



IOWA ADMINISTRATIVE BULLETIN

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Pages 549 to 698

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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]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

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

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CITATION of Administrative Rules

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

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

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

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

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

Schedule for Rule Making 2008

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. 26 '07	Jan. 16 '08	Feb. 5 '08	Feb. 20 '08	Feb. 22 '08	Mar. 12 '08	Apr. 16 '08	July 14 '08
Jan. 11	Jan. 30	Feb. 19	Mar. 5	Mar. 7	Mar. 26	Apr. 30	July 28
Jan. 25	Feb. 13	Mar. 4	Mar. 19	Mar. 21	Apr. 9	May 14	Aug. 11
Feb. 8	Feb. 27	Mar. 18	Apr. 2	Apr. 4	Apr. 23	May 28	Aug. 25
Feb. 22	Mar. 12	Apr. 1	Apr. 16	Apr. 18	May 7	June 11	Sep. 8
Mar. 7	Mar. 26	Apr. 15	Apr. 30	May 2	May 21	June 25	Sep. 22
Mar. 21	Apr. 9	Apr. 29	May 14	***May 14***	June 4	July 9	Oct. 6
Apr. 4	Apr. 23	May 13	May 28	May 30	June 18	July 23	Oct. 20
Apr. 18	May 7	May 27	June 11	June 13	July 2	Aug. 6	Nov. 3
May 2	May 21	June 10	June 25	***June 25***	July 16	Aug. 20	Nov. 17
May 14	June 4	June 24	July 9	July 11	July 30	Sep. 3	Dec. 1
May 30	June 18	July 8	July 23	July 25	Aug. 13	Sep. 17	Dec. 15
June 13	July 2	July 22	Aug. 6	Aug. 8	Aug. 27	Oct. 1	Dec. 29
June 25	July 16	Aug. 5	Aug. 20	***Aug. 20***	Sep. 10	Oct. 15	Jan. 12 '09
July 11	July 30	Aug. 19	Sep. 3	Sep. 5	Sep. 24	Oct. 29	Jan. 26 '09
July 25	Aug. 13	Sep. 2	Sep. 17	Sep. 19	Oct. 8	Nov. 12	Feb. 9 '09
Aug. 8	Aug. 27	Sep. 16	Oct. 1	Oct. 3	Oct. 22	Nov. 26	Feb. 23 '09
Aug. 20	Sep. 10	Sep. 30	Oct. 15	Oct. 17	Nov. 5	Dec. 10	Mar. 9 '09
Sep. 5	Sep. 24	Oct. 14	Oct. 29	Oct. 31	Nov. 19	Dec. 24	Mar. 23 '09
Sep. 19	Oct. 8	Oct. 28	Nov. 12	***Nov. 12***	Dec. 3	Jan. 7 '09	Apr. 6 '09
Oct. 3	Oct. 22	Nov. 11	Nov. 26	***Nov. 26***	Dec. 17	Jan. 21 '09	Apr. 20 '09
Oct. 17	Nov. 5	Nov. 25	Dec. 10	***Dec. 10***	Dec. 31	Feb. 4 '09	May 4 '09
Oct. 31	Nov. 19	Dec. 9	Dec. 24	***Dec. 24***	Jan. 14 '09	Feb. 18 '09	May 18 '09
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PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
8	Friday, September 19, 2008	October 8, 2008
9	Friday, October 3, 2008	October 22, 2008
10	Friday, October 17, 2008	November 5, 2008

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

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

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

AGENCY	HEARING LOCATION	DATE AND TIME
DENTAL BOARD[650]		
Guidelines on sedation, amendments to ch 29 IAB 8/27/08 ARC 7107B	Board Conference Room, Suite D 400 SW 8th St. Des Moines, Iowa	September 16, 2008 10 a.m.
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Targeted jobs withholding tax credit program, 71.1 to 71.6, IAB 8/13/08 ARC 7068B	Iowa Room, Second Floor 200 E. Grand Ave. Des Moines, Iowa	September 10, 2008 2:30 to 4:30 p.m.
EDUCATION DEPARTMENT[281]		
Quality faculty committee, 21.3, 21.31, 21.32, 24.3, 24.5 IAB 8/27/08 ARC 7090B (ICN NETWORK)	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 19, 2008 9 to 11 a.m.
	Room 410, Building D Northwest Iowa Community College 603 W. Park St. Sheldon, Iowa	September 19, 2008 9 to 11 a.m.
	Room 106, Activity Center North Iowa Area Community College 500 College Dr. Mason City, Iowa	September 19, 2008 9 to 11 a.m.
	Room 203B, Linn Hall Kirkwood Community College 6301 Kirkwood Blvd. SW Cedar Rapids, Iowa	September 19, 2008 9 to 11 a.m.
	Room 306, Clarinda Center Iowa Western Community College 923 E. Washington Clarinda, Iowa	September 19, 2008 9 to 11 a.m.
	Room 107, Technical Center Southwestern Community College 1501 W. Townline Rd. Creston, Iowa	September 19, 2008 9 to 11 a.m.
	Videoconferencing & Training Center Indian Hills Community College 651 Indian Hills Dr. Ottumwa, Iowa	September 19, 2008 9 to 11 a.m.
	Room 101 Northeast Iowa Community College 700 Main St. Dubuque, Iowa	September 19, 2008 9 to 11 a.m.
	Western Iowa Tech. Community College 11 N. 35th St. Denison, Iowa	September 19, 2008 9 to 11 a.m.

AGENCY	HEARING LOCATION	DATE AND TIME
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Wastewater disposal systems, amendments to chs 60, 62 to 64 IAB 9/10/08 ARC 7152B	Meeting Room, Public Library 424 Central Ave. Fort Dodge, Iowa	October 7, 2008 6 p.m.
	Room A, Public Library 123 S. Linn St. Iowa City, Iowa	October 8, 2008 7 p.m.
	Conference Rooms 5E and 5W Wallace State Office Bldg. Des Moines, Iowa	October 9, 2008 1:30 p.m.
HISTORICAL DIVISION[223]		
Emergency grant program for disaster relief, 50.2, 50.8 IAB 8/27/08 ARC 7084B (See also ARC 7085B)	Tone Board Room, Historical Bldg. 600 E. Locust St. Des Moines, Iowa	September 17, 2008 10 a.m.
INSURANCE DIVISION[191]		
Viatical and life settlements, amendments to ch 48 IAB 9/10/08 ARC 7154B (See also ARC 7153B herein)	330 Maple St. Des Moines, Iowa	September 30, 2008 10 a.m.
Annual financial reporting rule, ch 98 IAB 9/10/08 ARC 7124B	330 Maple St. Des Moines, Iowa	September 30, 2008 10 a.m.
IOWA FINANCE AUTHORITY[265]		
Waiver of up-to-date title plant requirement, 9.7 IAB 8/27/08 ARC 7115B	2015 Grand Ave. Des Moines, Iowa	September 16, 2008 1 p.m.
NATURAL RESOURCE COMMISSION[571]		
Daily bag and possession limit—bluegill and crappie, 81.1, 81.2(12) IAB 9/10/08 ARC 7146B	Senior Citizen Center 411 Walnut St. Atlantic, Iowa	September 30, 2008 7 p.m.
	Hartman Reserve Nature Center 657 Reserve Dr. Cedar Falls, Iowa	October 1, 2008 7 p.m.
	Dickinson County Community Bldg. 1602 15th St. Spirit Lake, Iowa	October 2, 2008 7 p.m.
	Fourth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 3, 2008 3 p.m.
	Pioneer Ridge Nature Center 1339 US Hwy 63 Bloomfield, Iowa	October 9, 2008 7 p.m.
Nonresident deer hunting—special licenses, 94.6(3) IAB 9/10/08 ARC 7148B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 21, 2008 10 a.m.

AGENCY	HEARING LOCATION	DATE AND TIME
NATURAL RESOURCE COMMISSION[571] (Cont'd)		
Wild turkey spring hunting—special licenses, 98.11(3) IAB 9/10/08 ARC 7150B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 21, 2008 10 a.m.
Wild turkey fall hunting—special licenses, 99.2(4) IAB 9/10/08 ARC 7151B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 21, 2008 10 a.m.
Depredation permit fees, 106.11(4)“e” IAB 9/10/08 ARC 7147B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 21, 2008 10 a.m.
NURSING BOARD[655]		
Administration of anesthetic agents, 6.2(6), 6.4 IAB 7/30/08 ARC 7009B	Des Moines West Room, Holiday Inn 1050 6th Ave. Des Moines, Iowa	September 10, 2008 6 p.m.
PROFESSIONAL LICENSURE DIVISION[645]		
Board of optometry, rescind chs 179, 184; amend chs 180 to 183 IAB 8/27/08 ARC 7113B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	September 16, 2008 8:30 to 9 a.m.
Board of respiratory care, rescind chs 260, 264; amend chs 261 to 263 IAB 8/27/08 ARC 7103B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	September 16, 2008 9 to 9:30 a.m.
REAL ESTATE COMMISSION[193E]		
Continuing education attendance requirements, 16.7, 17.2(4) IAB 8/27/08 ARC 7087B	Second Floor Conference Room 1920 SE Hulsizer Ankeny, Iowa	September 16, 2008 10 a.m.
Approval standards for courses of instruction, 17.7(3) IAB 8/27/08 ARC 7089B	Second Floor Conference Room 1920 SE Hulsizer Ankeny, Iowa	September 16, 2008 10 a.m.

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

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

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

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

The following list will be updated as changes occur:

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AGENCY: Iowa Homeland Security and Emergency Management Division (HSEMD)		
PROGRAM	ELIGIBLE APPLICANTS	TYPES OF PROJECTS
<p>Fiscal Year (FY) 2009 Grant Unified Hazard Mitigation Assistance (HMA) Program which includes Pre-Disaster Mitigation (PDM), Flood Mitigation Assistance (FMA), Severe Repetitive Loss (SKL), and Repetitive Flood Claims (RFC) Authorized by §203 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (Stafford Act), 42 U.S.C. 5133, FMA by Section 1366 of the National Flood Insurance Act of 1968, as amended (NFIA)(42 USC §4101c)with the goal of reducing or eliminating claims under the NFIP. SRL and RFC are authorized by Sections 1361A and 1323, respectively, of the NFLA, as amended by the Bunning-Bereuter-Blumenauer Flood Ins. Reform Act of 2004 (NFIRA), 42 U.S.C. §4102a. 4030) to provide funding to reduce or eliminate the long-term risk of flood damage to repetitive loss structures insured under the NFIP.</p>	<ul style="list-style-type: none"> • State Agencies and Local Governments • Federally recognized Indian Tribal governments, to include state recognized Indian Tribes, and Authorized Tribal Organizations. • Private non-profit organizations are not eligible to apply as sub-applicants; however, they may request a local government to submit an application for their proposed activity on their behalf. • All applicants must be participating in the NFIP if they have been identified as having a Special Flood Hazard Area. The Community must not be on probation, suspended or withdrawn from the NFIP. • All Applicants for a project grant MUST have a FEMA-approved local hazard mitigation plan. <p>To learn more about the HMA program, use the following link on HSEMD's website:</p> <p>http://www.iowahomelandsecurity.org/Partners/CountyCoordinators/Grants/tabid/134/Default.aspx</p> <p>Applicants must complete an application through the Electronic Grant (e-Grants) System. Applications must be submitted for State review via e-grants by November 3, 2008. To learn more about the e-grant system use the following link on HSEMD's website:</p> <p>http://www.iowahomelandsecurity.org/Portals/0/CountyCoordinators/Grants/egrant%20guidance.pdf</p> <p>For additional information please contact:</p> <p>Linda Roose 515-725-3212 Jim Russell 515-725-3217 John Wageman 515-725-3225 Sherry McCloskey 515-725-3283</p> <p>Iowa Homeland Security and Emergency Management Division 7105 NW 70th Ave., Camp Dodge, Bldg W4 Johnston, Iowa 50131</p>	<p>Eligible Project Activities Mitigation projects must focus on natural hazards. Examples include (but not limited to):</p> <ul style="list-style-type: none"> • Acquisition or relocation of hazard-prone property for conversion to open space in perpetuity; • Construction of safe rooms (tornado and severe wind shelters); • Structural and non-structural retrofitting (e.g., storm shutters, hurricane clips, bracing systems) of existing structures to meet or exceed applicable building codes relative to hazard mitigation; • Hydrologic and hydraulic studies/analyses, engineering studies, and drainage studies for the purpose of project design and feasibility in conjunction with a project. • Protective measures for utilities; water and sanitary sewer systems and/or infrastructure; • Storm water management projects (e.g., culverts, floodgates, retention basins) to reduce or eliminate long-term risk from flood hazards; and • Localized flood control projects, such as certain ring levees and floodwall systems, that are designed specifically to protect critical facilities and do not constitute a section of a larger flood control system. <p>Planning Application The outcome of a mitigation planning grant award must be a FEMA-approved hazard mitigation plan that complies with the requirements of 44 CFR Part 201. The planning grant deliverable can be a new hazard mitigation plan or an update of an already FEMA-approved hazard mitigation plan.</p> <p>PROJECT TECHNICAL ASSISTANCE: Technical assistance for Engineering Feasibility, Benefit-Cost Analysis and Environmental/Historic Preservation compliance is available through FEMA.</p> <p>TECHNICAL ASSISTANCE HELPDESK: Phone: (866)222-3580 (toll free) E-mail: enghelpline@dhs.gov ehelpline@dhs.gov bchelpline@dhs.gov</p>

ARC 7128B**ELDER AFFAIRS DEPARTMENT[321]****Notice of Termination**

Pursuant to the authority of Iowa Code section 231.14, the Elder Affairs Department terminates the rule making initiated by its Notice of Intended Action published in the July 2, 2008, Iowa Administrative Bulletin as **ARC 6919B** to adopt new Chapter 14, "Family Caregiver Program," Iowa Administrative Code.

The Notice proposed a new chapter to provide support services for family caregivers of persons aged 60 and older and for grandparents or older individuals aged 55 and older who are relative caregivers of children. It also established standards for those services and included a severability rule.

The Department has made changes to the chapter proposed in **ARC 6919B** based on written and oral comments from the federal Administration on Aging, the general public and other organizations. Therefore, the Department is terminating the rule making commenced in **ARC 6919B** and will renounce the rules.

ARC 7129B**ELDER AFFAIRS DEPARTMENT[321]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 231.14, the Elder Affairs Department hereby gives Notice of Intended Action to amend Chapter 16, "Senior Living Coordinating Unit," Iowa Administrative Code.

The amendments allow the Senior Living Coordinating Unit to appoint work groups to research and make recommendations on issues to be considered by the Unit and reduce the number of required meetings.

Any interested person may make written suggestions or comments on these proposed amendments before 4:30 p.m. on October 1, 2008. Such written comments should be directed to the Department of Elder Affairs, Jessie M. Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319; E-mailed to danika.rosales@iowa.gov; or faxed to (515)725-3300.

These amendments are intended to implement Iowa Code chapters 21, 231 and 249H.

The following amendments are proposed.

ITEM 1. Adopt the following **new** subrule 16.2(7):

16.2(7) The unit may, on an as-needed basis, appoint work groups related to specific issues.

ITEM 2. Amend rule 321—16.4(21,231,249H) as follows:

321—16.4(21,231,249H) Meetings. The unit shall meet a minimum of ~~six~~ four times a year. Meeting dates shall be set by members of the unit at the first meeting following July 1 of each year. The chairperson may call a special meeting upon five days' notice.

ARC 7133B

ELDER AFFAIRS DEPARTMENT[321]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 231.14 and Iowa Code chapters 231E and 633, the Elder Affairs Department hereby gives Notice of Intended Action to adopt new Chapter 22, "Office of Substitute Decision Maker," Iowa Administrative Code.

This proposed new chapter implements the office of substitute decision maker as created in Iowa Code chapter 231E and establishes standards and procedures for those appointed as substitute decision makers. It also establishes the qualifications of consumers eligible for services.

Any interested person may make written suggestions or comments on the proposed rules on or before October 1, 2008. Such written suggestions or comments should be directed to the Department of Elder Affairs, Jessie M. Parker Building, 510 E. 12th Street, Des Moines, Iowa 50319; E-mailed to danika.rosales@iowa.gov; or faxed to (515)242-3300.

These rules are intended to implement Iowa Code chapters 231E and 633.

The following amendment is proposed.

Adopt the following **new** 321—Chapter 22:

CHAPTER 22
OFFICE OF SUBSTITUTE DECISION MAKER

321—22.1(231E,633) Purpose. This chapter implements the office of substitute decision maker as created in Iowa Code chapter 231E and establishes standards and procedures for those appointed as substitute decision makers. It also establishes the qualifications of consumers eligible for services.

321—22.2(231E,633) Definitions. Words and phrases used in this chapter are as defined in 321 IAC 1 unless the context indicates otherwise. The following definitions also apply to this chapter:

"*Active*" means assuming the role of attorney-in-fact upon the triggering event specified in a power of attorney document.

"*Assessment*" means a comprehensive, in-depth evaluation to identify an individual's current situation, ability to function, strengths, problems, and care needs in the following major functional areas: physical health, medical care utilization, activities of daily living, instrumental activities of daily living, mental and social functioning, financial resources, physical environment, and utilization of services and support.

"*Case opening*" means the internal administrative process used by the state office in establishing a temporary or ongoing case, including, but not limited to: collecting and reviewing necessary financial, legal, medical or social history information pertaining to the consumer or the consumer's estate; opening bank or other financial accounts on the consumer's behalf; assigning substitute decision makers to perform substitute decision-making responsibilities for the consumer; collecting and receiving property of the consumer; creating files, summaries and other documents necessary for the management of the consumer or the consumer's estate; and any other activities related to preparing for and assuming the responsibilities as a substitute decision maker.

"*Consumer*" as used in this chapter means any individual in need of substitute decision-making services.

"*Court*" means the probate court having jurisdiction over the consumer.

"*Department*" means the department of elder affairs established in Iowa Code section 231.21.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

“*Estate*” means all property owned by the consumer including, but not limited to: all cash, liquid assets, furniture, motor vehicles, and any other tangible personal and real property.

“*Fee*” or “*fees*” means any costs assessed by the state office against a consumer or a consumer’s estate for substitute decision-making services or a one-time case-opening fee for establishment of a case.

“*Fiduciary*” means the person or entity appointed as the consumer’s substitute decision maker and includes a person or entity acting as personal representative, guardian, conservator, representative payee, attorney-in-fact or trustee of any trust.

“*Financial hardship*” means a living consumer who has a total value in liquid assets below \$6,500; or the consumer’s estate proving otherwise inadequate to obtain or provide for physical or mental care or treatment, assistance, education, training, sustenance, housing, or other goods or services vital to the well-being of the consumer or the consumer’s dependents.

“*Inventory*” means a detailed list of the estate.

“*Liquid assets*” means the portion of a consumer’s estate comprised of cash, negotiable instruments, or other similar property that is readily convertible to cash and has a readily ascertainable fixed value, including but not limited to: savings accounts, checking accounts, certificates of deposit, money market accounts, corporate or municipal bonds, U.S. savings bonds, stocks or other negotiable securities, and mutual fund shares.

“*Net proceeds*” means the value of the property at the time of sale minus taxes, commissions and other necessary expenses.

“*Program*” means the services offered by the office of substitute decision maker.

“*Record*” means any information obtained by the state or local office in the performance of its duties.

“*Substitute decision maker*” or “*SDM*” means a person providing substitute decision-making services pursuant to Iowa Code chapter 231E.

321—22.3(231E,633) Substitute decision maker qualifications. All SDMs shall have graduated from an accredited four-year college or university and shall be certified by the National Guardianship Association within 12 months of assuming duties as an SDM. This certification shall be kept current while the person is serving as an SDM.

321—22.4(231E,633) Ethics and standards of practice. The state office adopts the National Guardianship Association Standards of Practice adopted in 2000, including any subsequent amendments thereto, as a statement of the best practices and the highest quality of practice for persons serving as guardians or conservators. The adoption of standards of practice in this document is not intended to amend or diminish the statutory scheme, but rather to supplement and enhance the understanding of the statutory obligations to be met by the SDM when serving as an SDM. Subsequent to appointment to serve a consumer, the SDM shall perform all duties imposed by the court or other entity having jurisdiction and imposed by applicable law and, as appropriate, shall utilize standards found in the most current edition of the National Guardianship Association Standards of Practice.

321—22.5(231E,633) Staffing ratio. SDMs shall be responsible for no more than ten consumers per full-time equivalent position at any one time. The state office shall notify the state court administrator when the maximum number of appointments is reached.

22.5(1) In its sole discretion, if the state office determines that due to the complexity of current cases SDMs would have significant difficulty meeting the needs of consumers, the state office may choose to temporarily suspend acceptance of appointments. The state office shall notify the state court administrator of the suspension of services

22.5(2) In the state office’s sole discretion, the SDM may exceed staffing ratios under the following circumstances:

- a. A priority situation exists as defined in subrule 22.7(2), and
- b. Acceptance of case(s) will not adversely affect services to current consumers.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

321—22.6(231E,633) Conflict of interest—state office. A conflict of interest arises when the SDM has any personal or agency interest that is or may be perceived as self-serving or adverse to the position or best interest of the ward. When assigning a consumer to an SDM, all reasonable efforts shall be made to avoid an actual conflict of interest or the appearance of a conflict of interest.

22.6(1) The assigned SDM shall not:

- a. Provide direct services to the consumer receiving substitute decision-making services;
- b. Have an affiliation with or financial interest in the consumer's estate;
- c. Employ friends or family to provide services for a fee; or
- d. Solicit or accept incentives from service providers.

22.6(2) The SDM shall be independent from all service providers, thus ensuring that the SDM remains free to challenge inappropriate or poorly delivered services and to advocate on behalf of the ward.

321—22.7(231E,633) Consumers eligible for services. The state office shall seek to restrict appointments to only those necessary. The state office will not accept an appointment based upon a voluntary petition.

22.7(1) In order to qualify for services, the consumer shall meet all of the following criteria:

- a. A resident of the state of Iowa;
- b. Aged 18 or older;
- c. Does not have a willing and responsible fiduciary to serve as an SDM;
- d. Capable of benefiting from the services of an SDM;
- e. Receipt of SDM services is in the best interest of the consumer; and
- f. No alternative SDM resources are available.

22.7(2) The following cases shall be given priority:

- a. Those involving abuse, neglect or exploitation;
- b. Those in which a critical medical decision must be made; or
- c. Any situation which may cause serious or irreparable harm to the consumer's mental or physical health or estate.

321—22.8(231E,633) Application and intake process—guardianship, conservatorship, representative payee and personal representative.

22.8(1) Any person may request an application for services. Applications are available through the state office. Completed applications shall be submitted to the Office of Substitute Decision Maker, Jessie M. Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025. Incomplete applications will not be considered. Communication with the state office or the submission of an application does not imply an appointment and does not create any type of fiduciary relationship between the state office and the consumer.

22.8(2) The state office shall make a determination regarding eligibility of the consumer and acceptance or denial of the case based on a review of the completed application.

22.8(3) The state office shall grant or deny an application for services as soon as practicable, but, in any event, shall do so within 60 days of receipt of the application.

22.8(4) Failure of the state office to grant or deny an application within the specified time period shall be deemed a denial of the application by the state office.

321—22.9(231E,633) Application and intake process—power of attorney.

22.9(1) Any power of attorney that names the state office as attorney-in-fact is not effective unless the state office consents to such appointment.

22.9(2) Any person may request an application for services. Applications are available through the state office. Completed applications shall be submitted to the Office of Substitute Decision Maker, Jessie M. Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025. Incomplete applications will not be considered. Communication with the state office or the submission of an application does not imply an appointment and does not create any type of fiduciary relationship between the state office and the consumer.

22.9(3) The state office shall make a determination regarding eligibility of the consumer and acceptance or denial of the case based on a review of the completed application.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

22.9(4) The state office shall grant or deny an application for services as soon as practicable, but, in any event, shall do so within 60 days of receipt of the application.

22.9(5) Failure of the state office to grant or deny an application within the specified time period shall be deemed a denial of the application by the state office.

321—22.10(231E,633) Case records.

22.10(1) A case record must be established for each consumer. At a minimum, the case record must contain:

- a. Copies of the assessments, medical records, and updates, if any;
- b. A separate financial management folder containing an inventory, individual financial management plan, a record of all financial transactions made on behalf of the consumer by the SDM, copies of receipts for all expenditures made by the SDM on behalf of the consumer, and copies of all other documents pertaining to the consumer's financial situation as required by the state office;
- c. Itemized statements of costs incurred in the provision of services for which the SDM received court-authorized reimbursement directly from the consumer's estate; and
- d. Other information as required by the state office.

22.10(2) All case records maintained by the SDM shall be confidential as provided in Iowa Code section 231E.4(6) "g."

321—22.11(231E,633) Confidentiality. Notwithstanding Iowa Code chapter 22, the following provisions shall apply to records obtained by SDMs in the course of their duties.

22.11(1) Records or information obtained for use by an SDM is confidential. All records or information obtained from federal, state or local agencies and health or mental care service providers shall be managed by the state office with the same degree of confidentiality required by law or the policy utilized by the entity having control of such records or information. Such records or information shall not be disseminated without written permission from the entity having control of such records or information.

22.11(2) In its sole discretion, the state office may disclose a record obtained in the performance of its duties if release of the record is necessary and in the best interest of the consumer. Disclosure of a record under this rule does not affect the confidential nature of the record.

22.11(3) Information may be redacted so that personally identifiable information is kept confidential.

22.11(4) Confidential information may be disclosed to employees and agents of the department as needed for the performance of their duties. The state office shall determine what constitutes legitimate need to use confidential records. Individuals affected by this rule may include paid staff and volunteers working under the direction of the department and commission members.

22.11(5) Information concerning program expenditures and client eligibility may be released to staff of the state executive and legislative branches who are responsible for ensuring that public funds have been managed correctly. This same information may also be released to auditors from federal agencies when those agencies provide program funds.

22.11(6) The state office may enter into contracts or agreements with public or private entities in order to carry out the state office's official duties. Information necessary to carry out these duties may be shared with these entities. The state office may disclose protected health information to an entity under contract and may allow an entity to create or receive protected health information on the state office's behalf if the state office obtains satisfactory assurance that the entity will appropriately safeguard the information.

22.11(7) Release for judicial and administrative proceedings.

- a. Information shall be released to the court as required by law.
- b. The state office shall disclose protected health information in the course of any judicial or administrative proceeding in response to an order of a court or administrative tribunal. The state office shall disclose only the protected health information expressly authorized by the order and when the court makes the order knowing that the information is confidential.
- c. If a court subpoenas other information that the state office is prohibited from releasing, the state office shall advise the court of the statutory and regulatory provisions against disclosure of the information and shall disclose the information only on order of the court.

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22.11(8) Information concerning suspected fraud or misrepresentation in order to obtain SDM services or assistance may be disclosed to law enforcement authorities.

22.11(9) Information concerning consumers may be shared with service providers under contract.

a. Information concerning the consumer's circumstances and need for services may be shared with prospective service providers to obtain placement for the consumer. If the consumer is not accepted for service, all written information released to the service provider shall be returned to the state office.

b. When the information needed by the service provider is mental health information or substance abuse information, the consumer's specific consent is required.

22.11(10) After the state office receives a request for access to a confidential record, and before the state office releases such a record, the state office may make reasonable efforts to promptly notify any person who is a subject of that record, who is identified in that record, or whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

321—22.12(231E,633) Termination or limitation. Either an SDM or the state office may seek the termination or limitation of an SDM's duties under circumstances including but not limited to the following:

1. The SDM's services are no longer needed or do not benefit the consumer;
2. The consumer's assets allow for hiring a paid substitute decision maker;
3. A conflict of interest or the appearance of a conflict of interest arises;
4. The state office lacks adequate staff or financial resources;
5. The consumer moves outside the service area;
6. The state office is no longer the last resort for assistance;
7. The SDM withdraws from the service agreement;
8. Termination of the program by law; or
9. Other circumstances which indicate a need for termination or limitation.

321—22.13(231E,633) Service fees.

22.13(1) The state SDM and local SDM shall be entitled to reasonable compensation for their substitute decision-making services as determined by using the following criteria:

- a.* Such compensation shall not exceed actual costs.
- b.* Fees may be adjusted or waived based upon the ability of the consumer to pay, upon whether financial hardship to the consumer would result, or upon a finding that collection of such fees is not economically feasible.
- c.* Fees shall be as established in rule 22.14(231E,633). The state office may collect a fee from the estate of a deceased consumer.

22.13(2) Fees shall not be assessed on income or support derived from Medicaid. Income or support derived from Social Security and other federal benefits shall be subject to assessment unless the funds have been expressly designated for another purpose. Written notice shall be given to the consumer prior to the collection of fees. The written notice shall describe the type and amount of fees assessed.

22.13(3) Case-opening fees. All consumers, except those receiving representative payee services, with liquid assets valued at \$6,500 or more on the date of the SDM's appointment shall be assessed a one-time case-opening fee for establishment of the case by the state office. Case-opening fees shall be assessed for each appointment, including a reappointment more than six months after the termination of a prior appointment as SDM for the same consumer which involves similar powers and duties.

22.13(4) Monthly fees.

a. A monthly fee for SDM services other than the sale or management of real or personal property shall be assessed against all consumers with liquid assets valued at \$6,500 or more on any one day during the month. Monthly fees shall be collected by the state office on a pro rata basis on the first of each month. A monthly fee shall be assessed when an SDM is appointed to guardianship, conservatorship, or representative payee duties.

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b. Under a power of attorney, monthly fees shall be assessed once the state office assumes an active role as attorney-in-fact. The state office shall evaluate a consumer’s estate annually or as necessary to determine the need for an increase or decrease in the monthly fee.

c. In all cases where the state office serves as representative payee under programs administered by the Social Security Administration, Railroad Retirement Board, or similar programs, the monthly fee for providing representative payee services shall be as established by the federal governmental agency which appoints the representative payee.

22.13(5) Additional fees.

a. Fees for the sale of a consumer’s real or personal property shall be in addition to case-opening and monthly service fees.

b. Fees for the sale of real or personal property shall be 10 percent of the net proceeds resulting from the sale of the property and shall be paid at the time the sale is completed.

c. Such further allowances as are just and reasonable may be made by the court to SDMs for actual, necessary and extraordinary expenses and services.

22.13(6) Preparation and filing of state or federal income tax returns. Fees for the preparation and filing of a consumer’s state or federal income tax return may be assessed at the time of filing of a return for each tax year in which a return is filed.

22.13(7) Settlement of a personal injury cause of action. Fees for the settlement of a consumer’s personal injury cause of action may be collected upon court approval of the settlement.

22.13(8) Establishment of a recognized trust. Fees for establishing a recognized trust for the purpose of conserving or protecting a consumer’s estate and for petitioning the court for the approval of the trust may be collected at the time of court approval of establishment of the trust.

22.13(9) Extraordinary expenses and services. The state office may collect fees pursuant to court order for other actual, necessary and extraordinary expenses or services. Necessary and extraordinary services shall be construed to also include services in connection with real estate, tax matters, and litigated matters.

22.13(10) Impact on creditors. The state office may collect fees even when claims of creditors of the consumer may be compromised.

321—22.14(231E,633) Fee schedule. The following fees are applicable to services provided by an SDM unless reduced or waived pursuant to paragraph 22.13(1)“b.”

Action or Responsibility	Fee
One-time case opening:	
Guardianship	\$200
Conservatorship	\$300
Guardianship and conservatorship	\$500
Durable power of attorney for health care	\$ 60
Durable power of attorney for financial matters	\$100
Power of attorney for health care and financial matters	\$160
Monthly SDM services for conservator, durable power of attorney for health care and general power of attorney for financial matters.	
Total value of liquid assets:	
\$ 6,500 – \$ 9,999	\$100
\$10,000 – \$19,999	\$125
\$20,000 – \$29,999	\$150
\$30,000 – \$39,999	\$175
\$40,000 – \$49,999	\$200
\$50,000 – \$59,999	\$225
\$60,000 – \$69,999	\$250
\$70,000 – \$79,999	\$275
\$80,000 – \$89,999	\$300
\$90,000 – \$99,999	\$325
\$100,000 or above	\$350
Personal representative	As determined by Iowa Code section 633.197

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Preparation and filing of income tax returns: Each federal return Each state return	\$ 50 \$ 25
Settlement of a personal injury cause of action: Each cause of action approved by the probate court	\$250
Establishment of a recognized trust for the consumer's financial estate. Each trust	\$250
Representative payee—monthly fee	As determined by the federal governmental agency that appoints the representative payee

321—22.15(231E,633) Denial of services—appeal. An appeal from a consumer regarding denial of services shall be made pursuant to 321 IAC 13.

321—22.16(231E,633) Contesting the actions of a guardian or conservator.

22.16(1) Consumers who wish to contest the actions of a guardian or conservator may express their concerns to the state office in writing or verbally.

22.16(2) Within two working days of receipt of the concern, the state office shall notify the consumer of its decision to uphold or change the course of action taken by the guardian or conservator. The state office shall notify the consumer both verbally and in writing.

22.16(3) The state office shall explain to the consumer, in a manner that the consumer fully understands, that the consumer has the right to counsel and the right to appeal the state office's decision pursuant to 321 IAC 13.

321—22.17(231E,633) Contesting the actions of an attorney-in-fact.

22.17(1) Consumers who wish to contest the actions of an attorney-in-fact may express their concerns to the state office in writing or verbally.

22.17(2) Within two working days of receipt of the concern, the state office shall notify the consumer of its decision to uphold or change the course of action taken by the attorney-in-fact. The state office shall notify the consumer both verbally and in writing.

22.17(3) The state office shall explain to the consumer, in a manner that the consumer fully understands, that the consumer has the right to counsel and the right to appeal the state office's decision pursuant to 321 IAC 13.

22.17(4) The consumer shall be informed by the attorney-in-fact that the consumer always has the right to revoke the power of attorney or to a change of attorney-in-fact.

321—22.18(231E,633) Severability. Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

These rules are intended to implement Iowa Code chapters 231E and 633.

ARC 7152B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 455B.173 and 455B.197, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 60, "Scope of Title—Definitions—Forms—Rules of Practice," Chapter 62, "Effluent and Pretreatment Standards: Other Effluent Limits or Prohibitions," Chapter 63, "Monitoring, Analytical, and Reporting Requirements," and Chapter 64, "Wastewater Construction and Operation Permits," Iowa Administrative Code.

Pursuant to Iowa Code section 455B.173(3), the Commission is required to establish, modify, or repeal rules relating to the location, construction, operation, and maintenance of disposal systems. Iowa Code section 455B.173(3) specifies the conditions under which the Director shall issue, revoke, suspend, modify, or deny permits for the operation, installation, construction, addition to, or modification of any disposal system, or for the discharge of any pollutant. The proposed amendments fulfill the Commission's and the Department's requirements pursuant to section 455B.173(3).

The following summary describes the significant changes that are proposed for Chapters 60, 62, 63, and 64. It does not detail each of the proposed changes, but highlights the changes that will have the most impact on wastewater treatment facilities and the State of Iowa.

1. Chapter 60

The proposed amendments to Chapter 60 include the addition of several definitions, the addition of newer permit application forms, and clarification of the language concerning permit applications. Several definitions are being proposed for addition to Chapter 60. The terms are from either the Code of Federal Regulations, Iowa Code section 455B.171, the Wastewater Design Standards, other Administrative Code chapters, or as suggested by NPDES permit writers. The new definitions are being added to Chapter 60 because the terms are used in one or more of 567—Chapters 60 to 69.

The newer permit application forms are proposed to be added to Chapter 60 in order to make the list of permit application forms complete. These proposed changes to subrule 60.4(2) clarify the application requirements for NPDES and operation permits. The proposed language includes a description of a complete permit application, when a permit application is due, the procedure for addressing incomplete applications, how to submit a permit amendment request, and how to request a variance from monitoring requirements in a permit.

2. Chapter 62

The proposed amendments to Chapter 62 include language on prohibited discharges, on the derivation of effluent limits in permits using Total Maximum Daily Load (TMDL) allocations, on the reuse of treated effluent, and on the calculation of the 30-day average percent removal of five-day Carbonaceous Biochemical Oxygen Demand (CBOD₅). The language on prohibited discharges is taken from the Code of Federal Regulations which lists pollutants that cannot be discharged to public or private domestic sewage treatment works. The proposed language on the reuse of treated final effluent is taken from a department policy document and clarifies the requirements for the reuse of treated effluent for irrigation of golf courses.

Chapter 62 currently states that effluent limitations in permits shall be determined using the calculated wasteload allocations. The language on the derivation of effluent limits does not include a reference to TMDLs and, because TMDLs can establish effluent limits for point-source discharges, Chapter 62 should include a reference to TMDLs.

The proposed language on the calculation of the 30-day average percent removal for secondary treatment clarifies how to calculate the percent removal based on the monitoring that is proposed in Chapter 63. One of the proposed monitoring changes to Chapter 63 requires domestic treatment facilities to measure five-day

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Biochemical Oxygen Demand (BOD₅) in raw wastewater and CBOD₅ in effluent wastewater. BOD₅ is an appropriate measure of raw wastewater strength and is useful for the future design of wastewater treatment plants. CBOD₅ is an appropriate measure of effluent wastewater strength and is currently used in NPDES permits. The federal secondary treatment standards require that the 30-day average percent removal of either BOD₅ or CBOD₅ in wastewater is not less than 85 percent. As the proposed language in Chapter 63 requires monitoring of both BOD₅ and CBOD₅, it is necessary to specify how the percent removal shall be calculated. The proposed language will add a description of the 85 percent removal calculation to the secondary effluent limits listed in Chapter 62.

3. Chapter 63

The proposed language for Chapter 63 replaces the language on bypasses and includes language on sanitary sewer overflows, updates monitoring requirements for all NPDES permits by increasing the base monitoring requirements and adding new monitoring, and rescinds the monitoring table for inorganic waste discharges and replaces it with a rule-referenced document. The current language on bypasses in Chapter 63 does not comply with EPA's guidance on bypasses and does not mention sanitary sewer overflows (SSOs). The language needs to be expanded to address these two issues as well as to include public notice requirements; monitoring, disinfection, and cleanup requirements; new notification and reporting requirements; and a description of a sewage treatment works upset. The language proposed for bypasses and SSOs in Chapter 63 addresses all of these issues.

The current monitoring requirements in Chapter 63 have not been updated in more than 20 years. The proposed monitoring updates the minimum monitoring requirements for organic waste dischargers by increasing some of the current requirements and by adding new monitoring. The increase in the current monitoring allows for better operational control and compliance monitoring, thereby ensuring that all facilities will meet permit requirements and are properly operated. The new monitoring for Total Nitrogen, Total Phosphorus, and Total Kjeldahl Nitrogen (TKN) gives the facilities and the Department needed information on the nutrient levels coming from dischargers of organic wastes. Effluent limits for Total Nitrogen, Total Phosphorus, and TKN are not included in permits at this time. The data from the new monitoring will assist the Department in the development of nutrient standards and TMDLs and will help ensure that appropriate limits are placed in TMDLs for point source dischargers.

The minimum monitoring table in Chapter 63 for inorganic waste dischargers does not include monitoring requirements for several types of industrial dischargers. Due to the complexity of inorganic wastes and the diversity in industrial discharges, the development of a single table to cover all inorganic waste discharges is impractical. In light of this, the proposed amendments replace Table 5 with a rule-referenced document rather than a single table. The rule-referenced document is titled "Supporting Document for Permit Monitoring Frequency Determination" and is based on the existing statement in rule 567—63.3(455B) that discusses the basis for additional monitoring in operation and NPDES permits. The new document quantifies the factors requiring additional monitoring in rule 567—63.3(455B) and sets out a procedure for the derivation of monitoring requirements. The minimum monitoring for inorganic waste dischargers will not increase as a result of this document. The proposed rule-referenced document clarifies the procedure used to develop monitoring requirements for all industrial dischargers and describes how to determine the monitoring requirements for the large number of industrial discharges that are not covered by existing Table 5.

4. Chapter 64

The proposed language for Chapter 64 adds three classes of facilities that will be exempted from obtaining operation permits; clarifies the language regarding the issuance and denial of operation and NPDES permits; clarifies the public notice requirements for NPDES permits; adds language on public requests to amend, revoke and reissue, or terminate permits; and adds language on the determination of significant noncompliance. Chapter 64 currently includes nine types of facilities and discharges that are exempted from obtaining operation and NPDES permits. The proposed language adds exemptions for privately owned geothermal heat pumps that do not discharge to a navigable water and pretreatment systems discharging to another disposal system.

The current language in Chapter 64 is not descriptive of when, how, and under what circumstances operation and NPDES permits may be drafted, issued, or denied. The proposed language differentiates

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each occurrence and specifies the procedures and permit rationale requirements for the determinations to issue, deny, or draft operation or NPDES permits. The proposed language does not significantly alter the current requirements; it simply clarifies each of the above circumstances. The public notice requirements for NPDES permits are proposed to be expanded to include language on the public notice of public hearings for NPDES permits and the responses to comments on draft NPDES permits.

The current rules allow for the amendment, revocation and reissuance, and termination of permits under certain conditions but do not include all of the conditions under which permits may be amended, revoked and reissued, or terminated. The proposed amendments expand the existing language to incorporate the other conditions for permit changes from both existing practice and the federal regulations. The proposed amendment of note to this chapter is the inclusion of language from the Code of Federal Regulations that allows interested persons to submit requests to the Department for the amendment, revocation and reissuance, and termination of permits. Previously, only permittees were allowed to submit such requests. The proposed amendments allow interested persons to submit such requests for cause and allow the Director to act upon such requests by denying, amending, reissuing, or terminating permits.

Permits currently may not be reissued if permittees have not substantially complied with permit conditions. Because current rule language does not specify what constitutes substantial compliance with permit conditions, the amendments clarify when a permittee has not substantially complied with a permit. The proposed language on substantial compliance is from the federal regulations and from a department policy implementation guidance document (PIG).

5. Supporting Document

The following rule-referenced document is proposed to replace Table V in Chapter 63:

SUPPORTING DOCUMENT FOR PERMIT MONITORING FREQUENCY DETERMINATION

Prepared by:

NPDES Section
Water Quality Bureau
Environmental Services Division
Iowa Department of Natural Resources

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INTRODUCTION

This support document supplements 567—Chapter 63, Monitoring, Analytical, and Reporting Requirements.” The subject discussed in this document is monitoring frequencies in wastewater permits.

All National Pollutant Discharge Elimination System (NPDES) permits require monitoring of regulated pollutants. The frequency of monitoring is determined using the tables in Chapter 63. In addition, subrule 63.3(2) provides that self-monitoring requirements to be incorporated in the operation permit for the discharge of a pollutant not addressed in the monitoring tables shall be determined on a case-by-case evaluation of the potential impact of the discharge on the receiving stream, potential for toxic or deleterious effects of the discharge, complexity of the treatment process, variability in waste stream pollutant concentrations, or any other factor which requires strict control to meet the effluent limitations of the permit. The following support document describes the method by which the above rule will be implemented.

MONITORING FREQUENCY DETERMINATION FOR DIRECT DISCHARGERS

The following step-by-step process will be used to determine the monitoring frequency for individual pollutants covered by subrule 63.3(2). The permit writer is responsible for determining the pollutant group category for each pollutant to be monitored, the frequency at which each pollutant will be discharged at a concentration equal to or greater than 50 percent of the proposed limit and the percentage of effluent flow to stream flow. This information will be used to determine the monitoring frequency category.

A. Pollutant Groups: Appendix A lists pollutants by group based on Table I, Criteria for Chemical Constituents, 567—Chapter 61, Water Quality Standards, effective June 11, 2008. Pollutant groups were based on the numeric criteria for the Warm Water Type I (B(WW-1)) use designation. In the absence of a B(WW-1) use designation, the numeric criteria for the Human Health - Fish (HH) or Drinking Water (C) use designations were used for the purpose of pollutant groups. The following table shows the definition of each pollutant group based on the numeric criteria in micrograms per liter.

Table 1. Pollutant Group based on 567—Chapter 61 Criteria for Chemical Constituents

Pollutant Group	Water Quality Standard in $\mu\text{g/L}$
1	≥ 1000
2	200 – 999
3	50 – 199
4	11 – 49
5	≤ 10

Each pollutant group has a corresponding number. This number relates to the first row of the monitoring frequency flow chart found in Appendix C. In the absence of a Water Quality Standard, a pollutant will be assigned to a group based on the toxicity of the pollutant (see “Pollutants Not Listed in Appendix A” below).

B. Potential: Potential is defined as the frequency at which the pollutant has been or could be discharged at a concentration that is equal to or greater than 50 percent of the proposed maximum concentration limit. The following equation will be used to determine this frequency:

Equation 1. Potential.

$$\frac{D}{N} \times 100 = F$$

Where: N = Total number of monitoring data points from the previous five years

D = Number of data points that are equal to or above 0.50 times the proposed limit from the WLA^{1,2} (mass or concentration)

F = Frequency at which the pollutant has been or can be expected to be discharged at greater than 50 percent of the proposed limit

¹To determine potential for industrial contributors D = number of monitoring data points from the industrial contributor that are equal to or above 0.50 times the proposed concentration limit from the treatment agreement.

²For data that have been reported as “no detection,” the detection level will be used.

For the determination of potential where less than ten data points are available for analysis, the potential category will automatically be category five. After the permittee has submitted more than ten sample results, the permit may be reopened to reduce monitoring based on the procedure outlined in this document.

The calculated frequency will be used to determine the potential category in Table A of Appendix B. Each category has a corresponding number 1 to 5. This number will be used in the second row of the monitoring frequency flow chart in Appendix C.

C. Effluent Flow vs. Stream Flow: The average effluent flow versus stream flow will be compared on a percentage basis. Specifically, the comparison will be made between the proposed or actual average effluent flow to the 1Q10 stream flow which will be determined by using the following equation:

Equation 2. Effluent Flow vs. Stream Flow.

$$\frac{\text{Average Effluent Flow}^3}{1\text{Q10 Flow}} \times 100 = \text{Percent of Effluent Flow to Stream Flow}$$

³The conversion factor for million gallons per day to cubic feet per second is 1.55.

The calculated percentage of effluent flow vs. stream flow will be used to determine the category in Table B of Appendix B. Each category has a corresponding number 1 to 4. This number will be used in the third row of the monitoring frequency flow chart in Appendix C.

D. Monitoring Frequency Conclusion: After the permit writer has followed the above steps and applied the corresponding categories to the monitoring frequency flow charts in Appendix C, the result will be a roman numeral of I to IV. The roman numeral will correspond to a monitoring frequency category that will assist the permit writer in determining the appropriate monitoring frequency for an NPDES permit. Final determination of the specific frequency to be used in an NPDES permit will be left to the permit writer's discretion and any circumstances not accounted for in the previous steps.

MONITORING FREQUENCY DETERMINATION FOR INDIRECT DISCHARGERS (SIGNIFICANT INDUSTRIAL USERS)

Monitoring frequencies for significant industrial users (SIUs) of POTWs will be based on the above described determination model with the exception of effluent flow vs. stream flow. The permit writer will compare the loadings from all of the SIUs to the calculated wasteload allocation (WLA) limits to determine if a reasonable potential exists for any pollutant to pass through the POTW in excess of the WLA limit. This will be done by determining the industrial loadings to the POTW and using the Average Dry Weather (ADW) design flow of the POTW to calculate the concentration of each pollutant at the headworks of the POTW. Conservatively assuming 100 percent pass-through of non-compatible pollutants, the concentration of a pollutant at the headworks of the POTW can be used to calculate the percent of the WLA limit $\{(Concentration\ at\ headworks/WLA)*100 = Percent\ WLA\ limit\}$. The percentage found will be used to determine the category in Table C of Appendix B in place of effluent flow vs. stream flow. Each category has a corresponding number 1 to 4. This number will be used in the third row of the monitoring frequency flow chart in Appendix C.

