



IOWA ADMINISTRATIVE BULLETIN

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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"]; and agricultural credit corporation maximum loan rates [535.12].

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 2010

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 23 '09	Jan. 13 '10	Feb. 2 '10	Feb. 17 '10	Feb. 19 '10	Mar. 10 '10	Apr. 14 '10	July 12 '10
Jan. 8	Jan. 27	Feb. 16	Mar. 3	Mar. 5	Mar. 24	Apr. 28	July 26
Jan. 22	Feb. 10	Mar. 2	Mar. 17	Mar. 19	Apr. 7	May 12	Aug. 9
Feb. 5	Feb. 24	Mar. 16	Mar. 31	Apr. 2	Apr. 21	May 26	Aug. 23
Feb. 19	Mar. 10	Mar. 30	Apr. 14	Apr. 16	May 5	June 9	Sep. 6
Mar. 5	Mar. 24	Apr. 13	Apr. 28	Apr. 30	May 19	June 23	Sep. 20
Mar. 19	Apr. 7	Apr. 27	May 12	May 14	June 2	July 7	Oct. 4
Apr. 2	Apr. 21	May 11	May 26	***May 26***	June 16	July 21	Oct. 18
Apr. 16	May 5	May 25	June 9	June 11	June 30	Aug. 4	Nov. 1
Apr. 30	May 19	June 8	June 23	***June 23***	July 14	Aug. 18	Nov. 15
May 14	June 2	June 22	July 7	July 9	July 28	Sep. 1	Nov. 29
May 26	June 16	July 6	July 21	July 23	Aug. 11	Sep. 15	Dec. 13
June 11	June 30	July 20	Aug. 4	Aug. 6	Aug. 25	Sep. 29	Dec. 27
June 23	July 14	Aug. 3	Aug. 18	Aug. 20	Sep. 8	Oct. 13	Jan. 10 '11
July 9	July 28	Aug. 17	Sep. 1	***Sep. 1***	Sep. 22	Oct. 27	Jan. 24 '11
July 23	Aug. 11	Aug. 31	Sep. 15	Sep. 17	Oct. 6	Nov. 10	Feb. 7 '11
Aug. 6	Aug. 25	Sep. 14	Sep. 29	Oct. 1	Oct. 20	Nov. 24	Feb. 21 '11
Aug. 20	Sep. 8	Sep. 28	Oct. 13	Oct. 15	Nov. 3	Dec. 8	Mar. 7 '11
Sep. 1	Sep. 22	Oct. 12	Oct. 27	***Oct. 27***	Nov. 17	Dec. 22	Mar. 21 '11
Sep. 17	Oct. 6	Oct. 26	Nov. 10	***Nov. 10***	Dec. 1	Jan. 5 '11	Apr. 4 '11
Oct. 1	Oct. 20	Nov. 9	Nov. 24	***Nov. 24***	Dec. 15	Jan. 19 '11	Apr. 18 '11
Oct. 15	Nov. 3	Nov. 23	Dec. 8	***Dec. 8***	Dec. 29	Feb. 2 '11	May 2 '11
Oct. 27	Nov. 17	Dec. 7	Dec. 22	***Dec. 22***	Jan. 12 '11	Feb. 16 '11	May 16 '11
Nov. 10	Dec. 1	Dec. 21	Jan. 5 '11	Jan. 7 '11	Jan. 26 '11	Mar. 2 '11	May 30 '11
Nov. 24	Dec. 15	Jan. 4 '11	Jan. 19 '11	Jan. 21 '11	Feb. 9 '11	Mar. 16 '11	June 13 '11
Dec. 8	Dec. 29	Jan. 18 '11	Feb. 2 '11	Feb. 4 '11	Feb. 23 '11	Mar. 30 '11	June 27 '11
Dec. 22	Jan. 12 '11	Feb. 1 '11	Feb. 16 '11	Feb. 18 '11	Mar. 9 '11	Apr. 13 '11	July 11 '11

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
15	Wednesday, December 23, 2009	January 13, 2010
16	Friday, January 8, 2010	January 27, 2010
17	Friday, January 22, 2010	February 10, 2010

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*****

CORRECTIONS DEPARTMENT[201]

Electronic monitoring of Iowa sex offenders, 38.1 to 38.3 IAB 12/2/09 ARC 8321B	First Floor Conference Room Department of Corrections 510 E. 12th St. Des Moines, Iowa	December 22, 2009 11 a.m. to 1 p.m.
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DENTAL BOARD[650]

Deep sedation/general anesthesia, conscious sedation and nitrous oxide inhalation analgesia, amendments to ch 29 IAB 12/16/09 ARC 8370B	Board Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa	January 5, 2010 10 a.m.
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EDUCATIONAL EXAMINERS BOARD[282]

Elementary classroom teacher—core content areas, 13.26(5) IAB 12/16/09 ARC 8408B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	January 6, 2010 1 p.m.
Qualifications for behind-the-wheel driving instructor authorization, 23.1(1) IAB 12/16/09 ARC 8409B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	January 6, 2010 1 p.m.

EDUCATION DEPARTMENT[281]

Community colleges, amendments to ch 21 IAB 12/16/09 ARC 8390B	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	January 12, 2010 1 to 2 p.m.
Adult education, 23.1, 23.2 IAB 12/16/09 ARC 8389B	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	January 12, 2010 1 to 2 p.m.
Community college accreditation, 24.1, 24.3 to 24.6 IAB 12/16/09 ARC 8388B	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	January 12, 2010 1 to 2 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Water quality standards—lake criteria, 61.3(4) IAB 12/16/09 ARC 8397B	Fifth Floor Conference Rooms Wallace State Office Bldg. 502 E. 9th St. Des Moines, Iowa	January 11, 2010 10 a.m.
	Public Library 200 N. 4th St. Clear Lake, Iowa	January 13, 2010 1 p.m.
	Conference Room Atlantic Municipal Utilities 15 W. 3rd St. Atlantic, Iowa	January 14, 2010 10 a.m.
	Waite Building Iowa Lakeside Laboratory 1838 Highway 86 Milford, Iowa	January 14, 2010 6 p.m.
	Falcon Civic Center 1305 5th Ave. NE Independence, Iowa	January 21, 2010 10 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567] (Cont'd)

	Meeting Room B, Public Library 115 W. Washington St. Washington, Iowa	January 21, 2010 4 p.m.
Animal feeding operations, amendments to ch 65 IAB 12/16/09 ARC 8398B	Orange City Gymnasium 125 Central Ave. SE Orange City, Iowa	January 12, 2010 4:30 p.m.
	NICC Dairy Center, Room 115 Highway 150 (south of Calmar) Calmar, Iowa	January 13, 2010 1:30 p.m.
	Wallace State Office Bldg. Auditorium 502 E. 9th St. Des Moines, Iowa	January 15, 2010 11 a.m.
	Cass County Community Center 805 W. 10th St. Atlantic, Iowa	January 15, 2010 4:30 p.m.
	Marr Park Conservation Center 2943 Highway 92 Ainsworth, Iowa	January 20, 2010 1:30 p.m.
	NIACC Muse Norris Conference Center 500 College Dr. Mason City, Iowa	February 1, 2010 1:30 p.m.

