corrosion tester.

(3) For lined tanks, provide a lining and tank integrity inspection report.

(4) Results of precision tightness tests (0.1 gph) conducted on tanks in accordance with rule 567—135.5(455B).

(5) Results of precision tightness tests (0.1 gph) conducted on lines in accordance with rule 567—135.5(455B). This includes piping used for remote fill.

(6) Function test (3.0 gph) results of mechanical or electronic leak detectors conducted in accordance with rule 567—135.5(455B).

NOTE: Function tests are not required on confirmed “safe suction” dispensing lines.

(7) Tank and piping leak detection is operational and in good condition.

(8) Secondary containment is installed where necessary in accordance with subrule 135.3(9).

(9) Spill containment, overfill prevention and all containment sumps are in good condition and operating in accordance with subrule 135.4(1). Tightness tests conducted within the last 12 months must be provided for secondary containment of tanks, piping, sumps, under dispenser containment and spill containment.

(10) Copy of the financial responsibility (e.g., UST insurance) mechanism in accordance with 567—Chapter 136.

(11) Certification from an Iowa-licensed installer that the UST system and equipment are installed correctly, are in good operable condition and meet all regulatory requirements for startup and operation.

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(12) Copies of Class A and Class B operator training certificates.

(13) Change of ownership form (if the UST facility was sold).

ITEM 146. Amend subrule 135.15(2) as follows:

135.15(2) *Permanent closure and changes-in-service.* Permanent closure of an underground storage tank system must be conducted by an Iowa-licensed tank remover. Closure sampling must be conducted by or under the supervision of an Iowa-certified groundwater professional.

a. No change.

b. To permanently close a tank or piping, owners and operators must empty and clean them by removing all liquids and accumulated sludge. All tanks taken out of service permanently must also be either removed from the ground, or filled with an inert solid material, or closed in place by a method approved by the department. Piping must ~~either~~ be removed from the ground or have the ends plugged with an inert solid material.

When permanently closing a tank by filling with inert solid material, the tank may not be filled until a closure report is approved by the department. The tank must be filled within 30 days after department approval. The owner and operator must notify the department within 15 days after filling the tank with inert solid material.

c. No change.

d. Permanent closure procedures must be followed in the replacement of tanks or piping. Notification must be made using DNR Form 542-1308, "Notification of Tank Closure or Change-in-Service." The form must include the date scheduled for the closure. Oral confirmation of the closure date must be given to the DNR field office 24 hours prior to the actual closure. The required assessment of the excavation zone under ~~139.15(3)~~ subrule 135.15(3) must be performed after notifying the department but before completion of the permanent closure or change-in-service.

NOTE: The following cleaning and closure procedures may be used to comply with subrule 135.15(2): ~~American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks"; American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks"; American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks," may be used as guidance for compliance with this subrule; and the National Institute for Occupational Safety and Health "Criteria for a Recommended Standard... Working in Confined Space" may be used as guidance for conducting safe closure procedures at some hazardous substance tanks.~~

- American Petroleum Institute Recommended Practice RP 1604, "Closure of Underground Petroleum Storage Tanks";

- American Petroleum Institute Standard 2015, "Safe Entry and Cleaning of Petroleum Storage Tanks, Planning and Managing Tank Entry From Decommissioning Through Recommissioning";

- American Petroleum Institute Recommended Practice 2016, "Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks";

- American Petroleum Institute Recommended Practice RP 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks," may be used as guidance for compliance with this subrule;

- National Fire Protection Association Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair"; and

- National Institute for Occupational Safety and Health Publication 80-106, "Criteria for a Recommended Standard...Working in Confined Space" may be used as guidance for conducting safe closure procedures at some hazardous substance tanks.

ITEM 147. Amend subrule 135.15(3) as follows:

135.15(3) *Assessing the site at closure or change-in-service.*

a. Before permanent closure or a change-in-service is completed, owners or operators must measure for the presence of a release where contamination is most likely to be present at the UST site. This soil and groundwater closure investigation must be conducted or supervised by a groundwater professional certified under 567—Chapter 134, Part A, unless the department in its discretion grants an exemption and provides direct supervision of the closure investigation. In selecting the sample

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types, sample locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the type of backfill, the depth to groundwater, and other factors appropriate for identifying the presence of a release.

At UST sites with a history of petroleum storage, soil and groundwater samples shall in every case be analyzed for benzene, toluene, ethylbenzene, and xylenes (BTEX) with each compound reported separately in accordance with rule 567—135.16(455B). If there has been a history or suspected history of petroleum storage other than gasoline or gasoline blends (i.e., all grades of diesel fuels, fuel oil, kerosene, oil and mineral spirits), or such storage history is unknown or uncertain, soil and groundwater samples shall also be analyzed for total extractable hydrocarbons in accordance with rule 567—135.16(455B).

All such samples shall be collected separately and shipped to a laboratory certified under 567—Chapter 42, Part C, 567—Chapter 83 within 72 hours of collection. Samples shall be refrigerated and protected from freezing during shipment to the laboratory.

When a UST is removed from an area of confirmed contamination, the department may waive closure sampling if written documentation is submitted with the closure notification. Documentation should include laboratory analytical reports and a site map showing tank and piping locations along with contamination plume and sampling locations.

b. For all permanent tank and piping closures or changes-in-service, at least one water sample must be taken from the first saturated groundwater zone via a developed monitoring well ~~or borehole~~ except as provided in paragraph 135.15(3)“g.” The well ~~or borehole~~ must be located downgradient from and as close as possible to the ~~excavation~~ UST system but no farther away than 20 feet from system components. At some tank and piping closures, a minimum of one monitoring well may not be sufficient to represent a release where it is most likely to be present. An additional groundwater monitoring well or wells may be necessary.

If, however, the first saturated groundwater zone is not encountered within 10 feet below the lowest elevation of the tank excavation, the requirement for groundwater sampling shall not apply unless:

(1) and (2) No change.

c. For permanent closure by tank removal, the departmental guidance document entitled “Underground Storage Tank Closure Procedures for Tank and Piping Removal Guidance” must be followed. The minimum number of soil samples that must be taken depends on the tank size and length of product piping. Samples must be taken at a depth of 1 to 2 feet beneath the tank fill area below the base of the tank along the tank’s centerline. Soil samples must also be taken at least every 10 feet along the product piping at a depth of 1 to 2 feet beneath the piping fill area below the piping, unless alternate sampling is approved by the department.

If sands or other highly permeable soils are encountered, alternative sampling methods may be required.

If contamination is suspected or found in any area within the excavation (i.e., sidewall or bottom), a soil sample must be taken at that location.

The numbers of samples required for tanks are as follows:

Nominal Tank Capacity (gallons)	Number of Samples	Location on Centerline
1,000 or less	1	center of tank
1,001 - 8,000	2	1/3 from ends
8,001 - 30,000	3	5 feet from ends and at center of tank
30,001 - 40,000	4	5 and 15 feet from ends
40,001 and more	5	5 and 15 feet from ends and at center of tank

d. For closing a tank in place by filling with an inert solid material or for a change-in-service, the departmental guidance document entitled “Underground Storage Tank Closure for Filling in Place” must be followed. The minimum number of soil borings required for sampling depends on the size of the tank and the length of the product piping. Soil samples must be taken within 5 feet of the sides and ends of the tank at a depth of 2 to 4 feet below the base of the tank, but outside the backfill material, at

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equal intervals around the tank. Soil samples must also be taken at least every 10 feet along the product piping at a depth of 1 to 2 feet beneath the piping fill area below the piping, unless alternate sampling is approved by the department. If sands or other highly permeable soils are encountered, alternative sampling methods may be required.

The minimum numbers of soil borings and samples required are as follows:

Nominal Tank Capacity (gallons)	Number of Samples	Location of Samples
6,000 or less	4	1 each end and each side
6,001 - 12,000	6	1 each end and 2 each side
12,001 or more	8	1 each end and 3 each side

e. A closure report in a format prescribed by the department must be submitted to the department within 45 days of the tank removal or sampling for a closure in place. ~~The report must include all laboratory analytical reports, soil boring and well or borehole construction details and stratigraphic logs, and a dimensional drawing showing location and depth of all tanks, piping, sampling, and wells or boreholes, and contaminated soil encountered. Refer to the Underground Storage Tank Closure Guidance for reporting format.~~ The tank tags must be returned with the closure report.

f. and *g.* No change.

ITEM 148. Amend subrule 135.15(7) as follows:

135.15(7) Applicability to pre-1974 USTs. The closure provisions of rule 567—135.15(455B) are not applicable to USTs which have been out of operation as of prior to January 1, 1974. For purposes of this subrule, out of operation means that no regulated substance has been deposited into or dispensed from the tanks and that the tanks do not currently contain an accumulation of regulated substances other than a de minimus minimis amount as provided in paragraph 135.15(1) “a.”

Owners and operators or other interested parties are not required to submit documentation that USTs meet the exemption conditions and may rely on this subrule as guidance. However, should a question arise as to whether USTs meet the exemption, or owners and operators or other interested parties request acknowledgment by the department that USTs are exempt, they must submit an affidavit on a form provided by the department. The affiant must certify that based on a reasonable investigation and to the best of the affiant’s knowledge, the USTs were taken out of operation prior to January 1, 1974, the USTs have not contained a regulated substance since January 1, 1974, and the USTs do not currently contain an accumulation of regulated substances.

If the department has a reasonable basis to suspect a release has occurred, the release investigation and confirmation steps of ~~subrule 135.8(1) rule 567—135.6(455B)~~ and the corrective action requirements as provided in rules 567—135.7(455B) to 567—135.8(455B) through 567—135.12(455B) shall apply.

ITEM 149. Amend rule 567—135.16(455B) as follows:

567—135.16(455B) Laboratory analytical methods for petroleum contamination of soil and water.

135.16(1) General. When ~~having soil or water analyzed~~ analyzing for petroleum or hazardous substances, owners and operators of UST systems must use a laboratory certified under 567—Chapter 83. In addition they must ensure that all ~~soil and groundwater~~ samples are properly preserved and shipped within 72 hours of collection to a laboratory certified under 567—Chapter 83, ~~for UST petroleum analyses~~. This rule provides acceptable analytical procedures for petroleum substances and required information that must be provided in all laboratory reports.

135.16(2) No change.

135.16(3) Analysis of soil and water for high volatile petroleum compounds (i.e., gasoline, benzene, ethylbenzene, toluene, xylene). Sample preparation and analysis shall be by Method OA-1, “Method for Determination of Volatile Petroleum Hydrocarbons (gasoline),” revision 7/27/93, University Hygienic Laboratory, Iowa City, Iowa. ~~This method is based on U.S. EPA methods 5030, 8000, and 8015, SW 846, “Test Methods for Evaluating Solid Waste,” 3rd Edition. 12/01/2019, state hygienic laboratory~~

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at the University of Iowa, or EPA Method 8260D, “Test Methods for Evaluating Solid Waste,” 3rd Edition—Update 6, July 2018. Copies of Method OA-1 are available from the department.

135.16(4) *Analysis of soil and water for low volatile petroleum hydrocarbon contamination (i.e., all grades of diesel fuel, fuel oil, kerosene, oil, and mineral spirits).* Sample preparation and analysis shall be by Method OA-2, “Determination of Extractable Petroleum Products (and Related Low Volatility Organic Compounds),” revision 7/27/93, University Hygienic Laboratory, Iowa City, Iowa. This method is based on U.S. EPA methods 3500, 3510, 3520, 3540, 3550, 8000, and 8100, SW-846, “Test Methods for Evaluating Solid Waste,” 3rd Edition. 12/01/2019, state hygienic laboratory at the University of Iowa. Copies of Method OA-2 are available from the department.

135.16(5) *Analysis of soil gas for volatile petroleum hydrocarbons.* Analysis of soil gas for volatile petroleum hydrocarbons shall be conducted in accordance with the National Institute for Occupational Safety and Health (NIOSH) Method 1501, Issue 3, March 15, 2003, or a department-approved equivalent method.

135.16(6) *Analytical methods for methyl tertiary-butyl ether (MTBE).* Analysis of water for MTBE must be conducted by a laboratory certified under 567—Chapter 83 for petroleum analyses.

a. Sample preparation and analysis shall be by U.S. Environmental Protection Agency Method 8260D, “Test Methods for Evaluating Solid Waste,” 3rd Edition—Update 6, July 2018.

b. Laboratories performing the analyses must run standards for MTBE on a routine basis, and standards for other possible compounds like ethyl tertiary-butyl ether (ETBE), tertiary-amyl methyl ether (TAME), di-isopropyl ether (DIPE), and tertiary-butyl alcohol (TBA) to be certain of their identification should they be detected.

c. Laboratories must run a method detection limit study and an initial demonstration of capability for MTBE. These records must be kept on file.

d. The minimum detection level for MTBE in water is 15 ug/L.

ITEM 150. Amend subrule 135.17(2) as follows:

135.17(2) Individual claims. The financial ability of individual owners and operators of USTs, with or without an active business (including but not limited to sole proprietorships and general partnerships), ~~shall may~~ be evaluated using the ~~“Individual Ability to Pay Guidance” document dated June 19, 1992,~~ most current version of “INDIPAY” developed by the U.S. Environmental Protection Agency and generally accepted principles of financial analysis. This guidance is only one tool the department may use in evaluating claims of financial inability.

ITEM 151. Amend subrule 135.17(3) as follows:

135.17(3) Corporate claims. The financial ability of corporate owners and operators of USTs ~~shall may~~ be evaluated using the ~~June 1992~~ most current version of “ABEL” developed by the U.S. Environmental Protection Agency and generally accepted principles of financial analysis. This guidance is only one tool the department may use in evaluating claims of financial inability.

ITEM 152. Rescind subrules **135.18(1)** to **135.18(4)**.

ITEM 153. Renumber subrules **135.18(5)** to **135.18(7)** as **135.18(1)** to **135.18(3)**.

ITEM 154. Amend rule 567—135.19(455B) as follows:

567—135.19(455B) Analyzing for methyl tertiary-butyl ether (MTBE) in soil and groundwater samples.

135.19(1) *General.* The objective of analyzing for MTBE is to determine its presence in ~~soil and~~ water samples collected as part of investigation and remediation of contamination at for underground storage tank facilities.

135.19(2) *Required MTBE testing.* ~~Soil and water~~ Water samples must be analyzed for MTBE when collected for risk-based corrective action as required in rules 567—135.8(455B) through 567—135.12(455B). These sampling requirements include but are not limited to: Tier 2 and Tier 3 assessments where groundwater ingestion pathway evaluation and subsequent monitoring is required.

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~~a. Risk-based corrective action (RBCA) evaluations required for Tier 1, Tier 2, and Tier 3 assessments and corrective action design reports.~~

~~b. Site monitoring.~~

~~c. Site remediation monitoring.~~

135.19(3) ~~MTBE testing not required. Soil and water samples~~ Analysis for MTBE is not required for the following actions ~~are not required to be analyzed for MTBE:~~

~~a. Closure sampling under rule 567—135.15(455B) unless Tier 1 or Tier 2 sampling is being performed.~~

~~b. Site checks under subrule 135.7(3) unless Tier 1 or Tier 2 sampling is being performed 135.6(3).~~

~~c. If prior analysis at a site under subrule 135.19(2) has not shown MTBE present in soil or groundwater.~~

~~d. If the department determines MTBE analysis is no longer needed at a site.~~

135.19(4) *Reporting.* The analytical data must be submitted in a format prescribed by the department.

~~**135.19(5)** *Analytical methods for methyl tertiary-butyl ether (MTBE).* When having soil or water analyzed for MTBE from contamination caused by petroleum or hazardous substances, owners and operators of UST systems must use a laboratory certified under 567—Chapter 83 for petroleum analyses. In addition, the owners and operators must ensure all soil and water samples are properly preserved and shipped within 72 hours of collection to a laboratory certified under 567—Chapter 83 for petroleum analyses.~~

~~a. Sample preparation and analysis shall be by:~~

~~(1) GC/MS version of OA-1, “Method for Determination of Volatile Petroleum Hydrocarbons (gasoline),” revision 7/27/93, University Hygienic Laboratory, Iowa City, Iowa; or~~

~~(2) U.S. Environmental Protection Agency Method 8260B, SW-846, “Test Methods for Evaluating Solid Waste,” Third Edition.~~

~~b. Laboratories performing the analyses must run standards for MTBE on a routine basis, and standards for other possible compounds like ethyl tertiary-butyl ether (ETBE), tertiary-amyl methyl ether (TAME), diisopropyl ether (DIPE), and tertiary-butyl alcohol (TBA) to be certain of their identification should they be detected.~~

~~c. Laboratories must run a method detection limit study and an initial demonstration of capability for MTBE. These records must be kept on file.~~

~~d. The minimum detection level for MTBE in soil is 15 ug/kg. The minimum detection level for MTBE in water is 15 ug/l.~~

ITEM 155. Amend subrule 135.20(1) as follows:

135.20(1) The owner or operator must have the UST system inspected and an inspection report submitted to the department by a UST compliance inspector certified by the department under 567—Chapter 134, Part B. An initial compliance site inspection shall be conducted ~~no later than December 31, 2007~~ within two years after new tank installation. All subsequent compliance site inspections conducted after the initial compliance site inspection ~~for the 2008–2009 biennial period~~ shall be conducted within 24 months of the prior compliance site inspection. Compliance site inspections must be separated by at least six months.

ITEM 156. Adopt the following new rule 567—135.21(455B):

567—135.21(455B) UST systems with field-constructed tanks and airport hydrant fuel distribution systems.

135.21(1) General requirements.

~~a. Implementation of requirements. Owners and operators must comply with the requirements of this rule for UST systems with field-constructed tanks and airport hydrant systems as follows:~~

~~(1) For UST systems installed on or before June 23, 2021, the requirements are effective according to the following schedule:~~

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Requirement	Effective Date
Upgrading UST systems, general operating requirements, and operator training	October 13, 2021
Release detection	October 13, 2021
Release reporting, response, and investigation; closure; financial responsibility and notification (except as provided in paragraph 135.21(1)“b”)	June 23, 2021

(2) For UST systems installed after June 23, 2021, the requirements apply at installation.

b. All owners of previously deferred UST systems must submit a registration form provided by the department. Owners and operators of UST systems must demonstrate financial responsibility at the time of submission of the registration form.

c. Except as provided in subrule 135.21(2), owners and operators must comply with the requirements of rules 567—135.1(455B) through 567—135.20(455B) and 567—Chapter 136.

d. In addition to the codes of practice listed in subrule 135.3(1), owners and operators may use military construction criteria, such as Unified Facilities Criteria (UFC) 3-460-01, Petroleum Fuel Facilities, when designing, constructing, and installing airport hydrant systems and UST systems with field-constructed tanks.

135.21(2) Additions, exceptions, and alternatives for UST systems with field-constructed tanks and airport hydrant systems.

a. Exception to piping secondary containment requirements. Owners and operators may use single-walled piping when installing or replacing piping associated with UST systems with field-constructed tanks greater than 50,000 gallons and piping associated with airport hydrant systems. Piping associated with UST systems with field-constructed tanks less than or equal to 50,000 gallons not part of an airport hydrant system must meet the secondary containment requirement when installed or replaced.

b. Upgrade requirements. Not later than October 13, 2021, airport hydrant systems and UST systems with field-constructed tanks where installation commenced on or before June 23, 2021, must meet the following requirements or be permanently closed pursuant to rule 567—135.15(455B).

(1) Corrosion protection. UST system components in contact with the ground that routinely contain regulated substances must meet one of the following:

1. Except as provided in paragraph 135.21(2)“a,” the new UST system performance standards for tanks in paragraph 135.3(1)“a” and for piping in paragraph 135.3(1)“b”; or

2. Be constructed of metal and cathodically protected according to a code of practice developed by a nationally recognized association or independent testing laboratory, and meet the requirements of paragraphs 135.3(1)“a”(2)“3” and “4” for tanks, and subparagraphs 135.3(1)“a”(2), (3) and (4) for piping. A tank greater than ten years old without cathodic protection must be assessed to ensure the tank is structurally sound and free of corrosion holes prior to adding cathodic protection. The assessment must be by internal inspection or another method determined by the department to adequately assess the tank for structural soundness and corrosion holes.

NOTE regarding paragraph 135.21(2)“b”: The following codes of practice may be used to comply with this paragraph:

- NACE International Standard Practice SP 0285, “External Control of Underground Storage Tank Systems by Cathodic Protection”;
- NACE International Standard Practice SP 0169, “Control of External Corrosion on Underground or Submerged Metallic Piping Systems”;
- National Leak Prevention Association Standard 631, Chapter C, “Internal Inspection of Steel Tanks for Retrofit of Cathodic Protection”; or
- American Society for Testing and Materials Standard G158, “Standard Guide for Three Methods of Assessing Buried Steel Tanks.”

(2) Spill and overfill prevention equipment. To prevent spilling and overfilling associated with product transfer to the UST system, all UST systems with field-constructed tanks and airport hydrant

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systems must comply with new UST system spill and overflow prevention equipment requirements specified in paragraph 135.3(1)“c.”

c. Walkthrough inspections. In addition to the walkthrough inspection requirements in subrule 135.4(13), owners and operators must inspect the following additional areas for airport hydrant systems at least once every 30 days if confined space entry according to the Occupational Safety and Health Administration (see 29 CFR part 1910) is not required or at least annually if confined space entry is required and keep documentation of the inspection according to paragraph 135.4(13)“e.”

(1) Hydrant pits: visually check for any damage; remove any liquid or debris; and check for any leaks, and

(2) Hydrant piping vaults: check for any hydrant piping leaks.

d. Release detection. Owners and operators of UST systems with field-constructed tanks and airport hydrant systems must begin meeting the release detection requirements described in this subrule not later than October 13, 2021.

(1) Methods of release detection for field-constructed tanks. Owners and operators of field-constructed tanks with a capacity less than or equal to 50,000 gallons must meet the release detection requirements in rule 567—135.5(455B).

(2) Owners and operators of field-constructed tanks with a capacity greater than 50,000 gallons must meet either the requirements in rule 567—135.5(455B) (except paragraphs 135.5(4)“e” and “f” must be combined with inventory control as stated below) or use one or a combination of the following alternative methods of release detection:

1. Conduct an annual tank tightness test that can detect a 0.5 gallon per hour leak rate;

2. Use an automatic tank gauging system to perform release detection at least every 30 days that can detect a leak rate less than or equal to 1 gallon per hour. This method must be combined with a tank tightness test that can detect a 0.2 gallon-per-hour leak rate performed at least every three years;

3. Use an automatic tank gauging system to perform release detection at least every 30 days that can detect a leak rate less than or equal to 2 gallons per hour. This method must be combined with a tank tightness test that can detect a 0.2 gallon-per-hour leak rate performed at least every two years;

4. Perform vapor monitoring (conducted in accordance with paragraph 135.5(4)“e” for a tracer compound placed in the tank system) capable of detecting a 0.1 gallon-per-hour leak rate at least every two years;

5. Perform inventory control (conducted in accordance with Department of Defense Directive 4140.25; ATA Airport Fuel Facility Operations and Maintenance Guidance Manual; or equivalent procedures) at least every 30 days that can detect a leak equal to or less than 0.5 percent of flow-through; and

- Perform a tank tightness test that can detect a 0.5 gallon per hour leak rate at least every two years; or

- Perform vapor monitoring or groundwater monitoring (conducted in accordance with paragraph 135.5(4)“e” or “f,” respectively, for the stored regulated substance) at least every 30 days; or

6. Another method approved by the department if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in subparagraph 135.21(2)“d”(2). In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability of detection.