POLLUTANTS NOT LISTED IN APPENDIX A

The pollutants not already placed into groups will be evaluated on a case-by-case basis to determine the toxicity of the pollutant. The EPA ECOTOX Web site will be used to gather information about pollutant toxicity. This data can be found at www.epa.gov/ecotox/ using the aquatic toxicity search feature.

Table 2. Pollutant Group based on pollutant toxicity

Pollutant Group	$\frac{1}{2}$ the LC50 or NOEC ⁴ $\mu\text{g/L}$
1	≥ 1000
2	200 – 999
3	50 – 199
4	11 - 49
5	≤ 10

⁴In cases where both the LC50 and NOEC are available, the NOEC will be used to determine the pollutant group.

PHYSIOCHEMICAL POLLUTANTS AND NONPOLLUTANT PARAMETERS

In cases where the monitoring of physiochemical parameters, such as pH, temperature or flow, is to be included in the NPDES permit, the permit writer will require monitoring at a frequency that is at least as frequent as the most frequently monitored pollutant, but no less than once per month. Monitoring for these parameters may be more frequent depending on any other extraneous factors that would require strict control.

Appendix A – Pollutant Groups

Group 1

Barium
Bromoform
Chlorobenzene
Chloroform
1,1-Dichloroethylene
Ethylbenzene
Fluoride
Iron
Hexachlorocyclopentadiene
Nitrate as N
Nitrate + Nitrite as N
Nitrite as N
Oil & Grease*
Total Nitrogen
Total Dissolved Solids
Total Suspended Solids*
Xylenes, Total

Group 2

Aluminum
Arsenic
Benzene
Chloride
Dalapon
o-Dichlorobenzene
1,2-Dichloroethane
Di(2-ethylhexyl)adipate
Glyphosphate
Oxamyl (Vydate)
Picloram

Group 3

Chlorodibromomethane
para-Dichlorobenzene
Dichlorobromomethane
cis-1,2-Dichloroethylene
1,2-trans-Dichloroethylene
1,2-Dichloropropane
2,4-D
Endothall
Methoxychlor
Nickel
Phenols
Styrene
Toluene
1,2,4-Trichlorobenzene
1,1,1,-Trichloroethane
Trichloroethylene (TCE)
Trihalomethanes (total)
Zinc

Group 4

Carbofuran
Carbon Tetrachloride
Chromium
Diquat
Di(2-ethylhexyl)phthalate
Tetrachloroethylene
Total Residual Chlorine
Vinyl Chloride

Group 5

Alachor
Aldrin
Antimony
Asbestos
Atrazine
Benzo(a)Pyrene
Beryllium
Cadmium
Chlordane
Chloropyrifos
Copper
Cyanide
4,4-DDT
Dibromochloropropane
3,3-Dichlorobenzidine
Dichloromethane
Dieldrin
Dinoseb
2,3,7,8-TCDD (Dioxin)
Endosulfan
Endrin
Ethylene dibromide
Heptachlor
Heptachlor epoxide
Hexachlorobenzene
Lead
gamma-BHC (Lindane)
Mercury
Parathion
Pentachlorophenol (PCP)
Polychlorinated Biphenyls (PCBs)
Polynuclear Aromatic Hydrocarbons (PAHs)
Selenium
Silver
2,4,5-TP (Silvex)
Simazine
Thallium
Toxaphene
1,1,2-Trichloroethane

*Pollutants that do not have a WQS

Appendix B – Potential, Effluent Flow vs. Stream Flow, and Percentage of WLA Limit Categories

Table A. Potential

Potential	Category
≤5 %	1
6 – 10 %	2
11 – 20 %	3
21 – 50 %	4
> 50 %	5

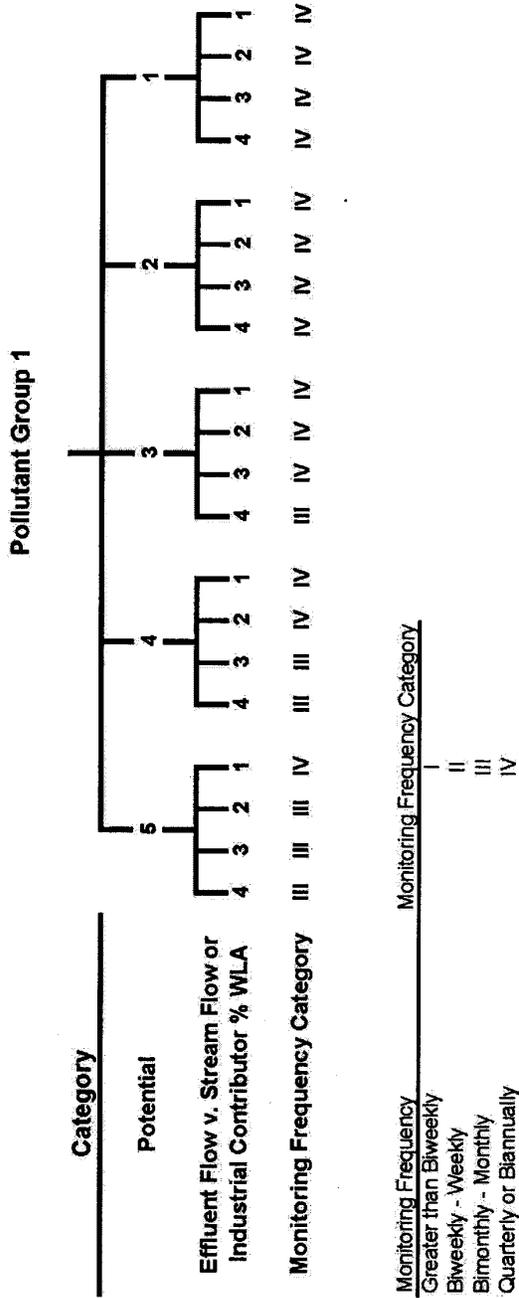
Table B. Effluent Flow vs. Stream Flow

Effluent Flow vs. 1Q10 Stream Flow	Category
<10% of 1Q10	1
10-25% of 1Q10	2
25-50% of 1Q10	3
>50% of 1Q10	4

Table C. SIU Pollutant Percentage of WLA Limit

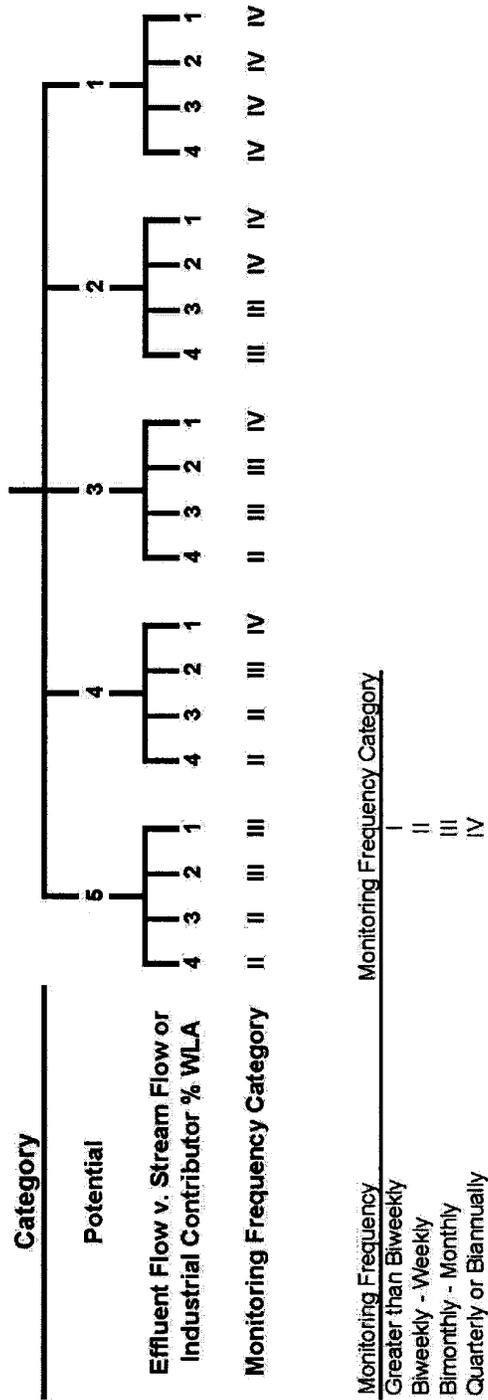
% of WLA limit	Category
<10% of WLA limit	1
10-25% of WLA limit	2
25-50% of WLA limit	3
>50% of WLA limit	4

Appendix C - Monitoring Frequency Flow Charts

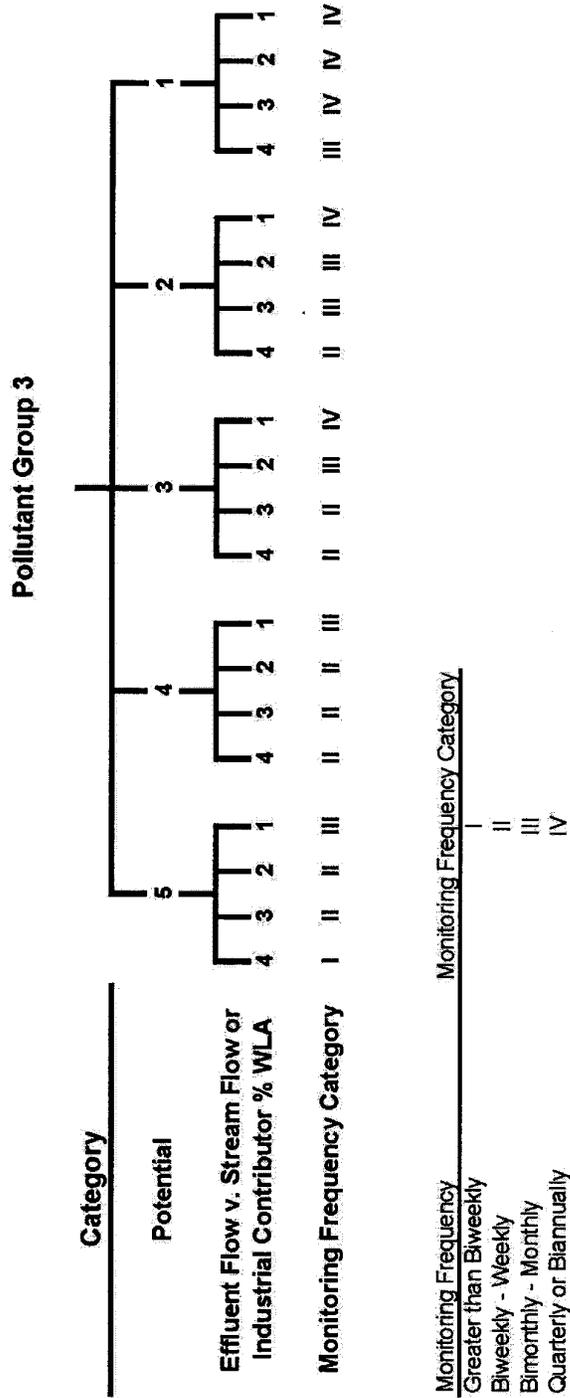


Appendix C - Monitoring Frequency Flow Charts

Pollutant Group 2

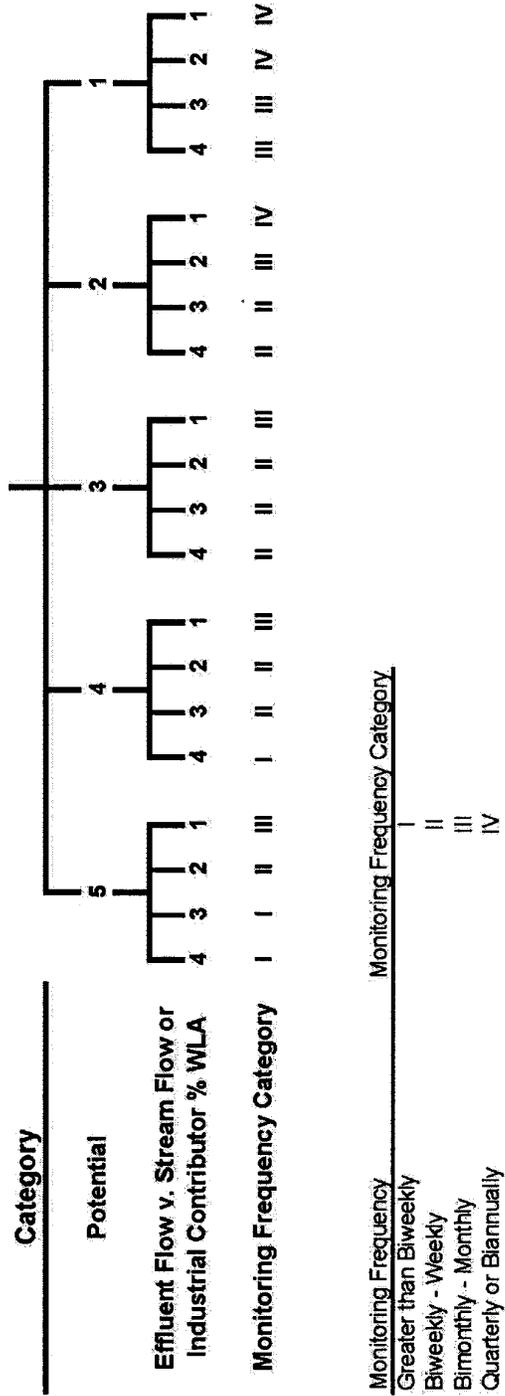


Appendix C - Monitoring Frequency Flow Charts



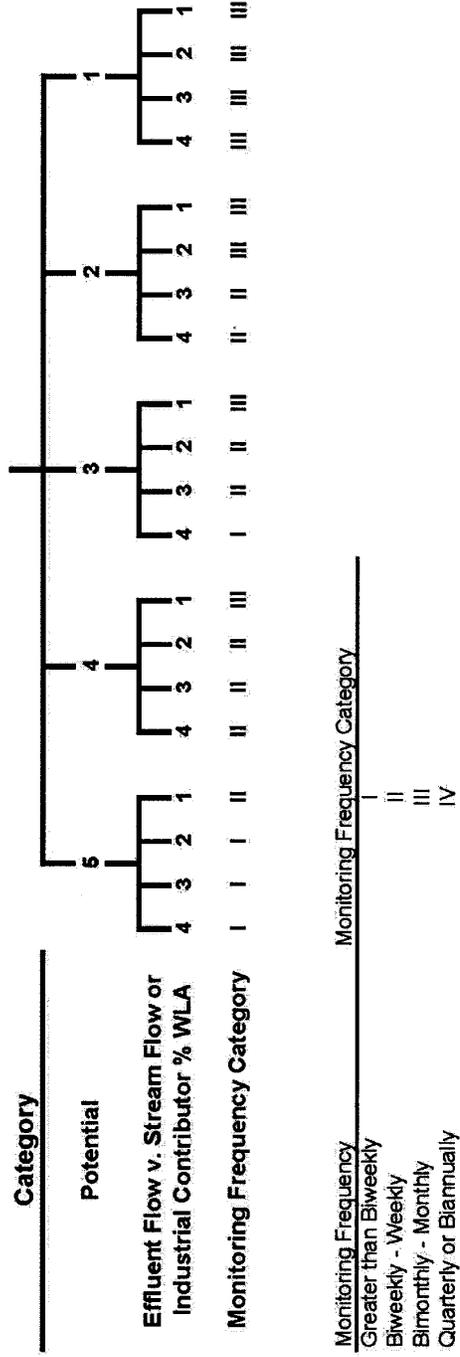
Appendix C - Monitoring Frequency Flow Charts

Pollutant Group 4



Appendix C - Monitoring Frequency Flow Charts

Pollutant Group 5



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Any person may submit written suggestions or comments on the proposed amendments through October 10, 2008. Such written material should be submitted to Courtney Cswercko, NPDES Section, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319-0034; by fax to (515)281-8895; or by E-mail to courtney.cswercko@dnr.iowa.gov. Persons who have questions may contact Courtney Cswercko by E-mail or by telephone at (515)281-7206.

Public hearings where persons may present their views orally or in writing will be held at the following dates and times:

October 7, 2008, at 6 p.m.
Fort Dodge Public Library, Meeting Room
424 Central Ave.
Fort Dodge

October 8, 2008, at 7 p.m.
Iowa City Public Library, Room A
123 South Linn Street
Iowa City

October 9, 2008, at 1:30 p.m.
Conference Rooms 5E and 5W
Wallace State Office Building
502 E. 9th Street
Des Moines

At the hearings, persons will be asked to give their names and addresses for the record and to confine their remarks to the subjects of the amendments.

Any person who intends to attend a public hearing and has special requirements such as those related to mobility or hearing impairments should contact the Iowa Department of Natural Resources to advise of any specific needs.

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1.

The following amendments are proposed.

ITEM 1. Amend rule 567—60.1(455B,17A) as follows:

567—60.1(455B,17A) Scope of title. The department has jurisdiction over the surface and groundwater of the state to prevent, abate and control water pollution, by establishing standards for water quality and for direct or indirect discharges of wastewater to waters of the state and by regulating potential sources of water pollution through a system of general rules or specific permits. The construction and operation of any wastewater disposal system and the discharge of any pollutant to a water of the state requires a specific permit from the department, unless exempted by the department.

This chapter provides general definitions applicable in this title and rules of practice, including forms, applicable to the public in the department's administration of the subject matter of this title.

Chapter 61 contains the water quality standards of the state, including classification of surface waters. Chapter 62 contains the standards or methods for establishing standards relevant to the discharge of pollutants to waters of the state. Chapter 63 identifies monitoring, analytical and reporting requirements pertaining to permits for the operation of wastewater disposal systems. Chapter 64 contains the standards and procedures for obtaining construction, operation and ~~discharge~~ NPDES permits for wastewater disposal systems other than those associated with animal-feeding operations. Chapter 65 specifies minimum waste control requirements and permit requirements for animal-feeding operations. Chapter 66 specifies restrictions on pesticide application to waters. Chapter 67 contains standards for the land application of sewage sludge. Chapter 68 contains standards and licensing requirements applicable to commercial septic tank cleaners. Chapter 69 specifies guidelines for private sewage disposal.

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ITEM 2. Adopt the following **new** definitions in rule **567—60.2(455B)**:

“Application for a construction permit” means the engineering report, plans and specifications and other data deemed necessary by the department for the construction of a proposed wastewater disposal system or part thereof.

“Application for an operation permit” means a written application for an operation or NPDES permit made on forms provided by the department.

“Approved pretreatment program” means a program administered by a publicly owned treatment works that meets the criteria established in 40 CFR Part 403 and which has been approved by the director.

“Average dry weather flow” or *“ADW”* means the daily average flow when the groundwater is at or near normal and runoff is not occurring.

“Average wet weather flow” or *“AWW”* means the daily average flow for the wettest 30 consecutive days for mechanical plants or for the wettest 180 consecutive days for controlled discharge lagoons.

“Bypass” means the intentional diversion of waste streams from any portion of a treatment works that occurs after the headworks of the treatment works. A bypass does not include internal operational waste stream diversions that are part of the original design of the treatment works or maintenance diversions where adequate redundancy is provided. Bypasses include internal waste stream diversions that result in partially treated waste being discharged, regardless of whether the partially treated waste is blended with treated waste before discharge.

“Combined sewer overflow” means the discharge from a combined sewer system at a point prior to the treatment works.

“Combined sewer system” means a wastewater collection system owned by a municipality which conveys sanitary wastewater (domestic, commercial, and industrial) and storm water through a single pipe system to the treatment plant.

“Construction permit” means a written approval from the director to construct a wastewater disposal system or part thereof in accordance with the plans and specifications approved by the department.

“Discharge of a pollutant” means any addition of any pollutant or combination of pollutants to navigable waters or waters of the state from any point source. “Discharge of a pollutant” includes additions of pollutants into navigable waters or waters of the state from surface runoff which is collected or channeled by human activity; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. “Discharge of a pollutant” does not include an addition of pollutants by any indirect discharger.

“Disposal system” means a system for disposing of sewage, industrial waste, or other wastes, or for the use or disposal of sewage sludge. “Disposal system” includes sewer systems, treatment works, point sources, dispersal systems, and any systems designed for the usage or disposal of sewage sludge.

“Indirect discharger” means a non-domestic discharger introducing pollutants to a publicly owned treatment works.

“Industrial waste” means any liquid, gaseous, radioactive, or solid waste substance resulting from any process of industry, manufacturing, trade, or business, or from the development of any natural resource.

“Interference” means a discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

1. Inhibits or disrupts a POTW, its treatment process or operations, or its sludge processes, use or disposal; and

2. Is a cause of a violation of any requirement of a POTW NPDES permit including an increase in the magnitude or duration of a violation or the prevention of sewage sludge use or disposal.

“Major permit amendment” or *“major modification”* means a permit modification that is not a minor permit amendment as defined in this rule.

“Maximum wet weather flow” or *“MWW”* means the total maximum flow received during any 24-hour period when the groundwater is high and runoff is occurring.

“Minor permit amendment” or *“minor modification”* means a permit modification that occurs as a result of any of the following:

1. Correction of a typographical error;

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2. Modification of the monitoring and reporting requirements in the permit to include more frequent monitoring or reporting;
 3. Revision of an interim date in a compliance schedule, provided that the new date is not more than 120 days after the date specified in the permit and does not interfere with the attainment of the final compliance date;
 4. Change in facility name or ownership;
 5. Deletion of a point source outfall that does not result in the discharge of pollutants from other outfalls;
- or
6. Incorporation of an approved local pretreatment program.

“*New source*” means any building, structure, facility or installation from which there is or may be a discharge of pollutants to a navigable water, the construction of which commenced after the promulgation of standards of performance under Section 306 of the Act which are applicable to such source, provided that:

1. The building, structure, facility or installation is constructed at a site at which no other source is located; the building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or the production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors, such as the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

2. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of paragraph “1” but otherwise alters, replaces, or adds to existing process or production equipment.

3. Construction of a new source as defined pursuant to this rule has commenced if the owner or operator has:

- Begun, or caused to begin, as part of a continuous on-site construction program, any placement, assembly, or installation of facilities or equipment; or significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
- Entered into a binding contractual obligation for the purchase of facilities or equipment which is intended to be used in the operation of the new source within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this definition.

“*Operation permit*” means a written permit by the director authorizing the operation of a wastewater disposal system or part thereof or discharge source and, if applicable, the discharge of wastes from the disposal system or part thereof or discharge source to waters of the state. An NPDES permit will constitute the operation permit in cases where there is a discharge to a water of the United States and an NPDES permit is required by the Act.

“*Other waste*” means heat, garbage, municipal refuse, lime, sand, ashes, offal, oil, tar, chemicals, and all other wastes which are not sewage or industrial waste.

“*Pass through*” means a discharge which, alone or in conjunction with a discharge or discharges entering the treatment facility from other sources, exits a POTW or semipublic sewage disposal system in quantities or concentrations which cause or contribute to a violation of any requirement of the treatment facility’s NPDES permit including an increase in the magnitude or duration of a violation.

“*Permit rationale*” means a document that sets forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing a draft operation or NPDES permit.

“*Point source*” means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, or vessel or other floating craft, from which pollutants are or may be discharged. “Point source” does not include return flows from irrigated agriculture or agricultural storm water runoff.

“*Pollutant*” means sewage, industrial waste, or other waste.

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“Population equivalent” means the calculated number of people who would contribute an equivalent amount of biochemical oxygen demand (BOD) per day as the system in question, assuming that each person contributes 0.167 pounds of five-day, 20 degrees Celsius, BOD per day.

“Pretreatment” means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical, or biological processes, by process changes, or by other means, except as prohibited in 40 CFR 403.6(d).

“Pretreatment requirements” means any substantive or procedural requirement related to pretreatment, other than a national pretreatment standard, imposed on an industrial user.

“Pretreatment standard” or *“national pretreatment standard”* means any regulation containing pollutant discharge limits promulgated by EPA in accordance with Section 307(b) and (c) of the Act, which applies to industrial users. “Pretreatment standard” includes prohibitive discharge limits established pursuant to 40 CFR 403.5.

“Private sewage disposal system” means a system which provides for the treatment or disposal of domestic sewage from four or fewer dwelling units or the equivalent of less than 16 individuals on a continuing basis.

“Sanitary sewer overflow” or *“SSO”* means an overflow, spill, release, or diversion of wastewater from a sanitary sewer collection system designed to carry sewage and prior to reaching the treatment plant. SSOs do not include diversions of wastewater from one point in a collection system to another point in a collection system or wastewater backups into buildings that are caused in the building lateral or private sewer line.

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

“Severe property damage” means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. “Severe property damage” does not mean economic loss caused by delays in production.

“Sewage” means the water-carried waste products from residences, public buildings, institutions, or other buildings, including the bodily discharges from human beings or animals together with such groundwater infiltration and surface water as may be present.

“Sewage from vessels” means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under Section 312 of the Act.

“Significant industrial user” means an industrial user of a POTW that meets any one of the following conditions:

1. Discharges an average of 25,000 gallons per day or more of process wastewater excluding sanitary, noncontact cooling and boiler blowdown wastewater;
2. Contributes a process waste stream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW;
3. Is subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N; or
4. Is designated by the department as a significant industrial user on the basis that the contributing industry, either singly or in combination with other contributing industries, has a reasonable potential for adversely affecting the operation of or effluent quality from the POTW or for violating any pretreatment standards or requirements.

Upon a finding that an industrial user meeting the criteria in paragraphs “1” or “2” of this definition has no reasonable potential for adversely affecting the operation of the POTW or for violating any pretreatment standard or requirement, the department may, at any time on its own initiative or in response to a request received from an industrial user or POTW, determine that an industrial user is not a significant industrial user.

“Water of the state” means any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or

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underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.

ITEM 3. Amend rule **567—60.2(455B)**, definitions of “CFR,” “Major,” “Navigable water,” and “Regional administrator,” as follows:

“CFR” or “Code of Federal Regulations” means the ~~Code of Federal Regulations as published by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402~~ federal administrative rules adopted by the United States in effect as of July 1, 2008. The amendment of the date contained in this definition shall constitute the amendment of all CFR references contained in 567—Chapters 60 to 69, Title IV, unless a date of adoption is set forth in a specific rule.

“Major,” ~~means~~ means for municipalities, ~~means~~ a facility having a discharge flow or an average wet weather design flow of 1.0 mgd million gallons per day (MGD) or greater. For industries it means a facility which is designated by EPA as being a major industry based on the EPA point rating system which uses pounds of wastes discharged for each facility.

“Navigable water” means a water of the United States as defined in 40 CFR Part 122.2.

“Regional administrator” means the regional administrator of the United States Environmental Protection Agency, Region VII, ~~726 Minnesota Avenue~~ 901 N. 5th Street, Kansas City, Kansas 66101.

ITEM 4. Rescind the definitions of “Dry weather design flow,” “Major contributing industry” and “Standard methods” in rule **567—60.2(455B)**.

ITEM 5. Amend rule **567—60.3(455B,17A)**, introductory paragraph, as follows:

567—60.3(455B,17A) Forms. The following forms ~~are~~ shall be used by the public to apply for departmental approvals and to report on activities related to the wastewater programs of the department. Electronic forms may be obtained from the appropriate regional field office. All forms Paper forms may be obtained from the Environmental Protection Division, Administrative Support Station, Iowa Department of Natural Resources, Henry A. Wallace Building, 900 East Grand Avenue, Des Moines, Iowa 50319-0032 the Web site of the department or by contacting the appropriate regional field office. Properly completed application forms should and all attachments shall be submitted in accordance with the instructions, to the Wastewater Permits Section, Environmental Protection Division. Reporting forms should shall be submitted to the appropriate field office. (See rule 567—1.4(455B))

ITEM 6. Amend subrule 60.3(2) as follows:

60.3(2) Operation and NPDES permit application forms.

a. Form 30 — public or private domestic ~~sewerage~~ sewer systems (municipal and semipublic facilities) 542-3220.

(1) Part A — basic information for all applicants.

(2) Part B — expanded effluent testing data.

(3) Part C — toxicity testing data.

(4) Part D — industrial user discharges and RCRA/CERCLA wastes.

(5) Part E — combined sewer systems.

(6) Part F — certification.

b. Form 31 — treatment agreement 542-3221.

c. Form 34 — open feedlots 542-3225.

d. Form 1 — general information for industrial, manufacturing or commercial systems 542-1376. ~~(For storm water discharge EPA Form 3510-1, also referred to as EPA Form 1, may be used.)~~

e. Form 2 — facilities which do not discharge process wastewater—industrial, manufacturing or commercial systems 542-1377. ~~(For storm water discharge EPA Form 3510-2E, also referred to as EPA Form 2E, may be used.)~~

f. Form 3 — facilities which discharge process wastewater existing sources—industrial, manufacturing, and commercial systems 542-1378. ~~(For storm water discharge EPA Form 3510-2C, also referred to as EPA Form 2C, may be used.)~~

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g. Form 4 — facilities which discharge process wastewater—new sources—industrial, manufacturing or commercial systems 542-1379. ~~(For storm water discharge EPA Form 3510-2D, also referred to as EPA Form 2D, may be used.)~~

h. EPA Form 2F ~~(EPA Form 3510-2F)~~—application for NPDES individual permit to discharge storm water discharge associated with industrial activity 542-1380.

i. Form 5 — Certification for Industrial Facilities.

j. NPDES Permit Application Supplement.

~~k.~~ k. Notice of Intent for Coverage Under Storm Water NPDES General Permit No. 1 “Storm Water Discharge Associated with Industrial Activity” or General Permit No. 2 “Storm Water Discharge Associated with Industrial Activity for Construction Activities” or General Permit No. 3 “Storm Water Discharge Associated with Industrial Activity from Asphalt Plants, Concrete Batch Plants, Rock Crushing Plants and Construction Sand and Gravel Facilities” 542-1415.

~~l.~~ l. Notice of Intent for Coverage Under NPDES General Permit No. 4 “Discharge from On-Site Wastewater Treatment and Disposal Systems.” 542-1541.

~~m.~~ m. Notice of Intent for Coverage Under NPDES General Permit No. 5 “Discharge from Mining and Processing Facilities” 542-4006.

~~n.~~ n. Notice of Discontinuation From Coverage Under General Permit No. 5 542-8038.

~~o.~~ o. Information Required to Accompany Application for the Municipal Separate Storm Sewer System (MS4) Permit 542-8039.

ITEM 7. Adopt the following **new** paragraph **60.3(3)“j”**:

j. Other forms as provided by the department, including electronic forms.

ITEM 8. Adopt the following **new** paragraph **60.4(1)“e”**:

e. *Fees.* Required fees shall be submitted with all applications for a construction permit as noted in 567—64.16(455B).

ITEM 9. Amend subrule 60.4(2) as follows:

60.4(2) Operation ~~permits~~ and NPDES permit applications.

a. *General.* A person ~~desiring~~ required to obtain or renew a wastewater operation permit or an Iowa NPDES permit pursuant to 567—Chapter 64 or 567—Chapter 65 must complete the appropriate application form as identified in subrule 60.3(2). ~~The application shall be reviewed when it is complete, and if approvable the department shall prepare and issue the permit or proposed permit, as applicable, and transmit it to the applicant. A permit or renewal will be denied when the applicant does not meet one or more requirements for issuance or renewal of such permit.~~

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

(2) Incomplete applications. Incomplete applications may be returned to the applicant for completion. Authorization to discharge will be suspended if a complete application is not submitted to the department before the expiration date of the current permit. In the case of new applications, no discharge will be allowed until an NPDES or operation permit is issued. If a permit application is incomplete or has not been submitted, the department shall notify the permittee of a violation of this rule and may proceed administratively on the violation or may request that the commission refer the matter to the attorney general for legal action.

(3) Other information. If a permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application, the permittee shall promptly submit such facts or information.

b. *Amendments.* A permittee seeking an amendment to its operation permit shall make a written request in the form of a detailed letter to the department which shall include the nature of and the reasons supporting the requested amendment ~~and the reasons therefor~~. A variance or amendment to the terms and conditions of

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a general permit shall not be granted. If a variance or amendment to a general permit is desired, the applicant must apply for an individual permit following the procedures in 567—paragraph 64.3(4) “a.”

(1) Schedules of compliance. Requests to amend a permit schedule of compliance shall be made at least ~~30~~ 60 days prior to the next scheduled compliance date which the permittee contends it is unable to meet. The request shall include any proposed changes in the existing schedule of compliance, and any supporting documentation for the time extension. An extension may be granted by the department for cause. Cause ~~includes~~ may include unusually adverse weather conditions, equipment shortages, labor strikes, federal grant regulation requirements, or any other extenuating circumstances beyond the control of the requesting party. Cause does not include economic hardship, profit reduction, or failure to proceed in a timely manner.

(2) No change.

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

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

c. Fees. Required fees shall be submitted with all permit applications as noted in 567—64.16(455B).

ITEM 10. Amend subrules 62.1(6) and 62.1(7) as follows:

62.1(6) The discharge of wastewater into a publicly owned treatment works or a ~~privately owned domestic sewage treatment works~~ semipublic sewage disposal system in volumes or quantities in excess of those to which a ~~major contributing industry~~ significant industrial user is committed in the treatment agreement described in 567—subrule 64.3(5) or a local control mechanism in the case of a POTW with a pretreatment program approved by the department is prohibited.

62.1(7) Wastes in such volumes or quantities as to exceed the design capacity of the treatment works, cause interference or pass through, or reduce the effluent quality below that specified in the operation permit of the treatment works are considered to be a waste which interferes with the operation or performance of a publicly owned treatment works or a ~~privately owned domestic sewage treatment works~~ semipublic sewage disposal system and are prohibited.

ITEM 11. Adopt the following new subrule 62.1(8):

62.1(8) Discharge of the following pollutants to a publicly owned treatment works, a semipublic sewage disposal system, or a private sewage disposal system is prohibited:

a. Pollutants which create a fire or explosion hazard including but not limited to waste streams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in 40 CFR 261.21;

b. Solid or viscous substances in amounts that will cause obstruction to the flow in the treatment works resulting in interference;

c. Heat in amounts which will inhibit biological activity in the treatment works resulting in interference but, in no case, heat in such quantities that the temperature of the waste stream at the treatment plant exceeds 40 degrees Celsius (104 degrees Fahrenheit) unless specifically approved by the department;

d. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;

e. Pollutants which result in the presence of toxic gases, vapors, or fumes within the treatment works in a quantity that could cause acute worker health and safety problems; and

f. Pollutants which will cause corrosive structural damage to the treatment works but, in no case, discharges with a pH lower than 5.0 standard units, unless the treatment works is specifically designed

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to accommodate such discharges, or wastes which would intermittently change the pH of the raw waste entering the treatment plant by more than 0.5 standard pH units or which would cause the pH of the raw waste entering the treatment plant to be less than 6.0 or greater than 9.0 standard units.

ITEM 12. Amend rule **567—62.3(455B)**, catchwords, as follows:

567—62.3(455B) Secondary treatment information: effluent standards for publicly owned treatment works and ~~privately owned domestic sewage treatment works~~ semipublic sewage disposal systems.

ITEM 13. Amend subrule 62.3(1), introductory paragraph, as follows:

62.3(1) General. The following paragraphs describe the minimum level of effluent quality attainable by secondary treatment in terms of the pollutant measurements carbonaceous biochemical oxygen demand (CBOD₅), the five-day measure of the pollutant parameter carbonaceous biochemical oxygen demand; suspended solids (SS), the pollutant parameter total suspended solids; and pH, the measure of the relative acidity or alkalinity. The pollutant measurement carbonaceous biochemical oxygen demand is used in lieu of the pollutant measurement five-day biochemical oxygen demand (BOD₅), as noted in 40 CFR 133.102. All requirements for each pollutant measurement shall be achieved by publicly owned treatment works and ~~privately owned domestic sewage treatment works~~ semipublic sewage disposal systems except as provided for in subrules 62.3(2) and 62.3(3).

ITEM 14. Amend paragraph **62.3(1)“a”** as follows:

a. Carbonaceous biochemical oxygen demand (5 day)—CBOD₅.

(1) and (2) No change.

(3) The 30-day average percent removal shall not be less than 85 percent, and the percent removal shall be calculated by adding 5 units to the effluent CBOD₅ monitoring data and comparing that value to the influent BOD₅ monitoring data. Site-specific information on the relationship between BOD₅ and CBOD₅ shall be used in lieu of the 5-unit relationship if such information is available.

ITEM 15. Amend subrule 62.3(3), introductory paragraph, as follows:

62.3(3) Treatment equivalent to secondary treatment. This subrule describes the minimum level of effluent quality attainable by facilities eligible for treatment equivalent to secondary treatment in terms of the pollutant measurements CBOD₅, SS and pH. The pollutant measurement CBOD₅ is used in lieu of the pollutant measurement BOD₅ as noted in 40 CFR 133.105. Treatment works shall be eligible at any time for consideration of effluent limitations described for treatment equivalent to secondary treatment if:

ITEM 16. Amend paragraph **62.3(3)“f”** as follows:

f. CBOD₅ limitations:

(1) and (2) No change.

(3) The 30-day average percent removal shall not be less than 65 percent, and the percent removal shall be calculated by adding 5 units to the effluent CBOD₅ monitoring data and comparing that value to the influent BOD₅ monitoring data. Site-specific information on the relationship between BOD₅ and CBOD₅ shall be used in lieu of the 5-unit relationship if such information is available.

ITEM 17. Amend subrule 62.6(3), introductory paragraph, as follows:

62.6(3) Effluent limitations. This subrule establishes effluent limitations on the discharge of pollutants from sources other than publicly owned treatment works and ~~privately owned domestic sewage treatment works~~ semipublic sewage disposal systems that are not subject to the federal effluent standards adopted by reference in 62.4(1) and 62.4(3) to ~~62.4(60)~~ 62.4(71).

ITEM 18. Amend subrule 62.6(4) as follows:

62.6(4) Pretreatment requirements for incompatible wastes. This subrule establishes pretreatment requirements for incompatible pollutants that apply to sources other than ~~those covered by 40 CFR §128.133, (i.e., sources other than existing “major contributing industries” as defined in 40 CFR §128.124)~~ significant industrial users as defined in 567—60.2(455B), and to sources that are new or existing major contributing industries significant industrial users for which there is no federal pretreatment standard (i.e., sources which do not fall within a point source category or, if they do fall within a point source category, sources for which the administrator has not yet promulgated a pretreatment standard).

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a. For sources that are within a point source category adopted by reference in 62.4(455B) for which there are promulgated effluent limitation guidelines, but no promulgated pretreatment standards, the pretreatment standard for incompatible pollutants shall be the promulgated effluent limitation guideline. ~~Provided, that if the treatment works which receives the pollutants is committed in its operation permit to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall be correspondingly reduced for that pollutant.~~

b. For sources that are not subject to paragraph "a," ~~there shall be established~~ the department shall establish an effluent limitation that represents the best engineering professional judgment in the department of the degree of for effluent reduction that is consistent with the Act and Iowa Code chapter 455B.

e. ~~In no case shall a discharge into a publicly owned treatment works or a privately owned domestic sewage treatment works by a source subject to this subrule intermittently change the pH of the raw waste reaching the treatment plant by more than 0.5 pH unit or cause the pH of the waste reaching the plant to be less than 6.0 or greater than 9.0.~~

ITEM 19. Amend rule 567—62.7(455B) as follows:

567—62.7(455B) Effluent limitations less stringent than the effluent limitation guidelines. An effluent limitation less stringent than the effluent limitation guideline (adopted by reference in 62.4(455B)) representing the degree of effluent reduction achievable by application of the best practicable control technology currently available may be allowed in an NPDES permit if the factors relating to the equipment or facilities involved, the process applied, or other such factors related to the discharger are fundamentally different from the factors considered by the administrator in the establishment of the guidelines. An individual discharger or other interested person may submit evidence concerning such factors to the director. On the basis of such evidence or other available information and in accordance with 40 CFR 125.31, the director will make a written finding that such factors are or are not fundamentally different from the facility compared to those specified in the development document. Any such less stringent effluent limitations must, as a condition precedent, be approved by the administrator.

ITEM 20. Amend subrule 62.8(2) as follows:

62.8(2) Effluent limitations necessary to meet water quality standards. No effluent, alone or in combination with the effluent of other sources, shall cause a violation of any applicable water quality standard. When it is found that a discharge that would comply with applicable effluent standards in 62.3(455B), 62.4(455B) or 62.5(455B) or effluent limitations in 62.6(455B) would cause a violation of water quality standards, the discharge will be required to meet whatever effluent limitations are necessary to achieve water quality standards, including the nondegradation policy of 567—subrule 61.2(2) the water quality-based effluent limits (WQBELs) necessary to achieve the applicable water quality standards as established in 567—Chapter 61. Any such effluent limitation limit shall be determined using a statistically based portion of derived from the calculated waste load allocation, as described in "Supporting Document for Iowa Water Quality Management Plans" ~~(Iowa Department of Water, Air and Waste Management, July 1976, Chapter IV Chapter IV, July 1976, as revised on June 16, 2004), or the waste load allocation as required by a total maximum daily load, whichever is more stringent. The translation of waste load allocations to WQBELs shall use Iowa permit derivation methods, as described in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on June 16, 2004. (Copy available upon request to the Department of Natural Resources, Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319. Copy on file with the Iowa Administrative Rules Coordinator.)~~

ITEM 21. Amend subrule 62.8(3) as follows:

62.8(3) Pretreatment requirements more stringent than pretreatment standards or requirements. The department or the publicly owned treatment works may impose pretreatment requirements more stringent than the applicable pretreatment standard of 62.4(455B) or pretreatment requirements of 62.6(455B) if such more stringent requirements are necessary to prevent violations of water quality standards, ~~or the permit limitations of the treatment works~~ interference, or pass through.

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ITEM 22. Adopt the following **new** rule 567—62.10(455B):

567—62.10(455B) Effluent reuse. Treated final effluent may be reused in a manner noted in 62.10(1) or as specified in the NPDES permit.

62.10(1) Reuse for golf course irrigation. Treated final effluent may be reused for golf course irrigation if the conditions described in “a” and “b” are met.

a. The treated final effluent must meet one of the following conditions:

(1) A minimum total residual chlorine level of 0.5 mg/l must be maintained at a minimum of 15 minutes contact time of chlorine to wastewater prior to the irrigation of the golf course with treatment plant effluent; or

(2) Disinfected effluent shall be held in a retention pond with a detention time of at least 20 days prior to reuse as irrigation on a golf course. For this purpose, effluent may be disinfected using any common treatment technology, such as chlorination or UV; and either an existing pond or a pond constructed specifically for effluent retention may be used.

b. A golf course utilizing treated final effluent shall take all of the following actions:

(1) Clearly state on all scorecards that treated final effluent is used for irrigation of the golf course and oral contact with golf balls and tees should be avoided;

(2) Post signs that warn against consumption of water at all water hazards;

(3) Color code, label, or tag all piping and sprinklers associated with the distribution or transmission of the treated final effluent to clearly warn against the consumptive use of the contents; and

(4) Restrict the access of the public to any area of the golf course where spraying is being conducted.

All four of the above conditions must be met.

62.10(2) Reserved.

ITEM 23. Amend subrule 63.1(4) as follows:

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

ITEM 24. Amend subrule 63.2(3) as follows:

63.2(3) The permittee shall retain for a minimum of three years ~~any~~ all paper and electronic records of monitoring activities and results including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records. This includes but is not limited to monitoring and calibration records from pH meters, dissolved oxygen meters, total residual chlorine meters, flow meters, and temperature readings from any composite samplers. The period of retention shall be considered to be extended during the course of any unresolved litigation or when requested by the director or the regional administrator.

ITEM 25. Amend rule 567—63.3(455B) as follows:

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

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

63.3(2) *Monitoring by inorganic waste dischargers.* The ~~minimum~~ self-monitoring requirements to be incorporated in the operation permit for ~~an inorganic waste discharge~~ facilities discharging inorganic

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~~wastes shall be the appropriate requirement in Table V. Additional monitoring may be specified in the operation permit based on~~ determined on a case-by-case evaluation of the impact of the discharge on the receiving stream, toxic or deleterious effects of wastewaters, complexity of the treatment process, history of noncompliance or any other factor which requires strict control to meet the effluent limitations of the permit, as described in the Supporting Document for Permit Monitoring Frequency Determination, August 2008.

~~63.3(3) Monitoring of industrial contributors to significant industrial users of publicly owned treatment works. All major contributing industries~~ Monitoring for significant industrial users as defined in 567—60.2(455B) and industrial contributors that are subject to national pretreatment standards shall be monitored in accordance with the requirements in Tables I, II and V, shall be determined as described in the Supporting Document for Permit Monitoring Frequency Determination, August 2008. provided that the Results of such monitoring shall be submitted to the department in accordance with the reporting requirements in the operation permit. The monitoring program of a publicly owned treatment works with a pretreatment program approved by the department may be used in lieu of the ~~tables~~ supporting document. ~~The results of such monitoring shall be submitted to the department in accordance with the reporting requirements in the operation permit.~~

~~63.3(4) Operational monitoring.~~ The minimum operational monitoring to be incorporated in permits shall be the appropriate requirements in Table ~~III~~ IV. These requirements reflect minimum indicators that any adequately run system must monitor. The department recognizes that most well-run facilities will be monitored more closely by the operator as appropriate to the particular system. However, the results of ~~this monitoring~~ any monitoring beyond the requirements in Table IV need not be reported to the department, ~~but shall be maintained according to 63.2(3).~~ Operational monitoring requirements may be modified or reduced at the discretion of the director when adequate justification is presented by the permittee that the reduced or modified requirements will not adversely impact the operation of the facility. Additional operational monitoring may be specified in the operation permit based on a case-by-case evaluation of the impact of the discharge on the receiving stream, toxic or deleterious effects of wastewaters, complexity of the treatment process, history of noncompliance or any other factor that requires strict control to meet the effluent limitations of the permit.

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

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

ITEM 26. Amend subrule 63.5(2) as follows:

~~63.5(2) Reports of the self-monitoring results shall be submitted to the appropriate regional field office of the department quarterly. The quarterly reports shall cover the periods January through March, April through June, July through September and October through December. The quarterly report for each period shall be submitted by the tenth day of the month following the quarter being reported.~~

ITEM 27. Rescind rule 567—63.6(455B) and adopt the following **new** rule in lieu thereof:

567—63.6(455B) Bypasses, sanitary sewer overflows (SSOs) and upsets.

63.6(1) Prohibition. Bypasses from any portion of a treatment facility and sanitary sewer overflows (SSOs) from a sanitary sewer collection system designed to carry only sewage are prohibited. The department may not assess a civil penalty against a permittee for a bypass if the permittee has complied with all of the following:

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a. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

c. The permittee submitted the information required in 63.6(2), 63.6(3), and 63.6(5).

63.6(2) Request for anticipated bypass. Except for bypasses that occur as a result of mechanical failure or acts beyond the control of the owner or operator of a waste disposal system (unanticipated bypasses), the owner or operator shall obtain written permission from the department prior to any discharge of sewage or wastes from a waste disposal system not authorized by a discharge permit. The director may approve an anticipated bypass after considering its adverse effects if the director determines that it will meet the conditions in 63.6(1).

a. The request for a bypass shall be submitted to the appropriate regional field office of the department at least two weeks prior to the expected date of the event.

b. The request shall be submitted in writing and shall include all of the following:

- (1) The reason for the bypass;
- (2) The date and time the bypass will begin;
- (3) The expected duration of the bypass;
- (4) An estimate of the amount of untreated or partially treated sewage or wastewater that will be discharged;
- (5) The location of the bypass;
- (6) The name of any body of surface water that will be affected by the bypass; and
- (7) Any actions the owner or operator proposes to take to mitigate the effects of the bypass upon the receiving stream or other surface water.

c. The owner or operator shall provide any additional information requested by the department.