HISTORICAL DIVISION[223]

HRDP grant eligibility—approval as a certified local government (CLG), 49.3 IAB 12/2/09 ARC 8336B	Tone Board Room, Historical Bldg. 600 E. Locust St. Des Moines, Iowa	December 22, 2009 10 a.m.
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LABOR SERVICES DIVISION[875]

OSHA—acetylene standards, conducting inspections, 3.5(1), 10.20 IAB 12/16/09 ARC 8378B	Stanley Room Iowa Workforce Development 1000 E. Grand Ave. Des Moines, Iowa	January 7, 2010 3:30 p.m.
Elevator safety board, amendments to chs 65 to 70 IAB 12/2/09 ARC 8322B	Capitol View Room Iowa Workforce Development 1000 E. Grand Ave. Des Moines, Iowa	December 23, 2009 9 a.m. (If requested)
Update of references to ASME codes, 91.1(1), 91.1(4) IAB 12/16/09 ARC 8391B	Stanley Room Iowa Workforce Development 1000 E. Grand Ave. Des Moines, Iowa	January 7, 2010 2:30 p.m. (If requested)

MEDICINE BOARD[653]

Permanent physician licensure, 9.1, 9.3(1), 9.4 to 9.18 IAB 12/16/09 ARC 8379B	Suite C 400 SW Eighth St. Des Moines, Iowa	January 5, 2010 11 a.m.
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NATURAL RESOURCE COMMISSION[571]

Aquatic plants in public waters; ginseng harvesting, amendments to ch 54 IAB 12/2/09 ARC 8332B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 5, 2010 1 p.m.
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PROFESSIONAL LICENSURE DIVISION[645]

Child support, loan repayment, nonpayment of state debt, 4.16; rescind chs 14, 15 IAB 12/2/09 ARC 8334B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	December 22, 2009 8 to 8:30 a.m.
Board of cosmetology arts and sciences, amendments to chs 60, 61, 63 IAB 12/2/09 ARC 8330B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	December 22, 2009 1 to 1:30 p.m.
Board of social work, rescind chs 279, 284; rescind 280.8, 280.12, 280.13, 281.4 to 281.7, 283.5 IAB 12/16/09 ARC 8368B	Fifth Floor Board Room 526 Lucas State Office Bldg. Des Moines, Iowa	January 5, 2010 9 to 9:30 a.m.
Social work—supervised professional practice for LISW, 280.6(1)“e” and “f” IAB 12/16/09 ARC 8374B	Fifth Floor Board Room 526 Lucas State Office Bldg. Des Moines, Iowa	January 5, 2010 9:30 to 10 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Immunizations, 7.4(1), 7.11(2) IAB 12/16/09 ARC 8399B (See also ARC 8377B herein) (ICN Network)	ICN Room, Sixth Floor Lucas State Office Bldg. Des Moines, Iowa	January 5, 2010 9 to 10 a.m.
	Room 276, High School 1700 Fourth St. S Mason City, Iowa	January 5, 2010 9 to 10 a.m.
	Room 247, Ottumwa Regional Health Ctr. 1001 E. Pennsylvania Ottumwa, Iowa	January 5, 2010 9 to 10 a.m.
	Room 465, Public Library 2950 Learning Campus Dr. Bettendorf, Iowa	January 5, 2010 9 to 10 a.m.
	West High School 2001 Casselman Sioux City, Iowa	January 5, 2010 9 to 10 a.m.
	Room 106, CB Comm. School District 2501 W. Broadway Council Bluffs, Iowa	January 5, 2010 9 to 10 a.m.
	Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	January 5, 2010 9 to 10 a.m.
Plumbing and mechanical systems board—administrative/regulatory authority, 27.1 to 27.4, 27.6(1) IAB 12/2/09 ARC 8360B (ICN Network)	Public Library 529 Pierce St. Sioux City, Iowa	December 22, 2009 11 a.m. to 1 p.m.
	Public Library 400 Willow Ave. Council Bluffs, Iowa	December 22, 2009 11 a.m. to 1 p.m.
	Meeting Room C, Public Library 415 Commercial St. Waterloo, Iowa	December 22, 2009 11 a.m. to 1 p.m.

PUBLIC HEALTH DEPARTMENT[641] (Cont'd)

(ICN Network)	Ottumwa Regional Health Center 1001 E. Pennsylvania Ottumwa, Iowa	December 22, 2009 11 a.m. to 1 p.m.
	Kelinson Rm., Public Library Info Center 2950 Learning Campus Dr. Bettendorf, Iowa	December 22, 2009 11 a.m. to 1 p.m.
	First Floor, Hoover State Office Bldg. 1305 E. Walnut Des Moines, Iowa	December 22, 2009 11 a.m. to 1 p.m.
	Iowa Western Community College – 2 923 E. Washington Clarinda, Iowa	December 22, 2009 11 a.m. to 1 p.m.
	National Guard Armory 1160 19th St. SW Mason City, Iowa	December 22, 2009 11 a.m. to 1 p.m.
	Crestwood High School 1000 4th Ave. E. Cresco, Iowa	December 22, 2009 11 a.m. to 1 p.m.
	Archdiocesan Pastoral Center 1229 Mount Loretta Dubuque, Iowa	December 22, 2009 11 a.m. to 1 p.m.
	Spirit Lake High School 2701 Hill Ave. Spirit Lake, Iowa	December 22, 2009 11 a.m. to 1 p.m.
	Prairie Lakes AEA 1 Triton Circle, Library Bldg. Fort Dodge, Iowa	December 22, 2009 11 a.m. to 1 p.m.
	Kirkwood Community College Room 117 1816 Lower Muscatine Rd. Iowa City, Iowa	December 22, 2009 11 a.m. to 1 p.m.
	Burlington High School 421 Terrace Dr. Burlington, Iowa	December 22, 2009 11 a.m. to 1 p.m.
Plumbing and mechanical systems board—license fees, 28.1 IAB 12/2/09 ARC 8361B (ICN Network)	[See list of hearings in ARC 8360B above]	December 22, 2009 11 a.m. to 1 p.m.
Plumbing and mechanical systems board—application, licensure, and examination, amendments to ch 29 IAB 12/2/09 ARC 8362B (ICN Network)	[See list of hearings in ARC 8360B above]	December 22, 2009 11 a.m. to 1 p.m.
Plumbing and mechanical systems board—licensee discipline, adopt ch 32 IAB 12/2/09 ARC 8363B (ICN Network)	[See list of hearings in ARC 8360B above]	December 22, 2009 11 a.m. to 1 p.m.
Plumbing and mechanical systems board—complaints and investigations, adopt ch 34 IAB 12/2/09 ARC 8364B (ICN Network)	[See list of hearings in ARC 8360B above]	December 22, 2009 11 a.m. to 1 p.m.