(3) Methods of release detection for piping. Owners and operators of underground piping associated with field-constructed tanks less than or equal to 50,000 gallons must meet the release detection requirements in rule 567—135.5(455B). Owners and operators of underground piping associated with airport hydrant systems and field-constructed tanks greater than 50,000 gallons must follow either the requirements in rule 567—135.5(455B) (except paragraphs 135.5(4)“e” and “f” must be combined with inventory control as stated below) or use one or a combination of the following alternative methods of release detection:

1. Perform a semiannual or annual line tightness test at or above the piping operating pressure in accordance with the table below.

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Test Section Volume (Gallons)	Maximum Leak Detection Rate Per Test Section Volume	
	Semiannual Test—	Annual Test—
	Leak Detection Rate Not to Exceed (Gallons Per Hour)	Leak Detection Rate Not to Exceed (Gallons Per Hour)
< 50,000	1.0	0.5
≥ 50,000 to < 75,000	1.5	0.75
≥ 75,000 to < 100,000	2.0	1.0
≥ 100,000	3.0	1.5

Piping segment volumes ≥ 100,000 gallons not capable of meeting the maximum 3.0 gallon per hour leak rate for the semiannual test may be tested at a leak rate up to 6.0 gallons per hour according to the following schedule:

Phase in for Piping Segments ≥ 100,000 Gallons in Volume

First test	Not later than October 13, 2021 (may use up to 6.0 gph leak rate)
Second test	Between October 13, 2021, and October 13, 2024 (may use up to 6.0 gph leak rate)
Third test	Between October 13, 2024, and October 13, 2025 (must use 3.0 gph for leak rate)
Subsequent tests	After October 13, 2025, begin using semiannual or annual line testing according to the Maximum Leak Detection Rate Per Test Section Volume table above

2. Perform vapor monitoring (conducted in accordance with paragraph 135.5(4) “e” for a tracer compound placed in the tank system) capable of detecting a 0.1 gallon per hour leak rate at least every two years;

3. Perform inventory control (conducted in accordance with Department of Defense Directive 4140.25, ATA Airport Fuel Facility Operations and Maintenance Guidance Manual; or equivalent procedures) at least every 30 days that can detect a leak equal to or less than 0.5 percent of flow-through, and

- Perform a line tightness test (conducted in accordance with paragraph 135.21(2) “d”(3) “1” using the leak rates for the semiannual test) at least every two years; or
- Perform vapor monitoring or groundwater monitoring (conducted in accordance with paragraph 135.5(4) “e” or “f,” respectively, for the stored regulated substance) at least every 30 days; or

4. Another method approved by the department if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in paragraphs 135.21(2) “d”(3) “1” to “3.” In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability of detection.

(4) Record keeping for release detection. Owners and operators must maintain release detection records according to the recordkeeping requirements in subrule 135.5(6).

e. Applicability of closure requirements to previously closed UST systems. When directed by the department, the owner and operator of a UST system with field-constructed tanks or airport hydrant system permanently closed before June 23, 2021, must assess the excavation zone and close the UST system in accordance with rule 567—135.15(455B) if releases from the UST may, in the judgment of the department, pose a current or potential threat to human health and the environment.

ITEM 157. Strike “Rural Electrification Administration” wherever it appears in 567—Chapter 136 and insert “Rural Utilities Service” in lieu thereof.

ITEM 158. Amend subrule 136.1(4) as follows:

136.1(4) The requirements of this chapter do not apply to owners and operators of farm or residential tanks of 1,100 gallons or less capacity installed prior to July 1, 1987, or any UST system described in 567—paragraph 135.1(3) “b” or “e.” subparagraph 135.1(3) “c”(1), (3) or (4).

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ITEM 159. Amend rule **567—136.3(455B)**, definition of “Accidental release,” as follows:

“*Accidental release*” means any sudden or nonsudden release of petroleum arising from operating an underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.

ITEM 160. Rescind the definition of “Petroleum marketing firms” in rule **567—136.3(455B)**.

ITEM 161. Amend subrule **136.6(4)**, first paragraph of the “Letter from Chief Financial Officer,” as follows:

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: “the financial test of self-insurance,” and/or “guarantee”] to demonstrate financial responsibility for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage”] caused by [insert: “sudden accidental releases” ~~and/or~~ or “nonsudden accidental releases” or “accidental releases”] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

ITEM 162. Amend subrule **136.6(4)**, third paragraph of the “Letter from Chief Financial Officer,” as follows:

A [insert: “financial test,” and/or “guarantee”] is also used by this [insert: “owner or operator,” or “guarantor”] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under ~~50~~ 40 CFR Parts 271 and 145:

ITEM 163. Amend paragraph **136.8(2)“a”(2)“2”** as follows:

2. The [“Insurer” or “Group”] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with a right of reimbursement by the insured for any such payment made by the [“Insurer” or “Group”]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in rules ~~567—136.6(455B) to 136.11(455B)~~ 567—136.17(455B).

ITEM 164. Amend subrule **136.9(2)**, third to fifth unnumbered paragraphs, as follows:

Whereas said Principal is required under Subtitle I of the ~~Resource Conservation and Recovery Act (RCRA)~~, Solid Waste Disposal Act, as amended, to provide financial assurance for [insert: “Taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases”; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully [“take corrective action, in accordance with rule ~~567—135.7(455B)~~ and the Director of the Iowa Department of Natural Resources instructions for,” and/or “compensate injured third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or ~~“sudden and nonsudden”~~ accidental releases “accidental releases”] arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in ~~567—Chapter 136~~, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

ITEM 165. Amend subrule **136.9(4)** as follows:

136.9(4) The owner or operator who uses a surety bond to satisfy the requirements of rule ~~136.4 (455B)~~ 567—136.4(455B) must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the director under rule ~~136.23(455B)~~

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

567—136.21(455B). This standby trust fund must meet the requirements specified in rule 136.18(455B) 567—136.12(455B).

ITEM 166. Amend subrule **136.10(2)**, paragraph (2) of the “Irrevocable Standby Letter of Credit,” as follows:

(2) your signed statement reading as follows: “I certify that the amount of the draft is payable pursuant to regulations issued under authority of Subtitle I of the ~~Resource Conservation and Recovery Act of 1976~~ Solid Waste Disposal Act, as amended.”

ITEM 167. Amend subrule **136.13(4)**, first paragraph of the “Letter from Chief Financial Officer,” as follows:

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage”] caused by [insert: “sudden accidental releases” ~~and/or~~ or “nonsudden accidental releases” or “accidental releases”] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

ITEM 168. Amend subrule **136.13(5)**, first paragraph of the “Letter from Chief Financial Officer,” as follows:

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage”] caused by [insert: “sudden accidental releases” ~~and/or~~ or “nonsudden accidental releases” or “accidental releases”] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s). This local government is not organized to provide general governmental services and does not have the legal authority under state law or constitutional provisions to issue general obligation debt.

ITEM 169. Adopt the following **new** subrule 136.13(8):

136.13(8) If the local government owner or operator fails to obtain alternate assurance within 150 days of finding that it no longer meets the requirements of the bond rating test or within 30 days of notification by the director of the department that it no longer meets the requirements of the bond rating test, the owner or operator must notify the director of such failure within 10 days.

ITEM 170. Amend subrule **136.14(5)**, first paragraph of the “Letter from Chief Financial Officer,” as follows:

I am the chief financial officer of [insert: name and address of the owner or operator]. This letter is in support of the use of the local government financial test to demonstrate financial responsibility for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage”] caused by [insert: “sudden accidental releases” ~~and/or~~ or “nonsudden accidental releases” or “accidental releases”] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

ITEM 171. Amend subrule **136.16(4)**, first to third unnumbered paragraphs of the “Letter of Chief Financial Officer,” as follows:

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the local government fund mechanism to demonstrate financial responsibility for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage”] caused by [insert: “sudden accidental releases” ~~and/or~~ or “nonsudden accidental releases” or “accidental releases”] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this local government fund mechanism: [List for each facility: the name and address of the facility where tanks are assured by the local government fund].

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

[Insert: “The local government fund is funded for the full amount of coverage required under 567—136.4(455B) of the Iowa Administrative Code (IAC), or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage,” or “The local government fund is funded for ~~ten~~ five times the full amount of coverage required under 567—136.4(455B) IAC, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage,” or “A payment is made to the fund once every year for seven years until the fund is fully funded and [name of local government owner or operator] has available bonding authority, approved through voter referendum, of an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund” or “A payment is made to the fund once every year for seven years until the fund is fully funded and I have attached a letter signed by the state attorney general stating that (1) the use of the bonding authority will not increase the local government’s debt beyond the legal debt ceilings established by the relevant state laws and (2) prior voter approval is not necessary before use of the bonding authority”].]

ITEM 172. Amend rule 567—136.22(455B) as follows:

567—136.22(455B) Release from the requirements. An owner or operator is no longer required to maintain financial responsibility under this chapter for an underground storage tank after the tank has been ~~properly~~ permanently closed or undergoes a change-in-service or, if corrective action is required, after corrective action has been completed and the tank has been ~~properly~~ permanently closed or undergoes a change-in-service as required by rule 567—135.15(455B).

[Filed 4/21/21, effective 6/23/21]

[Published 5/19/21]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/19/21.

ARC 5632C

LABOR SERVICES DIVISION[875]

Adopted and Filed

Rule making related to penalties for citations

The Labor Commissioner hereby amends Chapter 1, “Description of Organization and Procedures Before the Division,” Chapter 3, “Posting, Inspections, Citations and Proposed Penalties,” and Chapter 5, “Rules of Practice for Variances, Limitations, Variations, Tolerances and Exemptions,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 88.5 and 91.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2389.

Purpose and Summary

This rule making adopts mandatory, annual cost-of-living adjustments in order to align Iowa’s penalties for occupational safety and health citations with the corresponding federal penalties. These amendments also correct obsolete references; remove obsolete language; make procedural changes to align the rules with amendments to the Administrative Procedures Act enacted in 2020 Iowa Acts, House File 2389; and set forth a new set of procedures for petitions for rule making.

LABOR SERVICES DIVISION[875](cont'd)

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 10, 2021, as **ARC 5511C**. No public comments were received. Two changes from the Notice have been made to change the date in Item 14 from June 10, 2021, to June 26, 2021, and to update the rule title in Item 19.

Adoption of Rule Making

This rule making was adopted by the Commissioner on April 28, 2021.

Fiscal Impact

This rule making will cause about a 1 percent increase in Occupational Safety and Health Administration civil penalties that are deposited into the General Fund.

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 or Chapter 5 as appropriate.

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 June 26, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 1.17(8) as follows:

1.17(8) To the ~~citizens' aide~~ ombudsman under Iowa Code section ~~2C.9(3)~~ 2C.9(4).

ITEM 2. Amend paragraph **1.18(1)“i”** as follows:

i. List of private employment agencies licensed pursuant to Iowa Code chapter ~~95~~ 94A.

ITEM 3. Amend paragraph **1.42(2)“a”** as follows:

a. Copies of materials are not required to be submitted if the division follows Iowa Code ~~section 89.5(4)~~ sections 89.5(3) and 89A.3(5).

ITEM 4. Amend subrule 1.46(1) as follows:

1.46(1) *Compilation, indexing, public inspection.* The division will maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section ~~17A.2(10)“a,” “e,” “f,” “g,” “h,” “k.”~~ 17A.2(11)“a,” “c,” “f,” “g,” “h,” and “k.” Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section ~~17A.2(7)“f,”~~ 17A.2(11)“f,” or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

LABOR SERVICES DIVISION[875](cont'd)

ITEM 5. Amend **875—Chapter 1**, Division VII, title, as follows:

DIVISION VII
WAIVERS AND VARIANCES FROM ADMINISTRATIVE RULES

ITEM 6. Amend subrules 1.101(1) and 1.101(2) as follows:

1.101(1) These rules provide general procedures for waivers ~~and variances~~ from division rules. Specific waiver ~~or variance~~ procedures must be followed when applicable. Except where specific statutory authority is granted, no waiver ~~or variance~~ may be granted from a requirement or duty imposed by statute or when granting a waiver ~~or variance~~ would cause a denial of federal funds or be inconsistent with federal statute or regulation. Any waiver ~~or variance~~ must be consistent with statute. These waiver ~~and variance~~ procedures do not apply to rules that merely define the meaning of a statute or other provision of law unless the division possesses delegated authority to bind the courts with its rules.

1.101(2) Waivers ~~or variances~~ of rules may be granted either in response to a petition for waiver ~~or variance~~ filed within a contested case proceeding, or in response to a petition filed in the absence of a contested case proceeding.

ITEM 7. Amend rule 875—1.102(17A,91) as follows:

875—1.102(17A,91) Petitions. If the petition for waiver ~~or variance~~ relates to a pending contested case, the petition shall be filed in the contested case proceeding. Other petitions must be mailed to Labor Commissioner, Division of Labor Services, 150 Des Moines Street, Des Moines, Iowa 50309. In either case, the petition shall include the following information where applicable:

1.102(1) The name, address, case file number or state identification number, and telephone number of the person requesting the waiver ~~or variance~~ and the person's representative, if any.

1.102(2) No change.

1.102(3) The specific waiver ~~or variance~~ requested, including the precise scope and time period for the waiver ~~or variance~~.

1.102(4) The relevant facts the petitioner believes justify a waiver ~~or variance~~.

1.102(5) A description of any prior contacts between the division and the petitioner relating to the subject matter of the proposed waiver ~~or variance~~, including but not limited to a list or description of division licenses, registrations, or permits held by the petitioner, and any notices of violation, citations, contested case hearings, or investigative reports relating to the subject matter of the proposed waiver ~~or variance~~ within the last five years.

1.102(6) The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the grant of a waiver ~~or variance~~.

1.102(7) and **1.102(8)** No change.

1.102(9) A signed release of information authorizing persons with knowledge regarding the request to furnish the division with information pertaining to the waiver ~~or variance~~.

1.102(10) No change.

ITEM 8. Amend rule 875—1.104(17A,91) as follows:

875—1.104(17A,91) Review. Each petition for a waiver ~~or variance~~ shall be evaluated by the agency based on the unique, individual circumstances set out in the petition. Discretion to grant or deny a waiver ~~or variance~~ petition rests with the labor commissioner or the labor commissioner's designee. The burden of persuasion shall be upon the petitioner. The division may request additional information relating to the requested waiver ~~or variance~~ from the petitioner and may conduct any necessary and appropriate investigation.

1.104(1) A waiver ~~or variance~~ may be granted if the division finds all of the following based on clear and convincing evidence:

a. Application of the rule would pose an undue hardship on the person for whom the waiver ~~or variance~~ is requested;

LABOR SERVICES DIVISION[875](cont'd)

b. The provisions of a rule subject to a petition for a waiver ~~or variance~~ are not specifically mandated by statute or another provision of law;

c. Waiver ~~or variance~~ of the rule in the specific circumstances would not prejudice the substantial legal rights of any person or cause a denial of federal funds; and

d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver ~~or variance~~ is requested.

1.104(2) Petitioners requesting permanent waivers ~~or variances~~ must also show that a temporary waiver ~~or variance~~ would be impracticable.

ITEM 9. Amend subrules 1.105(1) and 1.105(2) as follows:

1.105(1) The division shall grant or deny all requests as soon as practicable, but no later than 120 days from receipt without consent of the petitioner. However, waiver ~~or variance~~ petitions filed in contested cases shall be granted or denied no later than the date of the decision in the contested case proceeding. Failure to grant or deny a petition within the required time period shall be deemed a denial.

1.105(2) If a waiver ~~or variance~~ is granted, it shall be drafted to provide the narrowest exception possible to the provisions of the rule. The ruling shall be in writing and shall include the reasons for granting or denying the petition and, if approved, the time period during which the waiver ~~or variance~~ is effective. The division may place any condition on a waiver ~~or variance~~ that the division finds desirable to protect the public health, safety, and welfare.

ITEM 10. Adopt the following **new** subrule 1.105(4):

1.105(4) Information about all orders granting or denying a waiver petition shall be submitted to the legislative services agency through the designated Internet site within 60 days of the granting or denying of the petition. The information submitted is available to the public via the website.

ITEM 11. Amend rules 875—1.106(17A,91) to 875—1.109(17A,91) as follows:

875—1.106(17A,91) Public availability. Subject to the provisions of Iowa Code section 17A.3(1)“e,” orders granting and denying waivers ~~or variances~~ shall be indexed by rule and available for public inspection.

875—1.107(17A,91) Cancellation. The division may cancel a waiver ~~or variance~~ upon appropriate notice and hearing if the facts alleged in the petition or supplemental information provided were not true, material facts were withheld or have changed, the alternative means of compliance provided in the waiver ~~or variance~~ have failed to achieve the objectives of the statute, the requester has failed to comply with conditions set forth in the waiver ~~or variance~~ approval, or the rule or enabling Act has been amended.

875—1.108(17A,91) Violations. Violation of conditions in the waiver ~~or variance~~ approval is the equivalent of violation of the particular rule for which the waiver ~~or variance~~ is granted and is subject to the same remedies or penalties.

875—1.109(17A,91) Appeals. Appeal from a decision granting or denying a waiver ~~or variance~~ shall be in accordance with the procedures provided in Iowa Code chapter 17A. An appeal shall be taken within 30 days of the ruling. However, any appeal from a decision on a petition for waiver ~~or variance~~ in a contested case proceeding shall be in accordance with the procedures for appeal of the contested case decision.

LABOR SERVICES DIVISION[875](cont'd)

ITEM 12. Adopt the following **new 875—Chapter 1**, Division VIII, title:

DIVISION VIII
PETITIONS FOR RULE MAKING

ITEM 13. Adopt the following **new** rules 875—1.110(17A) to 875—1.112(17A):

875—1.110(17A) Petitions for rule making. Any person or agency may file a petition for rule making with the commissioner requesting the adoption, amendment or repeal of a rule. The petition shall be filed at the location specified in subrule 1.3(2). The petition must be in writing and provide the following information where applicable and known to the petitioner:

1.110(1) A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation to and the relevant language of the particular portion or portions of the rule proposed to be amended or repealed.

1.110(2) A citation to any law deemed relevant.

1.110(3) A brief summary of petitioner's arguments in support of the action urged in the petition.

1.110(4) A brief summary of any data supporting the action urged in the petition.

1.110(5) The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in the proposed action which is the subject of the petition.

1.110(6) The petition must be dated and signed by the petitioner or the petitioner's representative. The petition must also include the name, mailing address, and telephone number of the petitioner and the petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed. If desired, the petition should also provide an email address and a statement that email is an acceptable method for communication.

1.110(7) The commissioner may deny a petition because it does not provide the required information.

875—1.111(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The commissioner may request a brief from the petitioner or from any other person concerning the substance of the petition.

875—1.112(17A) Review procedures.

1.112(1) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the commissioner shall deny the petition in writing and notify the petitioner of its action and the specific grounds for the denial, or grant the petition and notify the petitioner that the commissioner will institute rule-making proceedings on the subject of the petition. Notice shall be sent to the petitioner by regular mail or email if appropriate. The petitioner shall be deemed notified of the denial or granting of the petition on the date the notification is mailed to the petitioner. Copies of the petition and the document granting or denying the petition shall be sent to the administrative rules review committee.

1.112(2) Denial of a petition because it does not contain the required information does not preclude the filing of a new petition on the same subject that seeks to correct the deficiencies.

ITEM 14. Amend subrule 3.11(1) as follows:

3.11(1) The civil penalties proposed by the labor commissioner on or after ~~October 3, 2020~~ June 26, 2021, are as follows:

a. Willful violation. The penalty for each willful violation under Iowa Code section 88.14(1) shall not be less than \$9,639 and shall not exceed ~~\$134,937~~ \$136,532.

b. Repeated violation. The penalty for each repeated violation under Iowa Code section 88.14(1) shall not exceed ~~\$134,937~~ \$136,532.

c. Serious violation. The penalty for each serious violation under Iowa Code section 88.14(2) shall not exceed ~~\$13,494~~ \$13,653.

d. Other-than-serious violation. The penalty for each other-than-serious violation under Iowa Code section 88.14(3) shall not exceed ~~\$13,494~~ \$13,653.

LABOR SERVICES DIVISION[875](cont'd)

e. Failure to correct violation. The penalty for failure to correct a violation under Iowa Code section 88.14(4) shall not exceed ~~\$13,494~~ \$13,653 per day.

f. Posting, reporting, or record-keeping violation. The penalty for each posting, reporting, or record-keeping violation under Iowa Code section 88.14(9) shall not exceed ~~\$13,494~~ \$13,653.

ITEM 15. Amend **875—Chapter 5**, title, as follows:

RULES OF PRACTICE FOR VARIANCES, ~~LIMITATIONS, VARIATIONS,~~
TOLERANCES AND EXEMPTIONS

ITEM 16. Amend rule 875—5.1(88) as follows:

875—5.1(17A,88) Purpose and scope. This chapter contains rules of practice for administrative proceedings to grant variances and other relief under Iowa Code sections 17A.9A, 88.5(3), 88.5(6), and 88.5(7). These rules shall be construed to secure a prompt and just conclusion of proceedings ~~subject thereto~~.

ITEM 17. Amend rule **875—5.2(88)**, parenthetical implementation statute, as follows:

875—5.2(17A,88) Definitions.

ITEM 18. Amend rule **875—5.2(88)**, definition of “Variance,” as follows:

“*Variance*” means waivers or variances, ~~limitations, variations, tolerances and exemptions for temporary variances (Iowa Code section 88.5(3)), permanent variances (section 88.5(6)), and special variances (section 88.5(7))~~, pursuant to Iowa Code sections 17A.9A, 88.5(3), 88.5(6), and 88.5(7) unless otherwise specified.

ITEM 19. Rescind rule 875—5.5(88) and adopt the following **new** rule in lieu thereof:

875—5.5(17A,88) Submission of waiver information. Information about all orders granting or denying a variance petition shall be submitted to the legislative services agency through the designated Internet site within 60 days of the granting or denying of the petition. The information submitted is available to the public via the website.