63.6(3) Notification of unanticipated bypass, SSO, or upset and public notices. In the event that a bypass, SSO, or upset occurs without prior notice having been provided pursuant to 63.6(2) or as a result of mechanical failure or acts beyond the control of the owner or operator, the owner or operator shall notify the department by telephone as soon as possible but not later than 12 hours after the onset or discovery.

a. Notification shall be made by contacting the appropriate field office during normal business hours (8 a.m. to 4:30 p.m.) or by calling the department at (515)281-8694 after normal business hours.

b. Notification by voicemail is not acceptable; every attempt should be made to speak directly to department staff.

c. Notification shall include information on as many items listed in subparagraphs 63.6(3) "e"(1) through (6) below as available information will allow.

d. When the department has been notified of an unanticipated bypass or SSO, the department shall determine if a public notice is necessary. If the department determines that public notification is necessary, the owner or operator of the treatment facility or the collection system shall prepare a public notice.

e. Bypasses and SSOs shall be reported with the monthly operation report, as a separate attachment, that includes:

- (1) The reason for the bypass or SSO, including the amount and duration of any rainfall event that may have contributed to the bypass or SSO;
- (2) The date and time of onset or discovery of the bypass or SSO;
- (3) The duration of the bypass or SSO;
- (4) An estimate of the amount of untreated or partially treated sewage or wastewater that was discharged;
- (5) The location of the bypass or SSO; and
- (6) The name of any body of surface water that was affected by the bypass or SSO.

63.6(4) Monitoring, disinfection, and cleanup. The owner or operator of the treatment facility or collection system shall perform any additional monitoring, sampling, or analysis requested by the regional field office of the department and shall comply with the instructions of the department intended to minimize the effect

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of a bypass, SSO, or upset on the receiving water of the state. The following requirements for disinfection and cleanup apply to all bypasses and SSOs:

a. The department may require temporary disinfection depending on the volume and duration of the bypass or SSO, the classification of the stream affected by the bypass or SSO, and the time of year during which the bypass or SSO occurs; and

b. The department may require cleanup of any debris and waste materials deposited in the area affected by the bypass or SSO. In conjunction with the cleanup, the department may require lime application to the ground surface or disinfection of the area with chlorine solution.

63.6(5) *Reporting of subsequent findings and additional information requested by the department.* All subsequent findings and laboratory results concerning a bypass or SSO shall be reported and submitted in writing to the appropriate regional field office of the department as soon as they become available. Any additional information concerning a bypass or SSO requested by the department shall be submitted within 30 days of the request.

63.6(6) *Upset.* An upset is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

a. An upset constitutes an affirmative defense to the assessment of a civil penalty for noncompliance with technology-based effluent limitations if the requirements of paragraph “*b*” of this subrule are met.

b. A permittee who wishes to establish an affirmative defense of upset shall demonstrate, through properly signed operation logs or other relevant evidence, that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of upset in accordance with 63.6(3); and

(4) The permittee completed any remedial measures required by the department; including but not limited to monitoring, sampling, or analysis requested by the department and any instructions from the department calculated to minimize the effect of the upset on the receiving water of the state.

c. In any enforcement action proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

ITEM 28. Amend rule 567—63.7(455B) as follows:

567—63.7(455B) Submission of records of operation. ~~Records~~ Except as provided in subrules 63.3(4) and 63.5(1), records of operation shall be submitted to the appropriate regional field office of the department within 15 days following the close of the reporting period specified in 63.8(455B) and in accordance with monitoring requirements derived from this chapter and incorporated in the operation permit. The permittee shall report all instances of noncompliance not reported under 63.12(455B) at the time monitoring reports are submitted. If a permittee becomes aware that it failed to submit any relevant facts in any report to the director, the permittee shall promptly submit such facts or information.

ITEM 29. Amend rule 567—63.8(455B) as follows:

567—63.8(455B) Frequency of submitting records of operation. Except as provided in ~~subrule 63.1(2)~~ subrules 63.3(4) and 63.5(1), records of operation required by these rules shall be submitted at monthly intervals. The department may vary the interval at which records of operation shall be submitted in certain cases. Variation from the monthly interval shall be made only under such conditions as the department may prescribe in writing to the person concerned.

ITEM 30. Amend rule 567—63.9(455B) as follows:

567—63.9(455B) Content of records of operation. Records of operation shall include the results of all monitoring specified in or authorized by this chapter and incorporated in the operation permit. ~~Monitoring performed but not specified in the operation permit shall be recorded and maintained in accordance with~~

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~~63.2(455B)~~. The results of any monitoring not specified in the operation permit shall be included in the calculation and reporting of any data submitted in accordance with this chapter and the operation permit.

ITEM 31. Amend rule **567—63.11(455B)**, introductory paragraph, as follows:

567—63.11(455B) Certification and signatory requirements in the submission of records of operation. All records of operation as required by these rules shall include certification which attests that all information contained therein is representative and accurate. Each record of operation shall contain the signature of a duly authorized representative of the corporation, partnership or sole proprietorship, municipality, or public facility which has proprietorship of the wastewater treatment or disposal system as specified in 567—subrule 64.3(8). For electronic submissions of records of operation, a signed paper copy of the record that was submitted electronically must be maintained at the facility for a minimum of three years.

ITEM 32. Adopt the following **new** rules 567—63.12(455B) to 567—63.14(455B):

567—63.12(455B) Twenty-four-hour reporting. All permittees shall report any permit noncompliance that may endanger human health or the environment, including, but not limited to, violations of maximum daily limits for any toxic pollutant (listed as toxic under 307(a)(1) of the Act) or hazardous substance (as designated in 40 CFR Part 116 pursuant to 311 of the Act). Information shall be provided orally to the appropriate regional field office of the department within 24 hours from the time the permittee becomes aware of the circumstances. In addition, a written submission that includes a description of noncompliance and its cause; the period of noncompliance including exact dates and times; whether the noncompliance has been corrected or the anticipated time it is expected to continue; and the steps taken or planned to reduce, eliminate, and prevent a reoccurrence of the noncompliance must be provided to the regional field office within 5 days of the occurrence.

567—63.13(455B) Planned changes. The permittee shall give notice to the appropriate regional field office of the department 30 days prior to any planned physical alterations or additions to the permitted facility. Notice is required only when:

1. Notice has not been given to any other section of the department;
2. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as defined in 567—60.2(455B);
3. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices; or
4. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in the permit.

567—63.14(455B) Anticipated noncompliance. The permittee shall give notice to the appropriate regional field office of the department of any activity which may result in noncompliance with permit requirements. Notice is required only when previous notice has not been given to any other section of the department.

ITEM 33. Rescind Table I in **567—Chapter 63** and adopt the following **new** Table I in lieu thereof:

Table I Minimum Self-Monitoring in Permits for Organic Waste Dischargers
Controlled Discharge Wastewater Treatment Plants

Wastewater Parameter	Sampling ⁵ Location	Sample Type ⁴	Frequency by P.E. ^{1,6}			
			< 100	101-500	501-1,000	>1,001
Flow ²	Raw	24-Hr Total	2/Week	Daily	Daily	Daily
	Final	Instantaneous	Daily During Periods of Discharge			
BOD ₅	Raw	24-Hr Composite	—	—	—	1/3 Months
CBOD ₅ ³	Final	Grab	Twice during drawdown ⁵			
Total Suspended Solids (TSS) ³	Raw	24-Hr Composite	—	—	—	1/3 Months
	Final	Grab	Twice during drawdown ⁵			

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Wastewater Parameter	Sampling ⁵ Location	Sample Type ⁴	Frequency by P.E. ^{1,6}			
			< 100	101-500	501-1,000	>1,001
Ammonia Nitrogen	Final	Grab	1/Month	Twice during drawdown ⁵		
Total Nitrogen ⁷	Final	Grab	1/Month	1/Month	1/Month	1/Month
Total Phosphorous	Final	Grab	1/Month	1/Month	1/Month	1/Month
e. coli	Final	Grab	1/Month	1/2 Weeks	1/2 Weeks	1/2 Weeks
pH	Raw	Grab	-	-	-	1/3 Months
	Final	Grab	1/Month	1/2 Weeks	1/Week	1/Week

Explanation of Superscripts

- 1 - The P.E. shall be computed on the basis of the original engineering design criteria for the facility and any modifications thereof. Where such design criteria are not available, the P.E. shall be computed using 0.167 pounds of BOD₅ per capita per day.
- 2 - Facilities serving a population equivalent less than 100 are not required to provide continuous flow measurement but are required to provide manual flow measurement at the specified frequency. Facilities serving a population equivalent greater than 100 are required to provide continuous flow measurement of the raw waste but need only provide manual flow measurement on the final effluent. Acceptable flow measurement and recording techniques shall be those described in the "Iowa Wastewater Facilities Design Standards," Chapter 14 (14.7.2).
- 3 - In addition to the sampling required above, a grab sample of the lagoon cell contents collected at a point near the outlet structure shall be analyzed at least two weeks prior to an anticipated discharge to demonstrate that the wastewater is of such quality to meet the effluent limitations in the permit. The permittee must have the sample analyzed for 5-day carbonaceous biochemical oxygen demand (CBOD₅) and total suspended solids (TSS). The results must be compared with the 30-day average effluent limits. If the results are less than the 30-day average limits, the permittee may isolate the final cell and draw down the lagoon cell. If the pre-discharge sample results exceed the 30-day average effluent limits for either CBOD₅ or TSS, the permittee must contact the local DNR Field Office for guidance before beginning to discharge.
- 4 - Sample types are defined as:
 "Grab Sample" means a representative, discrete portion of sewage, industrial waste, other waste, surface water or groundwater taken without regard to flow rate.
 "24-Hour Composite" means:
 - a. For facilities where no significant industrial waste is present, a sample made by collecting a minimum of six grab samples taken four hours apart and combined in proportion to the flow rate at the time each grab sample was collected. (Generally, grab samples should be collected at 8 a.m., 12 a.m. (noon), 4 p.m., 8 p.m., 12 p.m. (midnight), and 4 a.m. on weekdays (Monday through Friday) unless local conditions indicate another more appropriate time for sample collection.)
 - b. For facilities where significant industrial waste is present, a sample made by collecting a minimum of 12 grab samples taken two hours apart and combined in proportion to flow rate at the time each grab sample was collected. (Generally, grab samples should be collected at 8 a.m., 10 a.m., 12 a.m. (noon), 2 p.m., 4 p.m., 6 p.m., 8 p.m., 10 p.m., 12 p.m. (midnight), 2 a.m., 4 a.m., and 6 a.m. on weekdays (Monday through Friday) unless local conditions indicate another more appropriate time for sample collection.)
 - c. An automatic composite sampling device may also be used for collection of flow-proportioned or time-proportioned composite samples.
- 5 - Raw wastewater samples shall be taken continuously (year-round) at the specified frequency. Final effluent wastewater samples shall be taken only during the drawdown period. The first final effluent sample shall be taken the third day after the drawdown begins, and subsequent samples shall be taken at the specified frequencies. For final effluent samples that are required to be taken twice during drawdown, the first sample shall be taken the third day after the drawdown begins, and the second sample shall be taken between three (3) and five (5) days before the drawdown ends.
- 6 - If a facility has a P.E. greater than 3000 or a significant industrial contributor, additional monitoring may be required.
- 7 - Total nitrogen shall be determined by testing for Total Kjeldahl Nitrogen (TKN) and nitrate + nitrite nitrogen and reporting the sum of the TKN and nitrate + nitrite results (nitrate + nitrite can be analyzed together or separately).

ITEM 34. Rescind Table II in **567—Chapter 63** and adopt the following **new** Table II in lieu thereof:

Table II Minimum Self-Monitoring in Permits for Organic Waste Dischargers
Suspended Growth Wastewater Treatment Plants*

Wastewater Parameter	Sampling Location	Sample Type ³	Frequency by P.E. ^{1,6}						
			≤ 100	101-500	501-1,000	1,001-3,000	3,001-15,000	15,001-105,000	> 105,000
Flow ²	Raw or Final	24-Hr Total	2/week	Daily	Daily	Daily	Daily	Daily	Daily
BOD ₅	Raw	24-Hr Comp.	1/6 Months	1/3 Months	1/Week	1/Week	2/Week	2-5/Week ⁵	Daily
CBOD ₅	Final	24-Hr Comp.	1/ Month	1/2 Weeks	1/Week	1/Week	2/Week	2-5/Week ⁵	Daily

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Wastewater Parameter	Sampling Location	Sample Type ³	Frequency by P.E. ^{1,6}						
			≤ 100	101-500	501-1,000	1,001-3,000	3,001-15,000	15,001-105,000	> 105,000
Total Suspended Solids (TSS)	Raw	24-Hr Comp.	1/6 Months	1/3 Months	1/2 Weeks	1/Week	2/Week	2-5/Week ⁵	Daily
	Final	24-Hr Comp.	1/ Month	1/2 Weeks	1/2 Weeks	1/Week	2/Week	2-5/Week ⁵	Daily
Ammonia Nitrogen	Final	24-Hr Comp.	1/ Month	1/2 weeks	1/Week	1/Week	2/Week	2-5/Week ⁵	Daily
TKN ⁸	Raw	24-Hr Comp.	—	—	—	1/ Month	1 Week	2-5/Week ⁵	Daily
Total Nitrogen ⁹	Final	24-Hr Comp.	1/6 Months	1/3 Months	1/3 Months	1/2 Months	1/2 Months	1/Month	1/Month
Total Phosphorus	Final	24-Hr Comp.	1/6 Months	1/3 Months	1/3 Months	1/2 Months	1/2 Months	1/Month	1/Month
pH	Raw	Grab	—	—	1/Week	1/Week	2/Week	2-5/Week ⁵	Daily
	Final	Grab	1/ Month	1/2 Weeks	1/Week	1/Week	2/Week	5/Week	Daily
e. coli ^{4,7}	Final	Grab	5 samples, 1/3 Months	5 samples, 1/3 Months	5 samples, 1/3 Months	5 samples, 1/3 Months	5 samples, 1/3 Months	5 samples, 1/3 Months	5 samples, 1/3 Months
Temperature	Raw	Grab	—	—	1/Week	1/Week	2/Week	2-5/Week ⁵	Daily
	Final	Grab	1/ Month	1/2 Weeks	1/Week	1/Week	2/Week	2-5/Week ⁵	Daily

Explanation of Superscripts

* - Suspended growth wastewater treatment plants include, but are not limited to, activated sludge, sequencing batch reactor, and oxidation ditch facilities.

1 - See Footnote #1, Table I.

2 - See Footnote #2, Table I. Both raw and final flow monitoring may be required if the raw and final wastewater flows may be different for any reason.

3 - See Footnote #4, Table I.

4 - Analysis is required only when the facility discharges directly to a stream designated as Class A1, A2, or A3 or there is a reasonable potential for the discharge to affect a stream designated as Class A1, A2, or A3.

5 - The frequency of sample collection and analysis shall be increased by 1/week according to the following: 15,001 to 30,000 – 2/week; 30,001 to 45,000 – 3/week; 45,001 to 75,000 – 4/week; 75,001 – 105,000 – 5/week.

6 - The requirements for significant industrial users shall be those specified in the permit for final effluent monitoring.

7 - Bacteria Monitoring. All facilities must collect and analyze a minimum of five e.coli samples in one calendar month during each three-month period (quarter) during the appropriate recreation season associated with the receiving stream designation as specified in 567—subrule 61.3(3). For sampling required during the recreational season, March 15 to November 15, the three-month periods are March – May, June – August, and September – November. For year-round sampling, the three-month periods are January – March, April – June, July – September, and October – December. For each three-month period, the operator must take five samples during one calendar month, resulting in 15 samples in one year for sampling required during the recreation season and 20 samples per year for sampling required year-round.

The following requirements apply to the individual samples collected in one calendar month:

- Samples must be spaced over one calendar month.
- No more than one sample can be collected on any one day.
- There must be a minimum of two days between each sample
- No more than two samples may be collected in a period of seven consecutive days.

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The geometric mean must be calculated using all valid sample results collected during a month. The geometric mean formula is as follows: Geometric Mean = (Sample one x Sample two x Sample three x Sample four x Sample five...Sample N)^(1/N), which is the Nth root of the result of the multiplication of all of the sample results where N = the number of samples. If a sample result is a less than value, the value reported by the lab without sign shall be used in the geometric mean calculation.

8 - Additional Total Kjeldahl Nitrogen (TKN) monitoring may be required if the facility has one or more significant industrial users or has effluent ammonia violations.

9 - See Footnote #7, Table I.

ITEM 35. Renumber Table III in **567—Chapter 63** as Table IV.

ITEM 36. Adopt the following new Table III in **567—Chapter 63**:

Table III Minimum Self-Monitoring in Permits for Organic Waste Dischargers
Fixed Film and Aerated Lagoon Wastewater Treatment Plants*

Wastewater Parameter	Sampling Location	Sample Type ^{3,10}	Frequency by P.E. ^{1,6}						
			≤ 100	101-500	501-1,000	1,001-3,000	3,001-15,000	15,001-105,000	> 105,000
Flow ²	Raw or Final	24-Hr Total	2/Week	Daily	Daily	Daily	Daily	Daily	Daily
BOD ₅	Raw	24-Hr Comp.	1/6 Months	1/3 Months	1/Week	1/Week	2/Week	2-5/Week ⁵	Daily
CBOD ₅	Final	24-Hr Comp.	1/Month	1/ Month	1/Week	1/Week	2/Week	2-5/Week ⁵	Daily
Total Suspended Solids (TSS)	Raw	24-Hr Comp.	1/6 Months	1/3 Months	1/ Month	1/2 Weeks	1/2 Weeks	2-5/Week ⁵	Daily
	Final	24-Hr Comp.	1/ Month	1/ Month	1/ Month	1/2 Weeks	1/2 Weeks	2-5/Week ⁵	Daily
Ammonia Nitrogen	Final	24-Hr Comp.	1/ Month	1/ Month	1/Week	1/Week	2/Week	2-5/Week ⁵	Daily
TKN ⁸	Raw	24-Hr Comp.	—	—	—	1/ Month	1 Week	2-5/Week ⁵	Daily
Total Nitrogen ⁹	Final	24-Hr Comp.	1/6 Months	1/3 Months	1/3 Months	1/2 Months	1/2 Months	1/Month	1/Month
Total Phosphorus	Final	24-Hr Comp.	1/6 Months	1/3 Months	1/3 Months	1/2 Months	1/2 Months	1/Month	1/Month
pH	Raw	Grab	—	—	1/ Week	1/Week	2/Week	2-5/Week ⁵	Daily
	Final	Grab	1/ Month	1/ Month	1/ Week	1/Week	2/Week	5/Week	Daily
e. coli ^{4,7}	Final	Grab	5 samples, 1/3 Months	5 samples, 1/3 Months	5 samples, 1/3 Months	5 samples, 1/3 Months	5 samples, 1/3 Months	5 samples, 1/3 Months	5 samples, 1/3 Months
Temperature	Raw	Grab	—	—	1/Week	1/Week	2/Week	2-5/Week ⁵	Daily
	Final	Grab	1/ Month	1/ Month	1/Week	1/Week	2/Week	2-5/Week ⁵	Daily

Explanation of Superscripts

* - Fixed film wastewater treatment plants include, but are not limited to, trickling filter, sand filter, and media filter facilities.

1 - See Footnote #1, Table I.

2 - See Footnote #2, Table I.

3 - See Footnote #4, Table I.

4 - See Footnote #4, Table II.

5 - See Footnote #5, Table II.

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6 - See Footnote #6, Table II.

7 - See Footnote #7, Table II.

8 - See Footnote #8, Table II.

9 - See Footnote #7, Table I.

10 - For aerated lagoons, 24-hour composite samples are not required on the final effluent; grab samples are acceptable.

ITEM 37. Amend renumbered Table IV in **567—Chapter 63** as follows:

Table IV Operational Monitoring Requirements in Permits

LAGOONS

Parameter	Sampling Location	Sample Type	Frequency by P.E. ¹						
			< 100	101-500	501-1,000	1,001-3,000	3,001-15,000	15,001-105,000	> 105,000
Cell Depth	Each Cell	Measurement	1/Week	1/Week	1/Week	2/Week	2/Week	2/Week	2/Week

AERATED LAGOONS

Dissolved Oxygen	Cell Contents	Grab	1/Month	1/2 Weeks	1/2 Weeks	1/Week	2/Week	2/Week	2/Week
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TRICKLING FILTERS

Recirculation	—	Measurement	1/Week	1/Week	1/Week	2/Week	3/Week	5/Week	7/Week
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ACTIVATED SLUDGE

MLSS	Aeration Basin Contents	Grab	1/Month	1/Week	1/Week	2/Week	3/Week	5/Week	7/Week
Dissolved Oxygen	Aeration Basin Contents	Grab	1/Week	1/Week	2/Week	2/Week	3/Week	5/Week	7/Week
Temperature	Aeration Basin Contents	Grab	1/Week	1/Week	2/Week	2/Week	3/Week	5/Week	7/Week
30-Minute Settability	Aeration Basin Contents	Grab	1/Week	1/Week	2/Week	2/Week	3/Week	5/Week	7/Week

ANAEROBIC DIGESTER

Temperature	Digester Contents	Grab	1/Week	1/Week	2/Week	2/Week	3/Week	5/Week	7/Week
pH	Digester Contents	Grab	1/Week	1/Week	2/Week	2/Week	3/Week	5/Week	7/Week
Alkalinity	Digester Contents	Grab	—	—	—	1/Week	1/Week	2/Week	2/Week
Volatile Acids	Digester Contents	Grab	—	—	—	1/Week	1/Week	2/Week	2/Week

AEROBIC DIGESTER

Dissolved Oxygen	Digester Contents	Grab	—	—	1/Week	2/Week	3/Week	5/Week	7/Week
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CHLORINATION FACILITIES

Total Residual Chlorine	Final Effluent	Grab	1/Week	1/Week	2/Week	2/Week	3/Week	5/Week	7/Week
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SEQUENCING BATCH REACTORS

Total Suspended Solids	Aeration Basin Effluent	Grab ³	1/Week	1/Week	2/Week	2/Week	3/Week	5/Week	7/Week
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CLARIFIERS

Settleable Solids	Effluent after final clarifier	Grab	1/Week	1/Week	2/Week	2/Week	3/Week	5/Week	7/Week
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Explanation of Superscripts

1 - See Footnote #1, Table I.

2 - Alternative test methods for operational monitoring:

- Dissolved Oxygen - Pao Titration
- MLSS - Spectrophotometric, Centrifuge
- pH - Colorimetric Comparator, Meter
- 30-Minute Settleability - Standard Methods Test 213C
- Alkalinity - Standard Methods Test 403
- Volatile Acids - Standard Methods Test 504A
- Residual Chlorine - Colorimetric Comparator, Meter

3 - The TSS grab sample of the aeration basin effluent should be taken at the point of maximum effluent turbidity.

ITEM 38. Rescind Table V in **567—Chapter 63**.

ITEM 39. Renumber existing Table IV in **567—Chapter 63** as Table V.

ITEM 40. Adopt **new** numbered paragraph "2" in **567—Chapter 63**, Table VI, as follows:

- 2. Escherichia coli (e. coli) P,G Cool, 4°C 6 hours

ITEM 41. Rescind and reserve rule **567—64.1(455B)**.

ITEM 42. Amend subrule 64.2(1) as follows:

64.2(1) No person shall construct, install or modify any wastewater disposal system or part thereof or extension or addition thereto without, or contrary to any condition of, a construction permit issued by the director or by a local public works department authorized to issue such permits under 567—Chapter 9, nor shall any connection to a sewer extension in violation of any special limitation specified in a construction permit pursuant to 64.2(10), ~~paragraph "a," "b," or "f"~~ be allowed by any person subject to the conditions of the permit.

ITEM 43. Amend subrule **64.2(3)**, introductory paragraph, as follows:

64.2(3) Site approval under 64.2(2) shall be based on the criteria contained in the Ten States Standards, design manuals published by the department, applicable federal guidelines and standards, standard textbooks, current technical literature and applicable safety standards. To the extent that separation distances of this subrule conflict with the separation distances of ~~567—subrule 23.5(1) or 23.5(2)~~ Iowa Code section 455B.134(3) "f," the greater distance shall prevail. The following separation distances from ~~treatment or lagoon water surface~~ a treatment works shall apply unless a separation distance exception is provided in the Iowa Wastewater Facilities Design Standards. The separation distance from lagoons shall be measured from the water surface.

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ITEM 44. Adopt the following new paragraph **64.2(8)“c”**:

c. A privately owned pretreatment facility, except an anaerobic lagoon, where a treatment unit or units provide partial reduction of the strength or toxicity of the waste stream prior to additional treatment and disposal by another person, corporation, or municipality. However, the department may require that the design basis and construction drawings be filed for information purposes.

ITEM 45. Amend subrule 64.3(1) as follows:

64.3(1) Except as ~~provided~~ otherwise provided in this subrule ~~and~~, in 567—Chapter 65, and in 567—Chapter 69, no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the director; ~~nor shall the permittee of a system to which a sewer extension has been made under a construction permit limited pursuant to 64.2(10), paragraph “a,” “b” or “f,” allow a connection to such sewer extension in violation of any special limitation in such construction permit.~~ An operation permit is not required for the following:

a. Private sewage disposal system which does not discharge into a water of the state: (NOTE: private sewage disposal systems that discharge to waters of the state are regulated under 567—Chapter 69 and NPDES General Permit No. 4);

b. No change.

~~*c.* — Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel: Provided, that this exclusion shall not be construed to apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to discharges when the vessel is being used in a capacity other than as a means of transportation.~~

~~*d.* — Discharges to aquaculture projects as defined in 40 CFR §122.25 (eff. 12-18-84).~~

c. A pretreatment system, the effluent of which is to be discharged directly to another disposal system for final treatment and disposal;

d. A discharge from a geothermal heat pump which does not reach a navigable water.

~~*e.* — Discharges of dredged or fill material into navigable waters which are regulated under Section 404 of the Act.~~

~~*f.* — Any discharge of pollutants directly to another waste disposal system for final treatment and disposal, with the exception of storm water point sources. (This exclusion from requiring an operation permit applies only to the actual addition of materials into the subsequent treatment works. Plans or agreements to make such additions in the future do not relieve dischargers of the obligation to apply for and receive permits until the discharges of pollutants to navigable waters are actually eliminated. It also should be noted that, in all appropriate cases, pretreatment standards promulgated by the administrator pursuant to Section 307(b) of the Act and adopted by reference by the commission and other pretreatment standards and requirements must be complied with.)~~

~~*g.* — Any discharge in compliance with the instruction of an On Scene Coordinator pursuant to 40 CFR Part 300 [The National Oil and Hazardous Substances Pollution Plan] or 33 CFR §153.10(e) [Pollution by Oil and Hazardous Substances].~~

~~*h.* — Water pollution from agricultural and silvicultural activities, runoff from orchards, cultivated crops, pastures, rangelands, and forestlands, except that this exclusion shall not apply to the following:~~

~~(1) — Discharges from concentrated aquatic animal production facilities as defined in 40 CFR §122.24 (eff. 12-18-84);~~

~~(2) — Discharges from concentrated animal feeding operations as defined in 40 CFR §122.23 (eff. 12-18-84);~~

~~(3) — Discharges from silvicultural point sources as defined in 40 CFR §122.27 (eff. 12-18-84);~~

~~(4) — Storm water discharge associated with industrial activity as defined in 567—Chapter 60.~~

~~*i.* — Return flows from irrigated agriculture.~~

ITEM 46. Amend subrule 64.3(3) as follows:

64.3(3) The owner of any disposal system or part thereof in existence before August 21, 1973, for which a permit has been previously granted by the Iowa department of health or the Iowa department of environmental quality shall submit such information as the director may require to determine the conformity of such system

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and its operation with the rules of the department by no later than 60 days after the receipt of a request for such information from the director. If the director determines that the disposal system does not conform to the rules of the department, the director may require the owner to make such modifications as are necessary to achieve compliance. A construction permit shall be required, pursuant to 64.2(1), prior to any such modification of the disposal system.

ITEM 47. Amend subrule 64.3(4) as follows:

64.3(4) Applications.

a. Individual permit. Except as provided in 64.3(4)“b” or 64.3(4)“c,” applications for operation permits required under 64.3(1) shall be made on forms provided by the department, as noted in 567—subrule 60.3(2). The application for an operation permit under 64.3(1) shall be filed at least 180 days prior to the date operation is scheduled to begin unless a shorter period of time is approved by the director pursuant to 567—subrule 60.4(2). Permit applications for a new discharge of storm water associated with construction activity as defined in 567—Chapter 60 under “storm water discharge associated with industrial activity” must be submitted at least 60 days before the date on which construction is to commence. ~~Applications submitted to the department must be accompanied by the appropriate permit fee as specified in rule 64.16(455B). The~~ Upon completion of a tentative determination with regard to the permit application as described in 64.5(1)“a,” the director shall issue operation permits for applications filed pursuant to 64.3(1) within 90 days of the receipt of a complete application unless the application is for an NPDES permit or unless a longer period of time is required and the applicant is so notified. ~~The director may require the submission of additional information deemed necessary to evaluate the application. If the application is incomplete or otherwise deficient, processing of the application shall not be completed until such time as the applicant has supplied the missing information or otherwise corrected the deficiency.~~

b. No change.

~~*e. —Group applications.* Group applications identified in 40 CFR Part 122.26(e)(2) as amended through June 15, 1992, that were submitted and approved by the U.S. Environmental Protection Agency will be accepted by the department as an application for an NPDES permit for a storm water discharge associated with industrial activity. A copy of the group application does not need to be submitted to the department. The department will notify a participant in a group application of the required application and individual permit fees as specified in 64.16(3)“b” if an industry specific general permit is not available for the participants in the group.~~

ITEM 48. Amend subrule 64.3(5) as follows:

64.3(5) Requirements for industries that discharge to another disposal system except storm water point sources.

a. The director may require any person discharging wastes to a publicly or privately owned disposal system to submit information similar to that required in an application for an operation permit, but no operation permit is required for such discharge.

~~Major contributing industries~~ Significant industrial users as defined in 567—Chapter 60 must submit a treatment agreement which meets the following criteria:

(1) The agreement must be on ~~a form~~ the treatment agreement form, number 542-3221, as provided by the department; and

(2) No change.

(3) Be signed and dated by the ~~industrial contributor~~ significant industrial user and the owner of the disposal system accepting the wastewater; and

(4) No change.

b. ~~A major contributing industry should~~ significant industrial user must submit a new treatment agreement form 60 days in advance of a proposed expansion, production increase or process modification that may result in discharges of sewage, industrial waste, or other waste in excess of the discharge stated in the existing treatment agreement. An industry that would become a ~~major contributing industry~~ significant industrial user as a result of a proposed expansion, production increase or process modification ~~should~~ shall submit a treatment agreement form 60 days in advance of the proposed expansion, production increase or process modification.

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c. A treatment agreement form must be submitted at least 180 days before a new ~~major contributing industry~~ significant industrial user proposes to discharge into a wastewater disposal system. The owner of a wastewater disposal system shall notify the director by submitting a complete treatment agreement to be received at least ten days prior to making any commitment to accept waste from a proposed new ~~major contributing industry~~ significant industrial user. However, the department may notify the owner that verification of the data in the treatment agreement may take longer than ten days and advise that the owner should not enter into a commitment until the data is verified.

d. A treatment agreement form for each ~~major contributing industry~~ significant industrial user must be submitted with the facility plan or preliminary engineering report for the construction or modification of a wastewater disposal system. These agreements will be used in determining the design basis of the new or upgraded system.

e. Treatment agreement forms from ~~major contributing industries~~ significant industrial users shall be required as a part of the application for a permit to operate the wastewater disposal system receiving the wastes from the ~~major contributing industry~~ significant industrial user.

ITEM 49. Amend subrule 64.3(8) as follows:

64.3(8) Identity of signatories of ~~operation~~ permit applications. The person who signs the application for ~~an operation~~ a permit shall be:

a. *Corporations.* In the case of corporations, ~~a principal executive officer of at least the level of vice president~~ a responsible corporate officer. A responsible corporate officer means:

(1) A president, secretary, treasurer, or vice president in charge of a principal business function, or any other person who performs similar policy- or decision-making functions; or

(2) The manager of manufacturing, production, or operating facilities, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. and c. No change.

d. *Public facilities* Municipality, state, federal, or other public agency. In the case of a municipal, state, or other public facility, ~~by either the principal executive officer, or the ranking elected official.~~ A principal executive officer of a public agency includes:

(1) The chief executive officer of the agency; or

(2) A senior executive officer having responsibility for the overall operations of a unit of the agency.

e. *Storm water discharge associated with industrial activity from construction activities.* In the case of a storm water discharge associated with construction activity, either the owner of the site or the general contractor.

~~The person who signs NPDES reports shall be the same, except that in the case of a corporation or a public body, monitoring reports required under the terms of the permit may be submitted by the person who is responsible for the overall operation of the facility from which the discharge originates.~~

f. Certification. Any person signing a document under paragraph "a" to "d" of this subrule shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for known violations.

The person who signs NPDES reports shall be a person described in this subrule, except that in the case of a corporation or a public body, monitoring reports required under the terms of the permit may be submitted by a duly authorized representative of the person described in this subrule. A person is a duly authorized representative if the authorization is made in writing by a person described in this subrule and the authorization specifies an individual or position having responsibility for the overall operation of the regulated facility, such as plant manager, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the corporation.

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ITEM 50. Amend subrule 64.3(9) as follows:

64.3(9) When necessary to comply with present standards which must be met at a future date, an operation permit shall include a schedule for the alteration of the permitted facility to meet said standards. Such schedules shall not relieve the permittee of the duty to obtain a construction permit pursuant to 64.2(455B). When necessary to comply with a pretreatment standard or requirement which must be met at a future date, a ~~major contributing industry~~ significant industrial user will be given a compliance schedule for meeting those requirements.

ITEM 51. Amend subrule 64.3(11) as follows:

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

~~Cause for modification, suspension or revocation of a permit includes the following:~~

a. Permits may be amended, revoked and reissued, or terminated for cause either at the request of any interested person (including the permittee) or upon the director's initiative. All requests shall be in writing and shall contain facts or reasons supporting the request.

b. Cause under this subrule includes the following:

~~a.~~ (1) Violation of any term or condition of the permit.

~~b.~~ (2) Obtaining a permit by misrepresentation of fact or failure to disclose fully all material facts.

~~c.~~ (3) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

~~d.~~ (4) Failure to submit such records and information as the director shall require both generally and as a condition of the operation permit in order to ensure compliance with the discharge conditions specified in the permit.

~~e.~~ (5) Failure or refusal of an NPDES permittee to carry out the requirements of 64.7(5) "c."

~~f.~~ (6) Failure to provide all the required application materials or appropriate fees.

(7) A request for a modification of a schedule of compliance, an interim effluent limitation, or the minimum monitoring requirements pursuant to 567—paragraph 60.4(2) "b."

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

c. The permittee shall furnish to the director, within a reasonable time, any information that the director may request to determine whether cause exists for amending, revoking and reissuing, or terminating a permit, including a new permit application.

d. The filing of a request by an interested person for an amendment, revocation and reissuance, or termination does not stay any permit condition.

e. If the director decides the request is not justified, the director shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, hearings, or appeals.

f. Draft permits.

(1) If the director tentatively decides to amend, revoke and reissue, or terminate a permit, a draft permit shall be prepared according to 64.5(1).

(2) When a permit is amended under this paragraph, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the permit.

(3) When a permit is revoked and reissued under this paragraph, the entire permit is reopened just as if the permit had expired and was being reissued.

(4) If the permit amendment falls under the definition of minor amendment in 567—60.2(455B), the permit may be amended without a draft permit or public notice.

(5) During any amendment, revocation and reissuance, or termination proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

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ITEM 52. Adopt the following **new** subrules 64.3(12) and 64.3(13):

64.3(12) No permit may be issued:

a. When the applicant is required to obtain certification under Section 401 of the Clean Water Act and that certification has not been obtained or waived;

b. When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states; or

c. To a new source or new discharger if the discharge from its construction or operation will cause or contribute to a violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge to a water segment which does not meet applicable water quality standards must demonstrate, before the close of the public comment period for a draft NPDES permit, that:

(1) There is sufficient remaining load in the water segment to allow for the discharge; and

(2) The existing dischargers to the segment are subject to compliance schedules designed to bring the segment into compliance with water quality standards.

The director may waive the demonstration if the director already has adequate information to demonstrate (1) and (2).

64.3(13) Operation permits do not convey any property rights of any sort or any exclusive privilege.

ITEM 53. Amend subrule 64.4(1) as follows:

64.4(1) Individual permit. ~~The director shall, when an operation permit expires and an NPDES permit is required for the discharge, and, upon proper application, issue an individual NPDES permit in accordance with 64.5(455B), 64.7(455B), 64.8(1) and 64.9(455B).~~ An individual NPDES permit is required when there is a discharge of a pollutant from any point source into navigable waters. An NPDES permit is not required for the following:

a. Reserved.

b. Discharges of dredged or fill material into navigable waters which are regulated under Section 404 of the Act;

c. The introduction of sewage, industrial wastes or other pollutants into a POTW by indirect dischargers. (This exclusion from requiring an NPDES permit applies only to the actual addition of materials into the subsequent treatment works. Plans or agreements to make such additions in the future do not relieve dischargers of the obligation to apply for and receive permits until the discharges of pollutants to navigable waters are actually eliminated. It also should be noted that, in all appropriate cases, indirect discharges shall comply with pretreatment standards promulgated by the administrator pursuant to Section 307(b) of the Act and adopted by reference by the commission);

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

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

(1) Discharges from concentrated animal feeding operations as defined in 40 CFR 122.23;

(2) Discharges from concentrated aquatic animal production facilities as defined in 40 CFR 122.24;

(3) Discharges to aquaculture projects as defined in 40 CFR 122.25;

(4) Discharges from silvicultural point sources as defined in 40 CFR 122.27;

f. Return flows from irrigated agriculture; and

g. Water transfers, which are defined as activities that convey or connect navigable waters without subjecting the transferred water to intervening industrial, municipal, or commercial use.

ITEM 54. Adopt the following **new** subrule 64.4(3):

64.4(3) Effect of a permit.

a. Except for any toxic effluent standards and prohibitions imposed under Section 307 of the Act and standards for sewage sludge use or disposal under Section 405(d) of the Act, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with Sections 301, 302, 306, 307, 318, 403 and 405(a)-(b) of the Act. However, a permit may be terminated during its term for cause as set forth in 64.3(11).

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Compliance with a permit condition which implements a particular standard for sewage sludge use or disposal shall be an affirmative defense in any enforcement action brought for a violation of that standard for sewage sludge use or disposal.

b. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

ITEM 55. Amend subrule 64.5(1) as follows:

64.5(1) *Formulation of tentative determination ~~and draft NPDES permit~~.* The department shall make a tentative determination to issue or deny an operation or NPDES permit for the discharge described in a ~~Refuse Act or NPDES permit~~ application in advance of the public notice ~~of~~ as described in 64.5(2).

a. If the tentative determination is to issue ~~the an~~ NPDES permit, the department shall prepare a permit rationale for each draft permit pursuant to 64.5(3) and a draft NPDES permit. The draft permit shall include the following:

~~a.~~ (1) Effluent limitations identified pursuant to 64.6(2) and 64.6(3), for those pollutants proposed to be limited.

~~b.~~ (2) If necessary, a proposed schedule of compliance, including interim dates and requirements, identified pursuant to ~~64.6(4)~~ 64.7(4), for meeting the effluent limitations and other permit requirements.

~~c.~~ (3) Any other special conditions (other than those required in 64.6(5)) which will have a significant impact upon the discharge described in the ~~NPDES permit~~ application.

b. If the tentative determination is to deny an NPDES permit, the department shall prepare a notice of intent to deny the permit application. The notice of intent to deny an application will be placed on public notice as described in 64.5(2).

c. If the tentative determination is to issue an operation permit (non-NPDES permit), the department shall prepare a final permit and transmit the final permit to the applicant. The applicant will have 30 days to appeal the final operation permit.

d. If the tentative determination is to deny an operation permit (non-NPDES permit), no public notice is required. The department shall send written notice of the denial to the applicant. The applicant will have 30 days to appeal the denial.

ITEM 56. Amend subrule 64.5(2) as follows:

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

a. Prior to the issuance of an NPDES permit, a major NPDES permit amendment, or the denial of a permit application for an NPDES permit, public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the tentative determination to issue or deny an NPDES permit for the proposed discharge. Procedures for the circulation of public notice shall include at least the procedures of subparagraphs (1) to (3).

(1) The public notice for a draft NPDES permit or major permit amendment shall be circulated by the applicant within the geographical areas of the proposed discharge by posting the public notice in the post office and public places of the city nearest the premises of the applicant in which the effluent source is located; by posting the public notice near the entrance to the applicant's premises and in nearby places; and by publishing the public notice in local newspapers and periodicals, or, if appropriate, in a newspaper of general circulation. The public notice for the denial of a permit application shall be sent to the applicant and circulated by the department within the geographical areas of the proposed discharge by publishing the public notice in local newspapers and periodicals, or, if appropriate, in a newspaper of general circulation.

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

(3) Upon request, the department shall add the name of any person or group to the ~~mailing~~ distribution list, ~~described in 567—4.2(455B)~~, to receive copies of all public notices concerning ~~proposed NPDES permits~~ the tentative determinations with respect to the permit applications within the state or within a certain geographical area and shall ~~mail~~ send a copy of all public notices to such persons.

b. The department shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the ~~NPDES permit~~ application and request a public hearing pursuant to 64.5(6). Written comments may be submitted by paper or electronic means. All ~~written~~ comments submitted during the 30-day comment period shall be retained by the department and considered by the director in the formulation of the director's

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final determinations with respect to the NPDES permit application. The period for comment may be extended at the discretion of the department. Pertinent and significant comments received during either the original comment period or an extended comment period shall be responded to in a responsiveness summary pursuant to 64.5(8).

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

(1) and (2) No change.

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

(4) No change.

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

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

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

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

e. No public notice is required when a request for a permit amendment or a request for a termination of a permit is denied. The department shall send written notice of the denial to the requester and the permittee only. No public notice is required if an applicant withdraws a permit application.

ITEM 57. Amend subrule 64.5(3) as follows:

64.5(3) ~~Fact sheets~~ Permit rationales and notices of intent to deny.

a. ~~For every discharge which has a total volume of more than 500,000 gallons on any day of the year~~ When the department has made a determination to issue an NPDES permit as described in 64.5(1), the department shall prepare and, upon request, shall send to any person a ~~fact sheet~~ permit rationale with respect to the application described in the public notice. The contents of such ~~fact sheets~~ permit rationales shall include at least the following information:

(1) A ~~sketch or~~ detailed description of the location of the discharge described in the NPDES permit application.

(2) A quantitative description of the discharge described in the NPDES permit application which includes: ~~at least the following: the rate or frequency of the proposed discharge (if the discharge is continuous, the average daily flow in gallons per day or million gallons per day); for thermal discharges subject to limitation under the Act, the average summer and winter discharge temperatures in degrees Fahrenheit; and the average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under Section 301, 302, 306 or 307 of the Act and regulations published thereunder.~~

1. The average daily discharge in pounds per day of any pollutants which are subject to limitations or prohibitions under 64.7(2) or Section 301, 302, 306 or 307 of the Act and regulations published thereunder; and

2. For thermal discharges subject to limitation under the Act, the average and maximum summer and winter discharge temperatures in degrees Fahrenheit.

(3) and (4) No change.

(5) ~~A fuller description of the procedures for the formulation of final determinations than that given in the public notice including: the 30 day comment period required by 64.5(2); procedures for requesting a~~

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~~public hearing and the nature thereof; and any other procedures by which the public may participate in the formulation of the final determinations.~~

(5) An explanation of the principal facts and the significant factual, legal, methodological, and policy questions considered in the preparation of the draft permit.

(6) Any calculations or other necessary explanation of the derivation of effluent limitations.

b. When the department has made a determination to deny an application for an NPDES permit as described in 64.5(1), the department shall prepare and, upon request, shall send to any person a notice of intent to deny with respect to the application described in the public notice. The contents of such notice of intent to deny shall include at least the following information:

(1) A detailed description of the location of the discharge described in the permit application; and

(2) A description of the reasons supporting the tentative decision to deny the permit application.

c. When the department has made a determination to issue an operation permit as described in 64.5(1), the department shall prepare a short description of the waste disposal system and the reasons supporting the decision to issue an operation permit. The description shall be sent to the operation permit applicant upon request.

d. When the department has made a determination to deny an application for an operation permit as described in 64.5(1), the department shall prepare and send written notice of the denial to the applicant only. The written denial shall include a description of the reasons supporting the decision to deny the permit application.

~~b. e.~~ Upon request, the department shall add the name of any person or group to a mailing distribution list, described in 4.2(455B), to receive copies of fact sheets permit rationales and notices of intent to deny and shall mail send a copy of all fact sheets permit rationales and notices of intent to deny to such person persons.

ITEM 58. Amend subrule 64.5(4) as follows:

64.5(4) Notice to other government agencies. Prior to the issuance of an NPDES permit, the department shall notify other appropriate government agencies of each complete application for an NPDES permit and shall provide such agencies an opportunity to submit their written views and recommendations. Notifications may be distributed and written views or recommendations may be submitted by paper or electronic means. Procedures for such notification shall include the procedures of paragraphs "a" to "~~d.~~" "f."

~~a.~~ At the time of issuance of public notice pursuant to 64.5(2), the department shall transmit the fact sheet, if any, public notice to any other state whose waters may be affected by the issuance of the NPDES permit and, upon request, the department shall provide such state with a copy of the NPDES application and a copy of the proposed permit prepared pursuant to 64.5(1). Each affected state shall be afforded an opportunity to submit written recommendations to the department and to the regional administrator which the director may incorporate into the permit if issued. Should the director fail to incorporate any written recommendation thus received, the director shall provide to the affected state or states and to the regional administrator a written explanation of the reasons for failing to accept any written recommendation.

~~b.~~ At the time of issuance of public notice pursuant to 64.5(2), the department shall mail send the public notice for proposed discharges (other than minor discharges) into navigable waters and the fact sheet, if any, to the appropriate district engineer of the army corps of engineers.

(1) The department and the district engineer for each corps of engineers district within the state may arrange for: notice to the district engineer of minor discharges; waiver by the district engineer of the right to receive fact sheets public notices with respect to classes, types, and sizes within any category of point sources and with respect to discharges to particular navigable waters or parts thereof; and any procedures for the transmission of forms, period of comment by the district engineer (e.g., 30 days), and for objections of the district engineer.

(2) A copy of any written agreement between the department and a district engineer shall be forwarded to the regional administrator and shall be available to the public for inspection and copying in accordance with 567—Chapter 4 Chapter 2.

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c. Upon request, the department shall ~~mail send~~ the public notice ~~and fact sheet, if any,~~ to any other federal, state, or local agency, or any affected country, and provide such agencies an opportunity to respond, comment, or request a public hearing pursuant to 64.5(6).

d. The department shall ~~mail send~~ the public notice ~~and fact sheet, if any,~~ for any proposed NPDES permit within the geographical area of a designated and approved management agency under Section 208 of the Act (33 U.S.C. 1288).

e. The department shall ~~mail send~~ the public notice ~~and fact sheet, if any,~~ to the local board of health for the purpose of assisting the applicant in coordinating the applicable requirements of the Act and Iowa Code chapter 455B with any applicable requirements of the local board of health.

f. Upon request, the department shall provide any of the entities listed in 64.5(4) "a" through "e" with a copy of the permit rationale, permit application, or proposed permit prepared pursuant to 64.5(1).

ITEM 59. Amend subrule 64.5(5) as follows:

64.5(5) Public access to NPDES information. The records of the department connected with NPDES permits are available for public inspection and copying to the extent provided in 567—~~Chapter 4~~ Chapter 2.