PUBLIC HEALTH DEPARTMENT[641] (Cont'd)

Plumbing and mechanical systems board—licensure of nonresident applicant—reciprocity, adopt ch 35 IAB 12/2/09 ARC 8365B (ICN Network)	[See list of hearings in ARC 8360B above]	December 22, 2009 11 a.m. to 1 p.m.
Plumbing and mechanical systems board—petitions for rule making, adopt ch 36 IAB 12/2/09 ARC 8366B (ICN Network)	[See list of hearings in ARC 8360B above]	December 22, 2009 11 a.m. to 1 p.m.
Renovation, remodeling, and repainting—lead hazard notification process, amendments to ch 69 IAB 12/2/09 ARC 8355B (ICN Network)	Public Library 507 Poplar Atlantic, Iowa	December 22, 2009 10 a.m.
	Great Prairie AEA Regional Office 3601 West Ave. Burlington, Iowa	December 22, 2009 10 a.m.
	Room 144, DMACC – Carroll Campus 906 N. Grant Rd. Carroll, Iowa	December 22, 2009 10 a.m.
	Room 550, Fifth Floor, DHS 411 3rd St. SE Cedar Rapids, Iowa	December 22, 2009 10 a.m.
	National Guard Armory Dewey Rd., RR 1 Centerville, Iowa	December 22, 2009 10 a.m.
	Room 116, Chariton High School 501 N. Grand Chariton, Iowa	December 22, 2009 10 a.m.
	Room 105, Clinton Community College 1000 Lincoln Blvd. Clinton, Iowa	December 22, 2009 10 a.m.
	Colo-Nesco Senior High School 919 West St. Colo, Iowa	December 22, 2009 10 a.m.
	Loess Hills AEA 13 24997 Hwy. 92 Council Bluffs, Iowa	December 22, 2009 10 a.m.
	Turner Room, Green Valley AEA 14 1405 N. Lincoln Creston, Iowa	December 22, 2009 10 a.m.
	Room 119, Kimberly Center 1002 W. Kimberly Davenport, Iowa	December 22, 2009 10 a.m.
	Decorah High School 100 E. Claiborne Dr. Decorah, Iowa	December 22, 2009 10 a.m.
	Department of Public Health Sixth Floor, Lucas State Office Bldg. 321 E. 12th St. Des Moines, Iowa	December 22, 2009 10 a.m.

PUBLIC HEALTH DEPARTMENT[641] (Cont'd)**(ICN Network)**

Room 2, Keystone AEA 1 2310 Chaney Rd. Dubuque, Iowa	December 22, 2009 10 a.m.
Public Library 424 Central Ave. Fort Dodge, Iowa	December 22, 2009 10 a.m.
AEA 267 Regional Office 909 S. 12th St. Marshalltown, Iowa	December 22, 2009 10 a.m.
North Iowa Area Community College – 1 Room 106, Activity Center 500 College Dr. Mason City, Iowa	December 22, 2009 10 a.m.
Muscatine Community College Room 60, Larson Hall 152 Colorado St. Muscatine, Iowa	December 22, 2009 10 a.m.
Onawa-West Monona Jr.-Sr. High School 1314 15th St. Onawa, Iowa	December 22, 2009 10 a.m.
Rieckhoff Room, Public Library 112 Albany Ave. SE Orange City, Iowa	December 22, 2009 10 a.m.
Great Prairie AEA – 1 2814 N. Court St. Ottumwa, Iowa	December 22, 2009 10 a.m.
Southwestern Community College – 1 Room 116, Red Oak Center 2300 N. 4th St. Red Oak, Iowa	December 22, 2009 10 a.m.
Room 206, Northwest AEA 1520 Morningside Ave. Sioux City, Iowa	December 22, 2009 10 a.m.
Iowa Lakes Community College Fiber Optic Rm. 118, Attendance Center 1900 N. Grand Ave. Spencer, Iowa	December 22, 2009 10 a.m.
Hawkeye Community College – 1 Room 110, Tama Hall 1501 E. Orange Rd. Waterloo, Iowa	December 22, 2009 10 a.m.
Lead-based paint activities, amendments to ch 70 IAB 12/2/09 ARC 8357B (ICN Network)	[See list of hearings in ARC 8355B above] December 22, 2009 10 a.m.

TRANSPORTATION DEPARTMENT[761]

REAL ID driver's licenses and
nonoperator's identification
cards, 601.7, 630.2(7)
IAB 12/2/09 **ARC 8342B**
(See also **ARC 8339B**)

Motor Vehicle Division Offices
6310 SE Convenience Blvd.
Ankeny, Iowa

December 29, 2009
1 p.m.
(If requested)

UTILITIES DIVISION[199]

Small wind innovation zones,
15.19, 15.20
IAB 12/2/09 **ARC 8335B**

Board Hearing Room
350 Maple St.
Des Moines, Iowa

January 11, 2010
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:

ADMINISTRATIVE SERVICES DEPARTMENT[11]
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 Agricultural Development Authority[25]
 Soil Conservation Division[27]
ATTORNEY GENERAL[61]
AUDITOR OF STATE[81]
BEEF INDUSTRY COUNCIL, IOWA[101]
BLIND, DEPARTMENT FOR THE[111]
CAPITAL INVESTMENT BOARD, IOWA[123]
CITIZENS’ AIDE[141]
CIVIL RIGHTS COMMISSION[161]
COMMERCE DEPARTMENT[181]
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 Accountancy Examining Board[193A]
 Architectural Examining Board[193B]
 Engineering and Land Surveying Examining Board[193C]
 Landscape Architectural Examining Board[193D]
 Real Estate Commission[193E]
 Real Estate Appraiser Examining Board[193F]
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ARC 8375B**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 175A.3(1)“d,” the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to rescind Chapter 52, “Grape and Wine Development Funding Program,” Iowa Administrative Code.