ITEM 20. Rescind and reserve rule **875—5.6(88)**.

ITEM 21. Amend paragraphs **5.7(2)“c”** and **“d”** as follows:

c. Any request for a hearing, as provided in this chapter; ~~and~~

d. The statements and certifications required by Iowa Code section 88.5(3); and

ITEM 22. Adopt the following **new** paragraph **5.7(2)“e”**:

e. The signature of the applicant or the applicant’s authorized representative.

ITEM 23. Amend paragraphs **5.8(2)“f”** and **“g”** as follows:

f. Any request for a hearing, as provided in this chapter; ~~and~~

g. A description of how employees have been informed of the application and of their right to petition the labor commissioner for a hearing; and

ITEM 24. Adopt the following **new** paragraph **5.8(2)“h”**:

h. The signature of the applicant or the applicant’s authorized representative.

ITEM 25. Amend paragraphs **5.9(2)“i”** and **“j”** as follows:

i. Any request for a hearing, as provided in this chapter; ~~and~~

j. A description of how employees have been informed of the application and of their right to petition the labor commissioner for a hearing; and

ITEM 26. Adopt the following **new** paragraph **5.9(2)“k”**:

k. The signature of the applicant or the applicant’s authorized representative.

ITEM 27. Amend rule 875—5.11(88) as follows:

875—5.11(88) Action on applications.

LABOR SERVICES DIVISION[875](cont'd)

~~5.11(1) Defective applications.~~ If an application filed pursuant to 5.7(1), 5.8(1), 5.9(1), or 5.10(1) does not conform to the applicable rule, the labor commissioner may deny the application. Prompt notice of the denial of an application shall be given to the applicant and shall include, or be accompanied by, a brief statement of the grounds for the denial. A denial of an application pursuant to this rule shall be without prejudice to the filing of another application.

~~5.11(2) Adequate applications.~~ If an application has not been denied pursuant to 5.11(1), the labor commissioner shall cause notice of the filing of the application to be made in accordance with rule 5.5(88).

A notice of the filing of an application shall include:

- ~~a. The terms or an accurate summary, of the application;~~
- ~~b. A reference to the section of the Act under which the application has been filed;~~
- ~~c. An invitation to interested persons to submit within a stated period of time written data, views or arguments regarding the application; and~~
- ~~d. Information to affected employers and employees of any right to request a hearing on the application.~~

ITEM 28. Amend rule 875—5.19(88) as follows:

875—5.19(88) Discovery.

~~5.19(1) Perpetuating testimony.~~ Iowa Rules of Civil Procedure 159–166 are applicable for the taking of depositions for a variance hearing before the hearing examiner.

~~5.19(2) Other discovery.~~ Whenever appropriate to a just disposition of any issue in a hearing, the hearing examiner may allow discovery by other appropriate procedures, such as by written interrogatories upon a party, depositions, production of documents by a party, or by entry for inspection of the employment or place of employment involved. Iowa Rules of Civil Procedure 121–134 and 140–158 shall be applicable to such authorized discovery procedures.

ITEM 29. Amend ~~875—Chapter 5~~, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections ~~84A.1, 84A.2, 88.2, 88.3, 17A.9A and 88.5, 88.6, and 88.7.~~

[Filed 4/28/21, effective 6/26/21]

[Published 5/19/21]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/19/21.

ARC 5631C

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Adopted and Filed

Rule making related to agency procedures, bargaining unit determination and representative certifications, and retention and recertification elections

The Public Employment Relations Board hereby amends Chapter 1, “General Provisions,” Chapter 2, “General Practice and Hearing Procedures,” Chapter 4, “Bargaining Unit and Bargaining Representative Determination,” Chapter 5, “Elections,” Chapter 7, “Impasse Procedures,” and Chapter 15, “Retention and Recertification Elections,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 20.6(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 20.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

Purpose and Summary

The following amendments are adopted after feedback and internal review. The adopted amendments relate to general procedures of the agency, impasse procedures, bargaining unit determination and representative certifications, and retention and recertification elections. These amendments update language in the general procedures of the agency to provide additional guidance and clarity, and they update rules relating to impasse, bargaining unit determinations and bargaining representative certifications, and retention and recertification elections. These amendments also increase election fees.

Items 1 through 4 update the agency's procedures regarding waiver of rules and petitions for rule making to reflect recent legislative changes enacted in 2020 Iowa Acts, House File 2389.

Items 5 through 7 update general rules on hearings and service of process. The amendment in Item 5 changes the method of service on notices of hearing from mail to electronic filing, which has been the agency's practice since 2015. The amendment in Item 6 clarifies the default order of procedure in grievance appeals and disciplinary action appeals pursuant to Iowa Code section 8A.415, as well as whistleblower actions pursuant to Iowa Code section 70A.28. Finally, the amendments to Chapter 2 add persons to the list of those who are appropriate to receive service.

Items 8 through 12, 14 through 21, 26, and 28 through 30 relate to general procedures in bargaining unit and representation cases and retention and recertification election cases. These amendments seek to clarify the employer's posting and distribution responsibilities in bargaining unit determination cases, representation certification cases, and elections. The current rules require employers to post and distribute, if customary, certain notices and other information during bargaining unit and representation cases and proceedings. These amendments clarify that employers shall distribute this information to employees and shall also post this information. These amendments also clarify that when an employer supplies the agency with a voter list for elections, the employer is only required to provide an eligible voter's telephone number if the employer knows that person's telephone number. These amendments are in response to questions that arose during previous election cycles, and they also provide consistency in the applicability of the agency's rules.

Item 13 increases the election fee assessed to certified employee organizations for certification and decertification elections. The fee would increase from \$1.50 per eligible voter with a \$15 minimum to \$2 per eligible voter with a \$20 minimum.

Items 22 through 24 relate to the proper service method of mediation requests, arbitration requests, and last offers during impasse. Currently, parties may serve mediation requests, arbitration requests, and last offers on the opposing party only by mail. These amendments allow both email and mail as appropriate methods of service.

Item 25 increases the election fee assessed to certified employee organizations for retention and recertification elections in a manner similar to the certification and decertification elections. The fee is being increased from \$1.50 per eligible voter with a \$15 minimum to \$2.00 per eligible voter with a \$20 minimum. This fee increase is necessary due to the decreasing number of eligible voters and the need to meet the fee charged by the election services vendor.

Item 25 also adds a time frame in which a certified employee organization can file a notice of nonpayment of the recertification election fee. This amendment provides that such notice may not be filed before the employer supplies the agency with the voter list for the election as the fee is not due until the agency has received such list.

Item 27 clarifies that when a certified employee organization files a successful pre-election challenge to a voter's eligibility to vote, the agency can order a new election as a remedy, but the agency also has other appropriate remedies available.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 24, 2021, as **ARC 5534C**. The agency requested that comments be received by April 14, 2021. A public hearing was held via video conference on April 14, 2021, at 10 a.m. Persons attended the public

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

meeting, but no one provided comments. The agency received informal comments concerning the fee. The agency received no formal comments.

As a result of feedback, informal comment, and internal review, in Items 13 and 25, the fee was changed from the proposed fee of \$1.90 per eligible voter to \$2 per eligible voter.

Adoption of Rule Making

This rule making was adopted by the Board on April 28, 2021.

Fiscal Impact

Although the implementation of Iowa Code section 20.6(7) and the subsequent increase in the fee in these rules will cause an increase in the expenditure of funds by the agency and affected persons, due to the requirement that these costs be paid by the employee organizations involved, the agency does not anticipate these expenditures will exceed \$100,000 per year or \$500,000 within five years.

Jobs Impact

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

Waivers

These rules do not provide for a waiver of their terms, but are instead subject to the agency's general waiver provisions found at rule 621—1.9(17A,20).

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 June 23, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 1.5(5) as follows:

1.5(5) The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in the proposed action which is the subject of the petition. Within 60 days after the filing of a petition, the board shall either deny the petition, stating its reasons for the denial, or initiate rule-making proceedings in accordance with Iowa Code chapter 17A. The board shall submit the petition and the disposition of the petition to the administrative rules review committee.

ITEM 2. Amend rule 621—1.9(17A,20), catchwords, as follows:

621—1.9(17A,20) Waiver ~~or variance~~ of rules.

ITEM 3. Amend paragraph **1.9(1)“a”** as follows:

a. *“Waiver ~~or variance~~”* as used in this rule means action by the board which suspends, in whole or in part, the requirements or provisions of a rule as applied to an identified individual or entity on the basis of the particular circumstances of that individual or entity. ~~The term “waiver” as used herein shall include both a waiver and a variance.~~

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ITEM 4. Amend subrule 1.9(23) as follows:

1.9(23) Summary reports. All orders granting or denying a waiver pursuant to this rule shall be ~~summarized in semiannual reports which comply with and are distributed pursuant to the requirements of Iowa Code section 17A.9A~~ submitted pursuant to Iowa Code section 17A.9A.

ITEM 5. Amend rule 621—2.2(20) as follows:

621—2.2(20) Notice of hearing—contents. Written notice of a contested case hearing shall be ~~delivered~~ filed by the board to all parties by ordinary mail agency. The notice shall include:

- 2.2(1)** A statement of the date, time, place and nature of the hearing.
- 2.2(2)** A statement of the legal authority and jurisdiction under which the hearing is to be held.
- 2.2(3)** A reference to the particular sections of the statutes and rules involved.
- 2.2(4)** A short and plain statement of the matters asserted.

ITEM 6. Amend rule 621—2.8(20) as follows:

621—2.8(20) Order of procedure.

2.8(1) Order of procedure. The following is the order of procedure for hearings before the agency:

- a. The employer shall present its evidence first in unit determination hearings.
- b. The complainant shall present its evidence first and shall have the burden of proof in prohibited practice hearings.
- c. The appellant shall present the appellant's evidence first and have the burden of proof in grievance appeals filed pursuant to Iowa Code section 8A.415(1).
- d. The appellee shall present its evidence first and have the burden of proof in disciplinary action appeals filed pursuant to Iowa Code section 8A.415(2).
- e. The petitioner shall present its evidence first and have the burden of proof in state employee whistleblower actions filed pursuant to Iowa Code section 70A.28.
- f. The board or administrative law judge may, in its discretion, alter the order of procedure.

2.8(2) Order of procedure for intervenors. Intervenors shall follow the parties in whose behalf the intervention is made; if not made in support of a principal party, the administrative law judge shall designate at what stage such intervenors shall be heard.

2.8(3) Order of other parties and general procedures. The order of other parties shall be determined by the administrative law judge. All parties shall be allowed cross-examination and an opportunity for rebuttal. At any stage of the hearing or after the close of the hearing but prior to decision, the board or administrative law judge may call for further evidence to be presented by the party or parties concerned.

ITEM 7. Amend subrule 2.15(1) as follows:

2.15(1) Service—upon whom made. Whenever under these rules nonelectronic service is required or permitted to be made upon a person or party, such service shall be as follows:

- a. Upon any city, or board, commission, council or agency thereof, by serving the mayor, ~~or~~ city clerk, city administrator, or city personnel officer.
- b. Upon any county, or office, board, commission or agency thereof, by serving the county auditor, ~~or~~ the chairperson of the county board of supervisors, or the county personnel director.
- c. Upon any school district, ~~school township~~, or school corporation, by serving the presiding officer ~~or~~, the secretary of its governing body, the superintendent, the school business official, or the human resources director.
- d. Upon the state of Iowa, or board, commission, council, office or agency thereof, by serving the governor or the director of the department of administrative services.
- e. Upon the state judicial department, by serving the state court administrator.
- f. Upon any other governing body, by serving its presiding officer, clerk, ~~or~~ secretary, or personnel director.
- g. Upon an employee organization, by serving the person designated by the employee organization to receive service pursuant to 621—subrule 8.4(2) or by service upon the president or secretary of the employee organization.

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h. Upon any other person, by serving that person or that person's attorney of record.

ITEM 8. Amend rule 621—4.2(20) as follows:

621—4.2(20) Unit determination.

4.2(1) *Content of petition.* A petition for bargaining unit determination shall be on an agency-prescribed form and filed with the agency. The petition shall identify and describe the proposed unit and indicate the unit's status as a public safety or non-public safety unit.

4.2(2) *Notice to parties.* Upon the filing of a proper petition, the agency shall serve copies thereof upon other interested parties by certified mail, return receipt requested. The agency shall file a notice to employees, giving notice that the petition has been filed and setting forth the rights of employees under Iowa Code chapter 20. ~~The employer shall promptly post the petition and notice to employees in the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees by additional means, such as by email or hard copy, the public employer shall also promptly distribute the petition and notice to employees by those means.~~ The employer shall promptly distribute, electronically or by hard copy, the petition and notice to the affected employees. The employer shall also promptly post the petition and notice in the manner and locations customarily used for the posting of information to employees.

4.2(3) *Notice of hearing.* The board or administrative law judge shall file a notice of hearing setting forth the time, date and place of the hearing and any other relevant information. ~~The public employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees by additional means, such as by email or hard copy, the employer shall also promptly distribute the notice to employees by those means.~~ The employer shall promptly distribute, electronically or by hard copy, the notice to the affected employees. The employer shall also promptly post the notice in the manner and locations customarily used for the posting of information to employees.

4.2(4) *Intervention.* See rule 621—2.4(20).

4.2(5) *Professional/nonprofessional unit elections.* Should the agency determine, in any case, that professional and nonprofessional employees are appropriately included in the same bargaining unit, the agency shall file an order directing that an election be conducted to determine whether the professional and nonprofessional employees wish to be represented in a single bargaining unit. The election shall be conducted in accordance with rule 621—5.8(20) 621—5.7(20).

4.2(6) *Informal settlement of bargaining unit determination.* Cases on bargaining unit determination may be informally settled in the following manner:

a. The parties may stipulate to the composition of the unit.

(1) The petitioning party shall prepare a stipulation setting forth in detail the composition of the bargaining unit as agreed upon by all parties. The stipulation shall be signed by the authorized representatives of the parties involved and shall be filed with the agency for informal review and tentative approval. In the event the parties agree to a combined unit of professional and nonprofessional employees, the stipulation shall set forth both those job classifications included within the professional category and those job classifications included within the nonprofessional category.

(2) If the agency fails to tentatively approve the stipulation, the agency shall notify the parties and, unless the parties amend the stipulation in a manner to gain tentative approval of the agency, the matter shall proceed to hearing.

(3) If the agency tentatively approves the stipulation, the agency shall file a public notice of proposed decision. The public employer shall promptly post copies of the notice of the proposed decision, for a period of not less than one calendar week, in a prominent place in the main office of the public employer accessible to the general public ~~and in the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees by additional means, such as by email or hard copy, the employer shall also promptly distribute such notice to employees by those means. The public employer shall also have copies of the notice available for distribution to the public upon request.~~ The employer shall promptly distribute,

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electronically or by hard copy, the notice to the affected employees. The employer shall also promptly post the notice in the manner and locations customarily used for the posting of information to employees.

b. Notice of the proposed decision shall identify the parties; specify the terms of the proposed decision; list the names, addresses, telephone numbers, and email addresses of the parties or their authorized representatives to whom inquiries by the public should be directed; and, further, state the date and method by which written objection to the proposed decision must be filed with the agency.

c. Objections to the proposed decision must be electronically filed with the agency by the date posted in the notice of proposed decision. Objections shall set out the specific grounds of objection. The objecting party must identify itself and provide a mailing address, telephone number, and email address, if available. The agency shall promptly advise the parties of the objections and make any investigation deemed appropriate. If the agency deems the objections to be of substance, the parties may, with agency approval, amend their proposed decision to conform therewith, and the objecting party shall be notified by the agency of the amendment. If the objections cannot be informally resolved, they may be dismissed or resolved at hearing.

d. Final board decision on the informal settlement shall be reserved until expiration of the time for filing of objections. If no objections have been filed; or if filed objections have been resolved through amendment of the proposed decision; or if filed objections, after inquiry by the board, were found to be frivolous, the board shall endorse the proposed decision as final.

e. If interested parties are unable to informally settle a case on bargaining unit determination within 15 days of service of a petition, the board or administrative law judge may order any interested party to file its proposed unit description.

ITEM 9. Amend subrule 4.3(4) as follows:

4.3(4) Notice. Upon the filing of a petition for certification, decertification or representation, the agency shall file a notice to employees, giving notice that an election petition has been filed and setting forth the rights of employees under Iowa Code chapter 20. ~~The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees by additional means, such as by email or hard copy, the employer shall also promptly distribute the notice to employees by those means.~~ The employer shall promptly distribute, electronically or by hard copy, the notice to the affected employees. The employer shall also promptly post the notice in the manner and locations customarily used for the posting of information to employees.

ITEM 10. Amend subrule 4.8(5), introductory paragraph, as follows:

4.8(5) Public employer posting, decisions and objection period. When a petition for amendment of certification is filed which the agency deems sufficient to fulfill the requirements of this rule, the agency shall file a public notice of its proposed decision to amend the employee organization's certification upon the non-petitioning interested parties. Upon receipt, the public employer shall promptly post the notice of proposed decision, for a period of not less than one calendar week, in a prominent place in the main office of the public employer accessible to the general public ~~and in the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees by additional means, such as by email or hard copy, the employer shall also promptly distribute such notice to employees by those means.~~ The public employer shall also have copies of the proposed decision available for distribution to the public upon request. The employer shall promptly distribute, electronically or by hard copy, the notice to the affected employees. The employer shall also promptly post the notice in the manner and locations customarily used for the posting of information to employees.

ITEM 11. Amend subrule 4.9(3) as follows:

4.9(3) Notice. Upon the filing of a petition, the agency shall file a notice to employees, giving notice that a petition for the merger of two units has been filed and setting forth the rights of employees under Iowa Code chapter 20. ~~The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees by additional means, such as by email or hard copy, the employer~~

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~~shall also promptly distribute the notice to employees by those means.~~ The employer shall promptly distribute, electronically or by hard copy, the notice to the affected employees. The employer shall also promptly post the notice in the manner and locations customarily used for the posting of information to employees.

ITEM 12. Amend subrule 4.10(3) as follows:

4.10(3) Notice. The agency shall file a notice to employees, giving notice that a petition to merge two units and amend the certification of the successive employee organization has been filed and setting forth the rights of employees under Iowa Code chapter 20. ~~The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees by additional means, such as by email or hard copy, the employer shall also promptly distribute the notice to employees by those means.~~ The employer shall promptly distribute, electronically or by hard copy, the notice to the affected employees. The employer shall also promptly post the notice in the manner and locations customarily used for the posting of information to employees.

ITEM 13. Amend paragraph **5.1(2)“d”** as follows:

d. For certification and decertification elections, the applicable election fee is based upon the list provided pursuant to 621—subrule 4.3(3) to verify the showing of interest.

(1) When the list contains ten or fewer eligible voters, the election fee is ~~\$15~~ \$20. When the list contains more than ten eligible voters, the election fee is ~~\$1.50~~ \$2 per eligible voter. When the number of eligible voters on the list for determining fees increases or decreases as contemplated by subparagraph 5.2(2)“b”(2) or due to successful challenges pursuant to subrule 5.2(3) and the increases or decreases alter the number of eligible voters by ten or more, the employee organization shall make an additional payment to reflect the increased number of eligible voters or, in the case of a decrease, the agency shall reimburse the employee organization for its overpayment.

(2) The agency will not refund the election fee in the event the election fee is paid and the agency has performed duties to conduct the election but the election does not occur.

ITEM 14. Amend subrule 5.2(2) as follows:

5.2(2) Certification, decertification, professional/nonprofessional, and amendment of unit elections—eligible voter list.

a. List for determining fees. The agency will determine the election fee based on the initial employer-provided list of employees used to verify the showing of interest pursuant to 621—subrule 4.3(3).

b. Voter eligibility list.

(1) When the agency files an order that an election be conducted, the employer shall, within seven days of the notice or order, email to the agency an alphabetical list of the names; addresses; email addresses, if known; telephone numbers, if known; and job classifications of the employees eligible to vote. When a telephonic/web-based election is ordered, the list of eligible voters shall also include the employee's date of birth, the last four digits of the employee's social security number and any other information required by the agency.

(2) The agency shall file the list of eligible voters' names and job classifications. This list shall become the official voting list for the election to be conducted. The agency shall provide to the employee organization the voter list containing the employees' contact information. The employer or employee organization shall email proposed additions or deletions of employees' names, changes in job classifications, addresses, contact information, or other eligible voter changes to the agency and to the other party. The parties may further amend the list by agreement.

ITEM 15. Amend rule 621—5.3(20) as follows:

621—5.3(20) Methods of voting—general procedures. The agency may conduct an election, in whole or in part, in person, by mail ballot, or through a telephonic/web-based system.

5.3(1) In-person election. An eligible voter shall cast the voter's ballot by marking the voter's choice on the ballot and depositing it in the ballot box or inserting it in a voting machine, whichever is applicable.

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If a voter inadvertently spoils a ballot, the ballot may be returned to the agent who shall void and retain it and provide another ballot to the voter. Eligible voters may be asked to cast their votes via a nondocument ballot when there is a voting machine present that accommodates this technology.

a. *Absentee ballot.* An absentee ballot shall be delivered to an eligible voter upon the voter's written notice to the agency of the voter's inability to be present at the election. The marked absentee ballot shall be in the possession of the election agent prior to the close of the in-person election in order to be counted. The marked absentee ballot shall be contained in the secret envelope provided to the voter, and the postage-paid, return-addressed outer envelope provided for the return of the ballot to the agency shall be signed by the voter in order for the ballot to be counted.

b. *Observers.* Each party to an election may designate an equal number of representatives to act as the party's observers during the election and tally of ballots. Unless agreed to by the parties, observers shall not be supervisory employees of the public employer.

c. *Ballot box.* Upon examination by the observers and prior to the opening of the polls, the election agent shall seal the ballot box so that entry thereto is limited to one slot. In the event that the election is continued for more than one polling period or at more than one polling place, the ballot box shall be sealed in its entirety and shall remain in the custody of the election agent until immediately prior to the next polling period or the counting of the ballots.

d. *Voting machines.* The agency may utilize voting machines to assist with the casting or tabulation of votes.

e. *Tally.* The agency shall tally the ballots by manual count or electronic count and file the tally after the close of the election. Void ballots are those which do not indicate a preference or the clear intent of the voter or which appear to identify the voter. ~~The employer shall promptly post copies of the tally of ballots in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by email or hard copy, the public employer shall also promptly distribute such notice to employees by those means.~~ The employer shall promptly distribute, electronically or by hard copy, copies of the tally of ballots to the affected employees. The employer shall also promptly post copies of the tally of ballots in the manner and locations customarily used for the posting of information to employees.