ITEM 60. Amend subrule 64.5(7) as follows:

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

a. Public notice of any hearing held pursuant to 64.5(6) shall be circulated at least as widely as was the notice of the ~~NPDES~~ tentative determinations with respect to the permit application.

(1) No change.

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

(3) and (4) No change.

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

(1) and (2) No change.

(3) The name of the ~~waterway~~ waterbody to which each discharge is made and a short description of the location of each discharge ~~on to the waterway waterbody;~~

(4) A brief reference to the public notice issued for each NPDES application, including ~~identification number and the~~ date of issuance;

(5) and (6) No change.

(7) A concise statement of the issues raised by the person ~~or persons~~ requesting the hearing;

(8) The address and telephone number of the premises where interested persons may obtain further information, request a copy of the draft NPDES permit prepared pursuant to 64.5(1), request a copy of the ~~fact sheet, if any,~~ permit rationale prepared pursuant to 64.5(3), and inspect and copy ~~NPDES~~ permit forms and related documents; ~~and~~

(9) A brief description of the nature of the hearing, including the rules and procedures to be followed; ~~and~~

(10) The final date for submission of comments (paper or electronic) regarding the tentative determinations with respect to the permit application.

ITEM 61. Adopt the following new subrule 64.5(8):

64.5(8) Response to comments. At the time a final NPDES permit is issued, the director shall issue a response to significant and pertinent comments in the form of a responsiveness summary. A copy of the responsiveness summary shall be sent to the permit applicant, and the document shall be made available to the public upon request. The responsiveness summary shall:

a. Specify which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the changes; and

b. Briefly describe and respond to all significant and pertinent comments on the draft permit raised during the public comment period provided for in the public notice or during any hearing. Comments on a draft permit may be submitted by paper or electronic means.

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ITEM 62. Amend paragraph **64.7(2)“f”** as follows:

f. Any other limitation, including those:

(1) Necessary to meet water quality standards, treatment or pretreatment standards, or schedules of compliance established pursuant to any Iowa law or regulation, or to implement the ~~policy of nondegradation~~ antidegradation policy in 567—subrule 61.2(2); or

(2) to (4) No change.

ITEM 63. Reletter paragraph **64.7(2)“g”** as **“h.”**

ITEM 64. Adopt the following new paragraph **64.7(2)“g”**:

g. Limitations must control all pollutants or pollutant parameters which the director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any water quality standard, including narrative criteria, in 567—Chapter 61. When the permitting authority determines that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion of the water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

ITEM 65. Amend relettered paragraph **64.7(2)“h”** as follows:

h. Any more stringent legally applicable requirements necessary to comply with a plan approved pursuant to Section 208(b) of the Act.

In any case where an NPDES permit applies to effluent standards and limitations described in paragraph “a,” “b,” “c,” “d,” “e,” “f,” or “g,” ~~or “h,”~~ the director must state that the discharge authorized by the permit will not violate applicable water quality standards and must have prepared some verification of that statement. In any case where an NPDES permit applies any more stringent effluent limitation, described in 64.7(2)“*f*”(1), or “g,” based upon applicable water quality standards, a waste load allocation must be prepared to ensure that the discharge authorized by the permit is consistent with applicable water quality standards.

ITEM 66. Amend subrule 64.7(5) as follows:

64.7(5) *Other terms and conditions of issued NPDES permits.* Each issued NPDES permit shall provide for and ensure the following:

a. No change.

b. That the permit may be ~~modified, suspended or revoked~~ amended, revoked and reissued, or terminated in whole or in part for the causes provided in ~~64.3(11)~~ 64.3(11)“b.”

c. No change.

d. That, if the permit is for a discharge from a publicly owned treatment works, the permittee shall provide notice to the director of the following:

(1) One hundred eighty days in advance of any new introduction of pollutants into such treatment works from ~~a source which would be a new source as defined in Section 306 of the Act~~ 567—Chapter 60 if such source were discharging pollutants;

(2) Except as specified below, 180 days in advance of any new introduction of pollutants into such treatment works from a source which would be subject to Section 301 of the Act if such source were discharging pollutants. However, the connection of such a source need not be reported if the source contributes less than ~~50,000~~ 25,000 gallons of process wastewater per day at the ~~maximum~~ average discharge, or less than 5 percent of the organic or hydraulic loading of the treatment facility, or is not subject to a federal pretreatment standard adopted by reference in 567—Chapter 62, or does not contribute ~~toxic materials pollutants~~ that may adversely affect the treatment process or any waste that may have an adverse or deleterious impact on the treatment process cause interference or pass through; and

(3) No change.

Such notice shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works.

e. No change.

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f. That the permittee at all times shall maintain in good working order and operate as efficiently as possible any facilities or systems of treatment and control which have been installed or are used by the permittee to achieve compliance with the terms and conditions of the permit. Proper operation and maintenance also includes adequate laboratory control and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by the permittee only when such operation is necessary to achieve compliance with the conditions of the permit.

g. to j. No change.

ITEM 67. Amend paragraphs 64.7(6)“a” and “b” as follows:

a. The director shall notify the owner of a POTW of the plan of action requirement, and of an opportunity to meet with department staff to discuss the plan of action requirements. The POTW owner shall submit a plan of action to the appropriate regional field office of the department within six months of such notice, unless a longer time is needed and is authorized in writing by the director.

b. The plan of action will vary in length and complexity depending on the compliance history and physical status of the particular POTW. It must identify the deficiencies and needs of the system, describe the causes of such deficiencies or needs, propose specific measures (including an implementation schedule) that will be taken to correct the deficiencies or meet the needs, and discuss the method of financing the improvements proposed in the plan of action.

The plan may provide for a phased construction approach to meet interim and final limitations, where financing is such that a long-term project is necessary to meet final limitations, and shorter term projects may provide incremental benefits to water quality in the interim.

Information on the purpose and preparation of the plan can be found in the departmental document entitled “Guidance on Preparing a Plan of Action,” available ~~through the records center of the department~~ from the department’s regional field offices.

ITEM 68. Amend rule 567—64.8(455B) as follows:

567—64.8(455B) Reissuance of operation and NPDES permits.

64.8(1) Individual operation and NPDES permits. Individual operation and NPDES permits will be reissued according to the procedures identified in 64.8(1)“a” to “c.”

a. Any ~~state~~ operation or NPDES permittee who wishes to continue to discharge after the expiration date of the permit shall file an application for reissuance of the permit at least 180 days prior to the expiration of the permit pursuant to 567—60.4(455B). ~~The application may be a simple written request. However, In addition, the applicant for reissuance~~ must submit or have submitted information to show:

(1) That the permittee is in compliance or has substantially complied with all the terms, conditions, requirements and schedules of compliance of the expiring operation or NPDES permit. Substantial compliance with a permit shall be determined as noted in paragraphs “b” and “c” of this subrule.

(2) and (3) No change.

b. The following criteria shall be used to determine if a controlled discharge lagoon has substantially complied with its permit. For the purposes of this subrule, controlled discharge lagoons are wastewater treatment facilities that consist of one or more facultative lagoons or ponds operated in a storage/drawdown mode and whose minimum monitoring is determined by Table I in 567—Chapter 63.

(1) Effluent violations: A controlled discharge lagoon has not substantially complied with its permit if there are two or more violations of a monthly average permit limit for CBOD₅ or TSS that equal or exceed the permit limit by 1.4 times the limit during six consecutive discharges or four or more violations of a monthly average limit by any amount during six consecutive discharges.

(2) Monitoring violations: A controlled discharge lagoon has not substantially complied with its permit if monitoring reports submitted to the department are incomplete or deficient to the extent that the department cannot determine whether the facility has complied with permit limits.

(3) Compliance schedule violations: A controlled discharge lagoon has not substantially complied with its permit if it has violated any compliance schedule milestone by more than 90 days from the date specified in its permit or specified in an enforcement order that is a result of acts of omissions by the permittee.

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(4) Operating violations: A controlled discharge lagoon has not substantially complied with its permit if it has discharged more frequently than 3 times in a consecutive 12-month period or has discharged more than a total of 90 days in a consecutive 12-month period. NOTE: Although a controlled discharge lagoon that has not discharged for more than 24 consecutive months has not violated its permit, it should be evaluated to determine if it is leaking in excess of the design standard in effect at the time it was constructed.

(5) Other violations: The director may determine that a controlled discharge lagoon has not substantially complied with its permit if it has had any other violation or combination of violations of permit conditions. Violations included in this category can include, but are not limited to, unauthorized bypasses, failure to report bypasses or sanitary sewer overflows, failure to properly operate and maintain the treatment works, violations by significant industrial users, or accepting wastes in volumes or amounts that exceed the design capacity of the treatment works.

c. The following criteria shall be used to determine if all facilities other than controlled discharge lagoons (as defined in "b") have substantially complied with their permits.

(1) Effluent violations: A facility has not substantially complied with its permit if a violation or combination of violations meet the criteria for significant noncompliance (SNC) with permit limits in 40 CFR 123.45 Appendix A, "Criteria for Noncompliance Reporting in the NPDES Program."

(2) Monitoring violations: A facility has not substantially complied with its permit if monitoring reports submitted to the department are incomplete or deficient to the extent that the department cannot determine whether the facility has complied with permit limits.

(3) Compliance schedule violations: A facility has not substantially complied with its permit if it has violated any compliance schedule milestone by more than 90 days from the date specified in its permit or specified in an enforcement order that is a result of acts of omissions by the permittee.

(4) Other violations: The director may determine that a facility has not substantially complied with its permit if it has had any other violation or combination of violations of permit conditions. Violations included in this category can include, but are not limited to, unauthorized bypasses, failure to report bypasses or sanitary sewer overflows, failure to properly operate and maintain the treatment works, violations by significant industrial users, or accepting wastes in volumes or amounts that exceed the design capacity of the treatment works.

b. d. The director shall follow the notice and public participation procedures specified in 64.5(455B) in connection with each request for reissuance of an NPDES permit.

e. e. Notwithstanding any other provision in these rules, any new point source the construction of which is commenced after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 (October 18, 1972) and which is so constructed as to meet all applicable standards of performance for new sources shall not be subject to any more stringent standard of performance during a ten-year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of Section 167 or 169 (or both) of the Internal Revenue Code, as amended through December 31, 1976, whichever period ends first.

64.8(2) No change.

64.8(3) *Continuation of expiring operation and NPDES permits.*

a. The conditions of an expired operation or NPDES permit will continue in force until the effective date of a new permit if:

(1) The permittee has submitted a complete application under 60.4(2); and

(2) The department, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit.

b. Operation and NPDES permits continued under this section remain fully effective and enforceable.

c. If a permittee is not in compliance with the conditions of the expiring or expired permit, the department may choose to do any of the following:

(1) Initiate enforcement action on the permit which has been continued;

(2) Issue a notice of intent to deny a permit under 64.5(1);

(3) Reissue a permit with appropriate conditions in accordance with this subrule; or

(4) Take other actions authorized by this rule.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 69. Amend rule 567—64.9(455B) as follows:

567—64.9(455B) Monitoring, record keeping and reporting by operation permit holders. Operation permit holders are subject to any applicable requirements and provisions specified in ~~567—Chapter 63~~ the operation permit issued by the department.

ITEM 70. Amend rule 567—64.10(455B) as follows:

567—64.10(455B) Silvicultural activities. The following is adopted by reference: 40 CFR 122.27 ~~as promulgated April 1, 1983 (48 FR 14153).~~

ITEM 71. Amend subrule 64.13(1) as follows:

64.13(1) The following is adopted by reference: 40 CFR 122.26 ~~as promulgated November 16, 1990 (55 FR 47990), and amended March 21, 1991 (56 FR 12098), April 2, 1992 (57 FR 11394), and December 8, 1999 (64 FR 68838).~~

ITEM 72. Amend rule 567—64.14(455B) as follows:

567—64.14(455B) Transfer of title or owner address change. If title to any disposal system or part thereof for which a permit has been issued under 64.2(455B), 64.3(455B) or 64.6(455B) is transferred, the new owners shall be subject to all terms and conditions of said permit. Whenever title to a disposal system or part thereof is changed, the department shall be notified in writing of such change ~~within 30 days~~ at least 30 days of the occurrence. No transfer of the authorization to discharge from the facility represented by the permit shall take place prior to notifying the department of the transfer of title. Whenever the address of the owner is changed, the department shall be notified in writing within 30 days of the address change. Electronic notification is not sufficient; all title transfers or address changes must be reported to the department by mail.

ITEM 73. Amend subparagraph **64.16(3)“a”(5)** as follows:

(5) Discharge from Mining and Processing Facilities, NPDES General Permit No. 5. Fees as established in ~~2006 Iowa Acts, House File 2540, section 25 Iowa Code section 455B.197,~~ are to be submitted by August 30 of every year unless a multiyear fee payment was received in an earlier year. New facilities seeking General Permit No. 5 coverage ~~in any month but August~~ shall submit fees with the Notice of Intent for coverage. ~~Coverage provided by the five year, four year, or three year permit fees expires no later than the expiration date of the general permit.~~ Maximum coverage is five years, four years, ~~and three years,~~ and one year respectively. In the event a facility is no longer eligible to be covered under General Permit No. 5, the remainder of the fees previously paid by the facility shall be applied toward its individual permit fees.

ITEM 74. Amend subparagraphs **64.16(3)“b”(3)** to **(6)** as follows:

(3) For operation and non-storm water NPDES permits not subject to subparagraphs (1) and (2), a single application fee of \$85 as established in ~~2006 Iowa Acts, House File 2540, section 25 Iowa Code section 455B.197,~~ is due at the time of application. The application fee is to be submitted with the application form ~~(Form 30 for municipal and semipublic facilities; Form 1, 2, 2F, 3, or 4 for industrial facilities)~~ forms (as required by 567—Chapter 60) at the time of a new application, renewal application, or amendment application. Before an approved amendment request submitted by a facility holding a non-storm water NPDES permit can be processed by the department, the application fee must be submitted. Application fees will not be charged to facilities holding non-storm water NPDES permits when an amendment request is ~~submitted by DNR staff, or initiated by the director,~~ when the requested amendment is to correct an error in the permit, or when there is a transfer of title or change in the address of the owner as noted in 64.14(455B).

(4) For every major and minor municipal facility, every semipublic facility, every major and minor industrial facility, every facility that holds an operation permit (no wastewater discharge into surface waters), and every open feedlot animal feeding operation required to hold a non-storm water NPDES permit, an annual fee as established in ~~2006 Iowa Acts, House File 2540, section 25 Iowa Code section 455B.197,~~ is due by August 30 of each year.

(5) For every municipal water treatment facility with a non-storm water NPDES permit, no fee is charged (as established in ~~2006 Iowa Acts, House File 2540, section 25 Iowa Code section 455B.197).~~

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

(6) For a new facility, an annual fee as established in ~~2006 Iowa Acts, House File 2540, section 25~~ Iowa Code section 455B.197, is due 30 days after the new permit is issued.

ITEM 75. Amend paragraph **64.16(3)“c”** as follows:

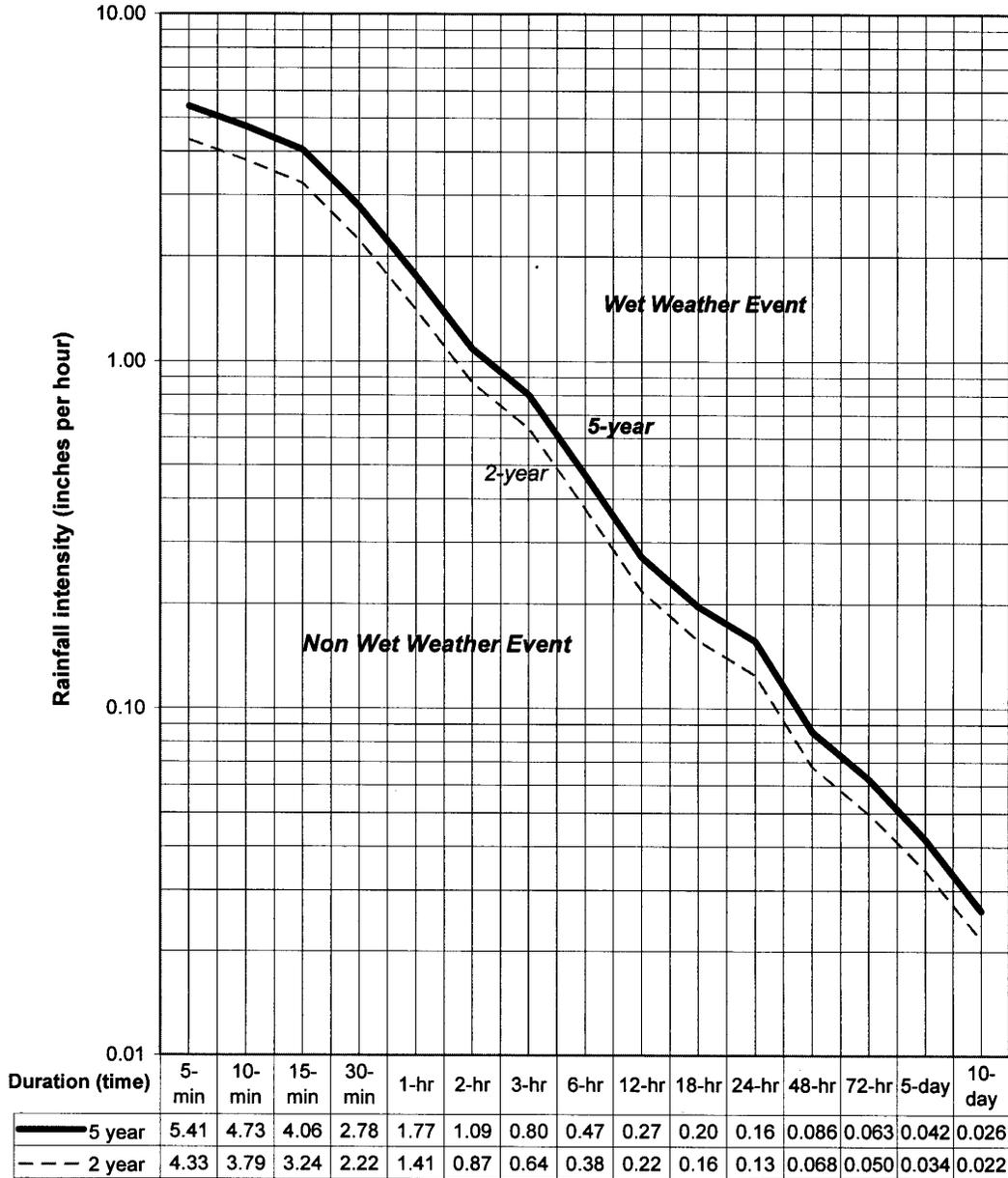
c. Wastewater construction permit fees. A single construction permit fee as established in ~~2006 Iowa Acts, House File 2540, section 25~~ Iowa Code section 455B.197, is due at the time of construction permit application submission.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 76. Rescind Appendix A in 567—Chapter 64 and adopt the following **new** Appendix A in lieu thereof:

**APPENDIX A
Rainfall Intensity - Duration - Frequency Curve
(5 and 2 year Return Intervals)**

Data Source: Rainfall Frequency Atlas of the Midwest, Illinois State Water Survey, 1992.



Rainfall intensity data points (inches per hour)

ARC 7120B**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 65, "Food Assistance Program Administration," Iowa Administrative Code.

These amendments implement the Food, Conservation, and Energy Act of 2008 (also known as the Farm Bill). Provisions of this bill improve access to the Food Assistance program, promote efficiency of the program's operation, and simplify the program for more effective program administration. These amendments implement the following program improvements:

- Raise the minimum standard deduction that is subtracted from countable income and provide for annual inflation adjustments in future years. Effective October 1, 2008, the minimum deduction will increase from \$134 to \$144.

- Remove the cap on the dependent care deduction that is subtracted from countable income. Currently the maximum deduction is \$200 monthly for each child under the age of two and \$175 monthly for dependents aged two or older.

- Raise the minimum benefit amount for households of one or two persons from \$10 a month to 8 percent of the thrifty food plan for a household of one. The minimum benefit is estimated to be \$14 in federal fiscal year 2009, with adjustments for food inflation in later years.

- Exclude tax-deferred retirement accounts and tax-deferred education accounts from countable resources. Funds in these accounts will not make a household ineligible due to excess resources.

- Index the resource limit, currently a fixed amount, to provide for annual adjustments based on inflation. Based on the Congressional Budget Office's most recent inflation projections, the first increase in the resource limit is expected in federal fiscal year 2012 or later.

- Implement the state option of expanding simplified reporting to include households in which all adult members are elderly or disabled and have no earned income. This change moves all households that are currently subject to ten-day change reporting to the simplified reporting method.

Switching households that include seniors (aged 60 or older) and people with disabilities to simplified reporting reduces paperwork burdens on these households. Simplified reporting households are required to report only if their total gross income exceeds 130 percent of the federal poverty level for their household size or if the work hours of an able-bodied adult without dependents change to less than 20 hours per week, averaged monthly. Simplified reporting households have the option of reporting changes that may increase their benefits, and the Department is required to act on all reported changes.

Certification periods of 12 months will be assigned to households in which all adult members are elderly or disabled and have no earned income. Certification periods of six months will be assigned to all other households. However, an interview is required only once a year. Certification periods shorter than 6 or 12 months may be assigned to align the recertification date to the FIP or medical assistance review date.

The Food Assistance Interim Report (FAIR) is being eliminated. Currently, households that are subject to simplified reporting must complete a FAIR in the sixth month of the certification period and a Review/Recertification Eligibility Document (RRED) every 12 months. With these amendments, these households will continue to complete a form every six months but the form will be the RRED each time.

These amendments do not provide for waivers in specified situations. The Department does not have authority to waive federal law or regulation.

The Council on Human Services adopted these amendments on August 13, 2008.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 7119B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before October 1, 2008. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code section 234.12.

ARC 7137B**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Iowa Administrative Code.

This amendment restores Medicaid coverage of periodontal and endodontic dental services, including posts, cores, and crowns, for members 21 years of age or older. This coverage was eliminated in 2002.

Periodontal disease and endodontic disease are infectious diseases that, if left untreated, may result in other health complications. They are the only infectious diseases for which treatment is not covered by Medicaid. In state fiscal year 2008, the Department received 208 requests for exceptions to policy for these services and approved 177 of them (85 percent). Reasons for approval included pregnancy, diabetes, organ transplants, heart disease, lung disease, severe or profound mental retardation, and physical disabilities.

The Department has determined that it is more cost-effective in the long term to treat these infectious diseases and thereby minimize other health complications.

This amendment does not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendment on or before October 1, 2008. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

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

The following amendment is proposed.

Amend subrule 78.4(14) as follows:

78.4(14) Services to ~~adults~~ members 21 years of age ~~and or~~ older: ~~Effective May 10, 2002, the following dental services~~ Orthodontic procedures are not covered for ~~adults~~ members 21 years of age ~~and or~~ older:

~~a. — Crowns, posts, and cores on anterior teeth that have not received endodontic treatment and on posterior teeth.~~

~~b. — Periodontal services.~~

~~c. — Endodontic services on posterior teeth.~~

~~d. — Orthodontic procedures.~~

ARC 7123B**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Iowa Administrative Code.

This amendment increases the Medicaid reimbursement rate for nonemergency medical transportation by car from \$.30 per mile to \$.34 per mile. Medicaid members are entitled to request reimbursement for travel expenses when they must travel outside their local community to obtain medical care. Due to the rise in gasoline costs from 2001 to 2005, the Department increased the mileage allowance from \$.21 per mile to \$.30 per mile effective November 1, 2005. In July 2005, the average gasoline price per gallon in Iowa was \$2.13. As of July 2008, the average price reached \$3.93 per gallon. This amendment aligns the reimbursement rate more closely with the actual cost of transportation.

This amendment does not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 7122B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendment on or before October 1, 2008. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

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

ARC 7126B**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 239B.4(4) and 239B.8(2), the Department of Human Services proposes to amend Chapter 93, "PROMISE JOBS Program," Iowa Administrative Code.

This amendment increases the PROMISE JOBS mileage reimbursement rate from \$.30 per mile to \$.34 per mile.

As an eligibility factor for the Family Investment Program, adults and older teens who are not in school must participate in employment and training activities through the PROMISE JOBS program, as outlined in their Family Investment Agreement (FIA). The FIA outlines what the participant will do to become self-sufficient and what supports the state will provide. A participant's failure to follow the FIA requirements results in a full family sanction, called a limited benefit plan.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The participant is eligible for a payment to cover transportation costs as a supportive service when participating in an approved PROMISE JOBS activity other than orientation or employment and assistance is not available from another source. Due to the large rise in gasoline costs from 2001 to 2005, the Department increased the mileage allowance from \$.21 per mile to \$.30 per mile effective November 1, 2005. In July 2005, the average gasoline price per gallon in Iowa was \$2.13. As of July 2008, the average price reached \$3.93 per gallon. This amendment aligns the reimbursement rate more closely with the actual cost of transportation.

This amendment does not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 7125B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendment on or before October 1, 2008. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

This amendment is intended to implement Iowa Code section 239B.17.

ARC 7154B

INSURANCE DIVISION[191]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 508E.4 and 2008 Iowa Acts, Senate File 2392, section 19, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 48, "Viatical and Life Settlements," Iowa Administrative Code.

The rules in Chapter 48 provide for the administration of viatical and life settlements in this state by providing rules under which viatical and life settlements may be made and safeguards by which viatical settlement providers may be monitored and remain in good standing. The proposed amendments update the rules to reflect recent changes to Iowa Code chapter 508E as amended by 2008 Iowa Acts, Senate File 2392. The Division intends that Iowa viatical settlement brokers and providers will comply with these rules for all viatical settlement purchase agreements issued on or after January 1, 2009.

Any interested person may make written suggestions or comments on these proposed amendments on or before September 30, 2008. Such written materials should be directed to Rosanne Mead, Assistant Insurance Commissioner, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319; fax (515)281-3059.

Also, there will be a public hearing on September 30, 2008, at 10 a.m. in the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend a public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Division and advise of specific needs.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 7153B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code chapter 508E as amended by 2008 Iowa Acts, Senate File 2392; Iowa Code chapters 252J and 261; and 2008 Iowa Acts, Senate File 2428.

ARC 7124B

INSURANCE DIVISION[191]**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 505.8, the Iowa Insurance Division hereby gives Notice of Intended Action to adopt new Chapter 98, "Annual Financial Reporting Requirements," Iowa Administrative Code.

The rules in Chapter 98 improve the Iowa Insurance Division's surveillance of the financial condition of insurers by requiring an annual audit of financial statements by certified public accountants, Communication of Internal Control Related Matters Noted in an Audit, and Management's Report of Internal Control Over Financial Reporting.

This chapter does not provide for waivers.

Any interested person may make written comments on the proposed rules on or before September 30, 2008. Written comments may be sent to Matt Hargrafen, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Comments may also be submitted electronically to matt.hargrafen@iid.iowa.gov or via facsimile to (515)281-3059.

A public hearing will be held at the office of the Insurance Division at 10 a.m. on September 30, 2008. The Division is located at 330 Maple Street, Des Moines, Iowa.

These rules are intended to implement Iowa Code section 505.8.

The following amendment is proposed.

Adopt the following **new** 191—Chapter 98:

CHAPTER 98
ANNUAL FINANCIAL REPORTING REQUIREMENTS
[Prior to January 1, 2010, see 191—5.25(505)]

191—98.1(505) Authority. This chapter is promulgated by the commissioner of insurance pursuant to Iowa Code section 505.8.

191—98.2(505) Purpose. The purpose of this chapter is to improve the Iowa insurance division's surveillance of the financial condition of insurers by requiring an annual audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants, Communication of Internal Control Related Matters Noted in an Audit, and Management's Report of Internal Control Over Financial Reporting.

98.2(1) Every insurer (as defined in rule 98.3(505)) shall be subject to this chapter. Insurers having direct premiums written in this state of less than \$1 million in any calendar year and less than 1,000 policyholders or certificate holders of direct written policies nationwide at the end of the calendar year shall be exempt from this chapter for such year (unless the commissioner makes a specific finding that compliance is necessary for the commissioner to carry out statutory responsibilities), except that insurers having assumed premiums pursuant to contracts or treaties of reinsurance of \$1 million or more will not be so exempt.

98.2(2) Foreign or alien insurers filing the audited financial report in another state, pursuant to that state's requirement for filing of audited financial reports, which has been found by the commissioner to be substantially similar to the requirements herein, are exempt from rules 98.4(505) through 98.11(505) if:

a. A copy of the audited financial report, Communication of Internal Control Related Matters Noted in an Audit, and the letter to the insured with the accountant's qualifications that are filed with such other state

INSURANCE DIVISION[191](cont'd)

are filed with the commissioner in accordance with the filing dates specified in rules 98.4(505), 98.11(505), and 98.17(505), respectively (Canadian insurers may submit accountants' reports as filed with the Office of the Superintendent of Financial Institutions Canada).

b. A copy of any Notification of Adverse Financial Condition Report filed with such other state is filed with the commissioner within the time specified in rule 98.10(505).

98.2(3) Foreign or alien insurers required to file Management's Report of Internal Control Over Financial Reporting in another state are exempt from filing the report in this state provided the other state has substantially similar reporting requirements and the report is filed with the commissioner of the other state within the time specified.

98.2(4) This rule shall not prohibit, preclude or in any way limit the commissioner of insurance from ordering or conducting or performing examinations of insurers pursuant to Iowa Code chapter 507.

191—98.3(505) Definitions. The terms and definitions contained herein are intended to provide definitional guidance as the terms are used within this chapter.

"Accountant" or *"independent certified public accountant"* means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants (AICPA) and in all states in which the individual or firm is licensed to practice; for Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.

"Affiliate" of, or person *"affiliated with,"* a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

"Audit committee" means a committee (or equivalent body) established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers and audits of financial statements of the insurer or group of insurers. The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers solely for the purposes of this chapter at the election of the controlling person. Refer to subrule 98.13(5) for exercising this election. If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee.

"Audited financial report" means and includes those items specified in rule 98.5(505).

"Group of insurers" means those licensed insurers included in the reporting requirements of Iowa, or a set of insurers as identified by management, for the purpose of assessing the effectiveness of internal control over financial reporting.

"Indemnification" means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.

"Independent board member" has the same meaning as described in subrule 98.13(3).

"Insurer" means a licensed insurer under Title XIII of the Iowa Code, except entities organized under Iowa Code chapters 512A, 512B, 518, and 518A.

"Internal control over financial reporting" means a process effected by an entity's board of directors, management and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements, i.e., those items specified in paragraphs "b" through "g" of subrule 98.5(2), and includes those policies and procedures that: (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, i.e., those items specified in paragraphs "b" through "g" of subrule 98.5(2), and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements, i.e., those items specified in paragraphs "b" through "g" of subrule 98.5(2).

"NAIC" means the National Association of Insurance Commissioners.

"SEC" means the United States Securities and Exchange Commission.

INSURANCE DIVISION[191](cont'd)

“*Section 404*” means Section 404 of the Sarbanes-Oxley Act, 15 U.S.C. Section 7262, and the SEC’s rules and regulations promulgated thereunder.

“*Section 404 Report*” means management’s report on “internal control over financial reporting” as defined by the SEC and the related attestation report of the independent certified public accountant.

“*SOX*” means the Sarbanes-Oxley Act of 2002, Pub.L. 107-204, 116 Stat. 745.

“*SOX compliant entity*” means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of SOX: (1) the preapproval requirements of Section 202 (Section 10A(i) of the Securities Exchange Act of 1934, 15 U.S.C. Section 78j-l(i)); (2) the audit committee independence requirements of Section 301 (Section 10A(m)(3) of the Securities Exchange Act of 1934, 15 U.S.C. Section 78j-l(m)(3)); and (3) the internal control over financial reporting requirements of Section 404 (Item 308 of SEC Regulation S-K, 17 C.F.R. Section 228.308).

191—98.4(505) General requirements related to filing and extensions for filing of annual audited financial reports and audit committee appointment.

98.4(1) All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the commissioner on or before June 1 for the year ended December 31 immediately preceding. The commissioner may require an insurer to file an audited financial report earlier than June 1 with 90 days’ advance notice to the insurer.

98.4(2) Extensions of the June 1 filing date may be granted by the commissioner for 30-day periods upon showing by the insurer and its independent certified public accountant the reasons for requesting such extension and determination by the commissioner of good cause for an extension. The request for extension must be submitted in writing not less than ten days prior to the due date in sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

98.4(3) If an extension is granted in accordance with the provisions of rule 98.4(505), a similar extension of 30 days is granted to the filing of Management’s Report of Internal Control Over Financial Reporting.

98.4(4) Every insurer required to file an annual audited financial report pursuant to this chapter shall designate a group of individuals who shall constitute its audit committee. The audit committee of an entity that controls an insurer may be deemed to be the insurer’s audit committee for purposes of this chapter at the election of the controlling person.

191—98.5(505) Contents of annual audited financial report.

98.5(1) The annual audited financial report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the division of insurance of the state of domicile.

98.5(2) The annual audited financial report shall include the following:

- a. Report of independent certified public accountant.
- b. Balance sheet reporting admitted assets, liabilities, capital and surplus.
- c. Statement of operations.
- d. Statement of cash flow.
- e. Statement of changes in capital and surplus.
- f. Notes to financial statements. These notes shall be those required by the appropriate National Association of Insurance Commissioners (NAIC) annual statement instructions and the NAIC accounting practices and procedures manual. The notes shall include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to Iowa Code sections 508.11 and 515.63, with a written description of the nature of these differences.

g. The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner, and the financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.

INSURANCE DIVISION[191](cont'd)

191—98.6(505) Designation of independent certified public accountant. Each insurer required by this chapter to file an annual audited financial report must, within 60 days after becoming subject to such requirement, register with the commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit as set forth in this chapter. Insurers not retaining an independent certified public accountant on August 28, 1991, shall register the name and address of their retained independent certified public accountant not less than six months before the date when the first audited financial report is to be filed.

98.6(1) The insurer shall obtain a letter from the accountant, and file a copy with the commissioner, stating that the accountant is aware of the provisions of Title XIII of the Iowa Code and administrative rules thereunder that relate to accounting and financial matters and affirming that the accountant will express an opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the insurance division, specifying such exceptions as the accountant may believe appropriate.

98.6(2) If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall within five business days notify the division of this event. The insurer shall also furnish the commissioner with a separate letter within ten business days of the above notification stating whether in the 24 months preceding such event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, and if any such disagreements, if not resolved to the satisfaction of the former accountant, would have caused the accountant to make reference to the subject matter of the disagreement in connection with the opinion. The disagreements required to be reported in response to this rule include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this rule are those that occur at the decision-making level, i.e., between personnel of the insurer responsible for the presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in writing request such former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for the disagreement; and the insurer shall furnish such responsive letter from the former accountant to the commissioner together with its own.

191—98.7(505) Qualifications of independent certified public accountant.

98.7(1) The commissioner shall not recognize any person or firm as a qualified independent certified public accountant that:

- a.* Is not in good standing with the AICPA and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, is not a chartered accountant; or
- b.* Has either directly or indirectly entered into an agreement of indemnity or release from liability (collectively referred to as indemnification) with respect to the audit of the insurer.

98.7(2) Except as otherwise provided herein, independent certified public accountants shall be recognized as qualified as long as they conform to the standards of their profession, as contained in the Code of Professional Ethics of the AICPA and rules and regulations and the code of ethics and rules of professional conduct of the Iowa accountancy examining board, or similar code.

98.7(3) A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under Iowa Code chapter 507C, the mediation or arbitration provisions shall operate at the option of the statutory successor.

98.7(4) The lead (or coordinating) audit partner (having primary responsibility for the audit) may not act in that capacity for more than five consecutive years. The person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of five consecutive years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. This application should be made at least 30 days before the end of the calendar year. The commissioner may consider the following factors in determining if the relief should be granted:

INSURANCE DIVISION[191](cont'd)

a. Number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm;

b. Premium volume of the insurer; or

c. Number of jurisdictions in which the insurer transacts business.

98.7(5) The insurer shall file, with its annual statement filing, the approval for relief from subrule 98.7(4) with the states in which it is licensed or doing business and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

98.7(6) The commissioner shall neither recognize as a qualified independent certified public accountant nor accept any annual audited financial report prepared in whole or in part by any natural person who:

a. Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961 to 1968, or any dishonest conduct or practices under federal or state law;

b. Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this chapter; or

c. Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this chapter.

98.7(7) The commissioner of insurance, under 191—Chapter 3, may hold a hearing to determine whether an independent certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing the opinion of the accountant on the financial statements in the annual audited financial report made pursuant to this chapter and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this chapter.

98.7(8) The commissioner shall not recognize as a qualified independent certified public accountant or accept an annual audited financial report prepared in whole or in part by an accountant who provides to an insurer, contemporaneously with the audit, the following nonaudit services:

a. Bookkeeping or other services related to the accounting records or financial statements of the insurer;

b. Financial information systems design and implementation;

c. Appraisal or valuation services, fairness opinions, or contribution-in-kind reports;

d. Actuarially oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions and inputs used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification ("opinion") on an insurer's reserves if the following conditions have been met:

(1) Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions;

(2) The insurer has competent personnel (or engages a third-party actuary) to estimate the reserves for which management takes responsibility; and

(3) The accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves;

e. Internal audit outsourcing services;

f. Management functions or human resources;

g. Broker or dealer, investment adviser, or investment banking services;

h. Legal services or expert services unrelated to an audit; or

i. Any other services that the commissioner determines, by rule, are impermissible.

98.7(9) In general, the principles of independence with respect to services provided by the qualified independent certified public accountant are largely predicated on three basic principles, violations of which would impair the accountant's independence. The principles are that the accountant cannot function in the role of management, cannot audit the accountant's own work, and cannot serve in an advocacy role for the insurer.

INSURANCE DIVISION[191](cont'd)

98.7(10) Insurers having direct written and assumed premiums of less than \$100 million in any calendar year may request an exemption from subrule 98.7(8). The insurer shall file with the commissioner a written statement discussing the reasons why the insurer should be exempt from these provisions. If the commissioner finds, upon review of this statement, that compliance with subrule 98.7(8) would constitute a financial or organizational hardship upon the insurer, an exemption may be granted.

98.7(11) A qualified independent certified public accountant who performs the audit may engage in other nonaudit services, including tax services that are not described in subrule 98.7(8) or that do not conflict with subrule 98.7(9), only if the activity is approved in advance by the audit committee, in accordance with subrule 98.7(12).

98.7(12) All auditing services and nonaudit services provided to an insurer by the qualified independent certified public accountant of the insurer shall be preapproved by the audit committee. The preapproval requirement is waived with respect to nonaudit services if the insurer is a SOX compliant entity or a direct or indirect wholly owned subsidiary of a SOX compliant entity or if:

a. The aggregate amount of all such nonaudit services provided to the insurer constitutes not more than 5 percent of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the nonaudit services are provided;

b. The services were not recognized by the insurer at the time of the engagement to be nonaudit services; and

c. The services are promptly brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee or by one or more members of the audit committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

98.7(13) The audit committee may delegate to one or more designated members of the audit committee the authority to grant the preapprovals required by subrule 98.7(12). The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

98.7(14) The commissioner shall not recognize an independent certified public accountant as qualified for a particular insurer if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for that insurer was employed by the independent certified public accountant and participated in the audit of that insurer during the one-year period preceding the date that the most current statutory opinion is due. This subrule shall only apply to partners and senior managers involved in the audit. An insurer may make application to the commissioner for relief from the above requirement on the basis of unusual circumstances.

98.7(15) The insurer shall file, with its annual statement filing, the approval for relief from the requirements of subrule 98.7(14) with the states in which it is licensed or doing business and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

191—98.8(505) Consolidated or combined audits. An insurer may make written application to the commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies which utilizes a pooling or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and such insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet shall be filed with the report as follows:

1. Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet.

2. Amounts for each insurer subject to this rule shall be stated separately.

3. Noninsurance operations may be shown on the worksheet on a combined or individual basis.

4. Explanations of consolidating and eliminating entries shall be included.

5. A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

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191—98.9(505) Scope of audit and report of independent certified public accountant. Financial statements furnished pursuant to rule 98.5(505) shall be examined by the independent certified public accountant. The audit of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. In accordance with AU Section 319 of the Professional Standards of the AICPA, Consideration of Internal Control in a Financial Statement Audit, the independent certified public accountant should obtain an understanding of internal control sufficient to plan the audit. To the extent required by AU Section 319, for those insurers required to file a Management's Report of Internal Control Over Financial Reporting pursuant to rule 98.15(505), the independent certified public accountant should consider (as that term is defined in Statement on Auditing Standards (SAS) No. 102, Defining Professional Requirements in Statements on Auditing Standards or its replacement) the most recently available report in planning and performing the audit of the statutory financial statements. Consideration shall be given to the procedures illustrated in the Financial Condition Examiners Handbook promulgated by the National Association of Insurance Commissioners as the independent certified public accountant deems necessary.

191—98.10(505) Notification of adverse financial condition.

98.10(1) The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within five business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under audit or that the insurer does not meet the applicable minimum capital and surplus requirements of Iowa Code sections 508.5, 508.10, 515.8, 515.10 and 515.12(5) as of that date. An insurer who has received a report pursuant to this rule shall forward a copy of the report to the commissioner within five business days of receipt of such report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the commissioner. If the independent certified public accountant fails to receive such evidence within the required five-business-day period, the independent certified public accountant shall furnish to the commissioner a copy of its report within the next five business days.

98.10(2) No independent certified public accountant shall be liable in any manner to any person for any statement made in connection with subrule 98.10(1) if such statement is made in good faith in compliance with this rule.

98.10(3) If the accountant, subsequent to the date of the audited financial report filed pursuant to this rule, becomes aware of facts which might have affected this report, the insurance division notes the obligation of the accountant to take such action as prescribed in Volume 1, AU Section 561 of the Professional Standards of the AICPA.

191—98.11(505) Communication of Internal Control Related Matters Noted in an Audit. In addition to the annual audited financial report, each insurer shall furnish the commissioner with a written communication as to any unremediated material weaknesses in its internal control over financial reporting noted during the audit. Such communication shall be prepared by the accountant within 60 days after the filing of the annual audited financial report, and shall contain a description of any unremediated material weakness (as the term "material weakness" is defined by Statement on Auditing Standard 60, Communication of Internal Control Related Matters Noted in an Audit, or its replacement) as of December 31 immediately preceding (so as to coincide with the audited financial report discussed in rule 98.4(505)) in the insurer's internal control over financial reporting noted by the accountant during the course of the audit of the financial statements. If no unremediated material weaknesses were noted, the communication should so state. The insurer is required to provide a description of remedial actions taken or proposed to correct unremediated material weaknesses, if the actions are not described in the accountant's communication.

191—98.12(505) Definition, availability and maintenance of independent certified public accountants' work papers. Work papers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the accountant's audit of the financial statements of an insurer. Work papers, accordingly, may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation,

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abstracts of company documents, and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of the accountant's audit of the financial statements of an insurer and which support the accountant's opinion.

98.12(1) Every insurer required to file an audited financial report pursuant to this chapter shall require the accountant to make available for review by insurance division examiners all work papers prepared in the conduct of the accountant's audit and any communications between the accountant and the insurer that are related to the audit at the offices of the insurer, at the insurance division, or at any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit work papers and communications until the insurance division has filed a report on examination covering the period of the audit but no longer than seven years from the date of the audit report.

98.12(2) In the conduct of the aforementioned periodic review by the insurance division examiners, it shall be agreed that photocopies of pertinent audit work papers may be made and retained by the division. Such reviews by the division examiners shall be considered investigations, and all work papers and communications obtained during the course of such investigations shall be afforded the same confidentiality as other examination work papers generated by the division.

191—98.13(505) Requirements for audit committees. This rule shall not apply to foreign or alien insurers licensed in this state or to an insurer that is a SOX compliant entity or a direct or indirect wholly owned subsidiary of a SOX compliant entity.

98.13(1) The audit committee shall be directly responsible for the appointment, compensation and oversight of the work of any accountant (including resolution of disagreements between management and the accountant regarding financial reporting) for the purpose of preparing or issuing the audited financial report or related work pursuant to this chapter. Each accountant shall report directly to the audit committee.

98.13(2) Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to subrule 98.13(5).

98.13(3) In order to be considered independent for purposes of this rule, a member of the audit committee may not, other than in the member's capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary thereof. However, if law requires board participation by otherwise nonindependent members, that law shall prevail and such members may participate in the audit committee and be designated as independent for audit committee purposes unless they are officers or employees of the insurer or one of its affiliates.

98.13(4) If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the state, may remain an audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to no longer be independent.

98.13(5) To exercise the election of the controlling person to designate the audit committee for purposes of this chapter, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers. Notification shall be made timely prior to the issuance of the statutory audit report and shall include a description of the basis for the election. The election may be changed through notice to the commissioner by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity until rescinded.

98.13(6) The audit committee shall require the accountant that performs for an insurer any audit required by this chapter to timely report to the audit committee in accordance with the requirements of SAS 61, Communication with Audit Committees, or its replacement, including:

- a. All significant accounting policies and material permitted practices;
- b. All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, the ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and
- c. Other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

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98.13(7) If an insurer is a member of an insurance holding company system, the reports required by subrule 98.13(6) may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

98.13(8) The proportion of independent audit committee members shall meet or exceed the following criteria:

Prior Calendar Year Direct Written and Assumed Premiums		
\$0 - \$300 million	Over \$300 million - \$500 million	Over \$500 million
No minimum requirements.	Majority (50 percent or more) of members shall be independent.	Supermajority of members (75 percent or more) shall be independent.

a. The commissioner has the authority to require the entity's board to enact improvements to the independence of the audit committee membership if the insurer is in any RBC action level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

b. Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from nonaffiliates for the reporting entities.

98.13(9) An insurer with direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$500 million may make application to the commissioner for a waiver from the requirements of this rule based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from this rule with the states that it is licensed in or doing business in and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

191—98.14(505) Conduct of insurer in connection with the preparation of required reports and documents.

98.14(1) No director or officer of an insurer shall, directly or indirectly:

a. Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review or communication required under this chapter; or

b. Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review or communication required under this rule.

98.14(2) No officer or director of an insurer, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead or fraudulently influence any accountant engaged in the performance of an audit pursuant to this chapter if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

98.14(3) For purposes of subrule 98.14(2), actions that, "if successful, could result in rendering the insurer's financial statements materially misleading" include, but are not limited to, actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead or fraudulently influence an accountant:

a. To issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances (due to material violations of statutory accounting principles prescribed by the commissioner, generally accepted auditing standards, or other professional or regulatory standards);

b. Not to perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;

c. Not to withdraw an issued report; or

d. Not to communicate matters to an insurer's audit committee.

191—98.15(505) Management's Report of Internal Control Over Financial Reporting.

98.15(1) Every insurer required to file an audited financial report pursuant to this chapter that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of \$500 million or more shall prepare a report of the insurer's or

INSURANCE DIVISION[191](cont'd)

group of insurers' internal control over financial reporting. The report shall be filed with the commissioner along with the Communication of Internal Control Related Matters Noted in an Audit described under rule 98.11(505). Management's Report of Internal Control Over Financial Reporting shall be as of December 31 immediately preceding.

98.15(2) Notwithstanding the premium threshold in subrule 98.15(1), the commissioner may require an insurer to file Management's Report of Internal Control Over Financial Reporting if the insurer is in any RBC level event, or meets any one or more of the standards of an insurer deemed to be hazardous to policyholders, creditors or the general public.