The proposed amendment eliminates the program because the funding has been transferred to Iowa State University.

Any interested persons may make written comments or suggestions on the proposed amendment on or before 4:30 p.m. on January 6, 2010. Written comments should be sent to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319; or faxed to (515)281-6236. E-mail comments may be sent to Margaret.Thomson@IowaAgriculture.gov.

No waiver provision is included in the proposed amendment.

This amendment is intended to implement Iowa Code section 175A.3(2).

The following amendment is proposed.

Rescind and reserve **21—Chapter 52**.

ARC 8392B**ARCHITECTURAL EXAMINING BOARD[193B]****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 544A.29, the Architectural Examining Board hereby gives Notice of Intended Action to amend Chapter 2, “Registration,” Iowa Administrative Code.

The amendment to Chapter 2 reflects a change that resulted from a resolution adopted by the National Council of Architecture Registration Boards (NCARB) at the annual meeting in June 2009. NCARB writes and administers the national Architect Registration Examination and is adopting a five-year rolling clock. The practice of architecture continues to evolve. As a result, NCARB has determined that any examinations taken longer than five years ago no longer reflect current architecture practice. This amendment, with an effective date of January 2011, makes any examination scores older than five years invalid. Further, it purges old examination scores from an applicant’s record for any examination passed prior to January 1, 2006, if the applicant does not pass all remaining divisions of the examination by July 1, 2014. Under prior rule, an applicant received credit permanently for an examination passed prior to January 1, 2006.

The amendment is subject to waiver or variance pursuant to 193—Chapter 5.

Consideration will be given to all written suggestions or comments on the proposed amendment received on or before January 5, 2010. Comments should be addressed to Glenda Loving, Architectural

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

Examining Board, 1920 S.E. Hulsizer Road, Ankeny, Iowa 50021; or faxed to (515)281-7411. E-mail may be sent to glenda.loving@iowa.gov.

This amendment is intended to implement Iowa Code chapter 544A.

The following amendment is proposed.

Amend subrule 2.3(4) as follows:

~~2.3(4) Applicants who have previously passed any portion of formerly required NCARB examinations will be granted credit for those portions passed in accordance with procedures established by NCARB.~~ Applicants who have passed one or more but not all divisions of the ARE by January 1, 2006, shall have a rolling five years-year period to pass all each of the remaining divisions. A passing grade for any remaining division shall be valid for five years, after which time the division must be retaken if all remaining divisions have not been passed. The rolling five-year period shall commence after January 1, 2006, on the date when the first division that has been passed is administered. Applicants who have passed no divisions of the ARE by January 1, 2006, shall be governed by the above rolling five-year requirement. The rolling five-year period shall commence on the date when the first division that has been passed is administered. Any division passed prior to January 1, 2006, shall no longer remain valid if all remaining divisions have not been passed by July 1, 2014.

Effective January 1, 2011, and thereafter, the Authorization to Test of any applicant shall terminate unless the applicant has passed or failed a division of the ARE within a period of five years, which includes the five-year period prior to January 1, 2011. Any applicant whose authorization is so terminated must establish a new eligibility under the then-current procedures of the board.

ARC 8370B**DENTAL BOARD[650]****Notice of Intended Action**

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

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

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

The amendments make various changes to the rules on the use of sedation and antianxiety premedication. The intent of these changes is to clarify the different levels of sedation and to clarify when a dentist must hold a sedation permit. Last year, the American Dental Association (ADA) revised its guidelines for the use of sedation and adopted new definitions concerning sedation. The ADA adopted new definitions for “minimal sedation” and “moderate sedation,” which was previously referred to as “conscious sedation.” The Board is proposing to adopt these new definitions, along with additional guidance for dentists on what constitutes minimal sedation or antianxiety premedication.

The training requirements for obtaining a moderate sedation or deep sedation permit in Iowa have not changed; however, the Board is incorporating the specific requirements in its rules. To qualify for a moderate sedation permit, a dentist must complete a Board-approved course in moderate (conscious) sedation that consists of a minimum of 60 hours of instruction and management of at least 20 patients. The Board does not differentiate between an enteral sedation permit or a parenteral sedation permit. All dentists who administer moderate sedation, regardless of the route of administration, must meet the same training requirements.

The proposed amendments also require that a dentist utilizing moderate sedation on pediatric (patients aged 12 and under) or American Society of Anesthesiologists (ASA) category 3 or 4 patients must have completed additional postgraduate training approved by the Board. This requirement is consistent with

DENTAL BOARD[650](cont'd)

the ADA guidelines that require dentists to have completed additional training in pediatric and medically compromised patients in order to provide sedation to these patients.

These amendments are subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7.

Any interested person may make written comments or suggestions on the proposed amendments on or before January 5, 2010. Such written comments should be directed to Jennifer Hart, Executive Officer, Iowa Dental Board, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687. E-mail may be sent to Jennifer.Hart@iowa.gov.

Also, there will be a public hearing on January 5, 2010, beginning at 10 a.m. in the Board Conference Room, 400 SW 8th Street, Suite D, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any person who plans to attend the public hearing and who may have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

These amendments were approved at the October 27, 2009, regular meeting of the Iowa Dental Board. These amendments are intended to implement Iowa Code sections 153.33 and 153.34.

The following amendments are proposed.