5.3(2) Mail-ballot election. When conducting a mail-ballot election, the agency shall send an official voting package to each eligible voter by ordinary mail and direct a date by which voted ballots must be received by the agency in order to be counted.

a. *Contents of official voting packages.* Voting packages sent to eligible voters shall consist of voting instructions, a ballot, a secret envelope in which the marked ballot is to be inserted, and a postage-paid, return-addressed outer envelope which identifies the voter for purposes of proposing challenges to the voter's eligibility. In the event of a challenge, both envelopes shall remain sealed until such time as the challenge is resolved.

b. *Tally of ballots—observers.* The agency shall set a time and place for the tally of ballots, at which time observers designated by the parties to the election shall be entitled to be present. The voter's outer envelope shall be opened, and the secret envelope containing the voter's ballot shall be commingled with the other secret envelopes. The agency shall tally the ballots and file the tally after the close of the election. Void ballots are those which do not indicate a preference or the clear intent of the voter, which appear to identify the voter, which are not enclosed in the secret envelope provided to the voter, or which are returned in an outer envelope which does not bear the voter's signature. ~~The employer shall promptly post copies of the tally of ballots in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by email or hard copy, the public employer shall also promptly distribute such notice to employees by those means.~~ The employer shall promptly distribute, electronically or by hard copy, copies of the tally of ballots to the affected employees. The employer shall also promptly post copies of the tally of ballots in the manner and locations customarily used for the posting of information to employees.

5.3(3) Telephonic/web-based election. The agency may utilize an election services vendor for the receipt of telephonic and web-based ballots and for the tabulation of those ballots.

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a. Notice of election. When conducting a telephonic/web-based election, whether in whole or in part, the agency shall include in the notice of election the telephone number the voter is to call to cast a ballot, the website address for web-based voting and a sample ballot or script.

b. Tally. Following the close of the election period and the agency's receipt of the ballot tabulation from the election services vendor, the agency shall tally the ballots and file the tally. Void or blank ballots are those which do not indicate a preference or clear choice by the voter in favor of one of the voting options presented by the ballot. ~~The employer shall promptly post copies of the tally of ballots in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by email or hard copy, the public employer shall also promptly distribute such notice to employees by those means.~~ The employer shall promptly distribute, electronically or by hard copy, copies of the tally of ballots to the affected employees. The employer shall also promptly post copies of the tally of ballots in the manner and locations customarily used for the posting of information to employees.

c. Inoperable voting system. The board may extend the period of the election due to inoperable voting systems.

5.3(4) Alternate voting method. When a voter promptly informs the agency of the voter's inability to cast a ballot using the designated methods of voting, the agency shall assist the voter in using an alternate method to cast a secret ballot.

ITEM 16. Amend subrule 5.5(3) as follows:

5.5(3) Notice of election. Following the employer's submission of the list of eligible voters, the employee organization's payment of the applicable election fee and the expiration of the time for intervention as provided in subrule 5.5(4), the agency shall file a notice of election containing a sample ballot or script and setting forth the date, time, place, method, and purpose of the election and such additional information as the agency may deem appropriate. ~~The employer shall promptly post copies of the notice in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by email or hard copy, the public employer shall also promptly distribute such notice to employees by those means.~~ The employer shall distribute, electronically or by hard copy, the notice to the affected employees. The employer shall also promptly post the notice in the manner and locations customarily used for the posting of information to employees.

ITEM 17. Amend subrule 5.6(3) as follows:

5.6(3) Notice of election. Following the employer's submission of the list of eligible voters and the employee organization's payment of the applicable election fee, the agency shall file a notice of election containing a sample ballot or script and setting forth the date, time, place, method, and purpose of the election, and such additional information as the agency may deem appropriate. ~~The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by email or hard copy, the public employer shall also promptly distribute such notice to employees by those means.~~ The employer shall promptly distribute, electronically or by hard copy, the notice to the affected employees. The employer shall also promptly post the notice in the manner and locations customarily used for the posting of information to employees.

ITEM 18. Amend subrule 5.7(2) as follows:

5.7(2) Voter eligibility list.

a. The public employer shall email the lists of employees in the professional and nonprofessional categories to the agency within seven days of the agency's order. The lists shall be organized alphabetically and contain the names; addresses; email addresses, if known; telephone numbers, if known; and job classifications of the employees eligible to vote; and any other information required by the agency. The agency shall file the lists of eligible voters' names and job classifications. These lists shall become the official voting lists for the election to be conducted. The agency shall provide to the employee organization the voter lists with the employees' contact information.

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b. The employer or employee organization shall email proposed additions or deletions of employees' names, changes in job classifications, addresses, contact information, or other eligible voter changes to the agency and other party. The parties may amend the lists by agreement.

ITEM 19. Amend subrule 5.7(3) as follows:

5.7(3) Notice of election. Following the employer's submission of the lists of eligible voters, the agency shall file a notice of election containing a sample ballot or script for each category of employee and setting forth the date, time, place, method, and purpose of the election, and such additional information as the agency may deem appropriate. ~~The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by email or hard copy, the public employer shall also promptly distribute such notice to employees by those means.~~ The employer shall promptly distribute, electronically or by hard copy, the notice to the affected employees. The employer shall also promptly post the notice in the manner and locations customarily used for the posting of information to employees.

ITEM 20. Amend subrule 5.8(2) as follows:

5.8(2) Voter eligibility list. The public employer shall email the list of employees to the agency within seven days of the agency's order. The list shall be organized alphabetically and contain the names; addresses; email addresses, if known; telephone numbers, if known; and job classifications of the employees eligible to vote; and any other information required by the agency. The agency shall file the list of eligible voters' names and job classifications, which shall become the official voting list for the election to be conducted. The employer or employee organization shall email proposed additions or deletions of employees' names, changes in job classifications, addresses, contact information or other eligible voter changes to the agency and other party. The parties may further amend the list by agreement.

ITEM 21. Amend subrule 5.8(3) as follows:

5.8(3) Notice of election. Following the employer's submission of the list of eligible voters, the agency shall file a notice of election containing a sample ballot or script and setting forth the date, time, place, method, and purpose of the election, and such additional information as the board may deem appropriate. ~~The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by email or hard copy, the public employer shall also promptly distribute such notice to employees by those means.~~ The employer shall promptly distribute, electronically or by hard copy, the notice to the affected employees. The employer shall also post the notice in the manner and locations customarily used for the posting of information to employees.

ITEM 22. Amend subrule 7.3(2) as follows:

7.3(2) Date, signature and notice. The request for mediation shall be dated and signed by an authorized representative of the requesting party. The requesting party shall also serve mail or email a copy of the request ~~upon~~ to the other parties to the negotiations ~~either by personal delivery or by ordinary mail.~~

ITEM 23. Amend subrule 7.5(3) as follows:

7.5(3) Service of request. The requesting party shall serve mail or email a copy of the request for arbitration ~~upon~~ to the opposing party ~~by ordinary mail.~~

ITEM 24. Amend subrule 7.5(4) as follows:

7.5(4) Exchange of final offers. Within four days of the board's receipt of the request for arbitration, each party shall serve mail or email its final offer on each of the impasse items to the other party to the impasse. Final offers shall not be amended. A party shall not submit a final offer for arbitration which has not been offered to the other party in the course of negotiations.

ITEM 25. Amend subrule 15.1(1) as follows:

15.1(1) Election fees.

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a. The employee organization is responsible for and shall prepay the election fees in accordance with this chapter.

b. A certified employee organization may file a written request with the agency for an extension of time in which to pay its election fees. A certified employee organization may file a request after the agency's filing of its intent to conduct an election, but shall file the request no later than the date the election fee is due as provided in the notice of intent to conduct an election. In no event will the agency conduct an election prior to an employee organization's payment of election fees.

c. A certified employee organization may file notice of nonpayment to indicate that it will not pay the election fees. ~~The If the certified employee organization chooses to file a notice of nonpayment, that notice of nonpayment may shall be filed at any time, but must be filed no later than 30 days prior to the commencement of the election period after the employer has submitted the voter list pursuant to paragraph 15.2(2) "a," but no later than the date the election fee is due.~~ The notice shall be signed by an authorized representative of the organization, state that the organization will not pay the election fees, and acknowledge that the agency will not conduct the applicable election and the employee organization's certification will be revoked.

d. The applicable election fee is based upon the number of employees on the voter eligibility list submitted to the agency pursuant to subrule 15.2(2).

(1) When the list contains ten or fewer eligible voters, the election fee is ~~\$15~~ \$20. When the list contains more than ten eligible voters, the election fee is ~~\$1.50~~ \$2 per eligible voter. When the number of eligible voters on the list for determining fees increases or decreases as contemplated by paragraph 15.2(2) "b" or due to successful challenges pursuant to subrule 15.2(3) and the increases or decreases alter the number of eligible voters by ten or more, the employee organization shall make an additional payment to reflect the increased number of eligible voters or, in the case of a decrease, the agency shall reimburse the employee organization for its overpayment.

(2) The agency will not refund the election fee in the event the election fee is paid and the agency has performed duties to conduct the election but the election does not occur.

ITEM 26. Amend subrule 15.2(2) as follows:

15.2(2) Initial eligible voter list.

a. *List for determining fees.*

(1) The agency will determine the election fee based on the following initial employer-provided list of employees. When the agency files a notice of intent to conduct a retention and recertification election, the employer shall, within seven days of the notice, email to the agency an alphabetical list of the names; addresses; email addresses, if known; telephone numbers, if known; and job classifications of the employees in the bargaining unit. When a telephonic/web-based election is ordered, the list of eligible voters shall also include the employee's date of birth, the last four digits of the employee's social security number and any other information required by the agency. The employer shall separately email the certified employee organization to confirm that the employer provided the agency with the voter list and will provide the date the list was emailed to the agency and the number of employees on the list.

(2) The agency shall file the list of eligible voters' names and job classifications. The agency shall provide to the employee organization the voter list containing the employees' contact information.

b. *Final voter eligibility list.*

(1) When the agency files an order that the retention and recertification election be conducted, the employer shall, within seven days of the order, email to the agency a second alphabetical list of the names; addresses; email addresses, if known; telephone numbers, if known; and job classifications of the employees eligible to vote. If the original list the employer provided for determining fees is unchanged, the employer does not need to email this second list. The original list, if unchanged, or this second list will become the final list. The agency shall file the list of eligible voters' names and job classifications. This list shall become the official eligible voter list for the election to be conducted. The agency shall provide to the employee organization the voter list containing the employees' contact information.

(2) The employer shall not add to or delete from the list any employee name after the submission of the above-described voter eligibility list. By contacting the employer, the certified employee organization

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

may propose additions to or deletions from the list of employees' names prior to the date of the election for in-person elections, prior to the date the ballots are mailed for mail-ballot elections, or seven days prior to the commencement of the election period for telephonic/web-based elections. The parties may amend the list by agreement prior to the date of the election for in-person elections, prior to the date the ballots are mailed for mail-ballot elections, or seven days prior to the commencement of the election period for telephonic/web-based elections.

ITEM 27. Amend subrule 15.2(3) as follows:

15.2(3) Voter eligibility challenges.

a. General. A party may challenge, for good cause, the eligibility of any voter. The agency shall attempt to resolve the challenge. Whenever challenged ballots are unresolved and determinative of the outcome of an election, a hearing to determine the eligibility of the challenged voter(s) shall be scheduled and conducted. After the conclusion of the hearing, the board may, if necessary, ~~order a new election,~~ determine the appropriate remedy, which may include ordering a new election, and the cost of the new election may be taxed to the nonprevailing party.

b. Methods and timing of voter eligibility challenges. A party may challenge the eligibility of a voter by electronically filing a completed voter eligibility form in the BU case file and in accordance with the following:

(1) In-person elections. A party shall challenge a voter's eligibility prior to the time the voter deposits the voter's ballot in the ballot box. In the event of a challenge, the challenged voter may mark the ballot in secret, and the election agent shall segregate the ballot by causing it to be placed in a challenged-ballot envelope with appropriate markings and depositing it in the ballot box.

(2) Mail-ballot elections. A party shall challenge a voter's eligibility prior to the time the outer envelope containing the voter's secret envelope and ballot is opened. In the event of a challenge, both the secret envelope and the outer envelope shall remain sealed until the challenge is resolved.

(3) Telephonic/web-based elections. A party shall challenge a voter's eligibility at least seven days prior to the commencement of the election period for telephonic/web-based elections.

ITEM 28. Amend subrule 15.5(2) as follows:

15.5(2) General procedure.

a. Upon determining that a retention and recertification election is required, the agency shall file a notice of intent to conduct an election which shall contain the dates of the election period; the place, method, and purpose of the election; the date the voter list for determining fees is due; and the date upon which the employee organization shall pay the applicable election fee. The agency shall order the public employer's submission of the voter eligibility list in accordance with rule 621—15.2(20) and subrule 15.5(4).

b. Following the public employer's submission of the list of eligible voters as provided in subrule 15.5(4) and the agency's receipt of the applicable election fee from the certified employee organization, the agency will file an order directing a retention and recertification election and a notice of election, ~~copies of which shall be promptly posted by the employer in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by email or hard copy, the public employer shall also promptly distribute such notice to employees by those means.~~ The employer shall promptly distribute, electronically or by hard copy, the notice to the affected employees. The employer shall also promptly post the notice in the manner and locations customarily used for the posting of information to employees. Such notices shall contain a sample ballot or script and shall set forth the dates of the election period; the time, place, method, and purpose of the election; and such additional information as the agency may deem appropriate.

ITEM 29. Amend subrule 15.5(4) as follows:

15.5(4) Eligible voter list for determining election fee.

a. The public employer shall email to the agency a list of the employees in the bargaining unit in question within seven days of the filing of the notice of intent to conduct an election. This list shall be organized alphabetically and contain the names; addresses; email addresses, if known;

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

telephone numbers, if known; and job classifications of the employees in the bargaining unit. When a telephonic/web-based election is ordered, the list of eligible voters shall also include the employee's date of birth, the last four digits of the employee's social security number and any other information required by the agency. The employer shall separately email the certified employee organization to confirm that the employer provided the agency with the voter list and will provide the date the list was emailed to the agency and the number of employees on the list. The agency shall file the list of eligible voters' names and job classifications. The agency shall provide to the certified employee organization the list with the employees' contact information. The certified employee organization shall use this list to determine the election fee as provided in subrule 15.5(5).

b. If the public employer fails to submit the list of eligible voters to the agency by the deadline set in the notice, the agency will not conduct the election and will file an order recertifying the employee organization.

ITEM 30. Amend subrule 15.5(6) as follows:

15.5(6) *Final voter eligibility list.*

a. When the agency files an order directing that the retention and recertification election be conducted, the employer shall, within seven days of the order, email to the agency a second alphabetical list of the names; addresses; email addresses, if known; telephone numbers, if known; and job classifications of the employees eligible to vote. If the list the employer previously provided pursuant to subrule 15.5(4) is unchanged, the employer does not need to email a subsequent list. The agency shall file the list of eligible voters' names and job classifications. This list shall become the official eligible voting list for the election to be conducted. The agency shall provide to the certified employee organization the voter list containing the employees' contact information.

b. The employer shall not add to or delete from the list any employee name after the submission of the above-described voter eligibility list. By contacting the employer, the certified employee organization may propose additions to or deletions from the list of employees' names prior to the date of the election for in-person elections, prior to the date the ballots are mailed for mail-ballot elections, or seven days prior to the commencement of the election period for telephonic/web-based elections. The parties may amend the list by agreement prior to the date of the election for in-person elections, prior to the date the ballots are mailed for mail-ballot elections, or seven days prior to the commencement of the election period for telephonic/web-based elections.

[Filed 4/28/21, effective 6/23/21]

[Published 5/19/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/19/21.

ARC 5626C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Rule making related to the state plumbing code

The Plumbing and Mechanical Systems Board hereby amends Chapter 25, "State Plumbing Code," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 105.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 105.4.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Purpose and Summary

These amendments include the adoption by reference of the Uniform Plumbing Code (UPC), 2021 Edition. The Board previously adopted the 2018 edition of the UPC. The Board is required by law to adopt the most recent version of the UPC.

Notable changes in the most recent version include a new Appendix N titled “Impact of Water Temperature on the Potential for Scalding and Legionella Growth,” new provisions for backflow prevention devices, new provisions for temperature-limiting devices, new guards and rails requirements for installation of equipment and appliances on roofs, new requirements for the discharge of temperature and pressure relief valve piping, a new provision on leak detection devices, new provisions for potable water pumps, new standards for drain waste and vent pipe and fittings, new provisions for drain waste and vent cleanouts, updated and expanded circuit vent provisions, updated fuel gas provisions, and updated medical gas provisions.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 24, 2021, as **ARC 5478C**.

There were eight comments for Chapter 25. Five commenters from various trade organizations offered letters of support. Two commenters took issue with the state plumbing code changes the Board made in the last code cycle (2018). One commenter requested a change, but the Board disagreed with the commenter.

One commenter suggested that air admittance valves should be allowed to be used. Air admittance valves were not included as part of the 2021 state plumbing code changes and were not considered during the many months of work on the 2021 state plumbing code updates. However, in response to the comment, the Board disagreed with the commenter and did not believe air admittance valves should be allowed. The 2021 UPC does not allow air admittance valves because they have a tendency to disrupt the basic principles of venting, which can lead to venting system failure. Specifically, they involve the use of mechanical parts, which can fail.

Two comments were received regarding the use of single-stack drainage systems. The Board made changes to eliminate the use of such systems during its last update to the state plumbing code in 2018. Single-stack drainage systems were not included as part of the 2021 state plumbing code changes and were not considered during the many months of work on the 2021 state plumbing code updates. The Board has not changed its position on these systems and reiterates its response from 2018:

Section 301.5 of the UPC requires alternative engineered designs to comply with the intent of the overall UPC. Section 310.4 of the UPC, which the Board is also adopting, already prohibits single-stack drainage and venting systems with unvented branch lines. The Board’s proposed rule provides a uniform, easy-to-apply, bright-line rule that does not allow alternative engineered designs to become a loophole circumventing Section 310.4.

Additionally, the Board has found that single-stack systems in Iowa often do not maintain the one-inch water column required under Section 901.3 of the UPC. Potential cost savings for contractors are not a compelling reason to continue utilizing single-stack systems if the cost savings come at the expense of compliance with the UPC’s other provisions and overall intent.

The Board is not making any changes in response to the comments.

Adoption of Rule Making

This rule making was adopted by the Board on April 20, 2021.

Fiscal Impact

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

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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 the Board's general waiver provisions contained in 641—Chapter 31.

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 June 23, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rules 641—25.1(105) to 641—25.3(105) as follows:

641—25.1(105) Adoption. Sections 101 and 102 and Chapters 2 to 17 of the Uniform Plumbing Code, 2018 2021 Edition, as published by the International Association of Plumbing and Mechanical Officials, 4755 E. Philadelphia Street, Ontario, California 91761-2816, are hereby adopted by reference with amendments as the state plumbing code authorized by Iowa Code section 105.4. Portions of this chapter reproduce excerpts from the 2018 2021 International Plumbing Code; Copyright 2017 2020; Washington, D.C.: International Code Council. Such excerpts are reproduced with permission, all rights reserved. www.ICCSAFE.org

641—25.2(105) Applicability. The provisions of ~~this code~~ the Uniform Plumbing Code, as adopted and amended by this chapter, are applicable to the plumbing in buildings or on premises in Iowa. Local jurisdictions may not adopt other plumbing codes. Local jurisdictions may adopt additional amendments provided they are stricter than the Uniform Plumbing Code as amended by this chapter. Copies of any local amendments shall be provided to the board.

641—25.3(105) Fuel gas piping. Fuel gas piping shall comply with the requirements of Chapter 12 of the Uniform Plumbing Code, 2018 2021 Edition, unless the provisions conflict with 661—Chapter 226, Liquefied Petroleum Gas, Iowa Administrative Code. Where Chapter 12 conflicts with 661—Chapter 226, the provisions of 661—Chapter 226 shall be followed.

ITEM 2. Amend subrules 25.4(2) to 25.4(5) as follows:

25.4(2) The following amendments shall apply to UPC Chapter 3:

a. No change.

b. Section 309.6 Dead Legs. Modify the section by adding the following sentence to the end of the section: "The authority having jurisdiction can determine the method of flushing."

~~b.~~ c. Subsection 314.4.1 Installation of Thermoplastic Pipe and Fittings. Trench width for thermoplastic pipe shall be limited to six times the outside diameter of the piping at the base. Thermoplastic piping shall be bedded in not less than 4 inches (102 mm) of aggregate bedding material supporting the pipe. Initial backfill shall encompass the pipe. Aggregate material shall be three-eighths (3/8) inch p-gravel or 1-inch clean class one bedding.

25.4(3) The following amendments shall apply to UPC Chapter 4:

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a. and *b.* No change.

c. ~~Section 408.4 Waste Outlet. Modify the section by adding the following exception to the end of the section: "Exception: In a residential dwelling unit where a 2-inch waste pipe is not readily available and approval of the Authority Having Jurisdiction has been granted, the waste outlet, fixture tailpiece, trap and trap arm may be 1½ inches when an existing tub is being replaced by a shower sized per Section 408.6(2). This exception only applies where one shower head rated at 2.5 gpm is installed."~~ Section 408.3.2 Temperature Limiting.

(1) Modify this section by adding the following to the end of (3): "and installed at or as close as possible to the point of use."

(2) Modify this section by adding the following to the end of (5): "may be used downstream of other allowed device. TAFR valves are not intended to be installed in place of devices complying with ASSE 1016, ASSE 1017, ASSE 1066, ASSE 1069, or ASSE 1070."

d. Section 408.11 Showers. Create a new Section 408.11 stating: "Limitation of Hot Water Temperature of Hair Shampoo Bowls and Pet Grooming Stations. The maximum hot water temperature discharging from hair shampoo bowls and pet grooming stations shall be limited to 120°F (49°C). The maximum temperature shall be regulated by one of the following means, which shall be installed at or as close as possible to the point of use:

"(1) A limiting device conforming to ASSE 1070, ASME A112.1070, CSA B125.70, or CSA B125.3.

"(2) A water heater conforming to ASSE 1084."

~~*e.*~~ *e.* Section 409.4 Limitation of Hot Water in Bathtubs and Whirlpool Bathtubs. Modify the section by adding the following sentence to the end of the section: "These devices shall be installed at or as close as possible to the point of use."

~~*f.*~~ *f.* Section 410.3 Limitation of Water Temperature in Bidets. Modify the section by adding the following sentence to the end of the section: "These devices shall be installed at or as close as possible to the point of use."

~~*g.*~~ *g.* Section 416.5 Drain. Modify the section by deleting the last sentence, which states: "Where a drain is provided, the discharge shall be in accordance with Section 811.0."

~~*h.*~~ *h.* Section 418.3 Location of Floor Drains. Modify the section by adding the following to the end of the section: "(5) Rooms equipped with a water heater."