98.15(3) An insurer or a group of insurers that is (1) directly subject to Section 404; part of a holding company system whose parent is directly subject to Section 404; not directly subject to Section 404 but is a SOX compliant entity; or a member of a holding company system whose parent is not directly subject to Section 404 but is a SOX compliant entity may file its or its parent's Section 404 Report and an addendum in satisfaction of this rule's requirement provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements (those items included in subrule 98.5(2), paragraphs "b" through "g") were included in the scope of the Section 404 Report. The addendum shall be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements (those items included in subrule 98.5(2), paragraphs "b" through "g") excluded from the Section 404 Report. If there are internal controls of the insurer or group of insurers that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements and those internal controls were not included in the scope of the Section 404 Report, the insurer or group of insurers may either file (1) a report as described in this rule, or (2) the Section 404 Report and a report as described in this rule for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements not covered by the Section 404 Report.

98.15(4) Management's Report of Internal Control Over Financial Reporting shall include:

- a. A statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;
- b. A statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;
- c. A statement that briefly describes the approach or processes by which management evaluated the effectiveness of its internal control over financial reporting;
- d. A statement that briefly describes the scope of work that is included and whether any internal controls were excluded;
- e. Disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of December 31 immediately preceding. Management is not permitted to conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there are one or more unremediated material weaknesses in its internal control over financial reporting;
- f. A statement regarding the inherent limitations of internal control systems; and
- g. Signatures of the chief executive officer and the chief financial officer (or equivalent position/title).

98.15(5) Management shall document and make available upon financial condition examination the basis upon which its assertions, required in subrule 98.15(4), are made. Management may base its assertions, in part, upon its review, monitoring and testing of internal controls undertaken in the normal course of its activities.

a. Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost-effective manner and, as such, may include assembly of or reference to existing documentation.

b. Management's Report of Internal Control Over Financial Reporting, required by subrule 98.15(1), and any documentation provided in support thereof during the course of a financial condition examination, shall be kept confidential by the state insurance department.

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191—98.16(505) Exemptions. Upon written application of any insurer, the commissioner may grant an exemption from compliance with any and all provisions of this chapter if the commissioner finds, upon review of the application, that compliance with this chapter would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten days from a denial of an insurer's written request for an exemption from this chapter, the insurer may request in writing a hearing on its application for an exemption. The hearing shall be held in accordance with 191—Chapter 3.

191—98.17(505) Letter to insured with accountant's qualifications. The accountant shall furnish the insurer, in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

1. That the accountant is independent with respect to the insurer and conforms to the standards of the accountant's profession as contained in the Code of Professional Ethics and pronouncements of the AICPA and the rules of professional conduct of the Iowa accountancy examining board, or similar code.

2. The background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within this chapter shall be construed as prohibiting the accountant from utilizing such staff as is deemed appropriate where use is consistent with the standards prescribed by generally accepted auditing standards.

3. That the accountant understands the annual audited financial report and the opinion thereon will be filed in compliance with this chapter and that the commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers.

4. That the accountant consents to the requirements of rule 98.18(505) and that the accountant consents and agrees to make available for review by the commissioner, or a designee or appointed agent, the workpapers, as defined in rule 98.12(505).

5. A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the AICPA.

6. A representation that the accountant is in compliance with the requirements of rule 98.7(505).

191—98.18(505) Canadian and British companies. In the case of Canadian and British insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by such companies with their supervisory authority, duly audited by an independent chartered accountant. For such insurers, the letter required in rule 98.6(505) shall state that the accountant is aware of the requirements relating to the annual audited financial report filed with the commissioner pursuant to rule 98.4(505).

191—98.19(505) Severability provision. If any rule or portion of a rule of this chapter or its applicability to any person or circumstance is held invalid by a court, the remainder of the chapter or the applicability of its provision to other persons or circumstances shall not be affected.

191—98.20(505) Effective date. This chapter is applicable on or after January 1, 2010.

These rules are intended to implement Iowa Code section 505.8.

ARC 7136B**IOWA FINANCE AUTHORITY[265]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 17A.3(1)"b," Iowa Code Supplement section 16.5(1)"r," and Iowa Code section 16.52, the Iowa Finance Authority proposes to amend Chapter 12, "Low-Income Housing Tax Credits," Iowa Administrative Code.

The purpose of this amendment is to implement Iowa Code Supplement section 16.5(1)"r," Iowa Code section 16.52, and the Housing and Economic Recovery Act of 2008 and to facilitate disaster relief to areas of the state damaged by natural disasters in 2008.

This amendment replaces the current qualified allocation plan for the low-income housing tax credit program with the first amended 2009 qualified allocation plan, which is incorporated by reference in rule 265—12.1(16).

The first amended qualified allocation plan sets forth the purpose of the plan, the administrative information required for participation in the program, the threshold criteria, the selection criteria, the postreservation requirements, the appeal process, and the compliance monitoring component. The plan also establishes the fees for filing an application for low-income housing tax credits and for compliance monitoring. Copies of the first amended qualified allocation plan are available upon request from the Authority and are available electronically on the Authority's Web site at www.iowafinanceauthority.gov. It is the Authority's intent to incorporate the first amended 2009 qualified allocation plan by reference, which is consistent with Iowa Code chapter 17A and 265—subrules 17.4(2) and 17.12(2).

The Authority does not intend to grant waivers under the provisions of any of these rules, other than as may be allowed under the Authority's general rules concerning waivers at 265—Chapter 18. The first amended qualified allocation plan is subject to state and federal requirements that cannot be waived. (See Internal Revenue Code Section 42 and Iowa Code section 16.52.)

The Authority will receive written comments on the proposed amendment and on the qualified allocation plan until 4:30 p.m. on September 30, 2008. Comments may be addressed to Carla Pope, Affordable Rental Production Director, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Carla Pope at (515)725-4901 or E-mailed to carla.pope@iowa.gov.

The Authority anticipates that it may make changes to the 2009 First Amended Qualified Allocation Plan based on comments received from the public.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 7135B**. The content of that submission is incorporated by reference.

This amendment is intended to implement Iowa Code Supplement section 16.5(1)"r," Iowa Code section 16.52, and the Housing and Economic Recovery Act of 2008.

ARC 7145B

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 71, "Nursery Stock Sale to the Public," Iowa Administrative Code.

Chapter 71 provides the descriptions of plants made available through the State Nursery, the obligations of customers purchasing plants from the State Nursery, and the prices of such plants.

The proposed amendments clarify which customers must meet the obligations enumerated in the rules, provide for the sale of additional plants, and amend the prices of plants made available for sale under these rules.

Any interested person may make written suggestions or comments on the proposed amendments on or before September 30, 2008. Written comments may be directed to the Forestry Bureau's Web site at www.iowadnr.gov or may be sent to the Forestry Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Forestry Bureau at (515)281-5034 or at the Forestry Bureau offices on the fourth floor of the Wallace State Office Building.

These amendments are intended to implement Iowa Code sections 456A.20 and 461A.2 and 1989 Iowa Acts, chapter 311, section 16.

The following amendments are proposed.

ITEM 1. Amend **571—Chapter 71**, title, as follows:

NURSERY STOCK SALE TO THE PUBLIC SALES

ITEM 2. Amend subrules 71.2(2) and 71.2(3) as follows:

71.2(2) Order limitations.

a. The minimum acceptable order shall be 500 plants in total with the minimum number of 100 plants of one species.

(1) To complete ~~the~~ a previous year's planting, a purchaser may order less than 500 plants with a minimum of 100 plants of one species.

(2) No change.

b. No change.

c. Nursery stock shall be sold only for planting within the state of Iowa. Commercial nurseries, other state agencies within the state of Iowa, and federal agencies may purchase plants provided those plants are planted within the state of Iowa.

71.2(3) Customer obligation.

a. No change.

b. ~~Purchasers of~~ All private landowners who purchase nursery stock for planting on private land shall, as a part of the order, be required to certify the plants will be used for wildlife habitat, erosion control or forestation purposes and will not be used to establish a new farmstead windbreak, shade trees or ornamental plantings.

c. ~~All purchasers of~~ private landowners who purchase stock shall, as a part of the plant order, be required to certify as to the county in which the nursery stock will be planted.

d. ~~All purchasers~~ private landowners who purchase stock shall, ~~be required~~ as a part of the plant order, be required to certify that the plants purchased will not be sold with roots attached.

NATURAL RESOURCE COMMISSION[571](cont'd)

e. All commercial nurseries, state agencies within the state of Iowa, and federal agencies shall be required to certify that the plants purchased will be planted within the state of Iowa.

ITEM 3. Amend subrule 71.3(1) as follows:

71.3(1) Prices for hardwoods shall be as follows:

- a. ~~Oak, Aspen, oak~~, hickory, walnut, pecan and basswood, 6" to 16"—\$40 per hundred plants.
- b. ~~Oak, Aspen, oak~~, hickory, walnut, pecan and basswood, ~~17" and larger~~ 16" to 24"—~~\$45~~ \$50 per hundred plants.
- c. Other hardwood tree species, 6" to 16"—\$37 per hundred plants.
- d. Other hardwood tree species, ~~17" and larger~~ 16" to 24"—~~\$42~~ \$47 per hundred plants.
- e. Hardwood tree species, 24" to 48"—\$100 per 100 plants.
- f. Improved selections, 6" to 16"—\$80 per 100 plants. For purposes of this rule, "improved selections" means plants that have been developed and bred by the department of natural resources to perform superior to regularly cultivated plants in the following ways, by illustration and without limitation: faster growth, disease resistant or tolerant, and improved form.
- g. Improved selections, 16" to 24"—\$100 per 100 plants.
- h. Improved selections, 24" to 48"—\$150 per 100 plants.

ITEM 4. Amend subrule 71.3(2) as follows:

71.3(2) Prices for shrubs shall be as follows:

- a. ~~Elderberry, buttonbush, dogwood, and Nanking cherry~~ Shrub species, 6" to 16"—~~\$37~~ \$40 per hundred plants.
- b. ~~Elderberry, buttonbush, dogwood, and Nanking cherry~~ Shrub species, ~~17"~~ 16" and larger—~~\$42~~ \$50 per hundred plants.
- e. ~~Other shrub species, 6" to 16"—\$40 per hundred plants.~~
- d. ~~Other shrub species, 17" and larger—\$45 per hundred plants.~~

ITEM 5. Amend paragraph **71.3(3)"b"** as follows:

- b. Conifers, ~~17"~~ 16" and larger—~~\$30~~ \$35 per hundred plants.

ITEM 6. Amend subrule 71.3(4) as follows:

71.3(4) Prices for wildlife packets shall be ~~\$90~~ \$100 each.

ITEM 7. Amend subrule 71.3(6) as follows:

71.3(6) Prices for walnut seed shall be \$3 per ~~pound~~ bushel.

ARC 7146B

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 81, "Fishing Regulations," Iowa Administrative Code.

The proposed amendments establish a statewide daily bag and possession limit for bluegill and crappie in public waters.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 10, 2008. Such written materials should be directed to Marion Conover, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-6794; or E-mail Marion.Conover@dnr.iowa.gov. Persons who wish to convey their views orally

NATURAL RESOURCE COMMISSION[571](cont'd)

should contact the Fisheries Bureau at (515)281-5208 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

Also, there will be five public hearings as follows:

September 30, 2008	7 p.m.	Senior Citizen Center 411 Walnut Street Atlantic
October 1, 2008	7 p.m.	Hartman Reserve Nature Center 657 Reserve Drive Cedar Falls
October 2, 2008	7 p.m.	Dickinson County Community Building 1602 15th Street Spirit Lake
October 3, 2008	3 p.m.	Fourth Floor Conference Room Wallace State Office Building 502 E. 9th Street Des Moines
October 9, 2008	7 p.m.	Pioneer Ridge Nature Center 1339 US Hwy 63 Bloomfield

At the public hearings, persons may present their views either orally or in writing. At the hearings, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, and 481A.67.

The following amendments are proposed.

ITEM 1. Amend rule 571—81.1(481A) as follows:

571—81.1(481A) Seasons, territories, daily bag limits, possession limits, and length limits.

KIND OF FISH	INLAND WATERS OF THE STATE			BOUNDARY RIVERS	
	OPEN SEASON	DAILY BAG LIMIT	POSSESSION LIMIT	MINIMUM LENGTH LIMITS	MISSISSIPPI RIVER MISSOURI RIVER BIG SIOUX RIVER
Rock Sturgeon	Closed	0	0		Same as inland waters
Shovelnose Sturgeon	Continuous	None	None	None	Same as inland waters except no harvest allowed in the Big Sioux River and aggregate daily bag limit 10, aggregate possession limit 20, in the Missouri River
Paddlefish*	Continuous	2	4	None	Same as inland waters except no bag or possession limit in the Missouri River
Yellow Perch	Continuous	25	50	None	Same as inland waters
Trout	Continuous	5	10	None*	Same as inland waters
Catfish*	Continuous	15 Streams 8 Lakes	30	None	Same as inland waters except no bag or possession limit in the Mississippi River

NATURAL RESOURCE COMMISSION[571](cont'd)

INLAND WATERS OF THE STATE					BOUNDARY RIVERS
Black Bass (Largemouth Bass) (Smallmouth Bass) (Spotted Bass)	Continuous	3	6	See below*	Continuous open season; aggregate daily bag limit 5, aggregate possession limit 10 See below*
Combined Walleye, Sauger and Saugeye	Continuous*	5*	10*	None*	Continuous open season; aggregate daily bag limit 6, aggregate possession limit 12; except aggregate daily bag limit 4, aggregate possession limit 8, in the Big Sioux and Missouri Rivers See below*
Northern Pike	Continuous*	3	6	None	Continuous open season; daily bag limit 5, possession limit 10; except daily bag limit 6, possession limit 12, in the Big Sioux River
Muskellunge or Hybrid Muskellunge	Continuous*	1	1	40"	Same as inland waters
<u>Crappie</u>	<u>Continuous</u>	<u>25*</u>	<u>None</u>	<u>None</u>	<u>Same as inland waters except 50 in possession</u>
<u>Bluegill</u>	<u>Continuous</u>	<u>25*</u>	<u>None</u>	<u>None</u>	<u>Same as inland waters except 50 in possession and in aggregate with pumpkinseed on the Mississippi River</u>
All other fish species*	Continuous	None	None	None	See below*
Frogs (except Bullfrogs)	Continuous	48	96	None	Same as inland waters
Bullfrogs (Rana Catesbeiana)	Continuous	12	12	None	Same as inland waters

*Also see 81.2(481A), Exceptions.

ITEM 2. Amend subrule 81.2(12) as follows:

81.2(12) Panfish. The daily bag and possession limit for crappie and bluegill applies only to public waters of the state. In all waters of the Mississippi River, the daily bag and possession limit applied individually to crappie, yellow perch and rock bass shall be 25 and 50, respectively. In all waters of the Mississippi River, the daily bag and possession limit applied in the aggregate for bluegill and pumpkinseed and for white bass and yellow bass shall be 25 and 50, respectively.

ARC 7148B

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 94, "Nonresident Deer Hunting," Iowa Administrative Code.

Chapter 94 regulates nonresident deer hunting and includes season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of take, and transportation and reporting requirements. The proposed amendments allow this chapter to conform with Iowa Code Supplement section 483A.24, which was amended by 2008 Iowa Acts, Senate File 2230, to add new subsection 9A. This new law specifies that nonresidents 21 years of age or younger with a severe physical disability or who have been diagnosed with a terminal illness may obtain a special license to hunt deer during any season in any zone. The new law requires the Commission to adopt rules to implement Senate File 2230. The amendments also update the implementation sentence for Chapter 94.

A nonresident who receives a special license pursuant to 2008 Iowa Acts, Senate File 2230, must purchase both a hunting license and the nonresident deer hunting license and pay the wildlife habitat fee, but is not required to complete the hunter safety and ethics education course if the nonresident licensee is accompanied and aided by a person who is at least 18 years of age. The accompanying adult must be qualified to hunt and have a hunting license. During the hunt, the accompanying adult must be within arm's reach of the nonresident licensee. The applicant for the special license must apply on a form which requires that the applicant's attending physician sign the form declaring that the applicant has a severe physical disability or has been diagnosed with a terminal illness and is eligible for the special license.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 21, 2008. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Bureau at (515)281-5918 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on October 21, 2008, at 10 a.m. in the Fourth Floor East Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should inform the Department of Natural Resources of specific needs.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.1, and 483A.8 and Iowa Code Supplement section 483A.24 as amended by 2008 Iowa Acts, Senate File 2230, section 1.

The following amendments are proposed.

ITEM 1. Amend subrule 94.6(3) as follows:

94.6(3) ~~Antlerless defined. Special licenses. Rescinded IAB 3/1/06, effective 4/5/06.~~ The commission shall issue licenses in conformance with Iowa Code Supplement section 483A.24 as amended by 2008 Iowa Acts, Senate File 2230, section 1, to nonresidents 21 years of age or younger with a severe physical disability or who have been diagnosed with a terminal illness.

NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 2. Amend **571—Chapter 94**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.1, and 483A.8 and Iowa Code Supplement section 483A.24 as amended by 2008 Iowa Acts, Senate File 2230, section 1.

ARC 7150B

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 98, "Wild Turkey Spring Hunting," Iowa Administrative Code.

Chapter 98 regulates hunting wild turkeys during the spring and includes season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and method of take, and transportation tag requirements. The proposed amendments allow this chapter to conform with Iowa Code Supplement section 483A.24, which was amended by 2008 Iowa Acts, Senate File 2230, to add new subsection 9A. This new law requires the Commission to adopt rules to implement 2008 Iowa Acts, Senate File 2230. The proposed amendments also update the implementation sentence for Chapter 98.

2008 Iowa Acts, Senate File 2230, specifies that nonresidents 21 years of age or younger with a severe physical disability or who have been diagnosed with a terminal illness may obtain a special license to hunt turkey during any season in any zone. A nonresident who receives a special license pursuant to Senate File 2230 must purchase both a hunting license and the nonresident turkey hunting license and pay the wildlife habitat fee, but is not required to complete the hunter safety and ethics education course if the nonresident licensee is accompanied and aided by a person who is at least 18 years of age. The accompanying adult must be qualified to hunt and have a hunting license. During the hunt, the accompanying adult must be within arm's reach of the nonresident licensee. The applicant for the special license must apply on a form which requires that the applicant's attending physician sign the form declaring that the applicant has a severe physical disability or has been diagnosed with a terminal illness and is eligible for the special license.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 21, 2008. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Bureau at (515)281-5918 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on October 21, 2008, at 10 a.m. in the Fourth Floor East Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should inform the Department of Natural Resources of specific needs.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.1, and 483A.7 and Iowa Code Supplement section 483A.24 as amended by 2008 Iowa Acts, Senate File 2230, section 1.

The following amendments are proposed.

NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 1. Adopt the following **new** subrule 98.11(3):

98.11(3) *Special licenses.* The commission shall issue licenses in conformance with Iowa Code Supplement section 483A.24 as amended by 2008 Iowa Acts, Senate File 2230, section 1, to nonresidents 21 years of age or younger with a severe physical disability or who have been diagnosed with a terminal illness.

ITEM 2. Amend **571—Chapter 98**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.1, and 483A.7 and Iowa Code Supplement section 483A.24 as amended by 2008 Iowa Acts, Senate File 2230, section 1.

ARC 7151B

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 99, "Wild Turkey Fall Hunting by Residents," Iowa Administrative Code.

The proposed amendments allow Chapter 99 to conform with Iowa Code Supplement section 483A.24, which was amended by 2008 Iowa Acts, Senate File 2230, to add new subsection 9A. Senate File 2230 specifies that nonresidents 21 years of age or younger with a severe physical disability or who have been diagnosed with a terminal illness may obtain a special license to hunt turkey during any season in any zone. The new law requires the Commission to adopt rules to implement Senate File 2230.

A nonresident who receives a special license pursuant to 2008 Iowa Acts, Senate File 2230, must purchase both a hunting license and the nonresident turkey hunting license and pay the wildlife habitat fee, but is not required to complete the hunter safety and ethics education course if the nonresident licensee is accompanied and aided by a person who is at least 18 years of age. The accompanying adult must be qualified to hunt and have a hunting license. During the hunt, the accompanying adult must be within arm's reach of the nonresident licensee. The applicant requesting the special license must apply on a form which requires that the applicant's attending physician sign the form declaring that the applicant has a severe physical disability or has been diagnosed with a terminal illness and is eligible for the special license.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 21, 2008. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Bureau at (515)281-5918 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on October 21, 2008, at 10 a.m. in the Fourth Floor East Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should inform the Department of Natural Resources of specific needs.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.1, and 483A.7 and Iowa Code Supplement section 483A.24 as amended by 2008 Iowa Acts, Senate File 2230, section 1.

The following amendments are proposed.

NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 1. Amend **571—Chapter 99**, title, as follows:

WILD TURKEY FALL HUNTING ~~BY RESIDENTS~~

ITEM 2. Adopt the following **new** subrule 99.2(4):

99.2(4) *Special licenses.* The commission shall issue licenses in conformance with Iowa Code Supplement section 483A.24 as amended by 2008 Iowa Acts, Senate File 2230, section 1, to nonresidents 21 years of age or younger with a severe physical disability or who have been diagnosed with a terminal illness.

ITEM 3. Amend **571—Chapter 99**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, and 483A.7 and Iowa Code Supplement section 483A.24 as amended by 2008 Iowa Acts, Senate File 2230, section 1.

ARC 7147B

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 106, "Deer Hunting by Residents," Iowa Administrative Code.

Chapter 106 sets the season dates, shooting hours, license types, quotas and restrictions, method of take, and tagging and reporting requirements for resident deer hunting. It also includes rules for issuing depredation licenses and shooting permits. The proposed amendment clarifies that all shooting permits and depredation licenses issued through the depredation program will have a \$1 charge for the HUSH program and a \$1 writing fee added to the cost to be consistent with all other deer licenses issued by the Department.

Any interested person may make written suggestions or comments on the proposed amendment on or before October 21, 2008. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Bureau at (515)281-5918 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on October 21, 2008, at 10 a.m. in the Fourth Floor East Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should inform the Department of Natural Resources of specific needs.

This amendment is intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.24, 483A.24B, and 483A.24C.

The following amendment is proposed.

Adopt the following **new** paragraph **106.11(4)"e"**:

e. A person who receives a depredation permit pursuant to this paragraph shall pay a \$1 fee for each license that shall be used and is appropriated for the purpose of deer herd population management, including assisting with the cost of processing deer donated to the help us stop hunger program administered by the commission and a \$1 writing fee for each license to the license agent.

ARC 7144B

NATURAL RESOURCES DEPARTMENT[561]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 455A.4 and 456A.24, the Department of Natural Resources hereby gives Notice of Intended Action to adopt new Chapter 12, "Special Nonresident Deer and Turkey Licenses," Iowa Administrative Code.

This new chapter establishes the process by which the Department will issue special nonresident deer and wild turkey licenses to individuals as part of statewide or local efforts to promote the state and its natural resources.

Any interested person may make written suggestions or comments on the proposed rules on or before September 30, 2008. Written comments may be sent to the Special Nonresident Deer and Turkey License Program Coordinator, Ross Harrison, Department of Natural Resources, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Program Coordinator at (515)281-5973 or at the Department's offices on the fourth floor of the Wallace State Office Building.

These rules are intended to implement Iowa Code section 483A.24.

The following new chapter is proposed.

Adopt the following new 561—Chapter 12:

CHAPTER 12

SPECIAL NONRESIDENT DEER AND TURKEY LICENSES

561—12.1(483A) Purpose. These rules establish the process by which the department will issue special nonresident deer and wild turkey licenses to individuals as part of statewide or local efforts to promote the state and its natural resources.

561—12.2(483A) Definitions. When used in this chapter:

"*Committee*" means the committee that makes the final selection of the special nonresident deer and turkey licenses, which is comprised of the majority leader of the Iowa senate, the speaker of the Iowa house of representatives, and the director of the Iowa department of economic development, or their designees, as described by Iowa Code Supplement section 483A.24(3).

"*Conservation organization*" means an organization that is developed and managed pursuant to Iowa Code chapter 504, the revised Iowa nonprofit corporation Act, with a mission that emphasizes natural resources conservation or that supports science-based natural resource management. A local or state chapter or division of a national or international conservation organization shall qualify.

"*Coordinator*" means a department staff person appointed by the director to administer the special nonresident deer and turkey license program.

"*Department*" means the department of natural resources.

"*Director*" means the director of the department of natural resources.

"*Outdoor industries*" means commercial enterprises or ventures that promote or otherwise contribute to the use of natural resources. For purposes of illustration, outdoor industries may include but are not limited to television or radio show production; video/DVD production; still and motion photography; writing in the popular media such as newspapers and periodicals; lecture presentations; manufacture or acquisition of

NATURAL RESOURCES DEPARTMENT[561](cont'd)

sporting equipment for resale; or similar activities. Outdoor industries shall not include businesses that solely provide guide or outfitter services.

“*Program*” means the review and selection process through which the committee will grant special nonresident deer licenses.

“*Special licenses*” means the special nonresident deer licenses and the special nonresident turkey licenses issued pursuant to these rules.

“*Special nonresident deer license*” means those deer licenses issued pursuant to Iowa Code Supplement section 483A.24(3).

“*Special nonresident turkey license*” means a wild turkey license issued pursuant to Iowa Code section 483A.24(4).

“*Sponsor*” means an entity that applies for a special license on behalf of a hunter(s).

561—12.3(483A) Administration and availability. The director shall appoint a coordinator who will administer this program and provide assistance to the committee. The program shall be available to provide not more than the number of special licenses allowed by Iowa Code section 483A.24 to nonresidents through requests submitted by the individual hunter or through a sponsor. Sponsors may be residents of the state of Iowa.

561—12.4(483A) Coordinator duties. The coordinator shall:

12.4(1) Assist the committee in the execution of this program.

12.4(2) Develop templates for requests for the special nonresident deer and turkey licenses and provide templates to potential hunters or hunter sponsors upon request.

12.4(3) Summarize requests received and distribute summaries to the committee.

12.4(4) Provide additional information on requestors as needed to aid the committee in its selection process.

12.4(5) Establish dates when the committee will select individuals who have requested the special nonresident deer license and shall inform successful individuals of their selection.

561—12.5(483A) Request process.

12.5(1) *Submission.* Individual hunters or sponsors shall submit a request, or requests, to the coordinator on the form provided by the department. Requests shall be received throughout the year.

12.5(2) *Review.* The committee shall review summaries prepared by the coordinator to select hunters to receive the special licenses. This review shall occur at least once annually but may occur more frequently as needed based upon the number of requests and the dates the requests are received.

12.5(3) *Payment.* Upon notice of success, requestors shall make payment to the department through the coordinator at least 30 days prior to the hunting season for which the license is valid.

12.5(4) *No consideration.* Requests that demonstrate little to no promotion of the state of Iowa or its natural resources, as determined by the coordinator, shall not be forwarded to or considered by the committee.

561—12.6(483A) Consideration of requests. The committee will determine which requests for these special licenses are best qualified to promote the state and its natural resources. In making such a determination, the committee will select hunters and conservation organizations based on their expected ability to promote the state and its natural resources and the successes accomplished by special license holders in prior years or seasons, if applicable. By way of illustration, the committee may consider requests from the following:

12.6(1) Hunters who have a direct beneficial impact on the state through an arm’s-length business relationship with an Iowa-based outdoor industry company.

12.6(2) A sponsor that is a conservation organization that will use the special nonresident deer license as a fundraiser for that organization. Such sponsor shall return to the department the greater amount of either one-half of the proceeds from its sale of the special nonresident deer license or the cost of a nonresident deer license, the fee described in Iowa Code section 483A.1. The department’s proceeds shall cover the cost of the special nonresident deer license. Licenses made available to these sponsors under this subrule may be valid up to two years after selection by the committee. The sponsoring conservation organization shall notify the coordinator by July 1 immediately following the sale of the special deer license, which year and

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for what season the special deer license will be used. Within the request form, the sponsoring organizations shall specifically explain how and during what period they will market the special deer license for auction or some other legal fundraiser.

12.6(3) Sponsors or hunters for whom the governor, a member of the Iowa legislature, or a member of the committee makes a request for a special license.

12.6(4) Hunters or sponsors that are recommended by the department.

12.6(5) Hunters or sponsors that are considered a national or regional celebrity and that may provide a positive portrayal of the state and its natural resources.

561—12.7(483A) License term. With the exception of the term provided for in subrule 12.6(2), special licenses issued under these rules shall be valid for only the applicable deer or turkey season immediately following the selection.

561—12.8(483A) Reporting. Within eight months of participating in a hunt with a license issued pursuant to this chapter, the requestor, which may be the hunter or a hunter sponsor, shall provide the coordinator with information about the hunt and how it will provide or has provided promotion of the state and its natural resources. That evidence may be in the form of testimonials of the participants, a completed DVD available for retail sale, a DVD copy of the actual television broadcast, an article in a periodical, or other verifiable means that demonstrate the promotional benefits. The committee may consider compliance with this reporting requirement in evaluating future requests.

561—12.9(483A) Prohibitions. Photographs, videotapes, or any other form of media resulting from the special nonresident deer licenses issued pursuant to this chapter shall not be used for political campaign purposes.

561—12.10(483A) License costs. With the exception provided for conservation organizations by subrule 12.6(2), nonresidents obtaining special licenses issued by the department shall pay for:

1. The special nonresident deer licenses, the fee described in Iowa Code section 483A.1 for a deer hunting license for antlered or any sex deer.
2. The special nonresident turkey licenses, the fee described in Iowa Code section 483A.1 for wild turkey hunting license.

561—12.11(483A) Hunter safety requirements. The hunter safety and ethics certificate requirement is waived for holders of a special nonresident deer license and special nonresident turkey license, as provided by Iowa Code Supplement section 483A.24(3) and Iowa Code section 483A.24(4).

These rules are intended to implement Iowa Code section 483A.24.

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PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 105.4 (2007 Iowa Acts, chapter 198, section 4), the Department of Public Health hereby gives Notice of Intended Action to adopt new Chapter 27, "Plumbing and Mechanical Systems Examining Board—Administrative and Regulatory Authority," Iowa Administrative Code.

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These proposed rules describe the purpose and organization of the Plumbing and Mechanical Systems Examining Board. The rules also describe how this Board will conduct its business.

Any interested person may make written comments or suggestions on the proposed rules on or before September 30, 2008. Such written comments should be directed to Cindy Houlson, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Comments may be sent by fax to (515)281-4529 or by E-mail to choulson@idph.state.ia.us.

These rules are intended to implement Iowa Code chapters 17A and 105 (2007 Iowa Acts, chapter 198, and 2008 Iowa Acts, House File 2390).

The following amendment is proposed.

Adopt the following **new** 641—Chapter 27:

CHAPTER 27

PLUMBING AND MECHANICAL SYSTEMS EXAMINING BOARD—ADMINISTRATIVE AND REGULATORY AUTHORITY

641—27.1(17A,105) Definitions. For purposes of this chapter, the following definitions apply:

“*Board*” means the plumbing and mechanical systems examining board.

“*Board office*” means the office of the administrative staff.

“*Department*” means the department of public health.

“*Disciplinary proceeding*” means any proceeding under the authority of the board pursuant to which licensee discipline may be imposed.

“*License*” means a license to work in the plumbing trade, HVAC trade, refrigeration trade, or hydronic trade.

“*Licensee*” means a person licensed to work in the plumbing trade, HVAC trade, refrigeration trade, or hydronic trade.

“*Overpayment*” means payment in excess of the required fee. Overpayment of less than \$10 received by the board shall not be refunded.

641—27.2(17A,105) Purpose of board. The purpose of the board is to administer and enforce the provisions of Iowa Code chapters 17A and 105 with regard to the licensing and regulation of plumbers and mechanical professionals. The mission of the board is to protect the public health, safety and welfare by licensing qualified individuals who provide services to consumers and by fair and consistent enforcement of the statutes and regulations of the licensure board. Responsibilities include, but are not limited to:

27.2(1) Licensing of qualified applicants to work in the plumbing trade, HVAC trade, refrigeration trade, or hydronic trade by examination, renewal, endorsement, and reciprocity.

27.2(2) Developing and administering a program of continuing education to ensure the continued competency of individuals licensed by the board.

27.2(3) Imposing discipline on licensees as provided by statute or rule.

641—27.3(17A,105) Organization of board and proceedings.

27.3(1) The board shall be composed of 11 members appointed by the governor and confirmed by the senate.

27.3(2) The members of the board shall include:

a. The director of public health or the director’s designee;

b. The commissioner of public safety or the commissioner’s designee;

c. One plumbing inspector;

d. One mechanical inspector;

e. One contractor who works primarily in rural areas;

f. One individual licensed as a journeyman plumber pursuant to the provisions of Iowa Code chapter 105 or, for the initial membership of the board, an individual eligible for such licensure;

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g. One individual working as a plumbing contractor and licensed as a master plumber pursuant to the provisions of Iowa Code chapter 105 or, for the initial membership of the board, an individual eligible for such licensure;

h. Two individuals licensed as journeyman mechanical professionals pursuant to the provisions of Iowa Code chapter 105 or, for the initial membership of the board, two individuals eligible for such licensure; and

i. Two individuals licensed as master mechanical professionals pursuant to the provisions of Iowa Code chapter 105 or, for the initial membership of the board, two individuals eligible for such licensure. One of these individuals shall be a mechanical systems contractor.

27.3(3) The board shall elect a chairperson, vice chairperson, and secretary from its membership at the first meeting after April 30 of each year.

27.3(4) The board shall hold at least four meetings annually.

27.3(5) A majority of the members of the board shall constitute a quorum.

27.3(6) Board meetings shall be governed in accordance with Iowa Code chapter 21, and the board's proceedings shall be conducted in accordance with Robert's Rules of Order, Revised.

27.3(7) The department shall furnish the board with the necessary facilities and employees to perform the duties required by this chapter but shall be reimbursed for all costs incurred from funds appropriated to the board and subsequent fees from licensing activities.

27.3(8) The board has the authority to:

a. Develop and implement a program of continuing education to ensure the continued competency of individuals licensed by the board.

b. Establish fees.

c. Establish committees of the board, the members of which shall be appointed by the board chairperson and shall not constitute a quorum of the board. The board chairperson shall appoint committee chairpersons.

d. Hold a closed session if the board votes to do so in a public roll-call vote with an affirmative vote of at least two-thirds if the total board is present or a unanimous vote if fewer are present. The board will recognize the appropriate statute allowing for a closed session when voting to go into closed session. The board shall keep minutes of all discussion, persons present, and action occurring at a closed session and shall tape-record the proceedings. The records shall be stored securely in the board office and shall not be made available for public inspection.

e. Investigate alleged violations of statutes or rules that relate to work in the plumbing trade, HVAC trade, refrigeration trade, or hydronic trade upon receipt of a complaint or upon the board's own initiation. The investigation will be based on information or evidence received by the board.

f. Initiate and impose licensee discipline.

g. Monitor licensees that are restricted by a board order.

h. Perform any other functions authorized by a provision of law.

641—27.4(17A,105) Official communications.

27.4(1) All official communications, including submissions and requests, may be addressed to the Plumbing and Mechanical Systems Examining Board, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075.

27.4(2) Notice of change of address. Each licensee and licensed entity shall notify the board of a change of the current mailing address within 30 days after the occurrence.

27.4(3) Notice of change of name. Each licensee shall notify the board in writing of a change of name within 30 days after the occurrence.

641—27.5(17A,105) Office hours. The board office is open for public business from 8 a.m. to 4:30 p.m., Monday to Friday of each week, except holidays.

641—27.6(21) Public meetings. Members of the public may be present during board meetings unless the board votes to hold a closed session. Dates and location of board meetings may be obtained through the Iowa department of public health's Web site (<http://www.idph.state.ia.us>) or directly from the board office.

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27.6(1) At every regularly scheduled board meeting, time will be designated for public comment. During the public comment period, any person may speak for up to two minutes. Requests to speak for two minutes per person later in the meeting when a particular topic comes before the board should be made at the time of the public comment period and may be granted at the discretion of the chairperson. No more than ten minutes will be allotted for public comment at any one time unless the chairperson stipulates otherwise.

27.6(2) Persons who have not asked to address the board during the public comment period may raise their hands to be recognized by the chairperson. Acknowledgment and an opportunity to speak will be at the discretion of the chairperson.

27.6(3) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

27.6(4) Cameras and recording devices may be used at open meetings, provided the cameras or recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

These rules are intended to implement Iowa Code chapters 17A and 105.

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Regulatory Analysis

I. Background

The Iowa legislature passed House File 2212, the Smokefree Air Act (SAA), on April 8, 2008. The Governor signed the SAA on April 15, 2008, with an effective date of July 1, 2008. (HF 2212; HJ 1280). The purpose of the SAA is to protect the public health and the health of employees. (HF 2212, Section 1). The SAA prohibits smoking in all public places, all enclosed areas within places of employment, and certain outdoor areas of the state including school grounds and the grounds of any public building. (HF 2212, Section 3). The law contains several limited exemptions, including private residences. (HF 2212, Section 4). The SAA imposes requirements on employers and owners and operators of businesses to post “no smoking” signage and to remove ashtrays. (HF 2212, Section 6). The law contains an enforcement section and provides for civil penalties as well as other remedies against violators. (HF 2212, Section 9).

The SAA directs the Department to “adopt rules to administer this chapter, including rules regarding enforcement.” (HF 2212, Section 8). The SAA requires that the Department adopt administrative rules to effectively implement and enforce the Act and to provide necessary guidance for those businesses and persons subject to the Act, including the following:

- The SAA provides that the chapter shall be enforced by the department “or the department’s designee.” (HF 2212, Section 8). The Department through rulemaking must formally designate which agencies or entities may enforce the provisions of the Act.
- The SAA prohibits smoking on the “grounds of any public building” and on “school grounds.” (HF 2212, Section 3). In order to effectively implement and enforce the Act, defining these phrases through rule is necessary.
- The SAA prohibits smoking in outdoor seating or serving areas of restaurants. (HF 2212, Section 3). Smoking is allowed at outdoor areas of bars. This distinction necessitates a definition in rules between restaurants and bars in order to effectively implement and enforce the Act and to provide required guidance to the owners of these facilities.
- The SAA provides that “the chapter shall be enforced by the department.” (HF 2212, Section 8). This provision requires the Department to outline, in rule, a process for receiving and investigating complaints and a process for enforcement of violations.

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The Department undertook substantial efforts to draft, receive input on, publicize, and adopt the rules prior to the effective date of the statute. Following the passage of the SAA the Department in conjunction with the Attorney General's Office immediately commenced drafting the administrative rules. The Department gathered model rule language from other states which have passed similar statutes and began drafting those definitions and enforcement provisions which are Iowa-specific. The Department hosted a meeting with affected state agencies and other entities on May 6, 2008, to gather input and comment from those groups. This meeting was attended by 33 people from 11 different agencies, including representatives from the state universities, the Department of Public Safety, the Secretary of State, the Governor's Office, and the Department of Inspections and Appeals. The Department then met individually with several state agencies to address agency-specific items. The Department also met with the Iowa State Association of Counties, the Iowa League of Cities and other interested associations and received input from the Iowa Restaurant Association.

The Department posted a draft of the administrative rules on the Department's website on June 2, 2008, and began receiving public comment regarding the rules immediately upon posting. Department staff met informally with the Administrative Rules Review Committee on June 11, 2008, and received comment from the Committee regarding the proposed rules. The Board of Health was scheduled to adopt the rules on June 11, 2008, but this meeting was postponed due to issues related to the flooding in Central and Eastern Iowa. The State Board of Health and the Department adopted these administrative rules – 641 Iowa Administrative Code chapter 153 – pursuant to Chapter 17A's expedited rulemaking process on June 27, 2008, with an effective date of July 1, 2008.

The Department is also proceeding with adopting the rules through the standard rule-making process. The notice of intended action was filed at the same time as the emergency rules, on June 30, 2008. (Iowa Code § 17A.4(1)“a”). Both the emergency rule and the notice of intended action for the standard rulemaking process were published in the Iowa Administrative Bulletin on July 30, 2008. (Iowa Code § 17A.4(1)“a”).

The Department is in the process of receiving public comment on the rules. From August 20 through August 22, 2008, five regional public hearings were held using the Iowa Communications Network (ICN). In addition to the five originating sites, an additional 27 locations were available to access the hearings. As a result of the request for regulatory analysis, the period for public comment has been extended; consideration will be given to all written suggestions or comments and any request for additional oral proceedings on these rules received on or before September 30, 2008. Such written materials or request should be sent to Bonnie Mapes, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. A comment form is also available on the following Web site: www.IowaSmokefreeAir.gov.

The chapter was scheduled to be adopted by the Board of Health and the Department on September 10, 2008, with an effective date of November 12, 2008. Due to this request for regulatory analysis, the timeframe for adoption has been delayed to November 12, 2008, with an effective date of January 7, 2009.

II. Request for Regulatory Analysis

On July 2, 2008, the Iowa Restaurant Association submitted a request to the Department pursuant to Iowa Code section 17A.4A(1) to conduct a regulatory analysis of the SAA administrative rules. Pursuant to this section, an agency “shall issue a regulatory analysis of a proposed rule ...if the rule would have a substantial impact on small business and if, within thirty-two days after the published notice of the proposed rule adoption, a written request for analysis is submitted to the agency by ...an organization representing at least twenty-five [persons who qualify as small business owners].” While the Department does not believe that the administrative rules will have a substantial impact on small business for the reasons outlined below, the Department has completed the requested regulatory analysis in the interest of furthering the public discussion on this important topic.

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III. Elements of the Regulatory Analysis

The elements to be included in a regulatory analysis are specifically identified as follows:

(1) A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

(2) A description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons, including a description of the nature and amount of all of the different kinds of costs that would be incurred in complying with the proposed rule.

(3) The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

(4) A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

(5) A determination of whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule.

(6) A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

(Iowa Code section 17A.4A(2)“a”(1) – (6)).

In addition, the regulatory analysis must contain a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rule on small business:

(1) Establish less stringent compliance or reporting requirements in the rule for small business.

(2) Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small business.

(3) Consolidate or simplify the rule’s compliance or reporting requirements for small business.

(4) Establish performance standards to replace design or operational standards in the rule for small business.

(5) Exempt small business from any or all requirements of the rule.

(Iowa Code section 17A.4A(2)“b”(1) – (5)).

Each of these elements will be addressed in turn as follows. It must be noted that the smoking prohibitions are contained in the Smokefree Air Act and the rules simply implement certain portions of that Act.

1. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

Classes that will benefit from the SAA and the proposed rules: Employees, members of the general public, the citizens of the state of Iowa.

Secondhand smoke contains hundreds of chemicals known to be toxic or carcinogenic, including formaldehyde, benzene, vinyl chloride, arsenic, ammonia, and hydrogen cyanide. Secondhand smoke has been designated as a Group A carcinogen (known to cause cancer in humans) by the U.S. Environmental Protection Agency, National Toxicology Program and the International Agency for Research on Cancer (IARC). The National Institute for Occupational Safety and Health also has concluded that secondhand smoke is an occupational carcinogen.

The U.S. Surgeon General has concluded that the only way to fully protect employees and the public is to completely eliminate smoking in indoor spaces. Separate smoking sections and ventilation systems have proven not to be effective approaches. The Smokefree Air Act makes all enclosed workplaces and some outdoor areas non-smoking for the purpose of reducing “the level of exposure by the general public and employees to environmental tobacco smoke in order to improve the public health of Iowans.”

Numerous studies have shown that smoke-free laws are associated with substantial and rapid reductions in environmental tobacco smoke (also called secondhand smoke) exposure in nonsmoking restaurant and bar workers and improvements in respiratory and sensory symptoms and pulmonary function among these workers. With a few exceptions, primarily employees working on the gaming floors of casinos, all employees

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and members of the public that patronize businesses in Iowa will benefit from reduced exposure to secondhand smoke.

Classes that will bear the costs of the SAA and the proposed rules: Employers and business establishments.

There are 82,087 business establishments with employees in Iowa. Approximately 1,481,100 Iowans are employed by these businesses. (Source: <http://www.iowadatacenter.org/quickfacts>). Of these businesses, 14,613 are licensed food service establishments (Source: Iowa Department of Inspections and Appeals).

According to the 2006 Iowa Adult Tobacco Survey, 77% of adults in Iowa reported that their workplace had an official policy that restricted smoking in some way, prior to passage of the law. However, only 39% of restaurants (excluding national “fast food” outlets) and 2% of bars were among those workplaces offering smoke-free work environments (See Center for Behavioral Research survey, “Smoking Policies at Food Serving Businesses in Iowa,” February 2007 for the Iowa Department of Public Health). The law now requires all restaurants and bars to be non-smoking in all enclosed areas.

2. A description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons, including a description of the nature and amount of all of the different kinds of costs that would be incurred in complying with the proposed rule.

Health Impact

Secondhand smoke has been shown to cause premature death and disease in nonsmokers. Non-smokers who are exposed to secondhand smoke, at home or at work, increase their risk of developing heart disease by 25% to 30%. Non-smokers who are exposed to secondhand smoke, at home or at work, increase their risk of developing lung cancer by 20% to 30%. Even brief exposure to secondhand smoke can result in upper airway changes in healthy persons and can lead to more frequent and more severe asthma attacks in children who already have asthma. (See U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.)

Smokefree workplace policies have an immediate impact on air quality and improved health outcomes, particularly for workers in the hospitality industry. After New York implemented a state law in 2003 requiring virtually all indoor workplaces and public places (including restaurants and bars) to be smoke-free, average levels of respirable suspended particles (a measure of secondhand smoke levels) declined by 84% in 20 hospitality settings. (See Centers for Disease Control and Prevention. “Indoor Air Quality in Hospitality Venues Before and After Implementation of a Clean Indoor Air Law—Western New York, 2003”. *Morbidity and Mortality Weekly Report*, 2004;53(44):1038–104.) One year after New York’s law took effect, self-reported secondhand smoke exposure on the job among nonsmoking employees of restaurants, bars, and bowling facilities decreased by 98% and their saliva cotinine levels (a biological marker of secondhand smoke exposure) decreased by 78%. (See Farrelly MC, Nonnemaker JM, Chou R, Hyland A, Peterson KK, Bauer UE. “Changes in Hospitality Workers’ Exposure to Secondhand Smoke Following the Implementation of New York’s Smoke-Free Law”. *Tobacco Control*. 2005;14(4):236–241.)

Scotland’s comprehensive 100% smoke free air law for all workplaces, restaurants, bars and pubs went into effect on March 26, 2006. The law was associated with an 86% reduction in respirable particles within two months, and rapid improvements in a number of health outcomes in nonsmoking bar workers, including: reductions in self-reported respiratory symptoms, improvements in objectively measured lung function, and reductions in objectively measured systemic inflammation. (See Menzies D, Nair A, et. al. “Respiratory Symptoms, Pulmonary Function, and Markers of Inflammation Among Bar Workers Before

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and After a Legislative Ban on Smoking in Public Places,” Journal of the American Medical Association. 2006; 296(14):1742–1748)

A study conducted in Ireland after implementation of a comprehensive national smoke-free law yielded much the same results: an 83% reduction in particulate matter levels in pubs; a 79% reduction in exhaled carbon monoxide in bar workers, improvements in objectively measured lung function among nonsmoking bar workers, and reductions in self-reported respiratory and sensory symptoms among nonsmoking bar workers. (See Goodman P, Agnew M, et. al. “Effects of the Irish Smoking Ban on Respiratory Health of Bar Workers and Air Quality in Dublin Pubs,” American Journal of Respiratory and Critical Care Medicine. 2007)

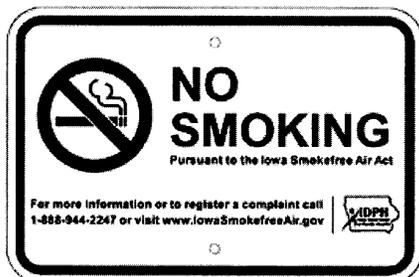
A survey of California bar owners, managers, assistant managers and bartenders found overwhelming support for the state’s smoke-free bar law, with more than eight in ten bar managers and employees (83%) saying they think the smoke-free workplace law protects their health and the health of other bar employees, and 77% of bar managers and employees saying that complying with the law has been “very” or “fairly” easy. (See Field Research Corporation, “Bar Establishment Survey,” conducted September – October 2002 for California Department of Health Services (CDHS).)