ITEM 1. Amend **650—Chapter 29**, title, as follows:

~~DEEP SEDATION/GENERAL ANESTHESIA, CONSCIOUS SEDATION
AND NITROUS OXIDE INHALATION ANALGESIA~~

ITEM 2. Amend rule 650—29.1(153), introductory paragraph, as follows:

650—29.1(153) Definitions. For the purpose of these rules relative to the administration of deep sedation/general anesthesia, ~~conscious moderate~~ minimal sedation, and nitrous oxide inhalation analgesia by licensed dentists the following definitions shall apply:

ITEM 3. Amend rule **650—29.1(153)**, definitions of “Antianxiety premedication” and “Conscious sedation,” as follows:

~~“Antianxiety premedication” is the prescription/administration of pharmacologic substances for the relief of anxiety and apprehension which does not result in a depressed level of consciousness means minimal sedation. A dentist providing minimal sedation must meet the requirements of rule 650—29.7(153).~~

~~“Conscious sedation” is a depressed level of consciousness produced by the administration of pharmacologic substances, that retains the patient’s ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command means moderate sedation.~~

ITEM 4. Adopt the following **new** definitions of “ASA,” “Minimal sedation,” “Moderate sedation” and “Pediatric” in rule **650—29.1(153)**:

“ASA” refers to the American Society of Anesthesiologists Patient Physical Status Classification System. Category 1 means normal healthy patients, and category 2 means patients with mild systemic disease with no functional limitations. Category 3 means patients with moderate systemic disease with functional limitations, and category 4 means patients with severe systemic disease that is a constant threat to life.

“Minimal sedation” means a minimally depressed level of consciousness, produced by a pharmacological method, that retains the patient’s ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected. The term “minimal sedation” also means “antianxiety premedication” or “anxiolysis.” A dentist providing minimal sedation shall meet the requirements of rule 650—29.7(153).

“Moderate sedation” means a drug-induced depression of consciousness, either by enteral or parenteral means, during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway and

DENTAL BOARD[650](cont'd)

spontaneous ventilation is adequate. Cardiovascular function is usually maintained. Prior to January 1, 2010, moderate sedation was referred to as conscious sedation.

“*Pediatric*” means patients aged 12 or under.

ITEM 5. Strike “conscious” wherever it appears in rules ~~650—29.2(153)~~ to ~~650—29.7(153)~~, ~~650—29.11(153)~~ and ~~650—29.12(153)~~ and insert “moderate” in lieu thereof.

ITEM 6. Amend paragraph **29.3(1)“a”** as follows:

a. Has successfully completed ~~Part II of the American Dental Association Council on Dental Education Guidelines~~ an advanced education program accredited by the Commission on Dental Accreditation that provides training in deep sedation and general anesthesia; and

ITEM 7. Amend subrule 29.4(1) as follows:

29.4(1) A permit may be issued to a licensed dentist to use ~~conscious moderate sedation on an outpatient basis~~ for dental patients provided the dentist meets the following requirements:

a. Has successfully completed a training program approved by the board that meets ~~Parts I and III of the American Dental Association Council on Dental Education Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students~~ and that consists of a minimum of 60 hours of instruction and management of at least 20 patients; and

b. and c. No change.

ITEM 8. Adopt the following **new** subrule 29.4(9):

29.4(9) A dentist utilizing moderate sedation on pediatric or ASA category 3 or 4 patients must have completed an accredited residency program that includes formal training in anesthesia and clinical experience in managing pediatric or ASA category 3 or 4 patients. A dentist who does not meet the requirements of this subrule is prohibited from utilizing moderate sedation on pediatric or ASA category 3 or 4 patients.

ITEM 9. Amend subrule 29.5(8) as follows:

29.5(8) Permit holders shall follow the American Dental Association’s guidelines for the use of ~~conscious sedation, deep sedation and general anesthesia for dentists, except as otherwise specified in these rules.~~

ITEM 10. Adopt the following **new** subrule 29.5(9):

29.5(9) A dentist utilizing moderate sedation on pediatric or ASA category 3 or 4 patients must have completed an accredited residency program that includes formal training in anesthesia and clinical experience in managing pediatric or ASA category 3 or 4 patients. A dentist who does not meet the requirements of this subrule is prohibited from utilizing moderate sedation on pediatric or ASA category 3 or 4 patients.

ITEM 11. Amend rule 650—29.7(153) as follows:

650—29.7(153) Antianxiety premedication Minimal sedation.

29.7(1) ~~Antianxiety premedication is the prescription or administration of pharmacologic substances for the relief of anxiety and apprehension. The term “minimal sedation” also means “antianxiety premedication” or “anxiolysis.”~~

29.7(2) ~~The regulation and monitoring of this modality of treatment are the responsibility of the ordering dentist.~~

29.7(3) ~~29.7(2)~~ If a dentist intends to achieve a state of ~~conscious moderate sedation~~ from the administration of ~~an antianxiety premedication minimal sedation~~, the rules for ~~conscious moderate sedation~~ shall apply.

29.7(4) ~~29.7(3)~~ A dentist utilizing ~~antianxiety premedication minimal sedation~~ and the dentist’s auxiliary personnel shall be trained in and capable of administering basic life support.

29.7(4) Minimal sedation for adults.

a. Minimal sedation for adults is limited to a dentist’s prescribing or administering a single enteral drug that is no more than 1.0 times the maximum recommended dose (MRD) of a drug that can be prescribed for unmonitored home use. A single supplemental dose of the same drug may be administered,

DENTAL BOARD[650](cont'd)

provided the supplemental dose is no more than one-half of the initial dose and the dentist does not administer the supplemental dose until the dentist has determined the clinical half-life of the initial dose has passed.

b. The total aggregate dose shall not exceed 1.5 times the MRD on the day of treatment.

c. For adult patients, a dentist may also utilize nitrous oxide inhalation analgesia in combination with a single enteral drug.

d. Combining two or more enteral drugs, excluding nitrous oxide, prescribing or administering drugs that are not recommended for unmonitored home use, or administering any intravenous drug constitutes moderate sedation and the dentist must hold a moderate sedation permit.

29.7(5) Minimal sedation for ASA category 3 or 4 patients or pediatric patients.

a. Minimal sedation for ASA category 3 or 4 patients or pediatric patients is limited to a dentist's prescribing or administering a single dose of a single enteral drug that can be prescribed for unmonitored home use and that is no more than 1.0 times the maximum recommended dose.

b. A dentist may administer nitrous oxide inhalation analgesia for minimal sedation of ASA category 3 or 4 patients or pediatric patients provided the concentration does not exceed 50 percent and is not used in combination with any other drug.

c. The use of one or more enteral drugs in combination with nitrous oxide, the use of more than a single enteral drug, or the administration of any intravenous drug in ASA category 3 or 4 patients or pediatric patients constitutes moderate sedation and the dentist must hold a moderate sedation permit.