~~*i.*~~ *i.* Section 422.1 Fixture Count.

(1) Modify the section by deleting the first paragraph and inserting the following in lieu thereof: "Plumbing fixtures shall be provided in each building for the type of building occupancy and in the minimum number shown in Table 403.1 of the International Plumbing Code, reprinted here as Table 422.1. The design occupant load and occupancy classification shall be determined in accordance with Section 1004 of the 2015 International Building Code the state building code or the authority having jurisdiction. Required public facilities shall be designated by a legible sign for each sex. Signs shall be readily visible and located near the entrance to each toilet facility."

(2) The minimum number of fixtures shall be calculated at 50 percent male and 50 percent female based on the total occupant load. Where information submitted indicates a difference in the distribution of the sexes, such information shall be used to determine the number of fixtures for each sex. Once the occupancy load and occupancy are determined, Table 422.1 shall be applied to determine the minimum number of plumbing fixtures required. When gender-neutral restrooms are provided, the total number of fixtures provided must be the sum of men's and women's fixtures as figured, and urinals in gender-neutral restrooms shall not be substituted for more than 67 percent of men's water closets in assembly and educational occupancies or 50 percent of men's water closets in all other occupancies. Where gender-neutral fixtures are provided in addition to separate men's and women's facilities, those gender-neutral fixtures shall be included in determining the number of fixtures provided in an occupancy. Where applying the fixture ratios in Table 422.1 results in fractional numbers, such numbers shall be rounded to the next whole number. For multiple occupancies, fractional numbers shall be first summed and then rounded to the next whole number.

~~*j.*~~ *j.* Subsection 422.1.1 Family or Assisted-Use Toilet and Bathing Facilities. Modify the subsection by adding the following sentence to the end of the subsection: "Required family or

PUBLIC HEALTH DEPARTMENT[641](cont'd)

assisted-use fixtures are permitted to be included in the number of required fixtures for either the male or female occupants in assembly and mercantile occupancies.”

~~j. k.~~ Table 422.1 Minimum Plumbing Facilities. Delete the table and insert the following table in lieu thereof. ~~Exception: Projects under the jurisdiction of the state building code may use fixture counts from the 2015 International Building Code.~~

TABLE 422.1 MINIMUM NUMBER OF REQUIRED PLUMBING FIXTURES^a (See Sections 403.1.1 and 403.2) (Reprinted with permission,* from the 2018 International Plumbing Code, excerpt from IPC Table 403.1)									
NO.	CLASSIFICATION	DESCRIPTION	WATER CLOSETS (URINALS: SEE SECTION 422.7)		LAVATORIES		BATHTUBS/ SHOWERS	DRINKING FOUNTAIN (SEE SECTION 415.0)	OTHER
			MALE	FEMALE	MALE	FEMALE			
1	Assembly	Theaters and other buildings for the performing arts and motion pictures ^d	1 per 125	1 per 65	1 per 200		—	1 per 500	1 service sink
		Nightclubs, bars, taverns, dance halls and buildings for similar purposes ^d	1 per 40	1 per 40	1 per 75		—	1 per 500	1 service sink
		Restaurants, banquet halls and food courts ^d	1 per 75	1 per 75	1 per 200		—	1 per 500	1 service sink
		Gaming areas	1 per 100 for the first 400 and 1 per 250 for the remainder exceeding 400	1 per 50 for the first 400 and 1 per 150 for the remainder exceeding 400	1 per 250 for the first 750 and 1 per 500 for the remainder exceeding 750		—	1 per 1,000	1 service sink
		Auditoriums without permanent seating, art galleries, exhibition halls, museums, lecture halls, libraries, arcades and gymnasiums ^d	1 per 125	1 per 65	1 per 200		—	1 per 500	1 service sink
		Passenger terminals and transportation facilities ^d	1 per 500	1 per 500	1 per 750		—	1 per 1,000	1 service sink
		Places of worship and other religious services ^d	1 per 150	1 per 75	1 per 200		—	1 per 1,000	1 service sink

TABLE 422.1 MINIMUM NUMBER OF REQUIRED PLUMBING FIXTURES^a (See Sections 403.1.1 and 403.2) (Reprinted with permission,* from the 2018 International Plumbing Code, excerpt from IPC Table 403.1)									
NO.	CLASSIFICATION	DESCRIPTION	WATER CLOSETS (URINALS: SEE SECTION 422.7)		LAVATORIES		BATHTUBS/ SHOWERS	DRINKING FOUNTAIN (SEE SECTION 415.0)	OTHER
			MALE	FEMALE	MALE	FEMALE			
1	Assembly (cont'd)	Coliseums, arenas, skating rinks, pools and tennis courts for indoor sporting events and activities	1 per 75 for the first 1,500 and 1 per 120 for the remainder exceeding 1,500	1 per 40 for the first 1,520 and 1 per 60 for the remainder exceeding 1,520	1 per 200	1 per 150	—	1 per 1,000	1 service sink
		Stadiums, amusement parks, bleachers and grandstands for outdoor sporting events and activities ^f	1 per 75 for the first 1,500 and 1 per 120 for the remainder exceeding 1,500	1 per 40 for the first 1,520 and 1 per 60 for the remainder exceeding 1,520	1 per 200	1 per 150	—	1 per 1,000	1 service sink
2	Business	Buildings for the transaction of business, professional services, other services involving merchandise, office buildings, banks, light industrial and similar uses	1 per 25 for the first 50 and 1 per 50 for the remainder exceeding 50		1 per 40 for the first 80 and 1 per 80 for the remainder exceeding 80		—	1 per 100	1 service sink ^e
3	Educational	Educational facilities	1 per 50		1 per 50		—	1 per 100	1 service sink
4	Factory and Industrial	Structures in which occupants are engaged in work fabricating, assembly or processing of products or materials	1 per 100		1 per 100		—	1 per 400	1 service sink

TABLE 422.1 MINIMUM NUMBER OF REQUIRED PLUMBING FIXTURES^a

(See Sections 403.1.1 and 403.2)

(Reprinted with permission,* from the 2018 International Plumbing Code, excerpt from IPC Table 403.1)

NO.	CLASSIFICATION	DESCRIPTION	WATER CLOSETS (URINALS: SEE SECTION 422.7)		LAVATORIES		BATHTUBS/ SHOWERS	DRINKING FOUNTAIN (SEE SECTION 415.0)	OTHER
			MALE	FEMALE	MALE	FEMALE			
5	Institutional	Custodial care facilities	1 per 10		1 per 10		1 per 8	1 per 100	1 service sink
		Medical care recipients in hospitals and nursing homes	1 per room ^c		1 per room ^c		1 per 15	1 per 100	1 service sink per floor
		Employees in hospitals and nursing homes ^b	1 per 25		1 per 35		—	1 per 100	—
		Visitors in hospitals and nursing homes	1 per 75		1 per 100		—	1 per 500	—
		Prisons ^b	1 per cell		1 per cell		1 per 15	1 per 100	1 service sink
		Reformatories, detention centers, and correctional centers ^b	1 per 15		1 per 15		1 per 15	1 per 100	1 service sink
		Employees in reformatories, detention centers and correctional centers ^b	1 per 25		1 per 35		—	1 per 100	—
		Adult day care and child day care	1 per 15		1 per 15		1	1 per 100	1 service sink
6	Mercantile	Retail stores, service stations, shops, salesrooms, markets and shopping centers	1 per 500		1 per 750		—	1 per 1,000	1 service sink ^e

TABLE 422.1 MINIMUM NUMBER OF REQUIRED PLUMBING FIXTURES ^a									
(See Sections 403.1.1 and 403.2)									
(Reprinted with permission,* from the 2018 International Plumbing Code, excerpt from IPC Table 403.1)									
NO.	CLASSIFICATION	DESCRIPTION	WATER CLOSETS (URINALS: SEE SECTION 422.7)		LAVATORIES		BATHTUBS/ SHOWERS	DRINKING FOUNTAIN (SEE SECTION 415.0)	OTHER
			MALE	FEMALE	MALE	FEMALE			
7	Residential	Hotels, motels, boarding houses (transient)	1 per sleeping unit		1 per sleeping unit		1 per sleeping unit	—	1 service sink
		Dormitories, fraternities, sororities and boarding houses (not transient)	1 per 10		1 per 10		1 per 8	1 per 100	1 service sink
		Apartment house	1 per dwelling unit		1 per dwelling unit		1 per dwelling unit	—	1 kitchen sink per dwelling unit; 1 automatic clothes washer connection per 20 dwelling units

TABLE 422.1 MINIMUM NUMBER OF REQUIRED PLUMBING FIXTURES ^a (See Sections 403.1.1 and 403.2) (Reprinted with permission,* from the 2018 International Plumbing Code, excerpt from IPC Table 403.1)									
NO.	CLASSIFICATION	DESCRIPTION	WATER CLOSETS (URINALS: SEE SECTION 422.7)		LAVATORIES		BATHTUBS/ SHOWERS	DRINKING FOUNTAIN (SEE SECTION 415.0)	OTHER
			MALE	FEMALE	MALE	FEMALE			
7	Residential (cont'd)	Congregate living facilities with 16 or fewer persons	1 per 10		1 per 10		1 per 8	1 per 100	1 service sink
		One- and two-family dwellings and lodging houses with five or fewer guestrooms	1 per dwelling unit		1 per dwelling unit		1 per dwelling unit	—	1 kitchen sink per dwelling unit; 1 automatic clothes washer connection per dwelling unit
		Congregate living facilities with 16 or fewer persons	1 per 10		1 per 10		1 per 8	1 per 100	1 service sink
8	Storage	Structures for the storage of goods, warehouses, storehouse and freight depots. Low and Moderate Hazard.	1 per 100		1 per 100		—	1 per 1,000	1 service sink

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a The fixtures shown are based on one fixture being the minimum required for the number of persons indicated or any fraction of the number of persons indicated. The number of occupants shall be determined by the International Building Code.

b Toilet facilities for employees shall be separate from facilities for inmates or care recipients.

c A single-occupant toilet room with one water closet and one lavatory serving not more than two adjacent patient sleeping units shall be permitted provided that each patient sleeping unit has direct access to the toilet room and provision for privacy for the toilet room user is provided.

d The occupant load for seasonal outdoor seating and entertainment areas shall be included when determining the minimum number of facilities required.

e For business and mercantile classifications with an occupant load of 15 or fewer, service sinks shall not be required.

~~f The required number and type of plumbing fixtures for outdoor public swimming pools shall be in accordance with Section 609 of the International Swimming Pool and Spa Code.~~

*Excerpted (with modifications) from Table 403.1 of the 2018 International Plumbing Code; Copyright 2017; Washington, D.C.: International Code Council. Reproduced with permission. All rights reserved. www.ICCSAFE.org

l. Section 422.2 Separate Facilities. Modify this section by adding an additional exception: “(4) Separate facilities shall not be required where rooms having both water closets and lavatory fixtures are designed for use by any gender and sufficient privacy for water closets is installed. Partitions or compartment walls shall extend from no more than 1 inch from the floor to no less than 84 inches from the floor. Urinals shall be located in an area visually separated from the remainder of the facility or each urinal that is provided shall be located in a stall.”

~~k. m.~~ Subsection 422.2.2 Family or Assisted-Use Toilet ~~and Bathing~~ Facilities. Modify the subsection by adding the following sentence to the end of the subsection: “Required family or assisted-use fixtures are permitted to be included in the number of required fixtures for either the male or female occupants in assembly and mercantile occupancies.”

~~l. n.~~ Insert the following text at the end of Chapter 4:

“422.6 Substitution for Water Closets. In each bathroom or toilet room, urinals shall not be substituted for more than 67 percent of the required water closets in assembly and educational occupancies. Urinals shall not be substituted for more than 50 percent of the required water closets in all other occupancies. (Reprinted from the 2018 International Plumbing Code section 424.2)”

25.4(4) The following amendments shall apply to UPC Chapter 6:

a. and b. No change.

c. Section ~~609.11~~ 609.12 Pipe Insulation. Delete sections Sections 609.11 through 609.11.2 and insert the following in lieu thereof:

Section ~~609.11~~ 609.12 Pipe Insulation. Insulation of domestic hot water piping shall be in accordance with the applicable energy conservation code.

d. and e. No change.

25.4(5) The following amendments shall apply to UPC Chapter 7:

a. Section 702.1 Trap Size. Table 702.1 Note 9. Modify this note by deleting “a maximum shower size of 36 inches (914 mm) in width and 60 inches (1524 mm) in length” and inserting the following in lieu thereof: “showers having only one shower head rated at a maximum of 2.5 gpm.”

~~a. b.~~ Section 710.1 Backflow Protection. Modify the section by adding the following sentences to the end of the section: “The requirement for the installation of a backwater valve shall apply only when determined necessary by the Authority Having Jurisdiction based on local conditions. When a valve is required by the Authority Having Jurisdiction, it shall be a manually operated gate valve or fullway ball valve. An automatic backwater valve may also be installed but is not required.”

~~b. Section 717.1 General. Modify the section by adding the following language to the end of the section: “No building sewer shall be smaller than 4 inches in diameter.”~~

ITEM 3. Amend subrule 25.4(8) as follows:

25.4(8) The following amendments shall apply to UPC Chapter 10:

a. No change.

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b. Section 1007.1 Trap Seal Protection. General. Modify this section by deleting “not deemed necessary for safety or sanitation by the Authority Having Jurisdiction” and inserting the following in lieu thereof: “floor drains or similar traps that receive a liquid discharge year round.”

~~*b.*~~ *c.* Section 1014.1.3 Food Waste Disposers and Dishwashers. Modify the section by deleting the second sentence and inserting the following in lieu thereof: “Commercial food waste disposers shall discharge into the building’s drainage system in accordance with the requirements of the Authority Having Jurisdiction.”

ITEM 4. Amend paragraph **25.4(9)“c”** as follows:

c. Subsection ~~1208.6.4.4~~ 1208.6.4.5 Corrugated Stainless Steel Tubing. Delete subsection ~~1208.6.4.4~~ 1208.6.4.5 and insert the following in lieu thereof:

Subsection ~~1208.6.4.4~~ 1208.6.4.5 Corrugated Stainless Steel Tubing. Only CSST with an arc-resistant jacket or covering system listed in accordance with ANSI LC-1 (Optional Section 5.16)/CSA 6.26-2016 shall be installed, in accordance with the terms of its approval, the conditions of listing, the manufacturer’s instructions and this code, including electrical bonding requirements in Section 1211.2. CSST shall not be used for through-wall penetrations from the point of delivery of the gas supply to the inside of the structure. CSST shall not be installed in locations where subject to physical damage unless protected in an approved manner.

ITEM 5. Adopt the following new paragraph **25.4(9)“d”**:

d. Section 1211.3 Arc-Resistant Jacketed CSST. Delete the section.

ITEM 6. Amend rule 641—25.5(105), introductory paragraph, as follows:

641—25.5(105) Backflow prevention with containment. Cities with populations of 15,000 or greater as determined by the 2010 census or any subsequent regular or special census shall have a backflow prevention program with containment. The minimum requirements for a program are given in subrules 25.5(1) through 25.5(5). These requirements are in addition to the applicable requirements of Section 603 of the Uniform Plumbing Code, ~~2018~~ 2021 Edition.

ITEM 7. Amend subrule 25.5(1), introductory paragraph, as follows:

25.5(1) Definitions. The following definitions are added to those in Chapter 2 and Section 603 of the Uniform Plumbing Code, ~~2018~~ 2021 Edition, or are modified from those definitions for the purposes of rule 641—25.5(105) only.

ITEM 8. Amend **641—Chapter 25**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 105 ~~as amended by 2013 Iowa Acts, Senate File 427.~~

[Filed 4/21/21, effective 6/23/21]

[Published 5/19/21]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/19/21.

ARC 5627C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Rule making related to state mechanical code

The Plumbing and Mechanical Systems Board hereby amends Chapter 61, “State Mechanical Code,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 105.4.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 105.4.

Purpose and Summary

These amendments include the adoption by reference of the International Mechanical Code (IMC), 2021 Edition. The Board previously adopted the 2018 Edition of the IMC. The Board is required by law to adopt the most recent version of the IMC.

Notable changes in the most recent version include provisions to maintain indoor air quality and correlate to the International Energy Conservation Code (IECC), allow type II commercial kitchen exhaust to be used in energy recovery ventilation systems and require wood-burning residential heaters to be EPA-certified, thus limiting high-particulate emissions. Additional changes correlate to the International Building Code (IBC) and reinforce safety-based requirements, which include minimum wall thickness for subducts penetrations of shaft enclosures, emergency egress requirements for machinery rooms and the comprehensive rewrite of the refrigeration piping sections, including safety-related provisions.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 24, 2021, as **ARC 5476C**. No public comments were received.

There are two minor typographical changes from the Notice. In Item 1, the Board changed the referenced Life and Safety Code to 2012 from 2021. Also, in Item 5, the Board changed “coded” to “code.”

Adoption of Rule Making

This rule making was adopted by the Board on April 20, 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

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 the Board’s general waiver provisions contained in 641—Chapter 31.

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 June 23, 2021.

The following rule-making actions are adopted:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 1. Amend rule **641—61.1(105)**, definition of “Life Safety Code,” as follows:

“*Life Safety Code*” means the ~~2000~~ 2012 edition of the Life Safety Code of the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, or the most recent version of the Life Safety Code adopted by reference by the federal Centers for Medicare and Medicaid Services.

ITEM 2. Amend rule 641—61.2(105), introductory paragraph, as follows:

641—61.2(105) Adoption by reference. ~~The provisions Sections 101 and 102 and Chapters 2 to 15 of the International Mechanical Code, 2018 2021 edition, published by the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478, are hereby adopted by reference as the requirements for the design, installation, maintenance, alteration, and inspection of mechanical systems that are permanently installed and utilized to provide control of environmental conditions and related processes within buildings,~~ with the following amendments: and premises in Iowa.

ITEM 3. Rescind subrules **61.2(1)** to **61.2(15)**.

ITEM 4. Renumber rules **641—61.3(105)** and **641—61.4(105)** as **641—61.4(105)** and **641—61.5(105)**.

ITEM 5. Adopt the following new rule 641—61.3(105):

641—61.3(105) Amendments to International Mechanical Code. The International Mechanical Code (IMC), as adopted by reference in rule 641—61.2(105), shall be amended as follows:

61.3(1) Amend Section 101.2 by deleting the following: “Exception: Detached one- and two-family dwellings and townhomes not more than three stories above grade plane in height with a separate means of egress and their accessory structures not more than three stories above grade plane in height shall comply with this code or the International Residential Code.”

61.3(2) Amend Section 102 by adopting new Section 102.12 as follows:

102.12 Local authority

(a) Local jurisdictions may administer the permit, inspection, testing, and enforcement provisions contained in the state mechanical code adopted and amended by this chapter. Permit, inspection, testing, and enforcement provisions contained in this code shall not be administered by the Plumbing and Mechanical Systems Board or the state unless otherwise provided by law.

(b) Local jurisdictions may not adopt mechanical codes other than the state mechanical code adopted and amended by this chapter. Local jurisdictions may adopt additional amendments to the state mechanical code if the additional amendments are stricter than the state mechanical code as set forth in this chapter. Local jurisdictions that adopt additional amendments must provide copies of any local amendments to the board.

61.3(3) Amend Section 304.11 by deleting the last sentence and inserting in lieu thereof the following new exception:

Exception: Guards are not required where permanent fall arrest/restraint anchorage connector devices that comply with ANSI/ASSE Z 359.1 are affixed for use during the entire lifetime of the roof covering. The devices shall be evaluated for possible replacement when the entire roof covering is replaced. The devices shall be placed not more than 10 feet (3048 mm) on center along hip and ridge lines and placed not less than 10 feet (3048 mm) from roof edges and the open sides of walking surfaces.

61.3(4) Amend Section 306.1 by deleting the last sentence and inserting in lieu thereof: “An unobstructed level working space at least 30 inches deep and 30 inches wide shall be provided on any side of equipment where service access is required. The authority having jurisdiction may approve service reductions prior to equipment installation, provided that the manufacturer’s instructions are met.”

61.3(5) Delete Section 306.2 and insert in lieu thereof the following new section:

306.2 Appliances in rooms and closets. Rooms and closets containing appliances shall be provided with a door and an unobstructed passageway measuring not less than 36 inches wide and 80 inches high. A level service space not less than 30 inches deep and 30 inches wide shall be present at the front service side of the appliance with the door open.

61.3(6) Amend Section 306.5 by:

a. Adding the following to the end of the section: "If the tenants of a multiple tenant building have, or are allowed to have, mechanical facilities on the roof or which penetrate the roof, then roof access ladders must be provided for use by all such tenants and their agents and contractors in a manner that does not require accessing space under the control of another tenant."

b. Deleting the following: "Exception: This section shall not apply to Group R-3 occupancies."

c. Adopting new Section 306.5.3 as follows:

306.5.3 Visual screening of rooftop equipment. Equipment screening shall not be installed to the rooftop unit or the curb of the rooftop unit unless specified in the mechanical equipment manufacturer's installation instructions.

61.3(7) Delete Section 401.1 and insert in lieu thereof the following new section:

401.1 Scope. This chapter shall govern the ventilation of spaces within a building intended to be occupied. These buildings shall meet either the requirements of ASHRAE Standard 62.1, "Ventilation for Acceptable Indoor Air Quality," 2019 edition, published by the American Society of Heating, Refrigeration, and Air-Conditioning Engineers, 1791 Tullie Circle N.E., Atlanta, GA 30329, or the requirements contained in this chapter. Mechanical exhaust systems, including exhaust systems serving clothes dryers and cooking appliances; hazardous exhaust systems; dust, stock, and refuse conveyor systems; subslab soil exhaust systems; smoke control systems; energy recovery ventilation systems; and other systems specified in Section 502 shall comply with Chapter 5.

61.3(8) Add the following footnote "i" related to the gym, stadium, arena (play area) category of the sports and amusement occupancy classification in Table 403.3.1.1, Minimum Ventilation Rates:

i. When combustion equipment is intended to be used on the playing surface, additional dilution ventilation and/or source control shall be provided.

61.3(9) Add the following footnote "j" to Table 403.3.1.1 anywhere the term "smoking lounges" appears:

j. For ventilation purposes, "smoking" includes both combustible tobacco products and accessories and electronic smoking devices and accessories.

61.3(10) Delete Section 504.8.2 and insert in lieu thereof the following new section:

504.8.2 Duct installation. Exhaust ducts shall be supported at 4-foot (1219 mm) intervals and secured in place. The insert end of the duct shall extend into the adjoining duct or fitting in the direction of airflow. Ducts shall not be joined by screws or similar fasteners that protrude into the inside of the duct.