Smokefree workplace laws not only protect non-smokers from the health impacts of exposure to secondhand smoke, they encourage smokers to quit or to reduce the number of cigarettes they smoke. A study in the July 1999 *American Journal of Public Health* that examined the impact of smoke-free laws and policies on smoking in the United States and Australia concluded that:

All of the 19 studies we reviewed reported either declines in daily cigarette consumption by continuing smokers or reductions in smoking prevalence after bans on smoking in the workplace were introduced... Because of the duration of time spent at work, workplaces are probably the most significant sites where smoking restrictions cause smokers to reduce their tobacco consumption. (See Chapman, S, et al., “The Impact of Smoke-Free Workplaces on Declining Cigarette Consumption in Australia and the United States,” *AJPH* 89(7):1018-1023, July 1999).

Comprehensive smoke-free policies can also reduce the number of youth who become smokers. A national study found that adolescents who work in smokefree workplaces are significantly less likely to be smokers than adolescents who work in workplaces with no smoking restrictions or a partial work-area smoking ban. (See Farkas AJ, Gilpin EA, White MM, Pierce JP. Association Between Household and Workplace Smoking Restrictions and Adolescent Smoking. *Journal of the American Medical Association*. 2000; 284(6):717–722)

Costs Incurred in Complying with the SAA



The only cost incurred by businesses to comply with the law is related to the required posting of no-smoking signs at all entrances to nonsmoking areas (including outdoor areas) and in all company vehicles. These signs must comply with specific requirements: contain either the international no-smoking symbol or the words “No Smoking” and include the Department’s toll-free number and website for information and to register

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complaints about the violations of the law. Schools and all government agencies must also post signs in the same manner. The rules require that the signs be at least 24 square inches, be clear and conspicuous at the entrance, and be in a legible font type.

To help allay the cost of producing or purchasing signs, the Act allowed businesses to post free signs provided by the Department for download from the Department's web site at www.IowaSmokefreeAir.gov. In addition, all current food service licensees in the state were mailed one free sign by the Department and outdoor, reflective metal signs (2,000) which conform to the Act are being distributed free-of-charge to tobacco-free schools throughout Iowa.

Given the wide variety of signs that may be produced or purchased from private vendors, it is difficult to estimate the cost of producing signage. The following costs were provided by Iowa Prison Industries, which is producing compliant no-smoking signs for governmental and non-profit agencies.

No Smoking Decals

- Suitable for indoor or outdoor use unless noted otherwise
- Will affix to glass, metal or wood doors, vehicles or nearly any flat surface

Size	Model	Price
12x12 No Smoking Decal, Black Background	#FISI-2212X12DECAL	\$4.80
12x12 No Smoking Decal, White Background	#FISI-2112X12DECAL	\$4.80
6x4 No Smoking Decal, Transparent For Inside Glass	#FISI-216X4DECAL	\$2.00
8.75x5.75 No Smoking Decal, Black Background	#FISI-228.75X5.7DECAL	\$2.40
8x3 No Smoking Decal, Transparent For Inside Glass	#FISI218X3DECAL	\$2.00
8x8 No Smoking Decal, Black Background	#FISI-228X8DECAL	\$2.60
8x8 No Smoking Decal, White Background	#FISI-218X8DECAL	\$2.60

No Smoking Aluminum Signs

- Produced on .080 aluminum
- Suitable for indoor or outdoor use
- Come pre-drilled for mounting to a post, the side of a building or other structure

Size	Model	Price
12x12 No Smoking Sign, Black Background	#FISI-2212X12EA	\$4.20
12x12 No Smoking Sign, White Background	#FISI-2112X12EA	\$4.20
12x18 No Smoking Sign, Black Background	#FISI-2018X12EA	\$6.20
12x18 No Smoking Sign, White Background	#FISI-1918X12EA	\$6.20

Source: http://www.iaprisonind.com/html/prodserv/signs/signs_nosmoking2.asp. Prices valid as of 8-5-08.

Potential Economic Impact

Twenty-four states and hundreds of municipalities now have laws in place which prohibit workplace smoking. At least 98 studies have been published which examine the economic impact of these laws. Evidence from all the peer-reviewed studies that examine objective measures such as sales tax revenues, employment levels or business license applications shows that smoke-free laws do not have an adverse economic impact on business revenues, including revenues in the hospitality industry. In fact, numerous

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Careful scientific and economic analyses show that smoke-free laws do not hurt restaurant and bar patronage, employment, sales, or profits. Some examples:

- An evaluation of the New York's Clean Indoor Air act found that the law had no negative impact on sales in full-service restaurants and bars. (See New York State Department of Health. Second Annual Independent Evaluation of New York's Tobacco Control Program, 2005.) Restaurant and bar revenues in New York City increased by 8.7% from April 2003 through January 2004 following implementation of the city's smoke-free law. Employment in the city's restaurants and bars increased by approximately 2,800 seasonally adjusted jobs from March 2003 to December 2003. The number of restaurants and bars in the city remained essentially unchanged between the third quarter of 2002 and the third quarter of 2003. (See New York City Department of Finance, New York City Department of Health and Mental Hygiene, New York City Department of Small Business Services, New York City Economic Development Corporation. "The State of Smoke-Free New York: A One-Year Review." New York, New York: New York City Department of Health and Mental Hygiene, 2004.)

- A study conducted by research economists at the University of Florida's Bureau of Economic and Business Research found that the state's smoke-free law has not hurt sales or employment in the hotel, restaurant and tourism industries. The proportion of retail sales by Florida's restaurants, lunchrooms, and catering services actually increased by 7.37% after the smoke-free law went into effect. (See Dai, C, et al., *The Economic Impact of Florida's Smoke-free Workplace Law*, Bureau of Economic and Business Research, Warrington College of Business Administration, University of Florida, June 25, 2004.)

- In Delaware, data from the Delaware Alcohol Beverage Control Commission show that the number of restaurant, tavern and taproom licenses increased in the year since the state's smokefree law took effect. Data from the Delaware Department of Labor show that employment in the state's food service and drinking establishments also increased in that first year. (See Meconi, Vincent, Secretary of the Delaware Department of Health and Social Services, "Secondhand Smoke Deserves Regulations," Delaware State News, (December 30, 2003). See also American Lung Association of Delaware, "Delaware's Clean Indoor Air Act – The 1st Anniversary Story", <http://www.alade.org/main.html>.)

- A study of Massachusetts' comprehensive statewide smoke-free law found that, "Analyses of economic data prior to and following implementation of the law demonstrated that the Massachusetts state-wide law did not negatively affect statewide meals and alcoholic beverage excise tax collections. Furthermore, the number of employees in food services and drinking places and accommodation establishments, and keno sales were not affected by the law." (See Connolly G, et al, *Evaluation of the Massachusetts Smokefree Workplace Law: A Preliminary Report*, Division of Public Health Practice, Harvard School of Public Health, Tobacco Research Program, April 4, 2005.)

- A study conducted by researchers at the Gatton College of Business and Economics of the Lexington-Fayette County, Kentucky comprehensive smoke-free law that took effect April 27, 2004 found that: "There was no effect of the smoke-free law on payroll withholding taxes (workers' earnings) in restaurants, bars, or hotels/motels in the 10 months after the law went into effect, after taking seasonal variation into account. The smoke-free law was not related to business openings or closures in alcohol-serving establishments or at non-alcohol serving establishments." (See Hahn E, et al, *Economic Impact of Lexington's Smoke-free Law: A Progress Report*, University of Kentucky College of Nursing and Gatton College of Business and Economics, April 18, 2005)

In Iowa, both Ames and Iowa City implemented smokefree air ordinances that were struck down by the Iowa Supreme Court on preemption grounds. However, studies of that limited experience strongly suggest that there was no negative economic impact. One study showed that there was no net change in the number of restaurants operating in Iowa City under the local smoking ordinance compared to neighboring Coralville where there was a net loss in the number of restaurants despite the lack of similar smoking restrictions. (See Sheffer, M., and Squier, C., "Up in Smoke: An Assessment Process Related to Smoke-Free Restaurant Ordinances in Iowa," Needs and Capacity Assessment Strategies for Health Education and Health Promotion, 3d Ed., Gilmore and Campbell (eds.) 2005).

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Anecdotal reports from business owners about the impact of the first month of Iowa's statewide law also suggest that businesses have not been negatively impacted. For example, an article in the Daily Iowan on July 28, 2008, reported that bar owners in Iowa City have seen business increase during the first four weeks the Smokefree Air Act has been in effect. (See Putnam, J., "Weeks After Smoking Ban, Some Businesses See Surge," The Daily Iowan, July 28, 2008). Even some opponents of the Smokefree Air Act now see that their business has not been hurt. (See Officials: Smoking Law Working Well, Opponents Say Smoking Customers Haven't Stayed Away, July 30, 2008, at www.kcci.com/print/17044407/detail.html).

Additional indicators of the potential economic impact of the SAA, including decreased economic burdens on employers and reductions in health care expenditures, are discussed in section 4 below.

3. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

The Department is responsible for educating the public and business owners about the requirements of the law and for enforcing the law. No additional state revenues were allocated by the Legislature in FY 2009 to support education and enforcement. The resources necessary to carry out these responsibilities have been provided by the Department, specifically by the Division of Tobacco Use Prevention and Control through budget reductions for other programs supported by the Division. Consequently, there is no anticipated effect upon state revenues.

The probable costs to the Department for the third quarter of fiscal year 2008, fiscal year 2009 and fiscal year 2010 total \$452,500.

1. Personnel expenses: \$208,219

A total of 4.0 full-time equivalent (FTE) staff at the Department of Public Health are currently involved in direct support of education and enforcement activities related to the Smokefree Air Act. One additional full-time staff was hired in July 2008 to respond to inquiries and complaints received via the Smokefree Air Act helpline and web site. Five existing staff have been temporarily re-assigned part-time to assist with responses to web and email inquiries, to collect written public comments about the rules, to prepare required comments documents, to investigate complaints about violations of the Act, and to maintain the database supporting complaint enforcement, including dissemination and tracking of notifications of potential violations. It is expected that staff required to support enforcement will drop to 2.0 FTE by the end of Fiscal Year 2009 and to 1.25 FTE by the end of Fiscal Year 2010.

2. Materials, Postage, Other Operating Expenses: \$77,874

Public education activities have included development of the www.IowaSmokefreeAir.gov web site, establishment of the Helpline at 1-888-944-2247, printing and distribution of brochures and fact sheets for businesses and the general public; bulk mailings to all food service license holders, chambers of commerce, local law enforcement agencies, local public health departments, and county tobacco control program grantees; travel and materials for a series of trainings for business owners and law enforcement agencies, and ICN trainings. In addition, outdoor, reflective metal signs (2,000) which conform to the SAA are being distributed free-of-charge to tobacco-free schools throughout Iowa.

An estimated 1,000 to 1,100 Notices of Potential Violation letters will be sent to employers via certified mail in fiscal year 2009 at a cost of \$5.23 per letter. That number is expected to decrease to about 570 in fiscal year 2010 at an anticipated cost of \$6.32 per letter.

3. Enforcement contract: \$160,000

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Complaint tracking system: \$6,500

The Department has contracted with the Alcoholic Beverages Division (ABD) to coordinate compliance checks by local law enforcement agencies of businesses which have received a second or subsequent notice of potential violation. This contract includes a \$100 payment from ABD to law enforcement agencies for each compliance check they conduct. ABD was also contracted to develop the on-line complaint and compliance check tracking system accessed by both DPH and ABD staff managing the enforcement process.

4. Civil penalties collected

The revenue from civil fines collected is not expected to be significant and will not have an impact upon state revenues. It is anticipated that not more than 75 citations will be issued for violations during FY 2009 and not more than 57 citations will be issued in FY 2010. The majority of these citations will be issued by local authorities and “civil penalties paid shall be deposited in the general fund of the respective city or county.”

4. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

The rules are necessary for implementation of the Smokefree Air Act, specifically the process for enforcement of the Act. Inaction on the rules would create confusion regarding the definition of key phrases of the SAA and would hamper the enforcement process, ultimately resulting in decreased compliance with the law. Allowing smoking to continue in workplaces in Iowa would prevent businesses, the State, and the citizens of Iowa from realizing the substantial economic and health benefits engendered by smokefree work environments.

As detailed in Section 2, there is no credible evidence that smokefree workplace laws have had any negative impact on business revenues in the states and municipalities which have enacted such laws. In fact, there is considerable evidence that these laws enhance business profitability by decreasing operating costs while sales revenues are unaffected or even increase.

Smoking in the workplace places a considerable economic burden on employers. Workers who smoke and workers who are exposed to secondhand smoke experience more smoking-related illnesses and miss more days of work than workers in a smoke-free environment. The U.S. Centers for Disease Control and Prevention estimates that an employee who smokes costs an employer \$3,391 more per year than a nonsmoker: \$1,760 in lost productivity and \$1,623 in excess medical expenditures. Estimated costs for nonsmoking employees exposed to secondhand smoke are estimated at \$490 per year. (See Fellow, J., et. al., “Annual Smoking Attributable Mortality, Years of Potential Life Lost and Economic Costs—United States, 1995-1999,” Journal of the American Medical Association, May 8, 2002, 287(18), pp. 2335-2356).

Smoking in the workplace also contributes to increased maintenance and cleaning costs, estimated at about \$500 per smoker per year. (See Weis, W., “Can You Afford to Hire Smokers?” Personnel Administrator 1981, pp. 71-78). The U.S. Environmental Protection Agency estimates that four to eight billion dollars in building operations and maintenance costs would be saved if policies prohibiting smoking in workplaces were adopted nationwide. (See Reducing Tobacco Use: A Report of the Surgeon General, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, 2000).

Other increased costs due to smoking in the workplace include property losses from smoking-caused fires, smoking breaks, on-the-job performance declines, higher worker compensation costs, and early termination of employment due to smoking-caused disability.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Smokefree workplace policies reduce operating costs and do not negatively impact revenues, meaning smokefree businesses operate at a higher profit margin than businesses that are not smokefree. Two studies, one of restaurants and a second of bars, show that smokefree laws enhance both profits and value: restaurants in areas with a smokefree ordinance sold for 16% more than comparable restaurants in areas with no restrictions. (See Alamar, B., and Glantz, S., "Smoke-free Ordinances Increase Restaurant Profit and Value," Contemporary Economic Policy, October 2004, Vol. 22, No. 4, pp.520-525; and Alamar B., and Glantz, S., "Effects of Smoke-free Laws on Bar Value and Profits," American Journal of Public Health, August 2007, Vol. 97, pp. 1400-1402).

Any costs to businesses and to the state to implement the law will be more than offset by decreased expenditures due to reductions in smoking prevalence and reduced consumption of cigarettes by continuing smokers, especially among employees. Smokefree workplace laws not only protect non-smokers from the health impacts of exposure to secondhand smoke, they are at least as effective as tobacco tax increases in encouraging smokers to quit or to reduce the number of cigarettes they smoke. A 2002 review of 26 studies concluded that a complete smoking ban in the workplace reduces smoking prevalence among employees by 3.8% and daily cigarette consumption by 3.1 cigarettes among employees who continue to smoke. (See Fichtenberg, C., and Glantz, S., "Effect of Smoke-free Workplaces on Smoking Behavior: Systematic Review," British Medical Journal, July 27, 2002, pp. 174-175).

A 3.8% reduction in the adult smoking rate in Iowa will result in more than \$160 million in reduced healthcare expenditures over the lifetime of the adults who quit (based upon the current adult smoking rate of 19.8% and excess lifetime healthcare costs of \$9,500 for smokers as compared to nonsmokers).

According to the Centers for Disease Control and Prevention, smoking-caused healthcare expenditures and productivity losses cost Iowa at least \$10.28 per each pack of cigarettes sold. Total health care costs directly caused by smoking in Iowa now total \$1 billion per year and productivity losses total \$964 million each year.

5. A determination of whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule.

The enforcement process established by the rules is the least costly and least intrusive, practicable method available to effectively enforce the requirements of the Smokefree Air Act.

Businesses are given at least two written notices of noncompliance and the opportunity for on-site technical assistance from a representative of the Department before an on-site inspection of the business by a law enforcement officer is initiated.

The enforcement process is complaint driven. The Department receives complaints from the public concerning observed violations of the Act. A First Notice of Potential Violation will be sent by certified mail to the business owner based upon validation of a first complaint. This Notice provides specific information about the reported violations and educational materials to assist the business owner with coming into compliance with the law. The business owner or manager is also offered the opportunity to meet voluntarily with a representative from a Department grantee who can provide the business with technical assistance to come into compliance with the law.

A Second Notice of Potential Violation will be sent by certified mail based upon validation of a second complaint. This Second Notice is also forwarded to the appropriate law enforcement authority with a request that an on-site inspection of that business be conducted. If, upon inspection, the law enforcement officer determines that the business is not in compliance with the law, a civil citation may be pursued.

No less intrusive or less costly method is feasible for achieving compliance with the law.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

6. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

As stated above, the SAA dictates the smoking prohibitions and the requirements on businesses for compliance. The rules define key phrases and effectuate a process for enforcement of the Act.

In drafting the definition section, the Department did seriously consider alternatives to the definition of the term “bar.” This definition is key to enforcement of the SAA as smoking is prohibited in the outdoor seating or serving areas of restaurants but is allowed in the outdoor areas of a bar. (HF 2212, Section 3). The SAA defines a “bar” as “an establishment where one may purchase alcoholic beverages as defined in section 123.3, for consumption on the premises and in which the serving of food is only incidental to the consumption of those beverages.” (HF 2212, Section 2). The rules further define “*Serving of food incidental to the consumption of alcoholic beverages*” to mean “food preparation that is limited to the service of ice, pre-packaged snack foods, popcorn, peanuts, and the reheating of commercially prepared foods that do not require assembly, such as frozen pizza, pre-packaged sandwiches, or other prepackaged, ready-to-serve products.” (641 IAC 153.2). This definition is based upon existing Department of Inspections and Appeals criteria for the “Tavern without food preparation” designation “check-off” on food service license applications.

Utilizing existing food service license or liquor license criteria is a common method used by states with smokefree workplace laws to differentiate a bar (an establishment where the serving of food is incidental to sales of alcohol) from a restaurant. In Iowa, there is no liquor license type that delineates an establishment where food sales are incidental to alcohol sales from a full-service restaurant with a liquor license.

Another common method used to differentiate a bar from a restaurant is based upon the annual percentage of food sales compared to alcohol sales in that establishment. In order to be defined as a bar, an establishment must show its food sales are limited to a specific percentage of overall sales (typically no greater than 20% to 25%). This method was considered by the Department; however, it was determined not to be a practical or effective option in Iowa for a number of reasons.

First, states which utilize the percentage of food sales method either had a system in place for collecting financial information from bars prior to passage of a smokefree workplace law or established such a system as part of smokefree workplace legislation and provided funding to support that system. The State of Iowa has no existing system for collecting financial records from liquor licensees. Some cities in Iowa have local ordinances which require submission of financial records by liquor licensees, but the methods for collecting and verifying those records varies widely from city to city and not all cities or counties have this requirement. All liquor licensees in Iowa must maintain dram shop insurance, and many insurers require submission of financial records of alcohol sales. Again however, the requirements for submission differ from insurer to insurer and not all dram insurers require the submission of such records.

Second, development and implementation of a statewide system to collect and audit financial records for purposes of certification of bars in Iowa would have taken several months beyond implementation of the Act on July 1, 2008. Additionally, the resources necessary to develop and maintain such a system were not made available to the Department or to any other state agency.

Third, defining bars according to a percentage of food sales definition would impose a substantial additional reporting burden for liquor licensees. States which currently use the food sales definition typically require that businesses apply for initial certification before qualifying for an exemption to a smokefree workplace law by submitting records of sales for the preceding one to three years. In some states, these records must be certified as accurate by a Certified Public Accountant. Regular recertification and resubmission of sales records is required and is often tied to reapplications for liquor licenses. Utilizing such a definition would impose additional reporting and record keeping requirements on these establishments.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Finally, enforcement of the law utilizing a percentage of food sales designation would result in a more cumbersome and intrusive enforcement process. The “bar or restaurant” status of a business could not be determined by a law enforcement officer during a compliance inspection but would have to be verified by an audit of financial records by a state agency such as the Department of Revenue or the Alcoholic Beverages Division. There could also be a considerable time lag between reported violations of the law and any enforcement actions resulting from violations having to be confirmed via an audit. Enforcement of the SAA would be more difficult, complex, and confusing for business owners and for the public.

In addition, the regulatory analysis must contain a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rule on small business:

1. Establish less stringent compliance or reporting requirements in the rule for small business.

First, the rules establish no reporting requirements on businesses and so a discussion of less stringent reporting requirements is not applicable here.

Second, the rules establish no compliance requirements beyond those established by the Smokefree Air Act. Namely, in order to be in compliance, the Smokefree Air Act provides that the “owner, operator, manager or other person having custody of a...place of employment” shall:

- a. Post signs at every entrance to all areas and in all vehicles declared as nonsmoking pursuant to the law. (HF 2212: Page 10, Lines 8-20)
 - i. The rules simply establish a minimum size requirement for posted signage: “The signs shall be...at least 24 square inches in size and shall be in legible font type.” (641 IAC 153.5(1)“d”)
- b. Remove all ashtrays from areas declared as nonsmoking (HF 2212: Page 10, Lines 30-34)
- c. Communicate the requirements of the law with current and prospective employees (HF 2212: Page 10, Lines 4-7)
- d. Inform person violating the law of the provisions of the law. (HF 2212: Page 11, Line 34 – Page 12, Line 4.
 - i. The rules further clarify this requirement to inform in 153.5(4): “An employer, owner, operator, manager, or person having custody or control of a place where smoking is prohibited under chapter 142D shall inform any individual smoking in a place where smoking is prohibited that the individual is violating the Smokefree Air Act and shall request that the individual stop smoking immediately.”

2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small business.

The Smokefree Air Act went into effect on July 1, 2008. The rules establish no additional schedules or deadlines for compliance, and establish no reporting requirements on businesses whatsoever.

3. Consolidate or simplify the rule’s compliance or reporting requirements for small business.

Again, the rules establish no compliance requirements beyond those stipulated in the Smokefree Air Act and neither the SAA nor the rules establish any reporting requirements.

4. Establish performance standards to replace design or operational standards in the rule for small business.

This standard is not applicable.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

5. Exempt small business from any or all requirements of the rule.

The Smokefree Air Act applies to all enclosed places of employment. It makes no exception for small businesses. The rules, therefore, cannot establish such an exemption and to do so would be in violation of the law. (Iowa Code sections 17A.2(11), 17A.9A(1))

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:

September 1, 2007 — September 30, 2007	7.00%
October 1, 2007 — October 31, 2007	6.75%
November 1, 2007 — November 30, 2007	6.50%
December 1, 2007 — December 31, 2007	6.50%
January 1, 2008 — January 31, 2008	6.25%
February 1, 2008 — February 29, 2008	6.00%
March 1, 2008 — March 31, 2008	5.75%
April 1, 2008 — April 30, 2008	5.75%
May 1, 2008 — May 31, 2008	5.50%
June 1, 2008 — June 30, 2008	5.75%
July 1, 2008 — July 31, 2008	6.00%
August 1, 2008 — August 31, 2008	6.00%
September 1, 2008 — September 30, 2008	6.00%

ARC 7117B

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 162.16, the Department of Agriculture and Land Stewardship hereby amends Chapter 67, “Animal Welfare,” Iowa Administrative Code.

The amendment to rule 67.9(162) updates the publication used to provide guidelines for the euthanasia of animals.

Pursuant to Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable. Notice and public participation would result in needless delays.

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of this amendment, 35 days after publication, should be waived and this amendment should be made effective upon filing with the Administrative Rules Coordinator. This amendment confers a benefit to the public because it allows the updated and more modern guidelines for animal euthanasia to be used.

No waiver provision is included in this amendment.

This amendment became effective on August 15, 2008.

This amendment is intended to implement Iowa Code chapter 162.

The following amendment is adopted.

Amend rule 21—67.9(162) as follows:

21—67.9(162) Acceptable forms of euthanasia. The euthanasia of all animals kept in facilities regulated under Iowa Code chapter 162 and these rules shall be performed in a manner deemed acceptable by and published in the 1993 Report of the American Veterinary Medical Association Panel on Euthanasia 2007 American Veterinary Medical Association Guidelines on Euthanasia. A copy of this report is on file with the department.

This rule is intended to implement Iowa Code chapter 162.

[Filed Emergency 8/15/08, effective 8/15/08]

[Published 9/10/08]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/10/08.

ARC 7142B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.261 through 455B.274, the Environmental Protection Commission hereby amends Chapter 50, “Scope of Division—Definitions—Forms—Rules of Practice,” Iowa Administrative Code.

The purpose of this amendment is to rescind subrule 50.4(2), which implements the \$25 application fee for the water use and allocation permits.

As a result of the passage of 2008 Iowa Acts, House File 2672, of the 82nd General Assembly, the Department is in the process of developing rules for the water use and allocation permitting program. Those rules will proceed through the routine Notice of Intended Action process, including public participation. This emergency rule making is intended to eliminate the \$25 permit application fee while the new rules are being drafted.

In compliance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are unnecessary because the application fee is rescinded with no other effect on the permitting rules.

The Commission also finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of the amendment should be waived and the amendment should become effective upon filing with the Administrative Rules Coordinator, as the amendment confers a benefit on everyone who applies for a permit.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

This amendment is intended to implement Iowa Code sections 455B.105 and 455B.173.

This amendment became effective on August 20, 2008.

The following amendment is adopted.

Rescind and reserve subrule **50.4(2)**.

[Filed Emergency 8/20/08, effective 8/20/08]

[Published 9/10/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/10/08.

ARC 7118B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 239B.4(6), the Department of Human Services amends Chapter 41, "Granting Assistance," Iowa Administrative Code.

This amendment exempts income earned through temporary employment with the U.S. Bureau of the Census from consideration in determining eligibility for the Family Investment Program. Many low-income people are hired to help with the collection of census data. Exemption of this income is supported by the U.S. Bureau of the Census and by the Administration for Children and Families in the U.S. Department of Health and Human Services. This exemption was applied to the last federal census, but the reference was time-limited. This amendment will make the exemption permanent.

This amendment does not provide for waivers in specified situations because the change benefits the persons affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on July 2, 2008, as **ARC 6871B**. The Department received no comments on the Notice of Intended Action. This amendment is identical to that published under Notice of Intended Action.

The Council on Human Services adopted this amendment on August 13, 2008.

The Department finds that this amendment confers a benefit on Family Investment Program applicants and recipients by exempting another source of income from consideration. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of this amendment shall be waived.

This amendment is intended to implement Iowa Code section 239B.7.

This amendment will become effective October 1, 2008.

The following amendment is adopted.

Amend paragraph **41.27(7)"ak"** as follows:

ak. All census earnings received by temporary workers from the Bureau of the Census ~~for Census 2000 during the period of April 1, 2000, through January 31, 2001.~~

[Filed Emergency After Notice 8/15/08, effective 10/1/08]

[Published 9/10/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/10/08.

ARC 7119B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 234.6 and 2008 Iowa Acts, Senate File 2425, section 6(6), the Department of Human Services amends Chapter 65, "Food Assistance Program Administration," Iowa Administrative Code.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments implement the Food, Conservation, and Energy Act of 2008 (also known as the Farm Bill). Provisions of this bill improve access to the Food Assistance program, promote efficiency of the program's operation, and simplify the program for more effective program administration. These amendments implement the following program improvements:

- Raise the minimum standard deduction that is subtracted from countable income and provide for annual inflation adjustments in future years. Effective October 1, 2008, the minimum deduction will increase from \$134 to \$144.

- Remove the cap on the dependent care deduction that is subtracted from countable income. Currently the maximum deduction is \$200 monthly for each child under the age of two and \$175 monthly for dependents aged two or older.

- Raise the minimum benefit amount for households of one or two persons from \$10 a month to 8 percent of the thrifty food plan for a household of one. The minimum benefit is estimated to be \$14 in federal fiscal year 2009, with adjustments for food inflation in later years.

- Exclude tax-deferred retirement accounts and tax-deferred education accounts from countable resources. Funds in these accounts will not make a household ineligible due to excess resources.

- Index the resource limit, currently a fixed amount, to provide for annual adjustments based on inflation. Based on the Congressional Budget Office's most recent inflation projections, the first increase in the resource limit is expected in federal fiscal year 2012 or later.

- Implement the state option of expanding simplified reporting to include households in which all adult members are elderly or disabled and have no earned income. This change moves all households that are currently subject to ten-day change reporting to the simplified reporting method.

Switching households that include seniors (aged 60 or older) and people with disabilities to simplified reporting reduces paperwork burdens on these households. Simplified reporting households are required to report only if their total gross income exceeds 130 percent of the federal poverty level for their household size or if the work hours of an able-bodied adult without dependents change to less than 20 hours per week, averaged monthly. Simplified reporting households have the option of reporting changes that may increase their benefits, and the Department is required to act on all reported changes.

Certification periods of 12 months will be assigned to households in which all adult members are elderly or disabled and have no earned income. Certification periods of six months will be assigned to all other households. However, an interview is required only once a year. Certification periods shorter than 6 or 12 months may be assigned to align the recertification date to the FIP or medical assistance review date.

The Food Assistance Interim Report (FAIR) is being eliminated. Currently households that are subject to simplified reporting must complete a FAIR in the sixth month of the certification period and a Review/Recertification Eligibility Document (RRED) every 12 months. With these amendments, these households will continue to complete a form every six months but the form will be the RRED each time.

These amendments do not provide for waivers in specified situations. The Department does not have authority to waive federal law or regulation.

The Council on Human Services adopted these amendments on August 13, 2008.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable because the Food, Conservation, and Energy Act of 2008 takes effect on October 1, 2008, and all states must have changes in place by that date. There is insufficient time to obtain public comment before the September meeting of the Council on Human Services. Also, emergency rule making is permitted by 2008 Iowa Acts, Senate File 2425, section 6(6), when necessary to meet federal requirements.

The Department also finds that these amendments confer benefits on Food Assistance applicants and recipients as described above. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

These amendments are also published herein under Notice of Intended Action as **ARC 7120B** to allow for public comment.

These amendments are intended to implement Iowa Code section 234.12.

These amendments will become effective October 1, 2008.

The following amendments are adopted.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 1. Amend rule 441—65.3(234) as follows:

441—65.3(234) Administration of program. The food assistance program shall be administered in accordance with the Food ~~Stamp~~ and Nutrition Act of ~~1977~~ 2008, 7 U.S.C. 2011 et seq., and in accordance with federal regulation, Title 7, Parts 270 through 283 as amended to June 19, 2006. A copy of the federal law and regulations may be obtained at no more than the actual cost of reproduction by contacting the Division of Financial, Health, and Work Supports, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114, (515)281-3133.

~~This rule is intended to implement Iowa Code section 234.12.~~

ITEM 2. Amend subrule 65.5(1) as follows:

65.5(1) Identification. All households are subject to simplified reporting requirements ~~except:~~

~~a. — Households that are exempt from periodic reporting by federal statute.~~

~~b. — Households that include an able-bodied adult without dependents, as provided in 7 CFR 273.24 as amended to April 29, 2003.~~

ITEM 3. Amend subrule 65.5(3) as follows:

65.5(3) Certification periods. ~~Simplified reporting households~~ Households shall be certified ~~for 12 months.~~ as follows:

a. Households that have no earned income and in which all adult members are receiving family investment program (FIP) cash assistance or family medical assistance program (FMAP) related Medicaid elderly or disabled shall be assigned certification periods of 12 months.

b. All other households shall be assigned certification periods of six months.

c. Exceptions:

(1) A household that has unstable circumstances or that includes an able-bodied adult without dependents shall be assigned a shorter certification period consistent with the household's circumstances, but generally no less than three months.

(2) However, a A shorter certification period of less than 12 months may be assigned at application or recertification to match the food assistance recertification date to the FIP family investment program or medical assistance annual review date.

ITEM 4. Rescind subrule 65.5(4) and adopt the following **new** subrule in lieu thereof:

65.5(4) Reporting responsibilities. Simplified reporting households are required to report changes as follows:

a. The household shall report if the household's total gross income exceeds 130 percent of the federal poverty level for the household size. The household must report this change within ten days of the end of the month in which the income exceeds this level. A categorically eligible household that reports income over 130 percent of the federal poverty level and that remains eligible for benefits shall not be required to make any additional report of changes.

b. A household containing an able-bodied adult without dependents shall report any change in work hours that brings that adult below 20 hours of work per week, averaged monthly. The household must report this change within ten days of the end of the month in which the change in work hours occurs.

ITEM 5. Rescind and reserve subrules **65.5(5)** and **65.5(6)**.

ITEM 6. Rescind and reserve subrules **65.5(8)** and **65.5(9)**.

ITEM 7. Amend subrule 65.8(9) as follows:

65.8(9) Standard deduction. Each household will receive a standard deduction from income equal to 8.31 percent of the net income limit for food assistance eligibility. No household will receive an amount less than ~~\$134~~ \$144 or more than 8.31 percent of the net income limit for a household of six members. The amount of the standard deduction is adjusted for inflation annually as directed by the Food and Nutrition Service of the U.S. Department of Agriculture.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 8. Rescind and reserve rule **441—65.10(234)**.

ITEM 9. Rescind and reserve rule **441—65.19(234)**.

ITEM 10. Amend subrule 65.29(4) as follows:

65.29(4) *Interest income for retrospectively budgeted cases.* Prorate interest income by dividing the amount anticipated during the certification period by the number of months in the certification period.

ITEM 11. Amend subrule 65.30(2) as follows:

65.30(2) *Limit for households with a disabled person Resource limit.* The resource limit for a household that includes a person aged 60 or over or a disabled person is \$3000. The resource limit for other households is \$2000. These amounts are adjusted for inflation annually as directed by the Food and Nutrition Service of the U.S. Department of Agriculture.

ITEM 12. Adopt **new** subrules 65.30(7) and 65.30(8) as follows:

65.30(7) *Retirement accounts.* Exclude from resources the value of:

a. Any funds in a plan, contract, or account described in Sections 401(a), 403(a), 403(b), 408, 408A, 457(b), and 501(c)(18) of the Internal Revenue Code of 1986.

b. Any funds in a Federal Thrift Savings Plan account as provided in Section 8439 of Title 5, United States Code.

c. Any retirement program or account included in any successor or similar provision that may be enacted and determined to be exempt from tax under the Internal Revenue Code of 1986.

d. Any other retirement plans, contracts, or accounts determined to be exempt by the Secretary of the U.S. Department of Agriculture.

65.30(8) *Education accounts.* Exclude from resources the value of:

a. Any funds in a qualified tuition program described in Section 529 of the Internal Revenue Code of 1986 or in a Coverdell Education Savings Account under Section 530 of the Internal Revenue Code.

b. Any other education plans, contracts or accounts determined to be exempt by the Secretary of the U.S. Department of Agriculture.

ITEM 13. Adopt the following **new** rule 441—65.32(234):

441—65.32(234) Basis for food stamp allotments. The minimum benefit amount for all eligible one-member and two-member households shall be 8 percent of the maximum monthly allotment for a household size of one member.

ITEM 14. Amend rule 441—65.33(234) as follows:

441—65.33(234) Maximum monthly dependent Dependent care deduction. ~~Notwithstanding anything to the contrary in these rules or regulations, the maximum monthly dependent care deduction households shall be granted is \$200 for each child under two years of age and \$175 for each other dependent.~~ Households shall be allowed a deduction for the amount of verified monthly dependent care expenses.

[Filed Emergency 8/15/08, effective 10/1/08]

[Published 9/10/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/10/08.

ARC 7121B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Iowa Administrative Code.

This amendment eliminates the requirement for maternity patients and children receiving home health agency services to be assigned a Department service worker. The amendment allows home health agency

HUMAN SERVICES DEPARTMENT[441](cont'd)

services to be available based on identified medical needs. The agency's treatment plan will continue to be reviewed and approved by the member's physician.

In 2004, the Department redesigned its child welfare services to focus on children whose safety, well-being, and permanency are most at risk. Families whose assessments indicate that abuse is unfounded but who have identified service needs have the opportunity to access community services. These families do not have a continuing child welfare case through the Department. If the Department does not have an open case, a service worker is not available to participate in planning for home health services.

The Assuring Better Child Health and Development Initiative, a clinical panel that reviewed service access for children from birth through three years of age, has recommended this change. The General Assembly in 2007 Iowa Acts, chapter 218, section 11(14), instructed the Department to implement the recommendations of this panel.

This amendment does not provide for waivers in specified situations because it removes a restriction on the persons affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on July 2, 2008, as **ARC 6873B**. The Department received no comments on the Notice of Intended Action. This amendment is identical to that published under Notice of Intended Action.

The Council on Human Services adopted this amendment on August 13, 2008.

The Department finds that this amendment confers a benefit on families that do not have an ongoing child welfare case by allowing them access to needed health services that were previously restricted. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of this amendment is waived.

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

This amendment will become effective October 1, 2008.

The following amendment is adopted.

Amend subrule 78.9(9) as follows:

78.9(9) Home health agency care for maternity patients and children. The intent of home health agency services for maternity patients and children shall be to provide services when the ~~recipients~~ members are unable to receive the care outside of their home and require home health care due to a high-risk factor. Routine prenatal, postpartum, or child health care is a covered service in a physician's office or clinic and, therefore, is not covered by Medicaid when provided by a home health agency.

a. Treatment plans for maternity patients and children shall identify:

(1) ~~the~~ The potential risk factors,

(2) ~~the~~ The medical factor or symptom which verifies the child is at risk,

(3) ~~the~~ The reason the recipient member is unable to obtain care outside of the home, and

(4) ~~the~~ The medically related task of the home health agency. ~~If the home health agency is assisting the family to cope with socioeconomic and medical problems, the plan of care shall indicate the involvement of the department's county office and document that the department and the home health agency have agreed that services are in the best interest of the child and are needed to supplement the intervention of the department social worker.~~

(5) ~~The plan of treatment shall document along with the high-risk factors, the~~ member's diagnosis,

(6) ~~specific~~ Specific services and goals, and

(7) ~~the~~ The medical necessity for the services to be rendered. A single high-risk factor does not provide sufficient documentation of the need for services.

~~a.~~ b. The following list of potential high-risk factors may indicate a need for home health services to prenatal maternity patients:

(1) to (8) No change.

~~b.~~ c. The following list of potential high-risk factors may indicate a need for home health services to postpartum maternity patients:

(1) to (12) No change.

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~e. d.~~ The following list of potential high-risk factors may indicate a need for home health services to infants:

(1) to (10) No change.

~~e. e.~~ The following list of potential high-risk factors may indicate a need for home health services to preschool or school-age children:

(1) to (9) No change.

[Filed Emergency After Notice 8/18/08, effective 10/1/08]

[Published 9/10/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/10/08.

ARC 7122B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Iowa Administrative Code.

This amendment increases the Medicaid reimbursement rate for nonemergency medical transportation by car from \$.30 per mile to \$.34 per mile. Medicaid members are entitled to request reimbursement for travel expenses when they must travel outside their local community to obtain medical care. Due to the rise in gasoline costs from 2001 to 2005, the Department increased the mileage allowance from \$.21 per mile to \$.30 per mile effective November 1, 2005. In July 2005, the average gasoline price per gallon in Iowa was \$2.13. As of July 2008, the average price reached \$3.93 per gallon. This amendment aligns the reimbursement rate more closely with the actual cost of transportation.

This amendment does not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted this amendment on August 13, 2008.

The Department also finds that notice and public participation are impracticable and contrary to the public interest because Medicaid members urgently need relief from higher transportation costs in order to be able to receive needed medical care. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(2).

The Department also finds that this amendment confers a benefit on Medicaid members by increasing transportation reimbursement. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of this amendment is waived.

This amendment is also published herein under Notice of Intended Action as **ARC 7123B** to allow for public comment.

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

This amendment became effective September 1, 2008.

The following amendment is adopted.

Amend subrule 78.13(5) as follows:

78.13(5) Transportation may be of any type and may be provided from any source.

a. Effective ~~November~~ September 1, 2005 ~~2008~~, when transportation is by car, the maximum payment that may be made will be the actual charge made by the provider for transportation to and from the source of medical care, but not in excess of ~~30~~ 34 cents per mile.

b. and c. No change.

[Filed Emergency 8/18/08, effective 9/1/08]

[Published 9/10/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/10/08.

ARC 7125B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 239B.4(4) and 239B.8(2), the Department of Human Services amends Chapter 93, "PROMISE JOBS Program," Iowa Administrative Code.

This amendment increases the PROMISE JOBS mileage reimbursement rate from \$.30 per mile to \$.34 per mile.

As an eligibility factor for the Family Investment Program, adults and older teens who are not in school must participate in employment and training activities through the PROMISE JOBS program, as outlined in their Family Investment Agreement (FIA). The FIA outlines what the participant will do to become self-sufficient and what supports the state will provide. A participant's failure to follow the FIA requirements results in a full family sanction, called a limited benefit plan.

The participant is eligible for a payment to cover transportation costs as a supportive service when participating in an approved PROMISE JOBS activity other than orientation or employment and assistance is not available from another source. Due to the large rise in gasoline costs from 2001 to 2005, the Department increased the mileage allowance from \$0.21 per mile to \$0.30 per mile effective November 1, 2005. In July 2005, the average gasoline price per gallon in Iowa was \$2.13. As of July 2008, the average price reached \$3.93 per gallon. This amendment aligns the reimbursement rate more closely with the actual cost of transportation.

This amendment does not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted this amendment on August 13, 2008.

The Department finds that notice and public participation are impracticable, in that participants urgently need relief from higher transportation costs in order to continue participation. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(2).

The Department finds that this amendment confers a benefit by increasing transportation allowances. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of this amendment is waived.

This amendment is also published herein under Notice of Intended Action as **ARC 7126B** to allow for public comment.

This amendment is intended to implement Iowa Code section 239B.17.

This amendment became effective September 1, 2008.

The following amendment is adopted.

Amend paragraph **93.110(6)"b"** as follows:

b. Private transportation. Effective ~~November~~ September 1, 2005 2008, for participants who use a motor vehicle they operate themselves or who hire private transportation, the transportation allowance shall be based on a formula which uses the normally scheduled days of participation in the PROMISE JOBS activity for the period covered by the allowance times the participant's anticipated daily round-trip miles times the mileage rate of ~~30~~ 34 cents per mile.

[Filed Emergency 8/19/08, effective 9/1/08]

[Published 9/10/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/10/08.

ARC 7153B

INSURANCE DIVISION[191]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 508E.4 and 2008 Iowa Acts, Senate File 2392, section 19, the Insurance Division hereby amends Chapter 48, "Viatical and Life Settlements," Iowa Administrative Code.

The rules in Chapter 48 provide for the administration of viatical and life settlements in this state by providing rules under which viatical and life settlements may be made and safeguards by which viatical settlement providers may be monitored and remain in good standing. The amendments update the rules to reflect recent changes to Iowa Code chapter 508E as amended by 2008 Iowa Acts, Senate File 2392. The Division intends that Iowa viatical settlement brokers and providers will comply with these rules for all viatical settlement purchase agreements issued on or after August 20, 2008.

In compliance with Iowa Code section 17A.4(2), the Division finds that notice and public participation are unnecessary because the amendments are a product of cooperation between the Division and interested parties, and are based on model language developed by the National Association of Insurance Commissioners. Further, the amendments adopted here are necessary for the administration of 2008 Iowa Acts, Senate File 2392, which became effective July 1, 2008.

The Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments, 35 days after publication, should be waived and these amendments should be made effective on August 20, 2008, because 2008 Iowa Acts, Senate File 2392, became effective July 1, 2008.

The Insurance Division adopted these amendments on August 20, 2008.

These amendments are also published herein under Notice of Intended Action as **ARC 7154B** to allow public comment.

These amendments became effective on August 20, 2008.

These amendments are intended to implement Iowa Code chapter 508E as amended by 2008 Iowa Acts, Senate File 2392; Iowa Code chapters 252J and 261; and 2008 Iowa Acts, Senate File 2428.

The following amendments are adopted.

ITEM 1. Amend rule 191—48.1(508E) as follows:

191—48.1(508E) Purpose and authority. The purpose of this chapter is to provide for the administration of viatical and life settlements in this state by providing rules under which viatical and life settlements may be made, disclosures and other provisions by which viators may be protected, and safeguards by which viatical settlement providers may be monitored and remain in good standing. These rules are adopted by the commissioner pursuant to the authority in Iowa Code chapter 508E as amended by 2008 Iowa Acts, Senate File 2392.

ITEM 2. Amend rule 191—48.2(508E), introductory paragraph, as follows:

191—48.2(508E) Definitions. For purposes of this chapter, the definitions in Iowa Code chapter 508E as amended by 2008 Iowa Acts, Senate File 2392, are incorporated by reference. In addition, the following definitions shall apply:

ITEM 3. Rescind the definitions of "Advertising," "Business character report," "Business of viatical settlements," "Escrow agent," "Financing entity," "Person," "Policy," "Related provider trust," "Special purpose entity," "Viatical settlement broker," "Viatical settlement contract," "Viatical settlement investment agent," "Viatical settlement investment contract," "Viatical settlement provider," "Viatical settlement purchaser," "Viaticated policy" and "Viator" in rule **191—48.2(508E)**.

ITEM 4. Adopt the following **new** definition in rule **191—48.2(508E)**:

"*Commissioner's Web site*" means the Web site of the commissioner and of the Iowa insurance division, www.iid.state.ia.us.

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ITEM 5. Amend rule 191—48.3(508E) as follows:

191—48.3(508E) License requirements.