29.7(6) A dentist providing minimal sedation shall not bill for non-IV conscious or moderate sedation.

29.7(7) A dentist shall ensure that any advertisements related to the availability of antianxiety premedication, anxiolysis, or minimal sedation clearly reflect the level of sedation provided and are not misleading.

ITEM 12. Amend rule 650—29.9(153), catchwords, as follows:

650—29.9(153) Reporting of adverse occurrences related to ~~deep sedation/general anesthesia, conscious sedation, nitrous oxide inhalation analgesia, and antianxiety premedication.~~

ITEM 13. Amend subrules 29.9(1) and 29.9(2) as follows:

29.9(1) Reporting. All licensed dentists in the practice of dentistry in this state must submit a report within a period of 30 days to the board of any mortality or other incident which results in temporary or permanent physical or mental injury requiring hospitalization of the patient during, or as a result of, antianxiety premedication, nitrous oxide inhalation analgesia, ~~conscious sedation or deep sedation/general anesthesia related thereto~~ sedation. The report shall include responses to at least the following:

a. to f. No change.

29.9(2) Failure to report. Failure to comply with subrule 29.9(1), when the occurrence is related to the use of ~~deep sedation/general anesthesia, conscious sedation, nitrous oxide inhalation analgesia, or antianxiety premedication,~~ may result in the dentist's loss of authorization to administer ~~deep sedation/general anesthesia, conscious sedation, nitrous oxide inhalation analgesia, or antianxiety premedication~~ or in ~~other sanctions~~ any other sanction provided by law.

ARC 8408B**EDUCATIONAL EXAMINERS BOARD[282]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 13, “Issuance of Teacher Licenses and Endorsements,” Iowa Administrative Code.

The following amendment adds greater clarity to each core content area to better communicate what elementary teachers must know in order to better serve students. The new subrule places greater emphasis on content and on meeting the needs of a wide range of learners in today’s changing population. The new requirements will be effective for teachers beginning September 1, 2015.

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

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, January 6, 2010, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

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

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, January 8, 2010. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to kim.cunningham@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Adopt the following **new** subrule 13.26(5):

13.26(5) Teacher—elementary classroom. Effective September 1, 2015, the following requirements apply to persons who wish to teach in the elementary classroom:

a. Authorization. The holder of this endorsement is authorized to teach in kindergarten and grades one through six.

b. Program requirements.

- (1) Degree—baccalaureate, and
- (2) Completion of an approved human relations component, and
- (3) Completion of the professional education core. See subrules 13.18(3) and 13.18(4).

c. Content.

(1) Child growth and development with emphasis on the emotional, physical and mental characteristics of elementary age children, unless completed as part of the professional education core. See subrule 13.18(4).

(2) At least 9 semester hours in literacy which must include:

1. Content:
 - Children’s literature;

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

- Oral and written communication skills for the twenty-first century.
2. Methods:
 - Assessment, diagnosis and evaluation of student learning in literacy;
 - Integration of the language arts (to include reading, writing, speaking, viewing, and listening);
 - Integration of technology in teaching and student learning in literacy;
 - Current best-practice, research-based approaches of literacy instruction;
 - Classroom management as it applies to literacy methods;
 - Pre-student teaching clinical experience in teaching literacy.
- (3) At least 9 semester hours in mathematics which must include:
 1. Content:
 - Numbers and operations;
 - Algebra/number patterns;
 - Geometry;
 - Measurement;
 - Data analysis/probability.
 2. Methods:
 - Assessment, diagnosis and evaluation of student learning in mathematics;
 - Current best-practice, research-based instructional methods in mathematical processes (to include problem solving; reasoning; communication; the ability to recognize, make and apply connections; integration of manipulatives; the ability to construct and to apply multiple connected representations; and the application of content to real world experiences);
 - Integration of technology in teaching and student learning in mathematics;
 - Classroom management as it applies to mathematics methods;
 - Pre-student teaching clinical experience in teaching mathematics.
 - (4) At least 9 semester hours in social sciences which must include:
 1. Content:
 - History;
 - Geography;
 - Political science/civic literacy;
 - Economics;
 - Behavioral sciences.
 2. Methods:
 - Current best-practice, research-based approaches to the teaching and learning of social sciences;
 - Integration of technology in teaching and student learning in social sciences;
 - Classroom management as it applies to social science methods.
 - (5) At least 9 semester hours in science which must include:
 1. Content:
 - Physical science;
 - Earth/space science;
 - Life science.
 2. Methods:
 - Current best-practice, research-based methods of inquiry-based teaching and learning of science;
 - Integration of technology in teaching and student learning in science;
 - Classroom management as it applies to science methods.
 - (6) At least 3 semester hours to include all of the following:
 1. Methods of teaching elementary physical education, health, and wellness;
 2. Methods of teaching visual arts for the elementary classroom;
 3. Methods of teaching performance arts for the elementary classroom.
 - (7) Pre-student teaching field experience in at least two different grade levels to include one primary and one intermediate placement.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

(8) A field of specialization in a single discipline or a formal interdisciplinary program of at least 12 semester hours.

ARC 8409B**EDUCATIONAL EXAMINERS BOARD[282]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 23, “Behind-the-Wheel Driving Instructor Authorization,” Iowa Administrative Code.

The following amendment removes the requirement that the holder of a behind-the-wheel driving instructor authorization hold a driver’s license specifically from Iowa. The rationale for this decision is that driving instructors in bordering states are occasionally hired to teach in driver education programs in Iowa, and requiring the applicants to get Iowa driver’s licenses creates a barrier to their being able to work in driver education programs in Iowa.

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

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, January 6, 2010, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

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

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, January 8, 2010. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to kim.cunningham@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Amend subrule 23.1(1) as follows:

23.1(1) Qualifications. To qualify for the behind-the-wheel driving instructor authorization, the applicant must:

- a. Be at least 25 years of age.
- b. Hold a valid Iowa driver’s license that permits unaccompanied driving, other than a motorized bicycle license or a temporary restricted license.
- c. No change.

ARC 8390B**EDUCATION DEPARTMENT[281]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby proposes to amend Chapter 21, “Community Colleges,” Iowa Administrative Code.