61.3(11) Delete Subsection 506.3.13.3 and insert in lieu thereof the following new subsection:

506.3.13.3 Termination location. Exhaust outlets shall be located not less than 10 feet (3048 mm) horizontally from parts of the same or contiguous buildings, adjacent buildings and adjacent property lines and shall be located not less than 10 feet (3048 mm) above the adjoining grade level. Exhaust outlets shall be located not less than 20 feet horizontally/vertically from or not less than 5 feet above air intake openings and operable doors and windows into any building.

61.3(12) The first sentence of Section 507.3 shall be amended to read: "Type II hoods shall be installed above dishwashers capable of heating water beyond 140 degrees Fahrenheit and appliances that produce heat or moisture and do not produce grease or smoke as a result of the cooking process, except where the heat and moisture loads from such appliances are incorporated into the HVAC system design or into the design of a separate removal system."

61.3(13) Delete Section 508.1.1 and insert in lieu thereof the following new section:

508.1.1 Makeup air temperature. All kitchen makeup air systems shall be verified by a certified TAB (testing and balance) contractor to heat makeup air to within 10 degrees of room temperature set point. The TAB contractor shall be certified by NEBB, TABB, or other certifying organization as approved by the Authority Having Jurisdiction.

61.3(14) Amend Section 601.5 by adopting new paragraph "9" as follows:

9. Return air openings shall be located at least 18 inches from supply air openings. Air throw shall be directed away from return air openings to reduce short cycling of air. Exception: Factory-made concentric duct terminations.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

61.3(15) Amend Section 601.5 by adopting new paragraph “10” as follows:

10. One return air opening per floor is required on a central duct return system per ACCA Manual D, Appendix 8. Return air transfer openings are required on all bedrooms when dedicated return air openings are not used.

61.3(16) Amend Section 603 by adopting new Section 603.1.1 as follows:

603.1.1 Duct location. Air plenums and ducts located in floor and wall cavities shall be separated from unconditioned space by construction with insulation to meet energy code requirements. These areas include but are not limited to exterior walls, cantilevered floors, and floors above garages.

61.3(17) Delete Section 604.3 and insert in lieu thereof the following new section:

604.3 Coverings and linings. Duct coverings and linings, including adhesives where used, shall have a flame spread index of not more than 25 and a smoke-development index of not more than 50, when tested in accordance with ASTM E84 or UL 723, using the specimen preparation and mounting procedures of ASTM E2231. Duct coverings and linings shall not flame, glow, smolder or smoke when tested in accordance with ASTM C411 at the temperature to which they are exposed in service. The testing temperature shall not fall below 250°F (121°C). Coverings and linings shall be listed and labeled. The use of an air gap to meet R-value requirements for duct insulation shall be prohibited.

61.3(18) Amend Subsection 607.6.2.1 by adopting new Subsections 607.6.2.1.3 and 607.6.2.1.4 as follows:

607.6.2.1.3 Access ceiling radiation dampers shall be provided with an approved means of access that is large enough to permit inspection and maintenance of the damper and its operating parts. Dampers equipped with fusible links, internal operators for both shall be provided with either an access door that is not less than 12 inches (305mm) square, or a removable duct section.

607.6.2.1.4 Identification ceiling radiation damper locations and access points shall be permanently identified on the exterior by a label or marking acceptable to the authority having jurisdiction.

61.3(19) Delete all references to the “International Plumbing Code” and insert in lieu thereof “state plumbing code.”

[Filed 4/21/21, effective 6/23/21]

[Published 5/19/21]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/19/21.

ARC 5628C

UTILITIES DIVISION[199]

Adopted and Filed

Rule making related to electric lines

The Utilities Board hereby amends Chapter 11, “Electric Lines,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 478.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 478.

Purpose and Summary

The Board conducted a comprehensive review of its Chapter 11 administrative rules in accordance with Iowa Code section 17A.7(2). Based upon comments received at an Administrative Rules Review Committee meeting, the Board concluded the rules for electric lines should be amended. The Chapter 11 rules are amended to address stakeholder concerns. On April 19, 2021, the Board issued an order

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adopting amendments. The order is available on the Board's electronic filing system, efs.iowa.gov, under Docket No. RMU-2020-0011.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 7, 2020, as **ARC 5217C**. An oral presentation was held on December 3, 2020, at 9 a.m. in the Board Hearing Room, 1375 East Court Avenue, Des Moines, Iowa.

Comments were presented at the oral presentation by electric transmission companies, public utilities, the Iowa Farm Bureau, and other interested persons. The comments addressed the proposed changes to the Board's Chapter 11 rules.

Written comments received were very similar to the comments made at the oral presentation. The Board allowed for additional written comments after the oral presentation. There were only a few additional comments filed.

The amendments in this rule making are not identical to those proposed in the Notice. The changes are based upon comments made at the oral presentation and written comments.

Adoption of Rule Making

This rule making was adopted by the Board on April 19, 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 this chapter.

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 June 23, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rule 199—11.2(478) as follows:

199—11.2(478) Definitions. For the administration and interpretation of this chapter, the following words and terms, when used in these rules, shall have the meanings indicated below:

“*Affected person*” means any person with a ~~recorded~~ legal right or interest in the property, including but not limited to a landowner, contract purchaser of record, a ~~tenant occupying the property or 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~~

UTILITIES DIVISION[199](cont'd)

~~unrecorded interests in property that have been identified through a good faith effort of the electric company.~~

“Board” means the utilities board within the utilities division of the department of commerce.

“Capable of operating” means the standard voltage rating at which the electric line, wire, or cable can be operated consistent with the level of the insulators and the conductors used in construction of the electric line, wire, or cable based on manufacturer’s specifications, industry practice, and applicable industry standards.

“Electric company” means any person that proposes to construct, erect, maintain, or operate an electric line, wire, or cable in Iowa.

“Person” means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity as defined in Iowa Code section 4.1(20).

“Termini” means the electrically functional end points of an electric line, without which it could not serve a public use. Examples of termini may include, but are not limited to, generating stations, substations, or switching stations.

“Transmission line” means any electric line, wire, or cable capable of operating at 69 kilovolts or more.

ITEM 2. Rescind subrule 11.3(3) and adopt the following **new** subrule in lieu thereof:

11.3(3) Railroad crossings. Where a petition for temporary construction permit is made as provided in Iowa Code section 478.31, an affidavit filed by an electric company will be accepted as a showing of consent for the crossing if the affidavit states the following provisions, as provided for in rule 199—42.3(476), have been met: (1) that proper application for approval of the railroad crossing has been made, (2) that a one-time crossing fee has been paid, and (3) that 35 days have passed since mailing of the application and payment with no claim of special circumstance or objection from the railroad. Such affidavit or an affirmative statement of consent from the railroad shall be filed as soon as possible and must be filed prior to commencement of construction of the railroad crossing.

ITEM 3. Rescind subparagraph **11.5(1)“d”(6)**.

ITEM 4. Renumber subparagraph **11.5(1)“d”(7)** as **11.5(1)“d”(6)**.

ITEM 5. Adopt the following **new** subrule 11.9(6):

11.9(6) Route study. If a hearing on a petition is required by Iowa Code section 478.6(1), an electric company shall file a route study, if conducted, with the board at the earlier of either the electric company’s next revised petition filing or its testimony in support of the petition after the board orders a hearing.

[Filed 4/19/21, effective 6/23/21]

[Published 5/19/21]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/19/21.

ARC 5629C

UTILITIES DIVISION[199]

Adopted and Filed

Rule making related to applications for rate increases by utilities

The Utilities Board hereby rescinds Chapter 26, “Rate Cases, Tariffs, and Rate Regulation Election Practice and Procedure,” Iowa Administrative Code, and adopts a new Chapter 26 with the same title.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 476.2, 476.6 and 476.33.

UTILITIES DIVISION[199](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 476.2, 476.3, 476.6, 476.7 and 476.33.

Purpose and Summary

This rule making adopts a new Chapter 26 of the Board's rules. The adopted chapter establishes filing requirements and procedures for applications for general rate cases by rate-regulated utilities, including general rate case applications based upon a future test year. The adopted chapter includes filing requirements and procedures for the subsequent proceeding required to be held if the application is based upon a future test year. New Chapter 26 also updates other rules and removes electric cooperatives and municipal utilities from the provisions of this chapter.

On April 19, 2021, the Board issued an order adopting amendments. The order is available on the Board's electronic filing system, efs.iowa.gov, under Docket No. RMU-2020-0026.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 29, 2020, as **ARC 5107C**.

The Board conducted an oral presentation on October 20, 2020. Rate-regulated utilities, the Consumer Advocate, and large customer groups participated in the oral presentation. The comments at the oral presentation addressed a revised Notice of Intended Action that had been attached to an order issued October 14, 2020, in Docket No. RMU-2020-0026. The comments addressed notice to customers of general rate increase applications, requirements for temporary rates, minimum filing requirements for applications based upon future test years, and requirements for subsequent proceedings, among other matters.

In addition to the written comment deadline contained in the Notice, the Board allowed the public to file additional written comments before and after the oral presentation. The Board also held two workshops to allow for a more in-depth discussion of some of the issues in the rules. Rate-regulated utilities, large customer groups, environmental associations, and the Consumer Advocate filed comments and participated in the workshops. The written comments and the workshops focused on the same issues discussed at the oral presentation: notice to customers of general rate increase applications, requirements for temporary rates, minimum filing requirements for applications based upon future test years, and requirements for subsequent proceedings. One workshop focused entirely on minimum filing requirements for an application based upon a future test year to address the complexity of the filing requirements.

The Board issued an order adopting amendments in Docket No. RMU-2020-0026 that can be accessed in the Board's electronic filing system.

The rules have been significantly revised since publication of the Notice. The revisions are based upon written comments and the discussions at the oral presentation and workshops. The minimum filing requirements for an application based upon a future test year were simplified, a standard notice to customers form was established, procedures for the subsequent proceeding were simplified, and the time for filing a new rate case was modified. Other less significant revisions were also made.

Adoption of Rule Making

This rule making was adopted by the Board on April 19, 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.

UTILITIES DIVISION[199](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 Board for a waiver of the discretionary provisions, if any, pursuant to rule 199—1.3(17A,474,476).

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 June 23, 2021.

The following rule-making action is adopted:

Rescind 199—Chapter 26 and adopt the following **new** chapter in lieu thereof:

CHAPTER 26

RATE CASES, TARIFFS, AND RATE REGULATION ELECTION PRACTICE AND PROCEDURE

199—26.1(17A,476) Scope.

26.1(1) This chapter contains utilities board procedural rules and filing requirements for utility rate cases, other rate tariff filings, and rate regulation election of electric cooperatives. The general contested case procedural rules in 199—Chapter 7 apply to these types of proceedings where the rules in this chapter do not provide specific guidance.

26.1(2) The provisions of this chapter do not apply to municipal utilities.

26.1(3) The provisions of this chapter do not apply to electric utilities with fewer than 10,000 customers or to electric cooperatives or associations subject to the provisions of Iowa Code section 476.1A that have not elected to be rate-regulated by the board. Electric utilities with fewer than 10,000 customers shall be subject to the same regulatory requirements as electric cooperatives prescribed in 199—Chapter 27.

26.1(4) The provisions of this chapter do not apply to natural gas utilities with fewer than 2,000 customers pursuant to Iowa Code section 476.1C unless a valid petition is filed with the board pursuant to Iowa Code section 476.1C(1)“e”(1).

199—26.2(17A,476) Definitions. Terms not otherwise defined in these rules shall be understood to have their usual meanings.

“*Board*” means the Iowa utilities board or a majority of its members.

“*Board staff*” means the staff employed by the board.

“*Bridge period*” means the period between the most recent calendar year and the beginning of the proposed future test year.

“*Commodity*” or “*commodities*” means water, sanitary sewage disposal, storm water drainage, electricity, or natural gas.

“*Effective date*” means the date, approved by the board, on which the utility may begin charging a new rate or charge or implementing tariff changes approved by the board.

“*Future test year*” means any 12-month period beginning no later than the date on which a proposed rate change is expected to take effect.

“*Historic test year*” means a 12-month period preceding when the application for a general rate increase is filed for which verifiable data exists concerning the utility's costs and revenues.

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“*Rates*” means the per-unit or per-occurrence amounts billed to customers for a recurring or nonrecurring service or commodity rendered or offered by the utility, and any charge, schedule, or regulation which a utility includes in a tariff approved by the board.

“*Subsequent proceeding*” means the proceeding the board is required to conduct subsequent to the effective date of the rates approved by the board based upon a future test year.

“*Utility*” means an investor-owned public utility subject to rate regulation by the board pursuant to Iowa Code chapter 476.

“*Verification period*” means the 12-month period of data required to be filed as part of the subsequent proceeding. The 12-month period begins the first day of the month following the month in which the rates approved by the board become effective.

“*Written notice*” means any form of written communication, including first-class mail or electronic mail if a customer has agreed to receive electronic notices from the utility for matters other than billing.

199—26.3(17A,476) Tariffs required.**26.3(1) *Tariffs to be filed.***

a. A utility shall not make effective any new or changed rate, charge, schedule, or regulation until it has been approved by the board and the board has determined an effective date, except as provided in Iowa Code sections 476.6(8) and 476.6(9). A proposed tariff consistent with this rule shall be filed with an application for a new or changed rate, charge, schedule, or regulation.

b. If the proposed new or changed rate, charge, schedule, or regulation is neither rejected nor approved by the board, the board will docket the tariff filing as a formal proceeding within 30 days after the filing date.

c. Proposed new or changed rates, charges, schedules, or regulations which contain energy efficiency expenditures and related costs for demand-side programs shall not be included in a utility's proposed tariff which relates to a general increase in revenue. A utility may propose to recover the costs of process-oriented industrial assessments not related to energy efficiency as defined in rule 199—35.2(476).

d. The consumer advocate or any customer affected by the filing may submit within 20 days after the filing date a written objection to the filing and a written request that the board docket the filing. The board may grant the request at its discretion. The written objections and requests for docketing shall set forth specific grounds relied upon in making the objection or request.

26.3(2) *Transmittal letter and tariff changes.*

a. Two versions of all applicable proposed tariff revisions along with an accompanying transmittal letter shall be filed at the same time as an application for a general increase in rates. One version shall be a marked version that shows all of the tariff language changes for which the utility seeks approval. The second version shall be a clean copy of the tariff with all of the proposed tariff language changes incorporated. The transmittal letter shall include or be accompanied by such information as is necessary to explain the nature, effect, and purpose of the proposed tariff. The information shall include, when applicable:

- (1) The amount of the aggregate annual increase or decrease proposed.
- (2) The names of communities affected.
- (3) A summary of the reasons for filing and such other information as may be necessary to support the proposed changes.

- (4) The number and classification of customers affected.

b. The marked version shall show all additions and deletions, with all new language marked by underlined text and all deleted language indicated by strike-through. The original sheet shall include the following symbols in the right margin to indicate the place, nature, and extent of any text changes.

- (1) The symbol C shall indicate a change in regulation.
- (2) The symbol D shall indicate a discontinued rate or regulation.
- (3) The symbol I shall indicate an increased rate.
- (4) The symbol N shall indicate a new treatment or regulation.
- (5) The symbol R shall indicate a reduced rate.

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(6) The symbol T shall indicate a change in the text that does not include a changed rate or regulation.

199—26.4(17A,476) General rate increase applications filed pursuant to Iowa Code section 476.6.

26.4(1) Customer notification procedures. When a utility intends to file an application for a general rate increase pursuant to Iowa Code section 476.6, the utility shall provide notice of the application as described below.

a. Notification of rate increase to customers.

(1) All utilities which propose to increase rates shall provide written notice of the proposed increase to all customers in all affected rate classifications. The written notice shall be mailed or delivered before the application for increase is filed, but not more than 62 days prior to filing the application for increase with the board. The utility may send one notice to customers who receive service from a utility for two different types of service.

(2) A utility may use the standard notice form found on the board's website for notification to customers without seeking prior board approval. If the standard notice is used to provide notice to customers of a general rate increase, the utility shall file the standard notice, with the rates that are being proposed, with the board at least five days prior to sending the notice to customers. A utility that uses the standard customer notice form shall issue a press release and post notice on the utility's website of the application for a general rate increase when the utility sends the notice to customers. A utility that uses the standard customer notice form shall be required to send separate notice to customers with the dates, times, and locations of any consumer comment meetings scheduled by the board. The second notice may be sent to customers as a bill insert if the customers receive at least 20 days of notice prior to the first consumer comment meeting. The utility shall issue a press release about the consumer comment meetings and put the dates, times, and locations of the meetings on the utility's website.

(3) A utility which proposes to increase rates and to provide notice to customers by a method that is not in substantial compliance with the standard customer notice on the board's website shall file its proposed notice for approval of the board not less than 45 days before the utility proposes to deliver the notice to its customers. A utility that uses a nonstandard customer notice shall issue a press release and post notice on the utility's website of the application for a general rate increase when the utility sends the notice to customers.

(4) The notice requirements in this paragraph are not applicable to rate increases for telecommunications services. Notice requirements for intrastate access service rates are subject to the requirements of rule 199—22.4(476).

b. Requirements for rate increase notices.

(1) A standard notice shall comply with the standard form notice on the board's website. Any deviation from the standard notice requires the filing of a proposed nonstandard notice in compliance with subparagraph 26.4(1)“b”(2).

(2) At a minimum, a nonstandard customer notice shall include the following information:

1. If the utility is proposing to place interim rates in effect, an explanation of the interim rate process applicable to the proceeding and, with respect to such proposed interim rates, all of the information that this subrule requires a utility to submit concerning final rates.

2. A description of the proposed increase in rates.

3. The proposed effective date of the proposed final increase in rates, including a statement that ultimately the board will determine if and when any changes in final rates become effective.

4. The proposed overall increase in total and base rate annual revenues stated in dollars and as a percentage for each applicable customer class.

5. A table that includes the utility's primary customer classes and that, for each class, shows the proposed monthly base rate increase, the proposed monthly base rate increase percentage, the proposed monthly overall increase in the average monthly bill, and the proposed average monthly overall percentage increase. Increases in monthly customer rates, rates for lighting, and similar rates shall be described in a footnote to the table. The utility shall highlight on the notice the rates that are proposed for a customer receiving the notice.

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6. If a utility proposes significant changes to nonrecurring rates, a table that contains the following for each nonrecurring rate: the current rate, the proposed rate, and the percentage increase.

7. A statement indicating that the impact proposed new rates have on amounts billed to customers may differ depending on the type and extent of usage.

8. A statement indicating that a written explanation of all current and proposed rate schedules is available without charge from the utility's local business office.

9. A statement indicating how a customer may contact the utility with any questions concerning the proposed increase in rates.

10. A statement indicating that customers have the right to file written objections to the proposed increase with the board and to request a hearing to determine whether the rate increase should be allowed. The statement shall include the board's mailing address, email address, and electronic filing system website address. The statement shall also direct customers to provide the board with any facts that would assist the board in determining the justness and reasonableness of the requested increase and shall indicate that the written objection will be made available to the consumer advocate, who represents the public interest in rate cases before the board.

11. The time, date, and place of any applicable consumer comment meetings. The utility shall include a list of proposed locations for consumer comment meetings, and the location of consumer comment meetings to be included in the notice shall be approved by the board.

12. A statement indicating that, after a thorough investigation, the board will make a determination on final rates, which may be different from those that the utility proposes, and that, if final rates are lower than interim rates or the interim rates are not based upon previously established regulatory principles, the utility shall make refunds, including interest, to customers.

13. A statement that the overall increase includes estimated rate case expense.

(3) The proposed notice shall contain estimated cost figures and cost percentages. The estimated cost figures and cost percentages may be updated when the utility sends its approved notice.

(4) The notice shall not contain a message from the utility about the proposed rate increase. The utility may include as a separate document a message from the utility.

(5) A copy of the notice with the final dates, cost figures, and cost percentages shall be filed with the board in the rate proceeding docket at the time of customer notification along with an exhibit showing the calculations of all amounts included in the notice with source references.

(6) The form of the notice, once approved by the board, may not be altered except to include dates, cost figures, and cost percentages reflecting the latest updates. The size and quality of the type used in the notice shall be easily legible.

c. Deficiencies in nonstandard notices. Within 30 days of the utility's filing of its proposed customer notice, the board shall issue an order either approving the notice or identifying any deficiencies and setting forth the corrections and additional information necessary for the notice to comply with Iowa Code chapter 476 and with board rules. A notice found to be deficient under this rule shall not constitute adequate notice under Iowa Code section 476.6. If the board fails to issue an order within 30 days of filing, the proposed notice shall be deemed approved without change.

d. Delivery of notices.

(1) The standard customer notice form or the nonstandard notice, as approved by the board, shall be mailed or delivered electronically to all affected customers pursuant to the timing requirements of paragraph 26.4(1)"a." Notice of proposed increases may be mailed with a regularly scheduled mailing of the utility. Electronic notice shall only be sent to customers who have agreed to receive electronic billing notice and notice of other information from the utility.

(2) Standard customer notice form notices and nonstandard notices shall be conspicuously marked "Notice of Proposed Rate Increase" on the notice itself. If a separate mailing is utilized by a utility for customer notification, the outside of the mailing shall also be conspicuously marked "Notice of Proposed Rate Increase." For notices delivered electronically, the subject line shall include "Notice of Proposed Rate Increase."

(3) Failure of the postal service or Internet service provider to deliver the notice to any customers shall not invalidate or delay the proposed rate increase proceeding.

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(4) After the date the first notice is mailed or delivered to any affected customer and until such rates are resolved in proceedings before the board, any person who requests utility service and is affected by the proposed increase in rates shall receive either the standard form and the notice of consumer comment meetings or the nonstandard notice approved by the board not later than 30 days after the date of commencement of service to the customer.

(5) An approved notice is required for each filing proposing a rate increase that is not directly identifiable with a previous customer notification.

e. Telecommunications service provider rate increases. Subrule 26.4(1) shall not apply to telecommunications service providers proposing to increase rates for interexchange services, excluding extended area service and intrastate access services.

26.4(2) Applications. Applications for a general increase in rates based upon either a historic test year or future test year shall include the filing requirements in this rule. The board shall review the application and supporting testimony, exhibits, and other information to determine if the application is complete and complies with the rules in this chapter.

a. The utility shall file a cover sheet or index listing each minimum filing requirement and identify all documents applicable to each requirement filed to support an application for a general rate increase. The application and minimum filing requirements shall not be accepted by the board until all of the documents listed have been filed.

b. The board may issue an order requiring additional information during its review of the application. Within 30 days of the date the application is filed, the board may reject an application that is not in substantial compliance with the filing requirements in subrule 26.4(4) for a historic test year application or subrule 26.4(5) for a future test year application.

c. No application, pleading, document, testimony or other submission filed with a tariff incorporating a general increase in rates for utility service shall be rejected for noncompliance after the date of a board order docketing the tariff and application as a formal proceeding.