48.3(1) Viatical settlement provider. ~~A person shall not operate as a viatical settlement provider without first obtaining a license from the commissioner of the state of residence of the viator.~~

~~a. Upon the filing of an~~ To be considered for licensure as a viatical settlement provider, pursuant to 2008 Iowa Acts, Senate File 2392, section 3, a person must complete the viatical settlement provider application form, to be found at the commissioner's Web site, file with the commissioner the completed application in the format prescribed by the commissioner, and include the payment of an application fee in the amount of \$100 and the costs of an initial examination, the commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that. An application shall not be deemed filed until all information necessary to process the application has been received by the commissioner. In addition to complying with 2008 Iowa Acts, Senate File 2392, section 3, the applicant also shall provide the following:

~~(1) Has provided a detailed plan of operation, which includes details of the proposed operation in this state;~~

~~(2) Is competent and trustworthy and intends to act in good faith in the capacity of viatical settlement provider;~~

~~(3) Has a good business reputation and has had experience, training or education so as to be qualified in the business of a viatical settlement provider;~~

~~(4) If a legal entity, has provided proof of licensure and a certificate of good standing from the state of its domicile;~~

~~(5) Has provided either:~~

~~1. A copy of the current year's audited financial statement, and a copy of audited financial statements for each of the previous five years; or~~

~~2. At the commissioner's discretion, a copy of the current year's consolidated annual audited financial statement with a financial guarantee from the provider's ultimate controlling person, and unaudited financial statements from the provider for the current year and each of the previous five years;~~

(1) Copies of the provider's audited financial statements for the current year and each of the previous five years. At the commissioner's discretion, the applicant also shall provide a copy of the current year's consolidated annual audited financial statement with a financial guarantee from the provider's ultimate controlling person, and copies of the provider's unaudited financial statements for the current year and each of the previous five years;

~~(6) (2) Maintains Evidence that the applicant maintains books and records in compliance with generally accepted accounting principles;~~

~~(7) Has provided proof of a fidelity bond on each officer and director in the amount of \$100,000 issued by an insurance carrier rated with one of the four highest categories by A.M. Best, or a comparable rating by another rating agency;~~

(3) If a legal entity intending to have any partners, officers, members, and designated employees act as viatical settlement providers or viatical settlement brokers under the legal entity's license, pursuant to 2008 Iowa Acts, Senate File 2392, section 3, all completed forms, fees, and information required to be filed under subrule 48.3(2) for each such person named in the application and any supplements to the application;

~~(8) (4) Has provided business character reports for the following: officers and directors (as listed on the most recent financial statement), key managerial personnel (including any vice presidents or other individuals who will control the operations of the applicant), and individuals with a 10 percent or more beneficial ownership in the applicant who will exercise control over the applicant~~ Biographical affidavits, in a form prescribed by the commissioner, for the following: officers and directors (as listed on the most recent financial statement), key managerial personnel (including any vice presidents or other individuals who will control the operations of the applicant), and individuals with a 10 percent or more beneficial ownership in the applicant who will exercise control over the applicant;

(5) An independent business character report on the individuals listed in subparagraph (4). The business character report shall be filed directly with the commissioner by the independent third party that certified the report. The business character report shall be in a format prescribed by the commissioner and shall

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not be older than one year prior to the date the application is filed. For purposes of subparagraph (5), "business character report" means a statement certified by an independent third party which has conducted a comprehensive review of the applicant's background and has indicated that the biographical information provided in the report, as completed by the applicant, has no inaccurate or conflicting information. An independent third party is one that has no affiliation with the applicant and is in the business of providing background checks or investigations. Business character reports must be current and shall not be older than one year prior to the date the application is filed. The business character report shall be in the format prescribed by the commissioner;

~~(9)~~ (6) Has provided the initial Initial viatical settlement contracts and disclosure statements that have been or are being submitted for approval and such contracts and statements that have been approved or that are approved during the course of the application process;

~~(10)~~ (7) Has provided information regarding the identity of the escrow agent to be used A copy of the provider trust, pursuant to 48.3(1) "c"; and

~~(11)~~ (8) Has provided a A report of any civil, criminal or administrative actions taken or pending against the viatical settlement provider in any state or federal court or agency, regardless of outcome, excluding misdemeanor traffic citations and juvenile offenses.

b. The commissioner shall have authority, at any time, to require the applicant to fully disclose the identity of all stockholders, partners, officers, members and employees, and the commissioner may, in the exercise of the commissioner's discretion, refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner or member thereof who may materially influence the applicant's conduct meets the standards of this rule. A form for the antifraud plan that is required to be submitted with an application, pursuant to 2008 Iowa Acts, Senate File 2392, section 3, to meet the requirements of 2008 Iowa Acts, Senate File 2392, section 15, can be found on the commissioner's Web site.

c. The provider trust that is required to be submitted with an application, pursuant to subparagraph 48.3(1) "a"(7), shall be in a format acceptable to the commissioner and shall include the following provisions:

(1) The provider trust cannot be terminated without the prior written consent of the commissioner.

(2) The provider trust is subject to the prior approval of the commissioner.

(3) The provider trust funds shall not be intermingled.

(4) The provider trust funds held shall be identified based on individual policyholders.

(5) The provider trust trustee is obligated to indemnify the provider or the policyholder or both for any lost funds.

(6) The agreement can only be amended or terminated with the prior written consent of the commissioner.

(7) The provider trust trustee shall be a bank or trust company, having its principal place of business in the United States.

(8) The provider trust trustee shall be audited annually by independent public accountants and complete the audit report, related financial statements, and opinion on internal controls. All reports shall be available for review by the commissioner.

~~e~~ d. In addition to the information required in this subrule, the commissioner may ask for other information necessary to determine whether the applicant for a license as a viatical settlement provider complies with the requirements of this subrule.

48.3(2) Viatical settlement broker. Effective July 1, 2002, a person shall not operate as a viatical settlement broker without first obtaining a license from the commissioner of the state of residence of the viator. Upon the filing of an application in the format prescribed by the commissioner and the payment of an application fee in the amount of \$100, the commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant:

a. To be considered for licensure as a viatical settlement broker, pursuant to 2008 Iowa Acts, Senate File 2392, section 3, a person must complete the viatical settlement broker application form, to be found at the commissioner's Web site, file the completed application in the format prescribed by the commissioner, and include the payment of an application fee in the amount of \$100. In addition to finding compliance with 2008 Iowa Acts, Senate File 2392, section 3, the commissioner also shall find that the applicant:

~~(1)~~ (1) Has passed the test required by the commissioner or has taken and passed a test on viatical and life settlement contracts required by another state insurance department;

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~~b. Is competent and trustworthy and intends to act in good faith in the capacity of viatical settlement broker;
e. Has a good business reputation and has had experience, training or education so as to be qualified in the business of a viatical settlement broker;~~

~~d. (2) Has provided a report of any civil, criminal or administrative actions taken or pending against the viatical settlement broker in any state or federal court or agency, regardless of outcome, excluding misdemeanor traffic citations and juvenile offenses; and~~

~~e. (3) Has provided proof that the applicant is covered by an errors and omissions policy for an amount of not less than \$100,000 liability per occurrence and not less than \$100,000 total annual aggregate for all claims during the policy period.~~

b. If a person is a life insurance producer who meets the requirements of 2008 Iowa Acts, Senate File 2392, section 3, the requirements of paragraph 48.3(2) "a" shall be deemed to have been met, and the life insurance producer shall file a form, to be found at the commissioner's Web site, and shall include the payment of \$100. The one year that a life insurance producer must be licensed to meet the requirements of 2008 Iowa Acts, Senate File 2392, section 3, shall immediately precede the producer's request for a viatical settlement broker license.

c. A form for the antifraud plan that is required to be submitted with an application, pursuant to 2008 Iowa Acts, Senate File 2392, section 3, to meet the requirements of 2008 Iowa Acts, Senate File 2392, section 15, can be found on the commissioner's Web site.

d. In addition to the information required in this subrule, the commissioner may ask for other information necessary to determine whether the applicant for a license as a viatical settlement broker complies with the requirements of this subrule.

48.3(3) Governing law where viators are residents of different states. For purposes of this subrule, if there is more than one viator on a single policy and the viators are residents of different states, the viatical settlement contract shall be governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all viators. If another state does not have a substantially similar statute or rule substantially similar to Iowa Code chapter 508E as amended by 2008 Iowa Acts, Senate File 2392, and this rule, the actions related to the viatical settlement contract shall be governed by the law of this state.

~~**48.3(4) Commissioner to be used for service of process.** The commissioner shall not issue a license to an applicant unless either a written designation of an agent for service of process is filed and maintained with the commissioner or the applicant has filed with the commissioner the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner.~~

~~**48.3(5) 48.3(4) License term.**~~

~~a. A viatical settlement provider or viatical settlement broker who meets the requirements of this rule, unless otherwise denied licensure pursuant to rule ~~48.12(508E)~~ 48.10(508E), shall be issued a license.~~

~~b. A viatical settlement provider license is valid for one year and automatically terminates on ~~March 31 of the renewal year~~ the last day of the month of the anniversary of the issue date unless renewed pursuant to subrule 48.3(6).~~

~~c. A viatical settlement broker license is valid for ~~three years~~ an initial term of one year from the last day of the applicant's birth month following the issuance of the license, and automatically terminates on ~~March 31 of the renewal year~~ the last day of the month of the initial term unless renewed pursuant to subrule 48.3(6).~~

~~d. A viatical settlement provider license or a viatical settlement broker license may remain in effect for the term of the license plus any renewals, unless the license is revoked or suspended, as long as all required fees are paid in the time prescribed by the commissioner.~~

~~e. The license issued to a viatical settlement provider or viatical settlement broker shall be a limited license that allows the licensee to operate only within the scope of its license.~~

~~**48.3(6) 48.3(5) Continuing education for viatical settlement broker.**~~

~~a. A viatical settlement broker An individual licensed as a viatical settlement broker shall complete ~~36~~ 15 credits of approved continuing education during ~~each every two~~ license term terms. A license term is as set forth in paragraph ~~48.3(5) "e."~~ 48.3(4) "c," and, for purposes of this rule, the two-term continuing education requirement shall be called the "CE reporting term." ~~Viatical settlement broker continuing education courses~~~~

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will be approved in the same manner that insurance continuing education courses are approved pursuant to 191—Chapter 11. A viatical settlement broker who successfully completes the examination for a viatical settlement broker license will be deemed to have completed sufficient continuing education for the license term in which the viatical settlement broker completed the examination.

b. The required continuing education credits shall include a minimum of:

(1) ~~Eighteen credits in life insurance;~~

(2) (1) Fifteen Thirteen credits in viaticals related to viatical settlements and viatical settlement transactions; and

(3) (2) Three Two credits in ethics.

c. The viatical settlement broker may submit the same completed credits to the ~~division~~ commissioner both to meet the continuing education requirements for the viatical settlement broker license and to meet the continuing education requirements for an applicable insurance producer license.

d. and e. No change.

f. A viatical settlement broker cannot carry over from one ~~license~~ CE reporting term to the next continuing education credits earned in excess of the viatical settlement broker's ~~license~~ CE reporting term requirements.

g. and h. No change.

i. A viatical settlement broker cannot receive continuing education credit for the same course twice in one ~~license~~ CE reporting term. A viatical settlement broker cannot receive continuing education credit both for the classroom portion and for the examination portion of a national designation program as defined in 191—subrule 11.5(5).

j. to l. No change.

m. Viatical settlement broker continuing education courses will be approved in the same manner that insurance continuing education courses are approved pursuant to 191—Chapter 11. The approval of continuing education providers, the responsibilities of continuing education providers, the prohibited conduct for continuing education providers, and the fees for approval and renewal of continuing education providers and courses shall be the same as those for insurance continuing education courses, continuing education providers, and insurance producers set forth in rules 191—11.9(505,522B) to 191—11.11(505,522B) and 191—11.14(505,522B). The commissioner may enter into a contractual arrangement with a qualified outside vendor to assist the commissioner with any or all continuing education services in the same manner as the commissioner may for insurance continuing education services pursuant to rule 191—11.12(505,522B). The commissioner may audit any continuing education course in the same manner as the commissioner may for insurance continuing education courses pursuant to rule 191—11.13(505,522B).

~~48.3(7)~~ 48.3(6) *License renewal.* A viatical settlement provider license or a viatical settlement broker license may be renewed as follows:

a. A viatical settlement provider license may be renewed by payment of \$100 ~~within the time prescribed by the commissioner~~ within 60 days prior to the expiration date of the license and by demonstration that the viatical settlement provider continues to meet the requirements of 2008 Iowa Acts, Senate File 2392, section 3 and subrule 48.3(1), has provided biographical affidavits not older than one year prior to the renewal date on all persons listed in subparagraph 48.3(1)“a”(4), has provided business character reports for any new persons listed in subparagraph 48.3(1)“a”(4), and has provided the reports required by rule ~~48.6(508E)~~ 48.7(508E).

(1) If renewal is approved, the license will be renewed effective ~~March 31 of~~ the last day of the month of the anniversary of the issue date in the renewal year, will be valid for one year, and will automatically terminate on ~~March 31 of~~ the last day of the month of the anniversary of the issue date in the following renewal year unless renewed pursuant to this subrule 48.3(6).

(2) Viatical settlement providers that had licenses prior to January 1, 2009, shall have a renewal date of January 1.

b. A viatical settlement broker license may be renewed by demonstration of completion of continuing education as required in subrule ~~48.3(6)~~ 48.3(5) and payment of \$100 within 60 days prior to the expiration date of the license. If renewal is approved, the license will be renewed effective ~~March 31 of~~ the last day of the month of the anniversary of the issue date in the renewal year, will be valid for ~~three years~~ one year, and

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will automatically terminate on ~~March 31~~ of the last day of the month of the anniversary of the issue date in the following renewal year unless renewed pursuant to subrule ~~48.3(7)~~ 48.3(6).

c. If a legal entity has any partners, officers, members, or designated employees acting as viatical settlement providers or viatical settlement brokers under the legal entity's license, pursuant to 2008 Iowa Acts, Senate File 2392, section 3, the legal entity must provide all completed forms, fees, and information required to be filed under paragraphs 48.3(6) "a" and "b" for each such person named in the application, or in any supplements to the application, and must provide any deletions to the list of names that was provided with the original application. If there are any new partners, officers, members, and designated employees that the legal entity intends will act as viatical settlement providers or viatical settlement brokers under the legal entity's license, the legal entity shall provide for each such person the forms, information and fees required by subrule 48.3(2).

~~e. d.~~ If a viatical settlement provider or viatical settlement broker fails to ~~pay the renewal fee~~ comply with the renewal procedures within the time prescribed, or a viatical settlement provider fails either to meet the requirements of 2008 Iowa Acts, Senate File 2392, section 3, and subrule 48.3(1) or to submit the reports required in rule ~~48.6(508E)~~ 48.7(508E), such nonpayment or failure shall result in lapse of the license.

~~d. e.~~ A licensed viatical settlement broker who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance may request from the commissioner a waiver of renewal procedures. Such viatical settlement broker may also request a waiver of any examination requirement or any other penalty or sanction imposed for failure to comply with renewal procedures.

48.3(7) License reinstatement.

a. A viatical settlement broker may reinstate an expired license up to 12 months after the license expiration date by proving that during the CE reporting term the viatical settlement broker met the CE requirements found in subrule 48.3(5), and by paying to the commissioner a reinstatement fee and license renewal fee. A viatical settlement broker who fails to apply for license reinstatement within 12 months of the license expiration date must apply for a new license.

b. A viatical settlement broker who has surrendered a license for a nondisciplinary reason and stated an intent to exit the viatical settlement business may file a request to reactivate the license. The request must be received by the commissioner within 90 days of the date the license was placed on inactive status. The request will be granted if the former viatical settlement broker is otherwise eligible to receive the license. If the request is not received within 90 days, the viatical settlement broker must apply for a new license.

48.3(8) Reinstatement or reissuance of a license after suspension, revocation or forfeiture in connection with disciplinary matters; and forfeiture in lieu of compliance.

a. The term "reinstatement" as used in this subrule means the reinstatement of a suspended license. The term "reissuance" as used in this subrule means the issuance of a new license following either the revocation of a license or the forfeiture of a license in connection with a disciplinary matter. This subrule does not apply to the reinstatement of an expired license.

b. Any viatical settlement broker whose license has been revoked or suspended by order, or who forfeited a license in connection with a disciplinary matter, may apply to the commissioner for reinstatement or reissuance in accordance with the terms of the order of revocation or suspension or the order accepting the forfeiture.

(1) All proceedings for reinstatement or reissuance shall be initiated by the applicant who shall file with the commissioner an application for reinstatement or reissuance of a license.

(2) An application for reinstatement or reissuance shall allege facts which, if established, will be sufficient to enable the commissioner to determine that the basis of revocation, suspension or forfeiture of the applicant's license no longer exists and that it will be in the public interest for the application to be granted. The burden of proof to establish such facts shall be on the applicant.

(3) A viatical settlement broker may request reinstatement of a suspended license prior to the end of the suspension term.

(4) Unless otherwise provided by law, if the order of revocation or suspension did not establish terms upon which reinstatement or reissuance may occur, or if the license was forfeited, an initial application for reinstatement or reissuance may not be made until at least one year has elapsed from the date of the order of

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the suspension (notwithstanding 191—paragraph 10.10(2)“c”), revocation, or acceptance of the forfeiture of a license.

c. All proceedings upon the application for reinstatement or reissuance, including matters preliminary and ancillary thereto, shall be held in accordance with Iowa Code chapter 17A. Such application shall be docketed in the original case in which the original license was suspended, revoked, or forfeited, if a case exists.

d. An order of reinstatement or reissuance shall be based upon a written decision which incorporates findings of fact and conclusions of law. An order granting an application for reinstatement or reissuance may impose such terms and conditions as the commissioner or the commissioner’s designee deems desirable, which may include one or more of the types of disciplinary sanctions provided by this chapter or by Iowa Code chapter 508E amended by 2008 Iowa Acts, Senate File 2392. The order shall be a public record, available to the public, and may be disseminated in accordance with Iowa Code chapter 22.

e. A request for voluntary forfeiture of a license shall be made in writing to the commissioner. Forfeiture of a license is effective upon submission of the request unless a contested case proceeding is pending at the time the request is submitted. If a contested case proceeding is pending at the time of the request, the forfeiture becomes effective when and upon such conditions as required by order of the commissioner. A forfeiture made during the pendency of a contested case proceeding is considered disciplinary action and shall be published in the same manner as is applicable to any other form of disciplinary order.

f. A license may be voluntarily forfeited in lieu of compliance with an order of the commissioner or the commissioner’s designee with the written consent of the commissioner. The forfeiture becomes effective when and upon such conditions as required by order of the commissioner, which may include one or more of the types of disciplinary sanctions provided by this chapter or by Iowa Code chapter 508E as amended by 2008 Iowa Acts, Senate File 2392.

g. When a viatical settlement broker’s license has been suspended for a period of time which extends beyond the viatical settlement broker’s license expiration date, the license will terminate at the license expiration date, and the viatical settlement broker must request reinstatement pursuant to subrule 48.3(7). If suspension for a period of time ends prior to the viatical settlement broker’s license expiration date, the commissioner shall reinstate the license at the end of the suspension period pursuant to paragraph 48.3(8)“b.” The commissioner is not prohibited from bringing an additional immediate action if the viatical settlement broker has engaged in misconduct during the period of suspension.

~~48.3(8)~~ **48.3(9)** *Duty to notify commissioner of cessation of business in the state.* If a viatical settlement provider intends to cease business in Iowa, it must notify the commissioner of those intentions and of its plan of operation for such cessation at least 180 days before the cessation shall occur. ~~This requirement ensures that servicing of the viatical settlement investment contracts continues and all current business can be completed.~~ This requirement is not meant to imply that a company must continue to accept new viatical or life settlement business during the 180-day period.

~~48.3(9)~~ **48.3(10)** *Duty to notify commissioner of changes.*

a. to c. No change.

~~48.3(10)~~ **48.3(11)** *Commissioner may use outside assistance.* In order to assist with the commissioner’s duties, the commissioner may contract with a nongovernmental entity, including, but not limited to, the National Association of Insurance Commissioners (NAIC) or any affiliate or subsidiary the NAIC oversees, to perform any ministerial functions related to licensing of viatical settlement providers or viatical settlement brokers that the commissioner deems appropriate including, but not limited to, the collection of fees.

ITEM 6. Amend rule 191—48.4(508E) as follows:

191—48.4(508E) Approval of viatical settlement contracts and disclosure Disclosure statements.

~~48.4(1) A viatical settlement provider or viatical settlement broker shall not use a viatical settlement application, a viatical settlement contract or a viatical settlement disclosure statement form in this state unless it has been filed with and approved by the commissioner. The commissioner shall disapprove a viatical settlement form or disclosure statement if, in the commissioner’s opinion, the provisions contained therein are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the~~

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viator. At the commissioner's discretion, the commissioner may require the submission of advertising material.

~~48.4(2)~~ The initial viatical settlement contracts and disclosure statements shall be filed for approval with the viatical settlement provider's application for licensure, as required under subparagraph 48.3(1) "a"(9). A distinct form number shall be assigned to each viatical settlement form the provider will be using.

~~48.4(3)~~ 48.4(1) If a viatical settlement provider enters into a viatical settlement contract that allows the viator to retain an interest in the policy, the viatical settlement contract shall contain the following:

a. to c. No change.

48.4(2) With each application for a viatical settlement contract, a viatical settlement provider or viatical settlement broker shall provide the viator with at least the following disclosure no later than the time the application for the viatical settlement contract is signed by the viator and the viatical settlement broker. The disclosure shall be provided in a separate document that is signed by the viator and the viatical settlement provider or viatical settlement broker, and shall advise the viator that, when entering into a viatical settlement contract, having a recent physical examination is in the viator's best interest, since an accurate life expectancy can be best calculated based on current medical records.

48.4(3) If the viator is not the insured, then these disclosures must be affirmatively made to the insured, as well as to the viator, and written consent to the viatication must be received from both parties.

48.4(4) In order to ensure that viators receive a reasonable return for viaticating an insurance policy when life expectancy is less than 25 months, a viatical settlement provider shall pay to a viator a discounted amount of the face value of the policy which amount shall be calculated at least at the following rates:

<u>Insured's Life Expectancy</u>	<u>Minimum Percentage of Face Value Less Outstanding Loans Received by Viator</u>
Less than 6 months	80%
At least 6 but less than 12 months	70%
At least 12 but less than 18 months	65%
At least 18 but less than 25 months	60%
25 months or more	Cash surrender value of policy

The percentage may be reduced by 5% for viaticating a policy written by an insurer rated less than the highest four categories by A.M. Best, or a comparable rating by another rating agency.

For a viatical settlement in which the viator has a life expectancy of 25 months or more, a viatical settlement provider or broker shall not enter into a viatical settlement contract that provides a payment to the viator that is unreasonable or unjust. As listed above, such payment must at least be equal to the cash surrender value of the policy. In determining whether a payment is unreasonable or unjust, the commissioner may consider, among other factors, the life expectancy of the insured; the applicable rating of the insurance company that issued the subject policy by a rating service generally recognized by the insurance industry, regulators and consumer groups; and prevailing discount rates in the viatical and life settlement market in Iowa or, if insufficient data is available for Iowa, the prevailing rates nationally or in other states that maintain this data.

~~48.4(5)~~ If a viatical settlement provider subsequently desires to change the viatical settlement contract documents or disclosure statements approved at the time of licensure, the provider shall submit the modified contract documents or disclosure statements to the commissioner for approval in triplicate, along with a postage paid return envelope. The viatical settlement provider shall identify its name and address in the cover letter and also reference the form number of the modified viatical settlement contract document or disclosure statement. Black lining the modifications made within the document(s) should expedite the form review and approval process.

ITEM 7. Rescind rule 191—48.5(508E) and adopt the following new rule in lieu thereof:

191—48.5(508E) Contract requirements. In order to ensure that viators receive a reasonable return for viaticating an insurance policy when life expectancy is less than 25 months, a viatical settlement provider

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shall pay to a viator a discounted amount of the face value of the policy which amount shall be calculated at least at the following rates:

Insured's Life Expectancy	Minimum Percentage of Face Value Less Outstanding Loans Received by Viator
Less than 6 months	80%
At least 6 but less than 12 months	70%
At least 12 but less than 18 months	65%
At least 18 but less than 25 months	60%
25 months or more	Cash surrender value of policy

The percentage may be reduced by 5% for viaticating a policy written by an insurer rated less than the highest four categories by A.M. Best, or a comparable rating by another rating agency.

For a viatical settlement in which the viator has a life expectancy of 25 months or more, a viatical settlement provider or broker shall not enter into a viatical settlement contract that provides a payment to the viator that is unreasonable or unjust. As listed above, such payment must at least be equal to the cash surrender value of the policy. In determining whether a payment is unreasonable or unjust, the commissioner may consider, among other factors, the life expectancy of the insured; the applicable rating of the insurance company that issued the subject policy by a rating service generally recognized by the insurance industry, regulators and consumer groups; and prevailing discount rates in the viatical and life settlement market in Iowa or, if insufficient data is available for Iowa, the prevailing rates nationally or in other states that maintain this data.

ITEM 8. Rescind rule **191—48.7(508E)**.

ITEM 9. Renumber rule **191—48.6(508E)** as **191—48.7(508E)**.

ITEM 10. Adopt the following new rule 191—48.6(508E):

191—48.6(508E) Filing of forms. If a viatical settlement provider subsequently desires to change the viatical settlement contract documents or disclosure statements approved at the time of licensure, or to use new ones, the provider shall submit the new or modified contract documents or disclosure statements to the commissioner for approval in triplicate, along with a postage-paid return envelope. The viatical settlement provider shall identify its name and address in the cover letter and also reference the form number of the modified viatical settlement contract document or disclosure statement. Black-lining the modifications made within the document(s) should expedite the form review and approval process.

ITEM 11. Amend renumbered rule 191—48.7(508E) as follows:

191—48.7(508E) Reporting requirements.

48.7(1) On March 1 of each calendar year, the secretary and either the president or the vice president of each viatical settlement provider licensed in this state shall ~~make a report submit, under oath, of the following: the annual statement required by 2008 Iowa Acts, Senate File 2392, section 6; a report of all viatical settlement transactions in which the viator is a resident of this state; and a report for all states in the aggregate, that contains the~~ The report shall contain the following information for the previous calendar year:

a. to e. No change.

48.7(2) No change.

ITEM 12. Amend rule 191—48.8(508E) as follows:

191—48.8(508E) Examination or investigations.

48.8(1) Authority, scope and scheduling of examinations. In addition to the authority, scope and scheduling of examinations set forth in 2008 Iowa Acts, Senate File 2392, section 7, the following provisions shall apply:

a. ~~The commissioner may conduct an examination of a viatical settlement provider or viatical settlement broker as often as the commissioner deems appropriate.~~

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~~b. — For purposes of completing an examination under this chapter, the commissioner may examine or investigate any person, or the business of any person, insofar as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the viatical settlement provider or viatical settlement broker.~~

~~e. a. The commissioner may investigate suspected fraudulent viatical settlement acts and persons engaged in the business of viatical settlements.~~

~~d. — In lieu of an examination of any foreign or alien viatical settlement provider or viatical settlement broker licensed in this state, the commissioner may, at the commissioner's discretion, accept an examination report on the viatical settlement provider or viatical settlement broker as prepared by the commissioner for the viatical settlement provider's or viatical settlement broker's state of domicile or port of entry state.~~

~~e. b. The provisions of Iowa Code chapter 507 shall apply to viatical settlement providers and viatical settlement brokers. The commissioner shall examine the affairs, transactions, accounts, records and assets of each viatical settlement provider as often as the commissioner deems advisable. The expense of such examination examinations shall be assessed against the viatical settlement provider in the same manner as insurers are assessed for examinations.~~

~~f. c. Neither the commissioner nor any person that received the documents, material or other information while acting under the authority of the commissioner, including the NAIC and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials or information subject to this subrule.~~

~~48.8(2) Record retention requirements.~~

~~a. — Executed documents. A person required to be licensed by these rules shall retain copies of all of the following records until the earlier of five years after the death of the viator or until completion of an examination following the death of the viator:~~

~~(1) Executed viatical settlement contracts, viatical settlement investment contracts, underwriting documents, policy forms, and applications from the date of the execution of the viatical settlement contract or viatical settlement investment contract, whichever is later; and~~

~~(2) All checks, drafts or other evidence and documentation related to the payment, transfer, deposit or release of viatical settlement contract funds from the date of the transaction; and~~

~~(3) All other records and documents related to the requirements of this rule.~~

~~b. — Unexecuted documents. A person required to be licensed by these rules shall retain copies of all of the following records for one year: viatical settlement contracts, viatical settlement investment contracts, underwriting documents, policy forms, and applications that were proposed but not accepted by a potential viator, from the date of the proposed viatical settlement contract or viatical settlement investment contract, whichever is later.~~

~~e. — This subrule does not relieve a person of the obligation to produce these documents to the commissioner after the retention period has expired if the person has retained the documents.~~

~~d. — Records required to be retained by this subrule must be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces or forms a durable medium for the reproduction of a record.~~

~~48.8(3) 48.8(2) Immunity from liability.~~ No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this rule or of Iowa Code chapter 508E as amended by 2008 Iowa Acts, Senate File 2392.

ITEM 13. Amend rule 191—48.9(508E) as follows:

191—48.9(508E) Requirements and prohibitions.

~~48.9(1) A viatical settlement investment agent shall not have any contact directly or indirectly with the viator or have knowledge of the identity of the viator.~~

~~48.9(2) A viatical settlement investment agent is deemed to represent the viatical settlement provider with whom the viatical settlement investment agent is appointed or contracted.~~

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~~48.9(3)~~ Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator.

~~48.9(4)~~ Before entering into a viatical settlement contract, a viatical settlement provider shall obtain:

~~a.~~ — If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract; and

~~b.~~ — A document in which the insured consents to the release of the insured's medical records to a viatical settlement provider, a viatical settlement broker and the insurance company that issued the life insurance policy covering the life of the insured.

~~48.9(5)~~ Within 20 days after a viator executes documents necessary to transfer any rights under an insurance policy or within 20 days of entering any agreement, option, promise or any other form of understanding, expressed or implied, to viaticate the policy, the viatical settlement provider shall give written notice to the insurer that issued the insurance policy that the policy has or will become a viaticated policy. The notice shall be accompanied by the documents required by subrule 48.9(6).

~~48.9(6)~~ The viatical settlement provider shall deliver a copy of the medical release required under paragraph 48.9(4) "b," a copy of the viator's application for the viatical settlement contract, the notice required under subrule 48.9(5) and a request for verification of coverage to the insurer that issued the life insurance policy that is the subject of the viatical transaction. The NAIC's form for verification shall be used unless standards for verification are developed by the commissioner.

~~48.9(7)~~ The insurer shall respond to a request for verification of coverage submitted on an approved form by a viatical settlement provider within 30 calendar days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation regarding the validity of the insurance contract.

~~48.9(8)~~ Prior to or at the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator consents to the viatical settlement contract, represents that the viator has a full and complete understanding of the viatical settlement contract, represents that the viator has a full and complete understanding of the benefits of the life insurance policy, acknowledges that the viator is entering into the viatical settlement contract freely and voluntarily and, for persons who are chronically ill or terminally ill under the definitions of Iowa Code sections 508E.2(1) and (3), acknowledges that the insured is chronically ill or terminally ill and that the chronic or terminal illness or condition was diagnosed after the life insurance policy was issued.

~~48.9(9)~~ All medical information solicited or obtained by any viatical settlement provider or viatical settlement broker shall be subject to the provisions of 191—Chapter 90, which governs the confidentiality of medical information.

~~48.9(10)~~ All viatical settlement contracts entered into in this state shall provide the viator with an unconditional right to rescind the viatical settlement contract for at least 15 calendar days from the receipt of the viatical settlement contract proceeds. If the insured dies during the viatical settlement contract rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment to the viatical settlement provider or viatical settlement purchaser of all viatical settlement contract proceeds, and any premiums, loans, and loan interest that have been paid by the viatical settlement provider or viatical settlement purchaser.

~~48.9(11)~~ The viatical settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment or change in beneficiary of the insurance policy or certificate directly to the independent escrow agent. Within three business days after the date the escrow agent receives the document (or from the date the viatical settlement provider receives the documents, if the viator erroneously provides the documents directly to the viatical settlement provider), the viatical settlement provider shall pay or transfer the proceeds of the viatical settlement contract into an escrow or trust account established with a state chartered or federally chartered financial institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation (FDIC) and with whom an escrow account has been established by a viatical settlement provider or viatical settlement purchaser. Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment or change in beneficiary forms to the viatical settlement provider within three business days.

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~~Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the viator within three business days.~~

~~48.9(12) Failure to tender consideration to the viator for the viatical settlement contract within the time required by subrule 48.9(11) renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator.~~

~~48.9(13) Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider or viatical settlement broker after the viatical settlement has occurred shall only be made by the viatical settlement provider or viatical settlement broker licensed in this state or the provider's or broker's authorized representatives and shall be limited to once per year if the insured has a life expectancy of more than two years, once every three months for an insured with a life expectancy of more than one year, and no more than once per month for an insured with a life expectancy of one year or less. The viatical settlement provider or viatical settlement broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into. The limitations set forth in this subrule shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Viatical settlement providers and viatical settlement brokers shall be responsible for the actions of their authorized representatives.~~

~~48.9(14) 48.9(1) With respect to policies containing a provision for double or additional indemnity for accidental death, the additional payment shall remain payable to the beneficiary last named by the viator prior to entering into the viatical settlement contract, or to such other beneficiary, other than the viatical settlement provider, as the viator may thereafter designate, or in the absence of a beneficiary, to the estate of the viator.~~

~~48.9(15) Payment by the escrow agent of the proceeds of a viatical settlement contract shall be by means of wire transfer to the account of the viator or by certified check or cashier's check.~~

~~48.9(16) 48.9(2) Payment of the proceeds to the viator pursuant to a viatical settlement contract shall be made in a lump sum except where the viatical settlement provider has purchased a single-premium paid-up annuity issued by a licensed insurance company to the viator. Retention of a portion of the proceeds by the viatical settlement provider or escrow agent is not permissible. For purposes of this subrule, "escrow agent" means an individual or institution that has established an escrow or trust account with a state-chartered or federally chartered financial institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation (FDIC) and with which an escrow account has been established for use by a viatical settlement provider or viatical settlement purchaser.~~

~~48.9(17) A viatical settlement provider, viatical settlement broker or viatical settlement investment agent shall not provide identifying information about either the insured or the viator to any person, unless the insured and viator provide written consent to the release of the information at or before the time of the viatical settlement transaction pursuant to subrule 48.5(1) and rule 48.7(508E) or if such release is necessary to report suspected fraudulent viatical settlement acts pursuant to subrule 48.11(4).~~

~~48.9(18) 48.9(3) A viatical settlement provider, viatical settlement broker or viatical settlement investment agent shall obtain from a person that is provided with identifying information about either the insured or the viator a signed affirmation that the person or entity will not further divulge the information without procuring the express, written consent of the insured or the viator for the disclosure. Notwithstanding the foregoing, if If a viatical settlement provider, or viatical settlement broker or viatical settlement investment agent is served with a subpoena and thereby compelled to produce records containing patient-identifying information, # the viatical settlement provider or viatical settlement broker shall notify the viator and the insured in writing at their the viator's and the insured's last-known addresses within five business days after receiving notice of the subpoena.~~

~~48.9(19) 48.9(4) A viatical settlement provider shall not act also as a viatical settlement broker, whether entitled to collect a fee directly or indirectly, related to the same viatical settlement contract.~~

~~48.9(20) 48.9(5) A viatical settlement broker shall not, without the written agreement of the viator obtained prior to performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.~~

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~~48.9(21)~~ **48.9(6)** A viatical settlement provider shall not use a longer life expectancy than is reasonable based on all medical and actuarial information available at the time of a viatical settlement transaction in order to reduce the payout to which the viator is entitled.

~~48.9(22)~~ **48.9(7)** A viatical settlement provider or viatical settlement broker shall not discriminate in the making or solicitation of viatical settlement contracts on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status or sexual orientation, or discriminate between viators with or without dependents.

~~48.9(23)~~ **48.9(8)** A viatical settlement provider or viatical settlement broker shall not pay or offer to pay any finder's fee, commission or other compensation to any insured's physician, or to an attorney, accountant or other person providing medical, legal or financial planning services to an insured or viator, or to any other person acting as an agent of an insured or viator with respect to a viatical settlement contract.

~~48.9(24)~~ **48.9(9)** A viatical settlement provider shall not knowingly solicit individuals who have treated or have been asked to treat the illness of an insured whose coverage would be the subject of a viatical settlement contract.

~~48.9(25)~~ A viatical settlement provider shall not structure a viatical settlement investment contract in a manner which requires an insurer to keep track of more than ten beneficiaries for each insurance contract being viaticated.

~~48.9(26)~~ Viatical settlement contracts entered into within the first two years of issuance of insurance.

~~a.~~ — A person shall not enter into a viatical settlement contract within a two year period commencing with the date of issuance of the insurance policy or certificate unless the viator certifies to the viatical settlement provider that one or more of the following conditions have been met within the two year period:

~~(1)~~ — The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least 24 months. The time covered under a group policy shall be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship;

~~(2)~~ — The viator is a charitable organization exempt from taxation under 26 U.S.C. §501(c)(3);

~~(3)~~ — The viator submits independent evidence to the viatical settlement provider that one or more of the following conditions have been met within the two year period:

~~1.~~ — The viator or insured is terminally ill or chronically ill, as defined in Iowa Code section 508E.2(1) or (3);

~~2.~~ — The viator's spouse dies;

~~3.~~ — The viator divorces the viator's spouse;

~~4.~~ — The viator retires from full time employment;

~~5.~~ — The viator becomes physically or mentally disabled and a physician determines that the disability prevents the viator from maintaining full-time employment;

~~6.~~ — The viator was the insured's employer at the time the policy or certificate was issued and the employment relationship terminated;

~~7.~~ — A final order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor of the viator, adjudicating the viator bankrupt or insolvent, or approving a petition seeking reorganization of the viator or appointing a receiver, trustee or liquidator to all or a substantial part of the viator's assets;

~~8.~~ — The viator experiences a significant decrease in income that is unexpected and that impairs the viator's reasonable ability to pay the policy premium; or

~~9.~~ — The viator or insured disposes of ownership interests in a closely held corporation.

~~b.~~ — Copies of the independent evidence described in this subrule and documents required by subrule 48.9(6) shall be submitted to the insurer when the viatical settlement provider submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.

~~48.9(27)~~ If a viatical settlement broker performs any of the activities required of the viatical settlement provider by this rule, the viatical settlement provider is deemed to have fulfilled the requirements of this rule.

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~~48.9(28) Insurance company practices.~~

~~a. — Life insurance companies authorized to do business in this state shall respond to a request for verification of coverage from a viatical settlement provider or a viatical settlement broker within 30 calendar days of the date a request is received, including the insurer's intent to pursue an additional investigation regarding possible fraud or the validity of the insurance contract, subject to the following conditions:~~

~~(1) — A current authorization consistent with applicable law, signed by the policy owner or certificate holder, accompanies the request;~~

~~(2) — In the case of an individual policy, submission of a form substantially similar to the NAIC's most current form describing verification of coverage for individual policies, which has been completed by the viatical settlement provider or the viatical settlement broker in accordance with the instructions on the form;~~

~~(3) — In the case of group insurance coverage, submission of a form substantially similar to the NAIC's most current form describing verification of group life insurance benefits,~~

~~1. — Which has been completed by the viatical settlement provider or viatical settlement broker in accordance with the instructions on the form, and~~

~~2. — Which has previously been referred to the group policyholder and completed to the extent the information is available to the group policyholder.~~

~~b. — Nothing in this subrule shall prohibit a life insurance company and a viatical settlement provider or a viatical settlement broker from using another verification of coverage form that has been mutually agreed upon in writing in advance of submission of the request.~~

~~c. — A life insurance company may not charge a fee for responding to a request for information from a viatical settlement provider or viatical settlement broker in compliance with this subrule in excess of any usual and customary charges to contract holders, certificate holders or insureds for similar services.~~

~~d. — The life insurance company may send an acknowledgment of receipt of the request for verification of coverage to the policyowner(s) or certificate holder(s) and, in cases in which the policyowner or certificate holder is other than the insured, to the insured. The acknowledgment may contain a description of any accelerated death benefit that is available under a provision of or rider to the life insurance contract and said acknowledgment may compare the benefits of accelerating the death benefits to the viatication of the policy.~~

~~e. — If the viatical settlement provider submits to the insurer a copy of the owner's or insured's certification described in subrule 48.9(8) when the provider submits a request to the insurer to effect the transfer of the policy or certificate to the viatical settlement provider, the copy shall be deemed to conclusively establish that the viatical settlement contract satisfies the requirements of this subrule and the insurer shall timely respond to the request.~~

48.9(10) A life insurance company may not charge a fee for responding to a request for information from a viatical settlement provider or viatical settlement broker in compliance with this rule in excess of any usual and customary charges to contract holders, certificate holders or insureds for similar services.

48.9(11) In recommending a viatical settlement contract, viatical settlement brokers and viatical settlement providers shall make suitable recommendations.

ITEM 14. Rescind rule 191—48.10(508E).

ITEM 15. Renumber rule 191—48.12(508E) as 191—48.10(508E).

ITEM 16. Amend renumbered rule 191—48.10(508E) as follows:

191—48.10(508E) Penalties; injunctions; civil remedies; cease and desist.

48.10(1) Unfair trade practices. A Pursuant to 2008 Iowa Acts, Senate File 2392, section 17, a violation of this rule 48.4(508E), 48.5(508E), 48.6(508E), 48.7(508E) or 48.9(508E) shall be considered an unfair trade practice under Iowa Code chapter 507B, and a violator shall be subject to the penalties contained in that chapter.

48.10(2) Unauthorized insurer. A person doing the activities of a viatical settlement provider or a viatical settlement broker without a license under this chapter shall be deemed an unauthorized insurer and shall be subject to the penalties of Iowa Code chapter 507A.

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48.10(3) License revocation and denial. The commissioner may ~~refuse to issue, suspend, revoke, or refuse to issue, or refuse to renew~~ the license of a viatical settlement provider or viatical settlement broker ~~if the commissioner finds that:~~ for violation of rule 48.3(508E).

- ~~a. — There was any material misrepresentation in the application for the license;~~
- ~~b. — The viatical settlement provider or viatical settlement broker or any officer, partner, member or key management employee has been convicted of fraudulent or dishonest practices, is subject to a final administrative action or is otherwise shown to be untrustworthy or incompetent;~~
- ~~c. — The viatical settlement provider made unreasonable payments to viators;~~
- ~~d. — The viatical settlement provider or viatical settlement broker or any officer, partner, member or key management employee has been found guilty of, or has pleaded guilty or nolo contendere to, any felony or to a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;~~
- ~~e. — The viatical settlement provider has entered into any viatical settlement contract that has not been approved pursuant to this rule;~~
- ~~f. — The viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract;~~
- ~~g. — The viatical settlement provider or viatical settlement broker no longer meets the requirements of rule 48.3(508E) for initial licensure;~~
- ~~h. — The viatical settlement provider has assigned, transferred or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this state, a viatical settlement purchaser, an institutional buyer as defined in rule 191—50.46(502) or a qualified institutional buyer as defined in Rule 144A of the Federal Securities Act of 1933, a financing entity, a special purpose entity, or a related provider trust; or~~
- ~~i. — The viatical settlement broker or viatical settlement provider or any of its officers, partners, members or key management personnel has violated any provision of Iowa Code chapter 508E or of these rules.~~

~~**48.10(4)** If the commissioner denies a license application or suspends, revokes or refuses to renew the license of a viatical settlement provider or viatical settlement broker, the commissioner shall conduct a hearing in accordance with 191— Chapters 2 and 3.~~

~~**48.10(5)** **48.10(4)** A viatical settlement provider licensed in this state that fails to file the annual statement referred to in 2008 Iowa Acts, Senate File 2392, section 6, or the annual audited financial statement referred to in subparagraph 48.3(1)“a”(5) and paragraph 48.3(6)“b” 48.3(1)“a”(1), in the time required shall pay and forfeit an administrative penalty in the sum of \$500 for deposit pursuant to Iowa Code section 505.7 2008 Iowa Acts, Senate File 2392, section 16. The viatical settlement provider’s right to transact further new business in this state shall immediately cease until the provider has fully complied with this rule.~~

~~**48.10(6)** In addition to the penalties and other enforcement provisions of this rule, the commissioner may seek an injunction in a court of competent jurisdiction and may apply for temporary and permanent orders that the commissioner determines are necessary to restrain the person from committing the violation.~~

~~**48.10(7)** The commissioner may issue, in accordance with 191— Chapters 2 and 3, a cease and desist order upon a person that violates any provision of these rules, any regulation or order adopted by the commissioner or any written agreement entered into with the commissioner.~~

~~**48.10(8)** **48.10(5)** If Pursuant to 2008 Iowa Acts, Senate File 2392, section 16, if the commissioner finds that an activity in violation of this rule presents an immediate danger to the public that requires an immediate final order, the commissioner may issue an emergency cease and desist order reciting with particularity the facts underlying the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains in effect for 90 days. If the commissioner begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective, absent an order by a court of competent jurisdiction pursuant to 191—Chapters 2 and 3.~~

ITEM 17. Rescind rule 191—48.11(508E) and adopt the following new rule in lieu thereof:

191—48.11(252J) Suspension for failure to pay child support.

48.11(1) Upon receipt of a certificate of noncompliance from the child support recovery unit (CSRU), the commissioner shall issue a notice to the viatical settlement broker that the viatical settlement broker’s pending

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application for licensure, pending request for renewal, or current license will be suspended 30 days after the date of the notice. Notice shall be sent to the viatical settlement broker's last-known address by regular mail.

48.11(2) The notice shall contain the following items:

- a.* A statement that the commissioner intends to suspend the viatical settlement broker's application, request for renewal or current license in 30 days;
- b.* A statement that the viatical settlement broker must contact the CSRU to request a withdrawal of the certificate of noncompliance;
- c.* A statement that the viatical settlement broker's application, request for renewal or current license will be suspended if the certificate of noncompliance is not withdrawn;
- d.* A statement that the viatical settlement broker does not have a right to a hearing before the commissioner, but that the viatical settlement broker may file an application for a hearing in district court pursuant to Iowa Code section 252J.9;
- e.* A statement that the filing of an application with the district court will stay the proceedings of the commissioner;
- f.* A copy of the certificate of noncompliance.

48.11(3) The filing of an application for hearing with the district court will stay all suspension proceedings until the commissioner is notified by the district court of the resolution of the application.

48.11(4) If the commissioner does not receive a withdrawal of the certificate of noncompliance from the CSRU or a notice from a clerk of court that an application for hearing has been filed, the commissioner shall suspend the viatical settlement broker's application, request for renewal or current license 30 days after the notice is issued.

48.11(5) Upon receipt of a withdrawal of the certificate of noncompliance from the CSRU, suspension proceedings shall halt, and the named viatical settlement broker shall be notified that the proceedings have been halted. If the viatical settlement broker's license has already been suspended, the license shall be reinstated if the viatical settlement broker is otherwise in compliance with this chapter. All fees required for license renewal or license reinstatement must be paid by the viatical settlement broker, and all continuing education requirements must be met before the viatical settlement broker's license will be renewed or reinstated after a license suspension or revocation pursuant to this rule.

ITEM 18. Adopt the following **new** rule 191—48.12(261):

191—48.12(261) Suspension for failure to pay student loan.

48.12(1) The commissioner shall deny the issuance or renewal of a viatical settlement broker license upon receipt of a certificate of noncompliance from the college student aid commission (CSAC) according to the procedures set forth in Iowa Code sections 261.126 and 261.127. In addition to the procedures contained in those sections, this rule shall apply.

48.12(2) Upon receipt of a certificate of noncompliance from the CSAC according to the procedures set forth in Iowa Code sections 261.126 and 261.127, the commissioner shall issue a notice to the viatical settlement broker that the viatical settlement broker's pending application for licensure, pending request for renewal, or current license will be suspended 30 days after the date of the notice. Notice shall be sent to the viatical settlement broker's last-known address by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant or licensed viatical settlement broker may accept service personally or through authorized counsel.

48.12(3) The notice shall contain the following items:

- a.* A statement that the commissioner intends to suspend the viatical settlement broker's application, request for renewal or current license in 60 days;
- b.* A statement that the viatical settlement broker must contact the CSAC to request a withdrawal of the certificate of noncompliance;
- c.* A statement that the viatical settlement broker's application, request for renewal or current license will be suspended if the certificate of noncompliance is not withdrawn or, if the current license is on suspension, a statement that the current license will be revoked;

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d. A statement that the viatical settlement broker does not have a right to a hearing before the commissioner, but that the viatical settlement broker may file an application for a hearing in district court pursuant to Iowa Code section 261.127;

e. A statement that the filing of an application with the district court will stay the proceedings of the commissioner;

f. A copy of the certificate of noncompliance.

48.12(4) The effective date of revocation or suspension of a viatical settlement broker license, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the applicant or licensed viatical settlement broker.

48.12(5) In the event an applicant or licensed viatical settlement broker timely files a district court action following service of notice by the commissioner pursuant to Iowa Code section 261.127, the commissioner's suspension proceedings will be stayed until the commissioner is notified by the district court of the resolution of the application. Upon receipt of a court order lifting the stay, or otherwise directing the commissioner to proceed, the commissioner shall continue with the intended action described in the notice. For purposes of determining the effective date of the denial of the issuance or renewal of a viatical settlement broker license, the commissioner shall count the number of days before the action was filed and the number of days after the court disposed of the action.