Following the removal in 2006 of the accreditation rules from this chapter into then-new 281—Chapter 24, this chapter of rules has undergone a general comprehensive review involving the following stakeholder groups: Iowa Association of Community College Presidents (IACCP), Iowa Association of Community College Trustees (IACCT), Community College Chief Academic Officers, Iowa Arts and Sciences Administrators (IASA), Community College Career and Technical Deans/Directors, Iowa State Education Association (ISEA), Community College Continuing Education Deans/Directors, Community College Business Officers, Community College Human Resource Directors, Community College Student Services Administrators (ICSSA), Community College Faculty Advisory Committee, Community College Accreditation Advisory Committee, and Community College Professional Development Advisory Committee.

The proposed amendments update language, provide greater clarity, and align the chapter with statutory changes made to licensure of community college staff and the new Senior Year Plus Program legislation in Iowa Code chapter 261E. The rules in Division VII (rules 281—21.57(260C) to 281—21.63(260C)) and Division VIII (rules 281—21.64(260C) to 281—21.71(260C)) are stricken because of statutory repeals. There are no substantive amendments proposed in this Notice of Intended Action.

An agencywide waiver provision is provided in 281—Chapter 4.

Interested individuals may make written comments on the proposed amendments on or before January 12, 2010, at 4:30 p.m. Comments on the proposed amendments should be directed to Colleen Hunt, Bureau Chief, Bureau of Community College Services, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-0319; E-mail colleen.hunt@iowa.gov; or fax (515)281-6544.

A public hearing will be held on January 12, 2010, from 1 to 2 p.m. in the State Board Room, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact and advise the Department of Education of their specific needs by calling (515)281-3125.

These amendments are intended to implement Iowa Code chapter 260C.

The following amendments are proposed.

ITEM 1. Adopt the following **new** rule 281—21.1(260C):

281—21.1(260C) Definitions. For purposes of this chapter, the indicated terms are defined as follows:

“*Department*” means the Iowa department of education.

“*Director*” means the director of the department.

ITEM 2. Amend rule 281—21.2(260C) as follows:

281—21.2(260C) Administration.

21.2(1) No change.

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21.2(2) *Administrative staff.* A community college shall develop an administrative staff appropriate to the size and the purpose of the institution and one which permits the institution to function effectively and efficiently. This administrative staff shall provide effective leadership for the major divisions of the institution including administrative services, adult and continuing education, career and technical education, college parallel education, and student services.

21.2(3) No change.

21.2(4) *Certification.* All administrative staff except for the superintendent shall hold certificates as required to authorize service in their respective areas of responsibility.

21.2(5) **21.2(4)** *Financial records and reports.* The community college shall maintain accurate financial records and make reports in the form and pursuant to the timeline prescribed by the state department of education and other state agencies.

21.2(6) **21.2(5)** *Enrollment.* A community college shall meet minimum enrollment requirements if it offers instruction as authorized in Iowa Code chapter 260C, and if, to the satisfaction of the state board of education, it is able to provide classes of reasonable economic size as needed by students, meets the needs of the students, and shows by its past and present enrollment and placement record that it meets individual and employment needs.

21.2(7) **21.2(6)** *Catalog.* The catalog shall be the official publication of the ~~area school~~ community college. It shall include accurate information on institutional policies, admissions requirements, procedures and fees, refund policies, residency requirements, program enrollment and degree requirements, due process procedures, affirmative action, and other information as recommended by the state department of education. Students' rights and responsibilities may be included in the catalog or in a separate document.

21.2(8) **21.2(7)** *Admission and program/course enrollment requirements.* The community college shall maintain an open-door admission policy for students of postsecondary age. This admission policy shall recognize that students should demonstrate a reasonable prospect for success in the program in which they are admitted. Applicants who cannot demonstrate a reasonable prospect for success in the program for which they apply should be assisted to enroll in courses where deficiencies may be remediated or into programs appropriate to the individual's preparation and objectives. The community college may set reasonable requirements for student enrollment in specified programs and courses. Admissions and program enrollment requirements established by each community college shall be published in the community college catalog.

a. Postsecondary age students. ~~The community college shall maintain an open-door admission policy for students of postsecondary age. This admission policy shall recognize that students should demonstrate a reasonable prospect for success in the program in which admitted. Applicants who cannot demonstrate a reasonable prospect for success in the program for which they apply should be assisted to enroll in courses where deficiencies may be remedied or into other programs appropriate to the individual's preparation and objectives.~~

b. High school age students. ~~High school age students who can be better served by community college programs may be authorized to undertake such work with the cooperative approval of the community college administration and the administration of the local school district.~~

21.2(9) **21.2(8)** *School Academic year.* ~~The length of the school academic year of the community college shall provide for the effective use of the physical plant and include a minimum of 48 weeks of operation. The school year may consist of: two semester, terms and one summer term, three trimester terms, or four quarter terms and shall be a period of time beginning with the first day of the fall term and continuing through the day preceding the start of the next fall term as indicated in the official college calendar. A community college may use any one or more of the three school years identified above or may offer instruction in units of length (i.e., days and weeks) keyed to consistent with the identified scope and depth of the instructional content.~~

21.2(10) **21.2(9)** *Graduation Award requirements.* The director shall approve all new credit certificate, diploma, and degree award programs in accordance with Iowa Code section 260C.14. Graduation Awards from a community college shall be certified by the issuance of appropriate recognition, pursuant to award approval requirement guidelines issued by the department, indicating

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the type of program the student has completed. The minimum number and maximum number of credit hours required for each award type contained within this subrule may be waived pursuant to paragraph 21.2(13)“i.”

a. Associate in arts or an associate in science. The degree issued to a person who has satisfied curricular requirements that consist of content equivalent to a two-year college parallel curriculum shall certify that its recipient is either an associate in arts or an associate in science.

b. Associate in applied arts or an associate in applied science. The degree issued to a person having satisfied curricular requirements and demonstrated competence for employment in the occupational field for which the program was designed shall certify that its recipient is either an associate in applied arts or an associate in applied science. Typically, these degrees apply to occupations requiring significant amounts of applied scientific and mathematical knowledge or occupations in which the individual will work in direct support of a professional.

c. Associate in general studies. The degree issued to a person who has satisfied the curricular requirements of a two-year program other than set forth in subrule 21.2(10) shall certify that its recipient is an associate in general studies.

d. Diploma. The recognition granted to a person who has been graduated from a curriculum other than set forth in 21.2(10) but of not less than 12 weeks in length shall be a diploma.

e. Certificate. A certificate of completion may be issued to certify that a student has satisfactorily completed a course of instruction other than the above.