26.4(3) Temporary rate authority pursuant to Iowa Code section 476.6. When proposing a general rate increase based on a historic test year, a utility may implement without board approval temporary rates ten days or more after filing notice with the board with the effective date of temporary rates pursuant to Iowa Code section 476.6(9).

a. A utility that chooses to implement temporary rates pursuant to Iowa Code section 476.6(9) shall file the following information with its application for permanent rates:

(1) A statement that the utility has elected to implement temporary rates pursuant to Iowa Code section 476.6(9).

(2) A bond or other corporate undertaking subject to review and approval by the board that, at a minimum, is equal to the increased amount of revenue that will be recovered through temporary rates. The bond or corporate undertaking shall include a commitment to refund, as directed by the board, any amounts the board determines are in excess of the amounts that would have been collected under final rates ultimately approved by the board and amounts that are not supported by established regulatory principles.

(3) The established regulatory principles that support the amounts included in the temporary rate filing may be established by statute, court decision, or by board orders where the regulatory issue was not settled.

(4) All workpapers supporting the request for temporary authority.

b. If at the conclusion of the proceeding the board finds that permanent rates are less than temporary rates implemented by a utility, the board shall order refunds with interest calculated at a rate consistent with Iowa Code section 476.6(9)“c.”

c. If at the conclusion of the proceeding the board determines that the temporary rates were not based upon previously established regulatory principles, the board shall consider ordering refunds based upon the overpayments made by each individual customer class, rate zone, or customer group with interest calculated at a rate consistent with Iowa Code section 476.6(9)“c.”

d. Objections to the temporary rates put into effect pursuant to Iowa Code section 476.6(9) shall be raised as an issue in the general rate proceeding through prepared testimony filed by a party and shall

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be addressed by the board at the hearing and in the board's final rate order, unless otherwise ordered by the board.

e. The return on equity used to calculate temporary rates shall not be greater than the return on equity proposed by the utility for permanent rates. The return on equity proposed for permanent rates is a cap and is not presumed reasonable for temporary rates.

26.4(4) *Testimony and exhibits to support applications based on a historic test year.* A utility proposing changes in tariffs or rates which relate to a general increase in revenue based upon a historic test year shall prepare and file with its proposed tariff the following evidence in the form of testimony and exhibits.

a. Factors relating to value. A statement showing the original cost of the items of plants and facilities, for the beginning and end of the last available calendar year, and any other factors relating to the value of the items of plants and facilities the utility deems pertinent to the board's consideration, together with information setting forth budgeting accounts for the construction of scheduled improvements.

b. Comparative operating data. Information covering the test year.

(1) Operating revenue and expenses by primary account.

(2) Balance sheet at beginning and end of test year.

c. Test year and pro forma income statements. Information setting forth revenues, expenses, net operating income for the last available calendar year, the adjustment of unusual items, and by adjustment to reflect operations for a full year under existing and proposed rates. The format of the information to be filed is available on the board's website at iub.iowa.gov.

d. Additional testimony and exhibits for utilities. Unless otherwise specified in these rules, the information required to be filed in this paragraph shall be based upon the calendar year immediately preceding the year in which the application for a general rate increase is filed.

(1) Rate base for Iowa jurisdictional operations calculated by utilizing a 13-month average of month-ending balances ending on December 31 of the year preceding the year of filing, and also calculated on a year-end basis, except for the cash working capital component of this figure, which will be computed on the basis of a lead-lag study as set forth in subparagraph 26.4(4) "d"(5).

(2) Revenue requirements for both total company and Iowa jurisdictional operations, to include: operating and maintenance expense, depreciation, taxes, and return on rate base.

(3) Capital structure calculated utilizing a 13-month average of month-ending balances ending on December 31 of the year preceding the year of filing, and also calculated on a year-end basis.

(4) Information supporting the proposed capital structure and information showing the calculation of the proposed capital cost for each component of the capital structure and showing requested return on rate base with capital structure and corresponding capital cost.

(5) Cash working capital requirements, including a recent lead-lag study which accurately represents conditions during the test period. For the purposes of this rule, a lead-lag study is defined as a procedure for determining the weighted average of the days for which investors or customers supply working capital to operate the utility.

(6) Complete federal and state income tax returns for the two calendar years preceding the year of filing and all amendments to those returns. If a tax return or amendment has not been prepared at the time of filing, the return shall be filed with the board under this subrule at the time it is filed with the Internal Revenue Service or the Iowa department of revenue.

(7) Information showing monthly Iowa jurisdictional expense by account as required by 199—Chapter 16 unless, upon application of the utility and prior to filing, the board finds that the utility is incapable of reporting jurisdictional expense on a monthly basis and prescribes another periodic basis for reporting jurisdictional expense.

(8) A schedule of monthly consumption (units sold) and revenue by customer rate classes, reflecting separately revenue collected in base rates and adjustment clause revenues.

(9) Information showing that the rates proposed will produce the revenues requested and information showing the dollar and percent increases expected for the average rate of consumption and at the 25th and 75th percentile within major rate classes. In addition to this information, the utility shall submit in support of the design of the proposed rate a narrative statement describing and justifying the

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objectives of the design of the proffered rate. If the purpose of the rate design is to reflect costs, the narrative statement should state how that objective is achieved and be accompanied by a cost analysis that would justify the rate design. If the rate design is not intended to reflect costs, a narrative statement should be furnished justifying the departure from cost-based rates. This filing shall be in compliance with all other rules of the board concerning rate design and cost studies.

(10) All monthly or periodic financial and operating reports to management beginning in January two years preceding the year of filing. The item or items to be filed under this rule include reports of sales, revenue, expenses, number of employees, number of customers, or similar data, and related statistical material. This requirement shall be a continuing one, to remain in effect through the month that the rate proceeding is finally resolved.

(11) Information showing monthly tax accruals, separated between federal, state, and property taxes, including the methods used to determine these amounts.

(12) Allocation methods, including formulas, supporting revenue, expenses, and plant or tax allocations.

(13) Information showing interest rates, dividend rates, amortizations of discount and premium and expense, and unamortized 13 monthly balances of discount and premium and expense, ending on December 31 of the year preceding the year of filing, for long-term debt and preferred stock.

(14) Information showing the 13 monthly balances of common stock expense, ending on December 31 of the year preceding the year of filing.

(15) Information showing the 13 monthly balances of paid-in capital in excess of par, separated between common and preferred stock, ending on December 31 of the test year.

(16) Stockholders' reports, including supplements for the year of filing and the two preceding calendar years. If such reports are not available at the time of filing, they shall be filed immediately upon their availability to stockholders.

(17) If applicable, Securities and Exchange Commission Form 10-Q for all past quarters in the year of filing and the preceding calendar year, and Form 10-K for the two preceding calendar years or, if applicable, comparable filings for corporations headquartered outside the United States. If these forms have not been filed with the Securities and Exchange Commission at the time the rate increase is filed, they shall be filed under this subrule immediately upon filing with the Securities and Exchange Commission. This requirement is not applicable for any such reports which are routinely and formally filed with the board.

(18) Any prospectus issued during the year of filing or during the two preceding calendar years.

(19) Consolidated and consolidating financial statements.

(20) Revenue and expenses involving transactions with affiliates and the transfer of assets between the utility and its affiliates, and transactions between the utility and the utility's parent company.

(21) Information showing the following for each of the ten calendar years preceding the year of filing, and for each quarter from the first quarter of the calendar year immediately preceding the year of filing through the current quarter.

1. Earnings, annual dividends declared, annual dividends paid, book value of common equity, and price of common equity (each item should be shown per average actual common share outstanding, adjusted for stock splits and stock dividends).

2. Rate of return to average common equity.

3. Common stock earnings retention ratio.

4. For other issues of common stock: net proceeds per common share issued, and number of shares issued and previously outstanding for each issue of common stock.

(22) If the utility is applying for a gas rate increase, the model used to calculate the weather normalization adjustment and documentation supporting the model inputs. The weather normalization model preferred by the board is available on the board's website at iub.iowa.gov.

(23) A statement that no direct or indirect lobbying expenses or advertising expenses not allowed by Iowa Code section 476.18(3) are included for recovery in the proposed rates.

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(24) All testimony and exhibits in support of the rate filing, attached to affidavits of the sponsoring witnesses. All known and measurable changes in costs and revenues upon which the utility relies in its application shall be included.

1. Unless otherwise required, all testimony, exhibits, and other information shall be filed in the board's electronic filing system as described in rule 199—14.5(17A,476). In addition, three paper copies of all of the documents filed electronically in the board's electronic filing system, including confidential information, shall be provided to the board and three copies to the consumer advocate within five days of the date the application is filed. The utility is not required to print voluminous workpapers that only provide supporting information as long as the utility has filed a summary of the information and the utility includes a page in the printed material that indicates the information in the workpapers that has not been printed and where that information is found in the application or minimum filing requirements. The board or the consumer advocate may request a printed copy of this information if the information is required for review of the application or minimum filing requirements. The paper copies shall be certified by an officer of the utility or by an attorney representing the utility.

2. If the utility that has filed for the rate increase is affiliated with another company as either parent or subsidiary, the information required in subparagraphs 26.4(4) "d"(3), (4), (6), (13) to (19), and (21) shall be provided for the parent company (if any) and for all affiliates which are not included in the consolidating financial statements filed pursuant to this rule.

e. At the time of filing an application for increased rates based upon a historic test year, all utilities shall file, as exhibits to testimony, all workpapers and data used to prepare the analyses, including the Excel spreadsheet version of each Excel-based document containing all formulae, calculations, and specific source references to all keyed-in data, along with a PDF version of each Excel document, formatted for printing. The Excel spreadsheets and PDF documents shall be searchable. The filing requirements in this paragraph may be modified with prior board approval.

f. The utility may file any other testimony and exhibits which it deems pertinent to the application.

g. In rate-regulatory proceedings under Iowa Code section 476.6, the board shall consider the use of the most current test period possible in light of existing and verifiable data respecting costs and revenues available as of the date of commencement of the proceedings.

h. Known and measurable changes. In rate-regulatory proceedings under Iowa Code section 476.6, the board shall consider:

(1) Verifiable data, existing as of the date of commencement of the proceedings, respecting known and measurable changes in costs not associated with a different level of revenue, and known and measurable revenues not associated with a different level of costs that are to occur within 12 months after the date of commencement of the proceedings.

(2) Data which becomes verifiable prior to the closing of the record at the hearing respecting known and measurable:

1. Capital infrastructure investments that will not produce significant additional revenues and will be in service in Iowa within nine months after the conclusion of the test year.

2. Cost of capital changes that will occur within nine months after the conclusion of the test year that are associated with a new generating plant that has been the subject of a ratemaking principles proceeding pursuant to Iowa Code section 476.53.

3. Verifiable data filed pursuant to subparagraph 26.4(4) "h"(2) shall be provided to other parties as soon as the data is available so that other parties have a reasonable opportunity to verify the data to be considered by the board.

i. Postemployment benefits other than pensions. For ratemaking purposes, the amount accrued for postemployment benefits other than pensions in accordance with Accounting Standards Codification No. 715, Compensation—Retirement Benefits (ASC 715) will be allowed in rates where:

(1) The net periodic postemployment benefit cost and accumulated postemployment benefit obligations have been determined by an actuarial study completed in accordance with the specific methods required and outlined by ASC 715.

(2) The accrued postemployment benefit obligations have been funded in a board-approved, segregated, and restricted trust account, or alternative arrangements have been approved by the board.

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Cash deposits shall be made to the trust at least quarterly in an amount that is proportional and, on an annual basis, at least equal to the annual test period allowance for postemployment benefits other than pensions.

(3) The transition obligation is amortized over a period of time determined by the board and does not exceed 20 years.

(4) Any funds, including income, returned to the utility from the trust not actually used for postemployment benefits other than pensions shall be refunded to customers in a manner approved by the board.

(5) The board finds the benefit program and all calculations are prudent and reasonable.

j. An actuarial study of the net periodic postemployment benefit cost and accumulated postemployment benefit obligations shall be determined and filed with the board at the time a rate increase is requested, when there has been a change in postemployment benefits other than pensions offered by the utility, or every three years, whichever comes first.

k. The utility shall provide its revenue requirement calculation in an Excel spreadsheet. The required spreadsheet format for this calculation is available on the board's website at iub.iowa.gov.

26.4(5) *Filing requirements to support applications based on a future test year.* An application for a general increase in rates based upon a future test year may be based upon one test year for each type of service, or one test year for a combined application for two types of service. If the application is for an increase in rates for two types of service, the application shall include separate financial schedules for each type of service and shall specifically identify in testimony, exhibits, and workpapers the type of service being addressed. An application for a general increase in rates based upon a future test year shall not be filed prior to the effective date of a final order regarding the subsequent proceeding in a previous proceeding based upon a future test year. An application for a general increase in revenue based upon a future test year shall include the following information to support the application:

a. For each forecast for a major component of the rate application provide the following information:

(1) Describe how each forecast was developed and include a description of the applicable starting point.

(2) Explain how and why the applicable assumptions, methods, models, and modeling inputs were used.

(3) Identify and explain any significant changes in forecast assumptions, adjustments, or methodology since the utility's last rate case or contested case review.

b. The utility's application shall include the following information for the test year:

(1) Operations and maintenance expenses by primary account, or functional grouping, including:

1. Any amounts previously specifically disallowed by the board or otherwise eliminated from current rates.

2. Any regulatory amortizations previously authorized by the board or that are being requested.

3. Additional detail outlining operations and maintenance expenses by labor costs and nonlabor costs.

4. Additional detail bifurcating operations and maintenance expenses that are recovered through automatic adjustment mechanisms.

(2) Utility payroll reconciliation, including distribution of total payroll between plant, operations, and maintenance, and any other accounts.

(3) Taxes other than income taxes.

(4) Income taxes, including any net operating losses (NOL) or other tax credits generated or utilized.

(5) Utility plant and other rate base, including:

1. Monthly utility plant in service by major function, summarizing and explaining plant additions, retirements, and transfers.

2. Monthly accumulated reserve for depreciation and amortization by major function, detailing depreciation, retirements, removal, salvage, and other amortizations or adjustments.

3. Depreciation and amortization expense by primary account or functional group.

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4. Any regulatory amortizations previously authorized by the board or being requested, including unamortized balances.

5. Utility working capital rate base, including a lead-lag study.

6. Monthly balances of other adjustments to utility rate base.

(6) Revenue and expenses involving transactions with affiliates and the transfer of assets between the utility and its affiliates, and transactions between the utility and the utility's parent company.

(7) Projected revenue requirement for operations, to include: operating and maintenance expense, depreciation, taxes, and return on rate base.

(8) Monthly and annual billing unit information by rate schedule.

1. Provide an explanation of any significant changes in the number of customers or usage between the most recent calendar year and the test year billing units.

2. The data and support should identify and explain: weather normalization methods, growth expectations, time period used as the base for building test year sales, and discrete adjustments to the base sales forecast and associated energy impacts.

3. Provide monthly and annual kilowatt-hour or therm sales by rate schedule, monthly and annual weather-normalized kilowatt-hour or therm sales, and monthly and annual customer numbers.

(9) Proof of revenue documentation showing that the rates proposed will produce the total requested revenue requirement. The proof of revenue should separately reflect revenue collected in base rates, revenue collected through all applicable adjustment clauses, sales for resale, and other revenues.

(10) Rate impact information showing the dollar and percent increases expected within the average rate of consumption, and at the 25th and 75th percentile, within major classes.

(11) Narrative statement describing and justifying the objectives of the proposed rate design. If the purpose of the rate design is to reflect projected costs, the narrative statement should state how that objective is achieved and be accompanied by a cost-of-service study that would justify the rate design. If the rate design is not intended to reflect projected costs, a narrative statement should be furnished describing and justifying the departure from cost-based rates. This filing shall be in compliance with all other rules of the board concerning rate design and cost studies.

(12) Allocation methods, including formulas, supporting projected revenue, expenses, plant, or tax allocations.

(13) A statement that no direct or indirect lobbying expenses or advertising expenses not allowed in Iowa Code section 476.18(3) are included for recovery in the proposed rates.

c. The utility shall file the following financial information:

(1) Projected capital structure.

(2) Information showing the calculation of the proposed capital cost for each component of the capital structure and information showing requested return on rate base with capital structure and corresponding capital cost for the test year, including:

1. Debt issuances, principal repayments, and retirement of debt, all by month.

2. Preferred stock issuances and retirements, all by month.

3. Common stock estimated net income, dividends, and capital infusions, all by month.

4. Source and use of funds schedule (cash flow) from the most recent actual balances, all by month.

5. Interest rates and dividend rates.

6. Amortizations of discount, premium, and expense, and unamortized balances of discount, premium, and expense for long-term debt and preferred stock, all by month.

7. Common stock expense, all by month.

8. Capital in excess of par, separated between common and preferred stock, by month.

(3) Projected balance sheet and income statement.

(4) Stockholders' reports, including supplements for the year of filing and the two preceding calendar years. If such reports are not available at the time of filing, they shall be filed immediately upon their availability to stockholders.

(5) If applicable, Securities and Exchange Commission Form 10-Q for all past quarters in the year of filing and the preceding calendar year, and Form 10-K for the two preceding calendar years or, if applicable, comparable filings for corporations headquartered outside the United States. If these

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forms have not been filed with the Securities and Exchange Commission at the time the rate increase is filed, they shall be filed under this subrule immediately upon filing with the Securities and Exchange Commission. This requirement is not applicable for any such reports which are routinely and formally filed with the board.

(6) Any prospectus issued during the year of filing or during the two preceding calendar years.

(7) Consolidated and consolidating financial statements for the calendar year preceding the filing.

(8) Information showing the following for each of the ten calendar years preceding the year of filing, and for each quarter from the first quarter of the calendar year immediately preceding the year of filing through the current quarter.

1. Earnings, annual dividends declared, annual dividends paid, book value of common equity, and price of common equity (each item should be shown per average actual common share outstanding, adjusted for stock splits and stock dividends).

2. Rate of return to average common equity.

3. Common stock earnings retention ratio.

4. For other issues of common stock: net proceeds per common share issued, and number of shares issued and previously outstanding for each issue of common stock.

d. The utility shall file three years of historic information for the following:

(1) Subparagraphs 26.4(5) "b"(1), (3), (4), (6), and (8), and subparagraph 26.4(5) "b"(5), except for the requirement in numbered paragraph "5."

(2) A reconciliation of the historic billing unit information to the sales included in the utility's annual report filings.

(3) Natural gas utilities shall also provide weather-normalized sales for each of the most recent three years on a calendar-year basis based on the board's preferred weather normalization model.

e. The utility shall file actual updated monthly data 120 days after the filing of the application and file an update with the subsequent monthly data 30 days before the hearing for the following: subparagraphs 25.4(5) "b"(1), (3), (4), (6), and (8), and subparagraph 26.4(5) "b"(5), except for numbered paragraph "5," and subparagraphs 26.4(5) "c"(2) and (3).

f. The utility shall provide its revenue requirement calculation in an Excel spreadsheet. The required spreadsheet format for this calculation is available on the board's website at iub.iowa.gov.

g. Unless otherwise required, all testimony, exhibits, and other information shall be filed in the board's electronic filing system as described in rule 199—14.5(17A,476). In addition, three paper copies of all of the documents filed by the utility, including confidential information, shall be provided to the board and three copies to the consumer advocate within five days of the date the application is filed. The utility is not required to print voluminous workpapers that only provide supporting information as long as the utility has filed a summary of the information and the utility includes a page in the printed material that indicates the information in the workpapers and where that information is found in the application or minimum filing requirements. The board or the consumer advocate may request a printed copy of this information if the information is required for review of the application or minimum filing requirements. The paper copies shall be certified by a utility official or an attorney representing the utility.

h. Workpapers, spreadsheets, and formulas. At the time of filing an application for increased rates based upon a future test year, all utilities shall file, as exhibits to testimony, all workpapers and data used to prepare the analyses, including the Excel spreadsheet version of each Excel-based document containing all formulae, calculations, and specific source references to all keyed-in data, along with a PDF version of each Excel document, formatted for printing. The Excel spreadsheets and PDF documents shall be searchable.

i. Additional testimony and exhibits. The applicant may submit any other testimony and exhibits that the applicant deems relevant to the application.

199—26.5(17A,476) Compliance filings and tariffs.

26.5(1) A utility may file compliance filings and compliance tariffs at any time after the board issues the final order in a rate proceeding, unless otherwise ordered by the board.

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26.5(2) The consumer advocate and other parties shall file responses, comments, or objections to the compliance filings and tariffs within 20 days of the date the compliance filings or tariffs are filed with the board, unless otherwise ordered by the board.

26.5(3) Compliance tariffs shall become effective on the date approved by the board or on a date set by the board.

199—26.6(17A,476) Subsequent proceeding in rate case proceedings based upon a future test year.

26.6(1) *Time period for updates for subsequent proceeding.* The utility shall file within 90 days of the end of the verification period the information, exhibits, and workpapers described in subrule 26.6(2).

26.6(2) *Updated information required.* The filing required in subrule 26.6(1) shall include an update of the cost-of-service study, revenue allocation, resulting rates, and revenue verifications, based upon methodologies approved by the board in the general rate proceeding, with actual costs, revenues, and sales applicable during the verification period. The filing shall include a calculation of the utility's return on equity based upon the updated information, exhibits, and workpapers.

26.6(3) *Other parties' filing requirements.* Any party to the future test year rate proceeding, or any other party who is granted intervention in the subsequent proceeding, may file a response to the return on equity calculation, and other information, exhibits, and workpapers, filed by the utility with information, exhibits, and workpapers within 30 days of the date the utility files its information, exhibits, and workpapers.

26.6(4) *Board order required.* The board shall issue within 30 days of the filing of any response, or, if no response is filed, within 60 days of the utility's filing, an order which finds that the actual costs and revenues are reasonably consistent with the costs and revenues approved by the board or shall set the matter for hearing to address questions from the board. If the board determines that the actual return on equity of the utility during the verification period falls within a standard of reasonableness of 50 basis points above or 50 basis points below the return on equity approved by the board, the actual costs and revenues shall be presumed to be reasonably consistent with the costs and revenues approved by the board.

26.6(5) *Hearing to be scheduled.* If the board determines that the return on equity based upon actual costs and revenues does not fall within the standard of reasonableness in subrule 26.6(4) or the board has questions about any of the information, exhibits, and workpapers filed by the utility, the board shall schedule the review of the actual costs and revenues for hearing. The hearing date of the subsequent proceeding shall be set no more than 90 days from the date the utility files its information, exhibits, and workpapers, unless otherwise ordered by the board. The issues to be considered at the hearing are the review of any inconsistencies between actual costs and revenues compared to the costs and revenues approved by the board. The utility and other parties shall provide witnesses to respond to board questions at the hearing and parties may ask questions of the witnesses.