48.12(6) If the commissioner does not receive a withdrawal of the certificate of noncompliance from the CSAC or a notice from a clerk of court that an application for hearing has been filed, the commissioner shall suspend the viatical settlement broker's application, request for renewal or current license 60 days after the notice is issued.

48.12(7) Upon receipt of a withdrawal of the certificate of noncompliance from the CSAC, suspension proceedings shall halt, and the named viatical settlement broker shall be notified that the proceedings have been halted. If the viatical settlement broker's license has already been suspended, the license shall be reinstated if the viatical settlement broker is otherwise in compliance with this chapter. All fees required for license renewal or license reinstatement must be paid by the viatical settlement broker, and all continuing education requirements must be met before the viatical settlement broker's license will be renewed or reinstated after a license suspension or revocation pursuant to Iowa Code section 261.126.

48.12(8) The commissioner shall notify the viatical settlement broker in writing through regular first-class mail, or such other means as the commissioner deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of the viatical settlement broker license, and shall similarly notify the viatical settlement broker when the viatical settlement broker license is reinstated following the commissioner's receipt of a withdrawal of the certificate of noncompliance.

48.12(9) Notwithstanding any statutory confidentiality provision, the commissioner may share information with the CSAC for the sole purpose of identifying viatical settlement brokers subject to enforcement under Iowa Code chapter 261.

ITEM 19. Renumber rule **191—48.13(508E)** as **191—48.14(508E)**.

ITEM 20. Adopt the following **new** rule 191—48.13(82GA,SF2428):

191—48.13(82GA,SF2428) Suspension for failure to pay state debt.

48.13(1) The commissioner shall deny the issuance or renewal of a viatical settlement broker license upon receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures in 2008 Iowa Acts, Senate File 2428. In addition to the procedures set forth in 2008 Iowa Acts, Senate File 2428, this rule shall apply.

48.13(2) Upon receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures set forth in 2008 Iowa Acts, Senate File 2428, the commissioner shall issue a notice to the viatical settlement broker that the viatical settlement broker's pending application for licensure, pending request for renewal, or current license will be suspended 30 days after the date of the notice. Notice shall be sent to the viatical settlement broker's last-known address by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules

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of Civil Procedure. Alternatively, the applicant or licensed viatical settlement broker may accept service personally or through authorized counsel.

48.13(3) Pursuant to 2008 Iowa Acts, Senate File 2428, section 14, the notice shall contain the following items:

a. A statement that the commissioner intends to suspend the viatical settlement broker's application, request for renewal or current license in 60 days;

b. A statement that the viatical settlement broker must contact the centralized collection unit of the department of revenue to schedule a conference or to otherwise obtain a withdrawal of the certificate of noncompliance;

c. A statement that the viatical settlement broker's application, request for renewal or current license will be suspended or denied if the commissioner does not receive a withdrawal of the certificate of noncompliance from the centralized collection unit of the department of revenue within 30 days of the issuance of notice under this rule; or, if the current license is on suspension, a statement that the viatical settlement broker's current license will be revoked;

d. A statement that the viatical settlement broker does not have a right to a hearing before the commissioner, but that the viatical settlement broker may file an application for a hearing in district court pursuant to 2008 Iowa Acts, Senate File 2428, section 15;

e. A statement that the filing of an application with the district court will stay the proceedings of the commissioner;

f. A copy of the certificate of noncompliance.

48.13(4) Viatical settlement brokers shall keep the commissioner informed of all court actions and all actions taken by the centralized collection unit of the department of revenue under or in connection with 2008 Iowa Acts, Senate File 2428; and viatical settlement brokers shall provide to the commissioner, within seven days of filing or issuance, copies of all applications filed with the district court pursuant to 2008 Iowa Acts, Senate File 2428, section 15, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit of the department of revenue.

48.13(5) The effective date of revocation or suspension of a viatical settlement broker license, as specified in the notice required by 2008 Iowa Acts, Senate File 2428, section 14, and subrule 48.13(2), shall be 60 days following service of the notice upon the applicant or licensed viatical settlement broker.

48.13(6) In the event an applicant or licensed viatical settlement broker timely files a district court action following service of notice by the commissioner pursuant to 2008 Iowa Acts, Senate File 2428, section 15, the commissioner's suspension proceedings will be stayed until the commissioner is notified by the district court of the resolution of the application. Upon receipt of a court order lifting the stay, or otherwise directing the commissioner to proceed, the commissioner shall continue with the intended action described in the notice. For purposes of determining the effective date of the denial of the issuance or renewal of a viatical settlement broker license, the commissioner shall count the number of days before the action was filed and the number of days after the court disposed of the action.

48.13(7) If the commissioner does not receive a withdrawal of the certificate of noncompliance from the centralized collection unit of the department of revenue or a notice from a clerk of court that an application for hearing has been filed, the commissioner shall suspend the viatical settlement broker's application, request for renewal or current license 60 days after the notice is issued.

48.13(8) Upon receipt of a withdrawal of the certificate of noncompliance from the centralized collection unit of the department of revenue, suspension proceedings shall halt, and the named viatical settlement broker shall be notified that the proceedings have been halted. If the viatical settlement broker's license has already been suspended, the license shall be reinstated if the viatical settlement broker is otherwise in compliance with this chapter. All fees required for license renewal or license reinstatement must be paid by the viatical settlement broker, and all continuing education requirements must be met before the viatical settlement broker's license will be renewed or reinstated after a license suspension or revocation pursuant to 2008 Iowa Acts, Senate File 2428.

48.13(9) The commissioner shall notify the viatical settlement broker in writing through regular first-class mail, or such other means as the commissioner deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of the viatical settlement broker license, and shall similarly

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notify the viatical settlement broker when the viatical settlement broker license is reinstated following the commissioner's receipt of a withdrawal of the certificate of noncompliance.

48.13(10) Notwithstanding any statutory confidentiality provision, the commissioner may share information with the centralized collection unit of the department of revenue for the sole purpose of identifying viatical settlement brokers subject to enforcement under 2008 Iowa Acts, Senate File 2428.

ITEM 21. Amend **191—Chapter 48**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 508E as amended by 2008 Iowa Acts, Senate File 2392; Iowa Code chapters 252J and 261; and 2008 Iowa Acts, Senate File 2428.

[Filed Emergency 8/20/08, effective 8/20/08]

[Published 9/10/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/10/08.

ARC 7135B

IOWA FINANCE AUTHORITY[265]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 17A.3(1)“b,” Iowa Code Supplement section 16.5(1)“r,” and Iowa Code section 16.52, the Iowa Finance Authority hereby amends Chapter 12, “Low-Income Housing Tax Credits,” Iowa Administrative Code.

The purpose of this amendment is to implement Iowa Code Supplement section 16.5(1)“r,” Iowa Code section 16.52, and the Housing and Economic Recovery Act of 2008 and to facilitate disaster relief to areas of the state damaged by natural disasters in 2008.

This amendment replaces the current qualified allocation plan for the low-income housing tax credit program with the first amended 2009 qualified allocation plan, which is incorporated by reference in rule 265—12.1(16).

The Authority does not intend to grant waivers under the provisions of any of these rules, other than as may be allowed under the Authority's general rules concerning waivers.

The Authority finds, pursuant to Iowa Code section 17A.4(2), that notice and public participation are impracticable and contrary to the public interest because the Housing and Economic Recovery Act of 2008 took effect on July 31, 2008, and the normal notice and public participation process would delay implementation of aspects of the Housing and Economic Recovery Act of 2008.

The Authority is also simultaneously publishing a Notice of Intended Action as **ARC 7136B** herein to allow for public comment.

The Authority finds that adoption of this amendment confers a benefit on the persons affected, low-income persons in need of housing, in that the rules ease and speed the administration of an important program that facilitates the development of decent, affordable housing. The Authority finds that this amendment should be implemented as soon as feasible in order to implement the beneficial aspects of the Housing and Economic Recovery Act of 2008 and to provide housing assistance to areas affected by natural disasters as quickly as possible. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of this amendment is waived.

The Authority adopted this amendment on August 18, 2008.

This amendment became effective September 3, 2008.

This amendment is intended to implement Iowa Code Supplement section 16.5(1)“r,” Iowa Code section 16.52, and the Housing and Economic Recovery Act of 2008.

The following amendment is adopted.

Amend rule 265—12.1(16) as follows:

265—12.1(16) Qualified allocation plan. The qualified allocation plan entitled Iowa Finance Authority Low-Income Housing Tax Credit Program 2009 First Amended Qualified Allocation Plan shall be the

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qualified allocation plan for the allocation of 2009 low-income housing tax credits consistent with IRC Section 42 and the applicable Treasury regulations and Iowa Code section 16.52. The qualified allocation plan includes the plan, application, and the application instructions. The qualified allocation plan is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2). The qualified allocation plan does not include any amendments or editions created subsequent to September 3, 2008.

[Filed Emergency 8/19/08, effective 9/3/08]

[Published 9/10/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/10/08.

ARC 7149B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 455A.5, the Natural Resource Commission hereby amends Chapter 91, "Waterfowl and Coot Hunting Seasons," Iowa Administrative Code.

These rules set regulations for hunting waterfowl and coot and include season dates, bag limits, possession limits, shooting hours, and areas open to hunting. Season dates were adjusted to comply with federal law and to ensure that seasons open on weekends.

The amendments adjust season dates for calendar date changes; change bag limits for scaup, wood ducks, and canvasbacks pursuant to federal regulations, remove the statewide two-day September Canada goose season; add an urban Canada goose zone around Cedar Falls and Waterloo; add parents and grandparents to the list of people eligible to hunt Canada geese on a landowner's farm in areas closed to Canada geese hunting in Clay, Dickinson, Emmet, Jackson, and Butler Counties; and clarify who is eligible to hunt during the youth waterfowl season.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 9, 2008, as **ARC 6697B**. A public hearing was held on April 29, 2008. Ten comments were received at the hearing. Another six comments were received in writing. Comments expressed appreciation for the addition of the new Waterloo/Cedar Falls urban zone and suggested the zone be expanded north to Waverly to include the Cedar River corridor between Waterloo/Cedar Falls and Waverly. Comments also suggested reducing the daily bag limit for ducks in order to increase the season length; expanding the urban goose zones; reducing the limit for geese in the urban goose zones; extending the duck season longer into December; extending the goose season longer into January; and eliminating the statewide Canada goose zones.

Changes from the Notice of Intended Action include federal regulation changes for hunting migratory game birds during the 2008-2009 seasons which allow the daily limit for wood ducks to be 3 (previously 2), allow a bag limit of 1 for scaup for the full 60-day season or 1 for 40 days and 2 for 20 days, and do not allow the taking of canvasbacks during the 2008-2009 season.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments should be waived and these amendments should be made effective upon filing with the Administrative Rules Coordinator, as they confer a benefit upon constituents.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39 and 481A.48.

These amendments became effective August 20, 2008.

The following amendments are adopted.

ITEM 1. Amend subrules 91.1(2), 91.1(3) and 91.1(4) as follows:

91.1(2) Season dates - north zone. For all ducks: September ~~22~~ 20 through September ~~26~~ 24 and October ~~13~~ 18 through December ~~6~~ 11.

91.1(3) Season dates - south zone. For all ducks: September ~~22~~ 20 through September ~~26~~ 24 and October ~~20~~ 18 through December ~~13~~ 11.

91.1(4) Bag limit. The daily bag limit of ducks is 6, and may include no more than 4 mallards (no more than 2 of which may be females), 1 black duck, ~~2~~ 3 wood ducks, 1 pintail, ~~2~~ sc scaup, 3 mottled ducks, ~~2~~

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~~canvasbacks, and 2 redheads, and 1 scaup, except during November 1 through November 20 when the daily limit for scaup is 2. No canvasbacks may be included in the daily bag limit; the canvasback season is closed.~~
The daily bag limit of mergansers is 5, only 2 of which may be hooded mergansers.

ITEM 2. Amend subrules 91.3(2) and 91.3(3) as follows:

91.3(2) Season dates - north zone. Canada geese and brant: September ~~29~~ 27 through December ~~9~~ 5 and October 18 through December 21 and December ~~15~~ 27 through January ~~1~~ 11, ~~2008~~ 2009. White-fronted geese: September ~~29~~ 27 through December ~~9~~ 7. Light geese (white and blue-phase snow geese and Ross' geese): September ~~29~~ 27 through January ~~13~~ 11, ~~2008~~ 2009.

91.3(3) Season dates - south zone. Canada geese and brant: September ~~29~~ 27 through October ~~7~~ 5 and October ~~20~~ 18 through December 21 and December ~~27~~ 27 through January ~~8~~ 11, ~~2008~~ 2009. White-fronted geese: September ~~29~~ 27 through December ~~9~~ 7. Light geese (white and blue-phase snow geese and Ross' geese): September ~~29~~ 27 through January ~~13~~ 11, ~~2008~~ 2009.

ITEM 3. Amend subrule 91.3(7), introductory paragraph, as follows:

91.3(7) Light goose conservation order season. Only light geese (white and blue-phase snow geese and Ross' geese) may be taken under a conservation order from the U.S. Fish and Wildlife Service from January ~~14~~ 12, ~~2008~~ 2009, through April 15, ~~2008~~ 2009.

ITEM 4. Rescind and reserve subrule **91.3(8)**.

ITEM 5. Adopt the following **new** subrule 91.3(11):

91.3(11) Cedar Falls/Waterloo goose hunting zone.

- a. *Season dates.* September 1 through September 15.
- b. *Bag limit.* Daily bag limit is 5 Canada geese.
- c. *Possession limit.* Twice the daily bag limit.
- d. *Zone boundary.* The Cedar Falls/Waterloo goose hunting zone includes those portions of Black Hawk County bounded as follows: Beginning at the intersection of County Roads C66 and V49 in Black Hawk County, thence south along County Road V49 to County Road D38, thence west along County Road D38 to State Highway 21, thence south along State Highway 21 to County Road D35, thence west along County Road D35 to Grundy Road, thence north along Grundy Road to County Road D19, thence west along County Road D19 to Butler Road, thence north along Butler Road to County Road C57, thence north and east along County Road C57 to U.S. Highway 63, thence south along U.S. Highway 63 to County Road C66, thence east along County Road C66 to the point of beginning.

ITEM 6. Amend subparagraph **91.5(1)“b”(9)** as follows:

(9) Permits will be issued only to individual landowners or tenants; however, permit holders must specify, when requesting a permit, the names of all other individuals qualified to hunt on the permit. Individuals qualified to hunt on the permit shall include the landowners or tenants and their spouses, domestic partners, parents, grandparents, children, children's spouses, grandchildren, siblings and siblings' spouses only.

ITEM 7. Amend rule 571—91.6(481A) as follows:

571—91.6(481A) Youth waterfowl hunt. A special youth waterfowl hunt will be held on October ~~6~~ 4 and ~~7~~ 5, ~~2007~~ 2008, in the north duck hunting zone and October ~~6~~ 4 and ~~7~~ 5, ~~2007~~ 2008, in the south duck hunting zone. Youth hunters must be ~~15~~ residents of Iowa as defined in Iowa Code section 483A.1A and less than 16 years old ~~or younger~~. Each youth hunter must be accompanied by an adult 18 years old or older. The youth hunter does not need to have a hunting license or stamps. The adult must have a valid hunting license and habitat stamp if normally required to have them to hunt and a state waterfowl stamp. Only the youth hunter may shoot ducks and coots. The adult may hunt for any other game birds for which the season is

NATURAL RESOURCE COMMISSION[571](cont'd)

open. The daily bag and possession limits are the same as for the regular waterfowl season, as defined in rule 91.1(481A). All other hunting regulations in effect for the regular waterfowl season apply to the youth hunt.

[Filed Emergency After Notice 8/20/08, effective 8/20/08]

[Published 9/10/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/10/08.

ARC 7139B

ELDER AFFAIRS DEPARTMENT[321]**Adopted and Filed**

Pursuant to the authority of Iowa Code section 231.14, the Elder Affairs Department hereby adopts amendments to Chapter 7, “Area Agency on Aging Service Delivery,” Iowa Administrative Code.

The adopted amendments delete portions of the chapter relating to the family caregiver program. This program will be administered under a new chapter.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 2, 2008, as **ARC 6905B**. The public comment period on the Notice ended July 23, 2008. No comments were received. These amendments are identical to those published under Notice.

The Commission adopted these amendments during their regularly scheduled meeting on August 18, 2008.

These amendments will become effective October 15, 2008.

These amendments are intended to implement Iowa Code chapter 231.

The following amendments are adopted.

ITEM 1. Rescind the definition of “Family caregiver” in rule **321—7.1(231)**.

ITEM 2. Rescind rule **321—7.25(231)**.

[Filed 8/20/08, effective 10/15/08]

[Published 9/10/08]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/10/08.

ARC 7134B

ELDER AFFAIRS DEPARTMENT[321]**Adopted and Filed**

Pursuant to the authority of Iowa Code section 231.14, the Elder Affairs Department hereby adopts amendments to Chapter 28, “Iowa Senior Living Program—Home- and Community-Based Services for Seniors,” Iowa Administrative Code.

The adopted amendments bring the chapter’s language into compliance with changes made in Iowa Code chapter 249H and add a severability clause to the chapter.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 2, 2008, as **ARC 6918B**. The public comment period on the notice ended July 23, 2008. No comments were received. These amendments are identical to those published under Notice.

The Commission adopted these amendments during their regularly scheduled meeting on August 18, 2008.

These amendments will become effective October 15, 2008.

These amendments are intended to implement Iowa Code chapter 231.

The following amendments are adopted.

ITEM 1. Amend rule **321—28.3(231,249H)**, definition of “Senior living program,” as follows:
“Senior living program” means the senior living program created in Iowa Code chapter 249H to provide for long-term care alternative services, ~~long-term care service development, and nursing facility conversion.~~

ITEM 2. Adopt the following **new** subrules 28.6(3) and 28.6(4):

28.6(3) An AAA may use client participation for services funded under Iowa Code section 249H.7 for persons with moderate income or above if the AAA does not utilize Older Americans Act funding for the same service category.

28.6(4) An AAA subcontractor may use client participation for services funded under Iowa Code section 249H.7 for persons with moderate income or above if the subcontractor does not receive Older Americans Act funding for the same service category.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

ITEM 3. Amend rule 321—28.8(231,249H) as follows:

321—28.8(231,249H) Prohibited use of senior living trust fund moneys. SLTF moneys shall ~~be~~ not be used to:

- ~~1. — Fund the same service category when providing direct service.~~
- ~~2. — Contract Older Americans Act funds and senior living trust funds to a provider for the same service category.~~

~~3. 1.~~ Purchase a service when the client is eligible for third-party purchase of that service by sources such as Medicare, Medicaid, Medicaid home- and community-based services (HCBS) waiver and private long-term care insurance.

~~4. 2.~~ Replace existing funding for a long-term care service.

The department may grant an exception in order to enhance access to a service if the displaced funding is subsequently dedicated by the AAA to another long-term care service for seniors and results in an increase in total AAA funding for long-term care services to seniors equal to the SLTF dollars used for replacement.

ITEM 4. Rescind paragraph **28.9(1)“b.”**

ITEM 5. Reletter paragraph **28.9(1)“c”** as **28.9(1)“b.”**

ITEM 6. Amend paragraph **28.9(4)“b”** as follows:

b. ~~For subsequent state fiscal years,~~ SLTF service dollars appropriated under Iowa Code section 249H.7 shall be disbursed to subcontractors through the area plan process as described in 321 IAC 5.

ITEM 7. Adopt the following new rule 321—28.11(231,249H):

321—28.11(231,249H) Severability. Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

[Filed 8/19/08, effective 10/15/08]

[Published 9/10/08]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/10/08.

ARC 7140B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455A.6, the Environmental Protection Commission hereby amends Chapter 1, “Operation of Environmental Protection Commission,” Iowa Administrative Code.

The amendment modifies the voting requirements for the Commission. Under the amendment, for official action by the Commission the requisite number of Commissioners varies depending on the number of Commissioners currently appointed by the Governor. The amendment provides that four votes are sufficient to take action when there are only seven appointed members.

From late November 2007 until very recently, the Commission has had only seven appointed members from a statutory total of nine members. Because of the number of votes required to take action, these two vacancies have resulted in delayed Agency action, gridlock, and stalemate, with the minority at times deciding an issue. The Commission wishes to adopt an amendment to provide that four votes are sufficient to take action when there are only seven appointed members. This amendment is authorized by Iowa Code section 455A.6(5), which allows the Commission to determine by rule the number of votes required to take action when a quorum is present.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 2, 2008, as **ARC 6922B**. In addition, this amendment was simultaneously Adopted and Filed Emergency as **ARC 6921B**. One oral comment was received at the public hearing on July 22, 2008. No changes have been made to the amendment as set forth in the Notice of Intended Action.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

This amendment is intended to implement Iowa Code section 455A.6.

This amendment shall become effective October 15, 2008, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [1.6] is being omitted. This amendment is identical to that published under Notice as **ARC 6922B** and Adopted and Filed Emergency as **ARC 6921B**, IAB 7/2/08.

[Filed 8/20/08, effective 10/15/08]

[Published 9/10/08]

[For replacement pages for IAC, see IAC Supplement 9/10/08.]

ARC 7143B**ENVIRONMENTAL PROTECTION COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby amends Chapter 20, "Scope of Title—Definitions—Forms—Rules of Practice," Chapter 21, "Compliance," Chapter 22, "Controlling Pollution," Chapter 23, "Emission Standards for Contaminants," Chapter 25, "Measurement of Emissions," and Chapter 33, "Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality," Iowa Administrative Code.

The purpose of the amendments is to make corrections, clarifications and improvements to existing air quality rules for: air quality definitions, electronic submittal of applications and inventories, temporary operation of small generators during disaster periods, construction permitting provisions, portable plant relocation notifications, Title V definitions and permitting provisions, Acid Rain program provisions, emission standards for hazardous air pollutants, test methods and procedures, and PSD permitting provisions.

Notice of Intended Action was published in the Iowa Administrative Bulletin (IAB) on June 4, 2008, as **ARC 6826B**. A public hearing was held on July 7, 2008. The Department did not receive any oral or written comments at the public hearing. The Department did not receive any written comments before the public comment period closed on July 8, 2008.

The Department made two changes to the amendments proposed in the Notice. Proposed new subparagraphs 22.105(1)"a"(10) to (12) and the proposed amendment to rule 25.3(455B) have not been adopted. See the summaries for Items 8, 17, 21 and 22 for a discussion of the reasons for the changes.

Item 1 amends rule 567—20.2(455B), the definition of "EPA reference method," to make this definition consistent with the definition in rule 567—22.100(455B), to reflect federal amendments to EPA reference methods that were adopted by reference into 567—Chapter 25 in previous rule makings, and to adopt updates to test methods that EPA recently finalized.

Items 2 and 3 amend subrules 21.1(3) and 21.1(4) to allow for electronic submittal of emissions inventories. Electronic submittal is provided for under Iowa Code chapter 554D. For the past several years, the Department has given stakeholders the option of submitting emissions inventories electronically using the State Permitting and Air Reporting System (SPARS). Items 1 and 2 codify the option for electronic submittal.

Item 4 adopts new rule 567—21.6(455B) to allow utilities to temporarily operate small generators for electricity generation during periods of natural and man-made disasters. During the winter ice storms that occurred in 2006-2007, when electricity generation was disrupted throughout much of the state, some utilities installed and temporarily operated small generators. Current rules do not allow for operation of a generator without an owner or operator first obtaining an air construction permit or a variance from the Department. In the fall of 2007, the Department began working with stakeholders to devise the best way for expediting use of these generators in the future while still ensuring that air quality standards are met. The new rule is the result of these discussions with stakeholders and specifies the conditions for installing and operating these

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generators. This rule applies the definition of “disaster,” specified in Iowa Code section 29C.2(1), which reads as follows: “‘Disaster’ means man-made and natural occurrences, such as fire, flood, drought, earthquake, tornado, windstorm, hazardous substance or nuclear power plant accident or incident, which threaten the public peace, health, and safety of the people or which damage and destroy public or private property. The term includes attack, sabotage, or other hostile action from within or without the state.” Additionally, an owner or operator may install and operate a generator under this rule even if the Governor or President does not make an official disaster declaration.

Item 5 amends subrule 22.1(3) to allow for electronic submittal of air construction permit applications. As stated in the explanation for Items 2 and 3 above, electronic submittal is authorized under Iowa Code chapter 554D. The Department has been accepting electronic submittals through SPARS for several years now. This amendment codifies the electronic submittal option.

Item 6 amends paragraph 22.3(3)“f,” which contains the provisions for portable plant relocations. The amendment reduces the notification requirement for portable plant relocations from 30 days prior to relocation to 14 days prior to relocation. This change will allow more flexibility for owners and operators of equipment at portable plants, while still allowing sufficient time for Department field office staff to conduct air quality inspections at these portable plants. Facilities relocating to areas that are classified as nonattainment or areas that are maintenance areas for the ambient air quality standards must still submit their relocation notices 30 days in advance of relocating. This amendment will still provide the Department with sufficient time to conduct the required air quality analysis for facilities relocating to these areas. A list of current nonattainment and maintenance areas is available from the Department, upon request, and also will be available on the Department’s Internet Web site.

Item 7 amends rule 567—22.100(455B), the definition of “EPA reference method,” to reflect federal amendments to EPA reference methods that were adopted by reference into 567—Chapter 25 in previous rule makings and to adopt updates to test methods that EPA recently finalized.

Item 8 amends subrule 22.105(1), which includes the “duty to apply” provisions for the Title V Operating Permit program. This amendment accomplishes two objectives.

First, the amendment includes provisions for electronic submittal of the Title V application forms. The Department has provided for electronic submittal of Title V permit applications through SPARS for several years. Electronic submittal is authorized under Iowa Code chapter 554D.

Second, the amendment clarifies the requirements for submitting different types of Title V applications for both existing and new major stationary sources. The amendment does not add any new requirements, but simply provides a better description for Title V facility owners or operators who must submit timely applications, revisions and notifications.

The subparagraphs included in the Notice referring to application requirements under the Clean Air Interstate Rule (CAIR) are being withdrawn in the adopted rules because the U.S. Court of Appeals for the District of Columbia (D.C. Circuit) recently vacated the federal CAIR program in its entirety.

Item 9 adopts new subrule 22.105(5). The new subrule adds provisions for the Department to allow more than one Title V permit for one stationary source. The amendment codifies Department policy to allow multiple permits under certain circumstances. The Department has issued multiple Title V permits to some single stationary sources. The Department will review requests for multiple Title V permits for a single stationary source and may issue multiple Title V permits, as appropriate.

Item 10 amends paragraph 22.106(3)“b” to provide for electronic submittal of Title V emissions inventories that are submitted to the Linn County or Polk County air quality programs. As with the Department, Linn County and Polk County currently allow electronic submittal of emissions inventories through SPARS.

Item 11 adopts new subrule 22.106(8). Subrule 22.106(8) sets forth the provisions for correcting errors in Title V emissions inventories and Title V fees.

Item 12 amends the catchwords for rule 567—22.110(455B) to add the term “off-permit revision.” The term “off-permit revision” is sometimes used to refer to a change at a Title V source that does not require a revision to the current Title V permit. This amendment will make rule 567—22.110(455B) consistent with the amendment proposed in Item 8.

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Item 13 amends subrule 22.116(2) to remove the sentence stating that required testing shall be completed prior to the submission of an application for Title V permit renewal. This statement is no longer needed because the Department's Title V program has established procedures to address compliance testing. If a required test is not completed prior to Title V permit renewal, the Department has the option of including a compliance plan in the renewed permit that addresses the need to complete testing. It is not practical to delay submittal of a Title V renewal application because testing has not yet been completed.

Items 14 and 15 amend rule 567—22.120(455B), the introductory paragraph and the definitions of "40 CFR Part 72" and "40 CFR Part 75," to reflect recent EPA amendments to analytical test methods and procedures.

Item 16 amends subrule 22.207(1) to correct the cross reference to subrule 22.105(1) to reflect the amendments in Item 8.

Item 17 amends subrule 23.1(4), the emission standards for hazardous air pollutants for source categories, also known as National Emission Standards for Hazardous Air Pollutants or NESHAP, to adopt recent amendments that EPA made to 40 CFR Part 63. The amendments being adopted are as follows:

- Amendments to the NESHAP for hazardous waste combustors (Subpart EEE, as adopted by reference in paragraph 23.1(4)"be"). This action clarifies several compliance and monitoring provisions and also corrects several omissions and typographical errors in the final federal rule. EPA states that it is finalizing the amendments to facilitate compliance and improve understanding of the rule requirements. The final federal rule does not address issues for which petitioners sought reconsideration, and it does not address issues raised in EPA's comment solicitation of September 27, 2007.

- Amendments to the NESHAP for iron and steel foundries that are major sources of hazardous air pollutants (HAP) (Subpart EEEEE, as adopted by reference in paragraph 23.1(4)"de"). EPA issued amendments to this standard to add alternative compliance options for cupolas at existing foundries and to clarify several provisions to increase operational flexibility.

- Amendments consisting of technical corrections to the NESHAP for area sources for several source categories, including the NESHAP for acrylic and modacrylic fibers production (Subpart LLLLLL), carbon black production (Subpart MMMMMM), chemical manufacturing of chromium compounds (Subpart NNNNNN), flexible polyurethane foam production and fabrication (Subpart OOOOOO), lead acid battery manufacturing (Subpart PPPPPP), and wood preserving (Subpart QQQQQQ). The amendments clarify certain provisions in two of the final area source rules (flexible polyurethane foam production and fabrication and lead acid battery manufacturing) and correct editorial and publication errors in all of the final rules.

Amendments to the NESHAP for dry cleaners (Subpart M, as adopted by reference in paragraph 23.1(4)"m"), described in the summary of Item 17 in the preamble of the Notice, are not being adopted because EPA subsequently withdrew the amendments described in the Notice.

Additionally, the Department added language to subrule 23.1(4) to state that an earlier date for adoption by reference may apply for a particular subpart of Part 63 if that earlier date is specified in parentheses for the paragraph for which the federal subpart is adopted.

Item 18 amends paragraph 23.1(4)"cz," which is the NESHAP for stationary reciprocating internal combustion engines (RICE) (Subpart ZZZZ). The amendment specifies that the Department has adopted the federal provisions as amended through April 20, 2006. The amendment is being made because the Department is not adopting the federal amendments that EPA finalized on January 19, 2008. The Department is not adopting the new amendments at this time because the Department is still identifying facilities that may be affected by the federal amendments and is also developing an implementation plan for the new federal provisions. The Department plans to adopt the federal amendments in a rule making later this year.

Item 19 adopts new paragraphs 23.1(4)"dw," "dy," and "dz." This amendment adopts by reference three new NESHAP for area sources. Area sources are those new and existing sources that are not major sources for HAP. The new standards apply to the following source categories: Hospital Ethylene Oxide Sterilizers (Subpart WWWW); Steelmaking Electric Arc Furnaces (Subpart YYYYY); and Iron and Steel Foundries (Subpart ZZZZ).

The Department estimates that 18 hospitals may be affected by the NESHAP requirements for ethylene oxide (EO) sterilizers. Many hospitals no longer sterilize equipment with EO sterilizers. Hospitals that do operate new or existing EO sterilizers will be required to implement management practices for sterilizing

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full loads (except under medically necessary circumstances). Hospitals which route EO to an air pollution control device are in compliance with the required management practices. It is expected that any hospitals still operating EO sterilizers are already following the required management practices. However, the Department plans to contact the identified hospitals to assist with the applicable NESHAP requirements.

The Department has identified two facilities that may be affected by the NESHAP requirements for steelmaking electric arc furnaces (EAF). These two affected facilities already have Title V permits, as required by the NESHAP. The two EAF facilities must implement and comply with a metal scrap handling plan by June 30, 2008. Additional NESHAP requirements may apply, such as compliance testing for particulate matter (PM) and opacity, as well as monitoring and record keeping. For purposes of the NESHAP, PM is a surrogate for HAP metals. The Department will be working with the two affected facilities to assist with applicable NESHAP provisions.

The Department estimates that 16 facilities may be affected by the NESHAP requirements for iron and steel foundries. Similar to the EAF NESHAP requirements, affected iron and steel foundries must implement a metal scrap handling plan by June 30, 2008. Affected foundries must also apply pollution prevention management practices, and larger foundries must comply with emission limits for PM (a surrogate for HAP metals). The Department will be working with the affected facilities to assist with applicable NESHAP provisions.

Item 20 adopts new paragraphs 23.1(4)“er,” “es,” and “et.” This amendment adopts by reference three additional new NESHAP for area sources. The new standards apply to the following source categories: Clay Ceramics Manufacturing (Subpart RRRRRR); Glass Manufacturing (Subpart SSSSSS); and Secondary Nonferrous Metals Processing (Subpart TTTTTT).

At this time, the Department has not identified any facilities that appear to be affected by the NESHAP requirements for clay ceramics manufacturing.

The Department has identified one facility that may be affected by the NESHAP requirements for glass manufacturing. This facility already has a Title V permit, as required by the NESHAP. The NESHAP emission limits and testing requirements apply only to specific types of glass manufacturing that use one or more continuous furnaces that produce glass at a rate of at least 50 tons per year and that contain compounds or one or more “glass manufacturing metal HAP,” as defined in Subpart SSSSSS. The Department will work with the glass manufacturing facility to determine what, if any, NESHAP requirements may apply.

The Department has identified three facilities that may be affected by the NESHAP requirements for secondary nonferrous metals processing. This standard applies to all furnace melting operations located at affected facilities. Existing facilities are required to route furnace emissions through a fabric filter or baghouse that achieves a PM control efficiency of at least 99 percent or to meet a specified outlet PM concentration limit. Affected facilities may be subject to other requirements, such as conducting performance testing. The Department will work with the three identified facilities to determine what, if any, NESHAP requirements apply.

Items 21 and 22 amend subrule 25.1(9) and rule 567—25.2(455B), respectively, to adopt by reference amendments and corrections that EPA recently finalized for 40 CFR Part 75. The federal test methods and procedures contained in Part 75 affect the Acid Rain program.

In the summary for Items 21 and 22 in the preamble of the Notice, statements were included concerning adoption of amendments for CAIR and for the Clean Air Mercury Program (CAMR). The Department is not adopting the amendments to Part 75 pertaining to CAIR and CAMR because the D.C. Court vacated both of the federal CAIR and CAMR programs in their entirety. The Department is retaining other amendments adopted in Items 21 and 22, however, because they adopt changes to test methods and procedures for the Acid Rain program. The Acid Rain program remains in effect, and the Department wants to ensure that the most current federal test methods are adopted into the state’s administrative rules.

The Department has not adopted the amendment described in Item 23 of the Notice because the amendment to rule 25.3(455B) concerned only the CAMR program. Subsequent items in the Adopted and Filed rule making are renumbered accordingly.

Item 23 amends subrule 33.3(17) to add a new paragraph “c.” When the Department adopted the federal PSD reform rules last year, EPA requested that the Department include specific rules for public participation because the federal PSD rules do not specify the procedures for public comment on state-issued PSD

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permits. Therefore, the Department adopted public participation rules similar to those used in the Title V Operating Permit program. This amendment further clarifies the public participation procedures by including provisions for reopening the public comment period when necessary. These provisions will add clarity for those applying for PSD permits and for those seeking to comment on draft PSD permits. This amendment codifies Department procedures, which have closely followed the federal rules for EPA-issued PSD permits set forth in 40 CFR Part 124.

Item 24 amends subrule 33.3(18), paragraphs “c” and “d.” This amendment adopts the PSD source obligation provisions specified in the federal regulations under 40 CFR 52.21(r) that were inadvertently omitted when the Department adopted EPA’s PSD reform rules in 2006. These provisions had been included in the state’s PSD rules prior to that time. These added provisions make clear that a source owner or operator is subject to enforcement action if a source is not constructed according to its issued PSD permit, and if a source owner or operator does not obtain the required PSD permit prior to initiating construction. The amendment does not change the Department’s existing authority to enforce the PSD permit requirements. The amendment also clarifies the time period allowed for commencing and completing construction on PSD projects.

Item 25 adopts new subrule 33.3(21) to add provisions for administrative amendments to PSD permits. These provisions codify current Department procedures and will add clarity for those applying for administrative amendments to PSD permits.

These amendments are intended to implement Iowa Code section 455B.133 and chapter 554D (electronic submittal provisions).

These amendments will become effective on October 15, 2008.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 20 to 23, 25, 33] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 6826B**, IAB 6/4/08.

[Filed 8/20/08, effective 10/15/08]

[Published 9/10/08]

[For replacement pages for IAC, see IAC Supplement 9/10/08.]

ARC 7127B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code Supplement section 234.6, the Department of Human Services amends Chapter 150, “Purchase of Service,” Iowa Administrative Code.

This amendment implements a 1 percent across-the-board increase for social service providers as directed by 2008 Iowa Acts, Senate File 2425, section 32(5). This increase affects foster care placements in supervised apartment living and shelter care. The increase will be applied to reimbursement rates in effect on June 30, 2008, or to the provider’s actual and allowable cost for each service plus inflation, whichever is less. The amendment eliminates references to adoption services, which are no longer available through a purchase of service contract.

This amendment does not provide for waivers in specified situations, since a rate increase benefits the providers affected. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

This amendment was previously Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on July 2, 2008, as **ARC 6902B**. Notice of Intended Action to solicit comments on the amendment was published in the Iowa Administrative Bulletin on the same date as **ARC 6903B**. The Department received no comments on the Notice of Intended Action. This amendment is identical to that Adopted and Filed Emergency and published under Notice of Intended Action.

The Council on Human Services adopted this amendment on August 13, 2008.

HUMAN SERVICES DEPARTMENT[441](cont'd)

This amendment is intended to implement Iowa Code Supplement sections 234.6 and 234.35 and 2008 Iowa Acts, Senate File 2425, section 32.

This amendment shall become effective October 15, 2008, at which time the amendment Adopted and Filed Emergency is rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [150.3(5)] is being omitted. This amendment is identical to that published under Notice as **ARC 6903B** and Adopted and Filed Emergency as **ARC 6902B**, IAB 7/2/08.

[Filed 8/19/08, effective 10/15/08]

[Published 9/10/08]

[For replacement pages for IAC, see IAC Supplement 9/10/08.]

ARC 7130B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 156, "Payments for Foster Care and Foster Parent Training," Iowa Administrative Code.

This amendment increases basic reimbursement rates for foster family care as directed by 2008 Iowa Acts, Senate File 2425, section 32(4). This increase maintains the rates at 65 percent of the USDA estimate of the cost to raise a child in 2007, in compliance with Iowa Code section 234.38. By reference, these amounts are also the maximum payments allowed for foster care supervised apartment living maintenance payments, adoption subsidy maintenance payments, and guardianship subsidy payments.

This amendment does not provide for waivers in specified situations, since a rate increase benefits the providers affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

This amendment was previously Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on July 2, 2008, as **ARC 6906B**. Notice of Intended Action to solicit comments on the amendment was published in the Iowa Administrative Bulletin on the same date as **ARC 6910B**. The Department received no comments on the Notice of Intended Action. This amendment is identical to that Adopted and Filed Emergency and published under Notice of Intended Action.

The Council on Human Services adopted this amendment on August 13, 2008.

This amendment is intended to implement Iowa Code sections 234.6, 234.35, and 234.38 and 2008 Iowa Acts, Senate File 2425, section 32.

This amendment shall become effective October 15, 2008, at which time the amendment Adopted and Filed Emergency is rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [156.6(1)] is being omitted. This amendment is identical to that published under Notice as **ARC 6910B** and Adopted and Filed Emergency as **ARC 6906B**, IAB 7/2/08.

[Filed 8/19/08, effective 10/15/08]

[Published 9/10/08]

[For replacement pages for IAC, see IAC Supplement 9/10/08.]

ARC 7131B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 170, "Child Care Services," Iowa Administrative Code.

The amendments:

- Add new forms and procedures to be used with the Department's new child care information management system, called KinderTrack.
- Align Child Care Assistance policy with policy of other financial support programs administered by the Department.

The KinderTrack system will contain the work schedules and training schedules of eligible families and the number of units of child care services that have been authorized for each family. This database will allow automated issuance of a form informing the provider of what child care usage the Department expects to cover (separate from the notice of decision issued to the family) and issuance of a detailed billing statement listing the children and units expected to be claimed.

When the KinderTrack system is implemented, the provider will have the option of completing and returning the printed claim and attendance documentation, similar to the methods currently used, or completing and submitting the claim on line through access to a secure Internet Web site. A provider who chooses to submit claims electronically must print an attendance record that is signed by both the parent and the care provider to document agreement on the amount of care to be billed. Since the attendance documentation will not be submitted with the claim, the provider must maintain the documentation for a period of five years after the billing date. Failure to produce this documentation upon audit will be grounds for recovery of the assistance paid.

The Department expects to phase in conversion to the new system on a geographical basis over a period of about six months. Areas that are not yet converted will continue to use the current enrollment and billing procedures.

The earnings of a student who is under the age of 18 is added to the list of income exclusions to match the policy of the Family Investment Program. Income from temporary employment with the Bureau of the Census is also excluded. The Medicaid, HAWK-I, Family Investment, and Child Care Assistance programs are all moving to exclude income from temporary census employment on the recommendation of the Department of Health and Human Services. Treating the same family circumstances in the same way across multiple programs clarifies and simplifies the eligibility process for both families and workers.

These amendments do not provide for waivers in specified situations because they benefit the applicant family and offer a range of options to the provider. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on July 2, 2008, as **ARC 6876B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on August 13, 2008.

These amendments are intended to implement Iowa Code Supplement section 237A.13.

These amendments shall become effective on November 1, 2008.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [170.1, 170.2(1), 170.3(1), 170.3(3), 170.4(7)] is being omitted. These amendments are identical to those published under Notice as **ARC 6876B**, IAB 7/2/08.

[Filed 8/19/08, effective 11/1/08]

[Published 9/10/08]

[For replacement pages for IAC, see IAC Supplement 9/10/08.]

ARC 7132B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 185, "Rehabilitative Treatment Services," Iowa Administrative Code.

These amendments implement a 1 percent across-the-board increase for group foster care service providers as directed by 2008 Iowa Acts, Senate File 2425, section 32(6). The increase will be applied to reimbursement rates in effect on June 30, 2008. Although rehabilitative treatment and supportive services have been discontinued, the rate structure in this chapter continues to be used for child welfare services provided by foster group care facilities.

The amendments also eliminate the subrule on statewide fixed rates, since the family-centered services for which those rates were used are no longer available through this type of contract. (See **ARC 5937B**, published in the Iowa Administrative Bulletin on June 6, 2007, and **ARC 6515B**, published in the Iowa Administrative Bulletin on January 2, 2008.)

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

These amendments were previously Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on July 2, 2008, as **ARC 6911B**. Notice of Intended Action to solicit comments on these amendments was published in the Iowa Administrative Bulletin on the same date as **ARC 6912B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those Adopted and Filed Emergency and published under Notice of Intended Action.

The Council on Human Services adopted these amendments on August 13, 2008.

These amendments are intended to implement Iowa Code sections 234.6 and 234.35 and 2008 Iowa Acts, Senate File 2425, section 32.

These amendments shall become effective October 15, 2008, at which time the amendments Adopted and Filed Emergency are rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [185.112(1), 185.112(14)] is being omitted. These amendments are identical to those published under Notice as **ARC 6912B** and Adopted and Filed Emergency as **ARC 6911B**, IAB 7/2/08.

[Filed 8/19/08, effective 10/15/08]

[Published 9/10/08]

[For replacement pages for IAC, see IAC Supplement 9/10/08.]

ARC 7141B**INSURANCE DIVISION[191]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 505.8 and chapter 515A, the Insurance Division hereby adopts new Chapter 60, "Workers' Compensation Insurance Rate Filing Procedures," Iowa Administrative Code.

The purpose of this chapter is to provide clarification and guidance to insurers regarding the deviations in workers' compensation filings as permitted under Iowa Code section 515A.7. Chapter 60 will become effective January 1, 2009, and insurance producers and insurance companies operating in Iowa must comply with these rules beginning January 1, 2009.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 2, 2008, as **ARC 6909B**. A public hearing was held on July 30, 2008, at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa. The Division received some comments at the public hearing and in writing

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related to the proposed chapter. One concern was whether the new chapter would impact existing safety programs. Another concern was that the chapter would impede competition by limiting premium discounts. The Division reviewed all comments and concluded that the noticed chapter was appropriate and included elements to address the concerns of the interested parties balanced with the Commissioner's duty to regulate the marketplace. No changes were made to the Notice.

These rules are intended to implement Iowa Code section 515A.7.

These rules will become effective January 1, 2009.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 60] is being omitted. These rules are identical to those published under Notice as **ARC 6909B**, IAB 7/2/08.

[Filed 8/20/08, effective 1/1/09]

[Published 9/10/08]

[For replacement pages for IAC, see IAC Supplement 9/10/08.]

ARC 7138B

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 97B.4 and 97B.15, the Iowa Public Employees' Retirement System (IPERS) amends Chapter 2, "Investment Board," Chapter 4, "Employers," Chapter 6, "Covered Wages," Chapter 7, "Service Credit and Vesting Status," Chapter 8, "Service Purchases," Chapter 13, "Disability for Regular and Special Service Members," Chapter 14, "Death Benefits and Beneficiaries," and Chapter 15, "Dividends," Iowa Administrative Code.

The amendments implement provisions of 2008 Iowa Acts, Senate File 2424, which requires the amendment or adoption of various sections: removing the 0.4 percent cap on management expenses for investments; adjusting contribution rates for members by IPERS staff based on actuarial valuation; adding new employee classes to IPERS protection occupation class; eliminating bonuses and allowances except for legislative pay; providing service credit at no cost to members of the military who served in a combat zone or hazardous area and received a service-related injury or disease that resulted in the member's death within two years after suffering the injury or disease; expanding choices for buying service time for IPERS members, including new "buy up" service purchase provisions for members who have a mixture of regular and special service credit; clarifying eligibility for disability benefit payments for regular class members; increasing the amount payable to custodians for minors who are beneficiaries to coordinate with other Iowa Code provisions; allowing nonspouse beneficiaries to roll over a deceased member's death benefit to a Roth IRA as an acceptable vehicle for IPERS lump sum distributions; and clarifying that November dividend adjustments will not be made unless statutory contribution rates meet or exceed the actuarially required rate for that fiscal year.

Previously, Iowa Code chapter 97B and administrative rules identified certain types of service as nonqualified service (e.g., employment with a qualified Canadian governmental entity or with the Peace Corps). Effective July 1, 2008, nonqualified service credit is not required to be linked to employment at all and is limited in the aggregate to 20 quarters. Therefore, in Items 18 and 19, references to specific categories of nonqualified service are eliminated.

Additional amendments remove provisions for employer-mandated reductions in hours because the time for that program has expired; remove provisions for patient advocate service purchases because the time for that program has also expired; and remove outdated law citations and update corresponding implementation clauses.

These amendments were Adopted and Filed Emergency and published in the July 16, 2008, Iowa Administrative Bulletin as **ARC 6976B**. Notice of Intended Action regarding these amendments was published simultaneously as **ARC 6975B** to give interested persons notice of the changes and an opportunity to comment.

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A public hearing was held on August 5, 2008. No comments were received prior to the hearing, and no one attended the hearing. These amendments are identical to those published under Notice of Intended Action.

These amendments were prepared after consultation with IPERS administration, Benefits Advisory Committee, investment, legal, operations and benefits divisions.

These amendments are not subject to requests for waivers; however, these amendments are subject to the normal IPERS appeal process.

These amendments are intended to implement 2008 Iowa Acts, Senate File 2424, and Iowa Code chapter 97B.

These amendments will become effective on October 15, 2008, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 2, 4, 6 to 8, 13 to 15] is being omitted. These amendments are identical to those published under Notice as **ARC 6975B** and Adopted and Filed Emergency as **ARC 6976B**, IAB 7/16/08.

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