26.6(6) *Order addressing issues in subsequent proceeding.* The board shall issue a final order within 120 days of the filing of the utility's information, exhibits, and workpapers required in subrule 26.6(2), unless otherwise ordered by the board. In the order, the board will determine whether the actual costs and revenues are reasonably consistent with the costs and revenues approved by the board and whether there should be any adjustment in rates based upon the board's determination. Any increase or reduction in rates based upon a return on equity outside of the standard of reasonableness band shall be calculated in relation to the band and not the return on equity approved by the board.

199—26.7(476) Rate case expense.

26.7(1) A utility making an application pursuant to Iowa Code section 476.6 shall file, within one week of the docketing of the rate case, the estimated or, if available, actual expenses incurred to date or to be incurred by the utility in litigating the rate case. Except for expenses incurred in preparation of the rate filing and notification of customers, the expenses shall be limited to expenses incurred in the time period from the date the initial application is filed through the filing of the utility's briefs unless the time period is extended by the board on a case-by-case basis. Each expense shall be designated as either estimated or actual.

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26.7(2) Estimated or, if available, actual expenses shall identify specifically:

a. Printing costs for the following:

- (1) Rate notification letters.
- (2) Initial filing.
- (3) Testimony.
- (4) Briefs.
- (5) Other (specify).

b. Postage costs.

c. Outside counsel costs, including support personnel:

- (1) The name of each attorney contracted for as outside counsel and the names of support personnel.
- (2) Hours worked by each attorney engaged as outside counsel and support personnel.
- (3) Cost per hour charged by each attorney and support personnel and support for the reasonableness of the rate.

(4) Scope of work and reason outside counsel was needed.

d. Outside expert witness/consultant costs:

- (1) The name of each outside consultant employed.
- (2) Hours each outside consultant worked.
- (3) Cost/hour per consultant employed and support for the reasonableness of this rate.
- (4) Scope of work and reason consultant was needed.

If a flat-fee arrangement is used for the services of an outside expert witness/consultant, the other information in this paragraph is still required to be provided.

e. Expenses stated by individual for outside consultants, outside counsel, and utility personnel:

- (1) Travel.
- (2) Hotel.
- (3) Meals.
- (4) Other (specify).

f. Other (specify).

26.7(3) Rate case expense shall not include recovery for expenses that are otherwise included in temporary or test year expenses, including salaries for staff preparing the filing, staff attorneys, and staff witnesses. Rate case expense approved for recovery from customers shall include only reasonable, nonrecurring, incremental expenses not covered by test year expenses for the period stated in subrule 26.7(1).

26.7(4) Total allowable rate case expense shall include expenses incurred by board staff and the consumer advocate for the time period stated in subrule 26.7(1). The rate case expense to be filed by the utility shall not include these expenses.

26.7(5) Estimated rate case expense may be litigated during or after the rate case proceeding. At the request of the consumer advocate, another party, or the board, the utility shall make witnesses available for cross-examination on any rate case expense item included in rate case expense.

26.7(6) Actual utility expenses shall be filed in the same format and detail as estimated expenses and shall be filed within two weeks after the utility files its reply brief or at some other point as approved by the board. All material differences between estimated and actual expenses shall be fully supported and justified. Objections to actual utility expenses shall be filed within 15 days of the filing of actual expenses.

26.7(7) The board may schedule any additional hearings to litigate the reasonableness of the final expenses. At the request of the consumer advocate, another party, or the board, the utility shall make witnesses available for cross-examination on any item included in rate case expenses.

26.7(8) The recovery mechanism for rate case expense shall be determined by the board. Recovery may be through base rates, by means of a rider, or otherwise. The applicable recovery period will be determined in the rate proceeding. Recovery through a rider will end once the expense is fully recovered.

26.7(9) A utility may recover rate case expenses for the subsequent proceeding for the preparation of the information and filing required in rule 199—26.6(476) through the date of the filing. A utility may request recovery of additional rate case expenses on a case-by-case basis.

199—26.8(476) Procedural schedule in Iowa Code section 476.6 proceedings.

26.8(1) In any proceeding initiated by a utility filing for new or changed rates, charges, schedules, or regulations pursuant to Iowa Code section 476.6, the board or presiding officer shall set a procedural schedule. The procedural schedule for an application for a general rate increase and associated revised tariffs shall be as follows unless otherwise ordered by the board:

- a.* Direct testimony and exhibits from the consumer advocate and other parties filed within five months from the date the application for a general rate increase is filed.
- b.* The consumer advocate's and other parties' cross-rebuttal testimony and exhibits filed 15 days after responsive testimony.
- c.* Rebuttal testimony and exhibits from the utility filed not later than six months from the date the application for a general rate increase is filed.
- d.* Hearing completed not later than seven and one-half months from the date the application for a general rate increase is filed.
- e.* Briefs of all parties filed not later than eight and one-half months after the date the application for a general rate increase is filed.

26.8(2) In setting the procedural schedule in a case, the board or presiding officer shall take into account the existing hearing calendar and shall give due regard to other obligations of the parties, attorneys, and witnesses. The board or presiding officer may, on the board's or the presiding officer's own motion or upon the motion of any party, including the consumer advocate, for good cause shown, change the time and place of any hearing. Any effect such a change has on the remainder of the procedural schedule or the deadline for decision shall be addressed when the change is ordered.

26.8(3) Additional time may be granted to a party, including the consumer advocate, upon a showing of good cause for the delay on a case-by-case basis.

26.8(4) If any party, including the consumer advocate, wishes to utilize the electric generating facility exception to the ten-month decision deadline contained in Iowa Code section 476.6, the party shall expeditiously file a motion seeking this exception, including an explanation of that portion of the suspended rates, charges, schedules, or regulations necessarily connected with the inclusion of the generating facility in rate base. Any other party may file a response to the motion.

199—26.9(17A,476) Consumer comment meetings in Iowa Code section 476.6 general rate case proceedings.

26.9(1) The board may hold consumer comment meetings to provide an opportunity for members of the general public who are customers of a utility involved in a general rate case to express their views regarding the case before the board as well as the general quality of service provided by the utility. However, specific service complaints must follow the procedure prescribed in rule 199—6.2(476). Nothing shall prohibit the board from holding consumer comment meetings in any other docketed case.

26.9(2) The location of consumer comment meetings shall be approved by the board and included in a notice to customers. A member of the board shall be assigned to preside over a consumer comment meeting. Representatives from the utility shall be present to explain, in a concise manner, the pertinent points of the utility's proposal and the utility may be required to present a graphic presentation at the consumer comment meeting that can also be provided to attendees. The utility's representatives shall also reasonably respond to any questions directed to the utility either at the consumer comment meeting or in a subsequent filing in the docket.

26.9(3) The consumer comment meeting shall be held in a major population center served by the utility at a time of day convenient to the largest number of customers. The board may schedule consumer comment meetings at multiple locations. Each meeting shall be conducted in a facility large enough to accommodate all who wish to attend. Notice of the consumer comment meeting shall be sent by the board to appropriate media outlets.

26.9(4) Individuals may submit written comments to the board. Written comments shall become part of the permanent case file but shall not constitute evidence in the rate proceeding.

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199—26.10(476) Switching from a future test year to a historic test year. Consistent with Iowa Code section 476.33, a utility may file an application for a rate-regulatory proceeding under Iowa Code section 476.6 using either a historic test year or future test year. A utility shall not file an application for a general rate increase using a historic test year until after the board issues a final order in the future test year subsequent proceeding.

199—26.11(476) Rate proceedings for small utilities. For purposes of this rule, a small utility shall mean a utility subject to rate regulation that serves fewer than 10,000 customers. A small utility that has had a rate case before the board within the past ten years shall be eligible to file an application for a rate increase under this rule no more frequently than once every 24 months.

26.11(1) At least 60 days prior to filing an application under this rule, a utility shall participate in a public technical conference with board staff and the consumer advocate at which the utility shall provide an overview of its planned rate increase application.

26.11(2) A utility filing under this rule is subject to the notice requirements of subrule 26.4(1) and the temporary rate provisions of subrule 26.4(3).

26.11(3) A utility's filing under this rule will take the form of a proposed tariff with a 30-day effective date along with supporting testimony and exhibits. The board will docket the proposed tariff for further review.

26.11(4) A utility shall file information showing the revenue requirement and revenue deficiency for Iowa jurisdictional operations, a template for which can be found on the board's website at iub.iowa.gov. If the utility is applying for a gas rate increase, the utility shall file information utilizing the weather normalization model preferred by the board, which is available on the board's website.

26.11(5) The filing shall be based upon the following assumptions:

a. Adjustments to book values shall be limited to 400 series accounting entries that are required to be excluded from rates.

b. Return on equity (ROE) will be based on ROEs approved for utilities by the board in the prior 24 months, or if the board has not approved an ROE in the past 24 months, the utility shall use the average of the ROEs approved by other jurisdictions for the same utility service for the year preceding the date of filing, provided there was a minimum of five such approvals. If there was not a minimum of five such approvals, the board may extend the one-year period as necessary to increase the number of approvals to five or more, or may make such other provision of ROE as the board may determine to be just and reasonable.

c. Utility and parent capital structures will be the same as those approved in the utility's last rate case.

26.11(6) The proposed overall rate increase will be applied uniformly to all rates and charges so that no changes in class cost-of-service allocations occur.

26.11(7) No new rates, charges, or riders shall be proposed.

26.11(8) The board establishes a rebuttable presumption that rate case expense in excess of \$150,000 for a filing under this rule is unreasonable.

26.11(9) The recovery mechanism for rate case expense shall be determined by the board. Recovery may be through base rates, by means of a rider, or otherwise. The applicable recovery period will be determined in the rate proceeding. Recovery through a rider will end once the expense is fully recovered.

26.11(10) The board shall issue an order granting, modifying, or rejecting the proposed rate increase within 90 days of the tariff required in subrule 26.11(3).

199—26.12(17A,476) Applications pursuant to Iowa Code section 476.6 that are not general rate increase applications. At the time a utility, other than a rural electric cooperative that has elected to be rate regulated by the board, files for new or changed rates, charges, schedules, or regulations, except in conjunction with general rate increase applications, the utility shall file the following:

26.12(1) Any cost, revenue, or economic data underlying the filing.

26.12(2) An explanation of how the proposed tariff would affect the rates and service of the utility.

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26.12(3) All testimony and exhibits in support of the filing, attached to affidavits of the sponsoring witnesses.

26.12(4) Automatic adjustment clauses. The notice requirements in this chapter do not apply to rates filed pursuant to an automatic adjustment mechanism approved by the board. Nothing in this paragraph shall be construed to prohibit a utility from making provision for the automatic adjustment of rates for utility service, provided that a schedule showing the automatic adjustment of rates shall first be filed with and approved by the board. The initial approval of an automatic adjustment mechanism requires notice to customers and may require a contested case proceeding.

199—26.13(17A,476) Rate investigation pursuant to Iowa Code section 476.3. Complaints filed pursuant to Iowa Code section 476.3(1) shall follow the procedures in 199—Chapter 6. The board shall commence a formal rate investigation as required by Iowa Code section 476.3(2) if a petition is filed by the consumer advocate alleging that a utility's rates are excessive. Rate complaint investigations to review the allegation made pursuant to Iowa Code section 476.3(2) shall include prepared testimony, exhibits, and workpapers to support the issues raised in the petition, all of which shall conform to the filing requirements for historic test year applications in subrule 26.4(4).

199—26.14(17A,476) Applications pursuant to Iowa Code section 476.7.

26.14(1) Any utility filing an application with the board requesting a determination of the reasonableness of its rates, charges, schedules, service, or regulations shall submit at the time the application is filed testimony and exhibits to fully support the utility's filing. All such testimony and exhibits shall be given or presented by competent witnesses, under oath or affirmation, at the proceeding ordered by the board as a result of the application, and the proceeding shall be governed by the applicable provisions of 199—Chapter 7 and rule 199—26.4(476).

26.14(2) All of the foregoing requirements shall apply in the event the board, on its own motion, initiates a formal proceeding to determine the reasonableness of a utility's rates, charges, schedules, service, or regulations.

26.14(3) All testimony and exhibits shall be marked and identified in compliance with the naming convention as described in the board's electronic filing system filing standards or as required by board order.

199—26.15(17A,476) Proposal of settlements.

26.15(1) In proposed settlements which resolve all revenue requirement issues in a rate case proceeding, parties to the settlement shall jointly file the revenue requirement calculations reflecting the adjustments proposed to be settled and the following cost-of-service information: an updated cost-of-service study showing the allocation of costs to customer classes, alternative revenue allocations if applicable, the resulting rates, the revenue verification, and the overall increase to total revenues and base rate revenues by class as compared to test year revenues. If the cost of service that supports the settlement is not agreed to by all of the settling parties, each party shall file the information based upon a party's position.

26.15(2) In proposed settlements which resolve some revenue requirement issues in a rate case proceeding and retain some issues for litigation, each party to the settlement shall file a revenue requirement calculation reflecting the adjustments proposed to be settled and the parties' positions on any remaining issues to be litigated in addition to cost-of-service information.

26.15(3) In proposed settlements which produce an agreed-upon revenue requirement as a mutually acceptable outcome to the proceeding without an agreement on each revenue requirement issue, parties to the settlement shall jointly file as exhibits to the settlement supporting documentation reflecting the specific adjustments for which the parties reached agreement and cost-of-service information.

26.15(4) For those revenue issues included in the proposed settlement which were not specifically resolved, the supporting documentation should identify the range between the positions of the parties.

26.15(5) Cost-of-service information to support a settlement may be filed up to five days after the settlement is filed.

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199—26.16(476) Rate regulation election—electric cooperative corporations and associations.

26.16(1) Application of rules. Electric cooperative corporations and associations shall not be subject to the jurisdiction of the board except as provided in Iowa Code section 476.1A and this chapter.

a. Procedure for election by members. Upon petition of not less than 10 percent of the members of an electric cooperative or upon its own motion, the board of directors of an electric cooperative shall order a referendum election to be held to determine whether the electric cooperative shall be subject to the jurisdiction of the board. A petition for election shall be completed within 60 days of commencement.

(1) Any member of an electric cooperative desiring a referendum election shall sign a petition for election addressed to the board of directors of an electric cooperative, in substantially the following form:

PETITION FOR ELECTION

TO: (Board of Directors of subject electric cooperative)

The undersigned members request you call an election to submit to the members the following proposition:

Shall . . . (name of the electric cooperative) be subject to rate regulation by the Iowa Utilities Board?

Signature

Address

Date

(2) Where signatures are made on more than one sheet, each sheet of the petition shall reproduce above the signatures the same matter as is on the first sheet. Each petitioner shall sign the petitioner's name in the petitioner's own handwriting and shall write the petitioner's address and the date on which the petitioner signed.

(3) The petition shall be filed with the board of directors of the electric cooperative and an election shall be held not less than 60 days nor more than 90 days from the date on which the petition was filed.

(4) On the election date, the board of directors of the electric cooperative shall mail by first-class mail to each member of the electric cooperative a ballot containing the following language:

Shall . . . (name of the electric cooperative) be subject to rate regulation by the Iowa Utilities Board? Yes/No.

(5) The ballot shall also contain a self-addressed envelope to return the ballot to the secretary of the board of directors of the electric cooperative. The ballot shall be dated when received by the secretary. The ballot must be received by the secretary not more than 30 days after it was mailed to the members. The election procedure shall require a signature form for verification, but shall not allow the signature to be traced to the vote of a particular member.

(6) The issue in the election shall be decided by a majority of the members voting, whose ballots are received by the secretary. Fifty-one percent of the membership shall constitute a quorum for the election. The secretary shall certify the results of the election and file the results with the board within 30 days of the election.

b. Procedure for election by board. Upon the resolution of a majority of the board of directors of an electric cooperative, the board of directors may elect to be subject to the jurisdiction of the utilities board. The secretary of the board of directors of the electric cooperative shall file a certified copy of the resolution with the board of directors within 30 days of the adoption of the resolution.

c. Effective date. Upon the resolution of a majority of the board of directors of an electric cooperative or when a majority of the members voting vote to place the cooperative under the jurisdiction of the board, the utilities board shall determine an effective date of its jurisdiction, which shall be not more than 90 days from the election. On and after the effective date of jurisdiction, the cooperative shall be subject to regulation by the utilities board.

d. Prohibited acts. Funds of an electric cooperative shall not be used to support or oppose the issue presented in the election. Nothing shall prohibit a letter of explanation and direction from being enclosed with the ballot.

e. Procedure for exemption. After the cooperative has been under the jurisdiction of the board for two years, the members or the board of directors of the electric cooperative may elect to remove the

UTILITIES DIVISION[199](cont'd)

cooperative from under the jurisdiction of the board as allowed by Iowa Code section 476.1A(4). If the membership elected to have the cooperative's rates regulated by the board, only the membership may elect to exempt the cooperative from the rate regulation authority of the board.

f. Frequency of election. An electric cooperative shall not conduct more than one election pursuant to this subrule within a two-year period.

26.16(2) Rate increase requirements—rural electric cooperatives. The board's consideration of the fair and reasonable level of rates necessary for rural electric cooperatives that have elected to be subject to rate regulation by the board shall include the following:

a. Minimum filing requirements. An electric cooperative subject to rate regulation proposing changes in tariffs or rates which relate to a general increase in revenue shall prepare and file with its proposed tariff evidence in the form of testimony and exhibits.

b. Factors relating to value. A statement showing the original cost of the items of plant and facilities, for the beginning and end of the last available calendar year, and any other factors relating to the value of the items of plant and facilities the utility deems pertinent to the board's consideration, together with information setting forth budgeting accounts for the construction of scheduled improvements.

c. Comparative operating data. Information covering the test year.

(1) Operating revenue and expenses by primary account.

(2) Balance sheet at beginning and end of test year.

d. Test year and pro forma income statements. Information setting forth revenues, expenses, net operating income of the last available calendar year, the adjustment of unusual items, and by adjustment to reflect operations for a full year under existing and proposed rates. The format of the information to be filed is available on the board's website at iub.iowa.gov.

e. After investigation of the historic test year results and pro forma adjustments thereto, the board shall determine the extent to which the applicant has met the following conditions:

(1) Revenues are sufficient for a times interest earned ratio between 1.5 and 3.0 for coverage of interest on outstanding utility short-term and long-term debt; or

(2) Revenues are sufficient for a debt service coverage ratio between 1.25 and 2.5 on utility long-term debt; or

(3) Utility operating margins are sufficient for a ratio between 1.5 and 2.5 of utility operating margins to interest on utility short-term and long-term debt; or

(4) Utility operating margins are sufficient for a ratio between 1.25 and 1.75 of utility operating margins plus utility depreciation, all divided by utility long-term interest plus principal; and

(5) Utility operating margins are sufficient to return utility patronage capital credits accumulated from utility operating margins, with a retention of such credits of no more than 20 years allowed, subject to modification where compelling circumstances require time period adjustments.

f. In addition to the information in subrule 26.12(2), evidence of the necessity for the requested rate relief may include, but need not be limited to, utility operating margins which will enable the cooperative to attain and maintain a reasonable ratio of utility long-term debt to retained utility operating margins. The cooperative's authorized construction program and an official policy statement of the cooperative's board of directors on a desired ratio will be considered factors in the determination of the reasonableness of any such ratio.

g. The board's initial decision will become final 15 days following its date of issuance; however, if filed within that 15-day period, allegations of error by the cooperative or any intervenor as to the board's findings of fact, together with a statement of readiness to present testimony, will serve to hold final disposition in abeyance pending the scheduling and completion of an evidentiary hearing. When such allegation is made, testimony in support of such position must be filed within 30 days of such filing. Upon receipt of the testimony, the board will schedule additional filing dates and set the matter for hearing. When a hearing is scheduled, final disposition of the rate proceeding will be accomplished

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under the contested case provisions of Iowa Code chapter 17A and the board's rules and regulations thereunder.

These rules are intended to implement Iowa Code sections 476.2, 476.3, 476.6, 476.7, and 476.33.

[Filed 4/19/21, effective 6/23/21]

[Published 5/19/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/19/21.

ARC 5630C

WORKERS' COMPENSATION DIVISION[876]

Adopted and Filed

Rule making related to payroll tax tables

The Workers' Compensation Commissioner hereby amends Chapter 8, "Substantive and Interpretive Rules," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 86.8.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 85.61.

Purpose and Summary

The purpose of this rule making is to update references to the tables which determine payroll taxes.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 24, 2021, as **ARC 5521C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Commissioner on April 28, 2021.

Fiscal Impact

The Commissioner is responsible for updating the tax tables annually. 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

This amendment does not include a waiver provision because rule 876—12.4(17A) provides the specific situations for waiver of Workers' Compensation Division rules.

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

WORKERS' COMPENSATION DIVISION[876](cont'd)

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 June 23, 2021.

The following rule-making action is adopted:

Amend rule 876—8.8(85,17A) as follows:

876—8.8(85,17A) Payroll tax tables. Tables for determining payroll taxes to be used for the period July 1, ~~2020~~ 2021, through June 30, ~~2021~~ 2022, are the tables in effect on July 1, ~~2020~~ 2021, for computation of:

1. Federal income tax withholding according to the percentage method of withholding for weekly payroll period. (Federal Income Tax Withholding Methods, Publication 15-T [~~2019~~ 2021].)

2. ~~Iowa income tax withholding for weekly pay period~~ Iowa individual income tax withholding formula. (Iowa Department of Revenue ~~Iowa Withholding Tax Rate Tables~~ [Effective January 1, ~~2020~~ 2021].)

3. Social Security and Medicare withholding (FICA) at the rate of 7.65 percent. (Internal Revenue Service, Circular E, Employer's Tax Guide, Publication 15 [~~2019~~ 2020].)

This rule is intended to implement Iowa Code section 85.61(6).

[Filed 4/28/21, effective 6/23/21]

[Published 5/19/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/19/21.

PUBLIC HEARINGS: POSSIBLE USE OF TELEPHONIC OR ELECTRONIC FORMAT DUE TO COVID-19

To protect public health and promote efficient government operations during the COVID-19 outbreak, the format of a public hearing on a Notice of Intended Action (NOIA) scheduled and published in the Iowa Administrative Bulletin (IAB) may be changed, without further publication in the IAB, from an in-person hearing at a physical location to a hearing conducted solely via telephonic or electronic means. For information on whether the format of a public hearing as published in the IAB has changed and how to participate telephonically or electronically in such a hearing, see the Internet site of the relevant agency or contact the agency directly using the contact information published in the NOIA. See also section 108 of the Governor's proclamation of disaster emergency issued April 30, 2021: governor.iowa.gov/sites/default/files/documents/Public%20Health%20Proclamation%20-%202021.04.30.pdf.