a. Associate of arts (AA). The degree is awarded upon completion of a college parallel (transfer) course of study that provides a strong general education component to satisfy the lower division general education liberal arts and sciences requirements for a baccalaureate degree. An associate of arts degree shall consist of a minimum of 60 semester (90 quarter) credit hours and a maximum of 64 semester (96 quarter) credit hours.

b. Associate of science (AS). The degree is awarded upon completion of a course of study that requires a strong background in mathematics or science. The degree is intended to prepare students to transfer and initiate upper-division work in baccalaureate programs or prepare them for employment. An associate of science degree may also be awarded upon completion of a state-approved associate of science-career option (AS-CO) program of study that includes core technical coursework needed to complete a concentration in a specific field of study. The AS-CO program shall prepare students for entry-level careers and to complete requirements for transfer to a baccalaureate degree. An associate of science degree awarded upon completion of an arts and sciences course of study shall consist of a minimum of 60 semester (90 quarter) credit hours and a maximum of 64 semester (96 quarter) credit hours. An associate of science degree awarded upon completion of an AS-CO course of study shall consist of a minimum of 60 semester (90 quarter) credit hours and a maximum number of credit hours stated in program guidelines issued by the department. An associate of science degree awarded upon completion of an AS-CO course of study shall not consist of more than 70 semester (117 quarter) credit hours without an approved waiver pursuant to paragraph 21.2(13)“i.”

c. Associate of general studies (AGS). The degree is awarded upon completion of a course of study that is primarily designed for the acquisition of a broad educational background rather than the pursuit of a specific college major or professional/technical program. It is intended as a flexible course of study and may include specific curriculum in lower division transfer, occupational education, or professional-technical education. An associate of general studies degree shall consist of a minimum of 60 semester (90 quarter) credit hours and a maximum of 64 semester (96 quarter) credit hours.

d. Associate of applied science (AAS). The degree is awarded upon completion of a state-approved program of study that is intended to prepare students for entry-level career and technical occupations. An associate of applied science degree shall consist of a minimum of 60 semester (90 quarter) credit hours and a maximum of 86 semester (129 quarter) credit hours. The general education component of the associate of applied science degree program shall constitute a minimum of 12 semester (18 quarter) credit hours of general education and shall include at least one course from each of the following areas: communications, social science or humanities, and mathematics or science. The technical specialty

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component of the associate of applied science degree shall constitute a minimum of 50 percent of the course credits.

e. Associate of applied arts (AAA). The degree is awarded upon completion of a state-approved program of study that is primarily intended for career training in providing students with professional skills for employment in a specific field of work such as arts, humanities, or graphic design. An associate of applied arts degree shall consist of a minimum of 60 semester (90 quarter) credit hours and a maximum of 86 semester (129 quarter) credit hours. The general education component of the associate of applied arts degree program shall constitute a minimum of 12 semester (18 quarter) credit hours of general education and shall include at least one course from each of the following: communications, social science or humanities, and mathematics or science. The technical specialty component of the associate of applied arts degree shall constitute a minimum of 50 percent of the course credits.

f. Diploma. The diploma is awarded upon completion of a state-approved program of study that is a coherent sequence of courses consisting of a minimum of 15 semester (22.5 quarter) credit hours and a maximum of 48 semester (72 quarter) credit hours including at least 3 semester (4.5 quarter) credit hours of general education. The general education component shall be from any of the following areas: communications, social science or humanities, and mathematics or science. A diploma may be a component of and apply toward subsequent completion of an associate of applied science or associate of applied arts degree.

g. Certificate. The certificate is awarded upon completion of a state-approved program of study that is designed for entry-level employment and shall consist of a maximum of 48 semester (72 quarter) credit hours. A certificate may be a component of and apply toward subsequent completion of a diploma or associate of applied science or associate of applied arts degree and may be developed in rapid response to the needs of business and industry. A certificate may consist of only career and technical courses and no general education course requirements.

~~21.2(11)~~ **21.2(10)** *Academic records.* The community college shall maintain in perpetuity for each student the complete academic record including every course attempted and grade received. An official transcript must be created at the time of course enrollment. The credit hour(s) and grade must be recorded on the student's official transcripts upon completion of a community college course. These records should shall be kept in fire-resistant disaster-resistant storage, unless other equivalent safeguards are used, such as maintaining a duplicate file files (microfilm electronic or otherwise) in a separate building facilities. The method of storage shall be consistent with current technology to ensure the ability to retrieve records. The community college shall implement a security plan that ensures the confidentiality of student records.

~~21.2(12)~~ **21.2(11)** *Resident policy.* There shall be adopted for all community colleges a uniform policy for the determination of permanent residence for tuition purposes.

~~21.2(13)~~ **21.2(12)** *Credit hour# hours.* Credit hours shall be determined in-line consistent with the following procedures.

a. No change.

b. ~~Instruction~~ Conventional instruction is subdivided into four instructional methods as herein defined.

(1) to (3) No change.

(4) Work experience — work employment-related experience planned and coordinated by an institutional representative and the employer, with control and supervision of the student on the job being the responsibility of the employer.

e. ~~Structured culminating activity(ies) for each course offering is above and beyond the minimal instructional requirements. Appropriate activities for structured culminating activity(ies) include but are not limited to:~~

~~(1) Written final examinations.~~

~~(2) Oral final examinations.~~

~~(3) Skill performance evaluations.~~

~~(4) Other structured activities deemed supplementary to the instructional process.~~

~~*d. c.*~~ No registration or orientation hours may be included when determining credit hours.

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~~e. d.~~ Institutions shall take into account the soundness of the learning environment being created by the scheduling sequence and length of classroom, laboratory, clinical, and work experience sessions. However, the final decision on these matters is left to the institutional administration so long as minimal standards are met.

~~f.~~ A fractional unit of credit may be awarded in a manner consistent with the specific minimal credit course requirements.

~~g. e.~~ Only minutes for students officially registered for courses or programs, including audit registration, may be included when determining credit hours.

~~h. f.~~ Credit hours shall be identified for self-paced courses or programs in accordance with the credit hours that would have been assigned if the program had been taught by conventional methods. Each community college must establish a policy that defines its methods of equating alternative instruction to credit hours and the process for evaluating the effectiveness of the alternative instruction to meet or exceed the expected student outcomes as if the course were taught utilizing conventional methods in paragraph 21.2(12) "b." Colleges will be held accountable for evaluating and maintaining high-quality programs, and their evaluations may be subject to department review. Students shall be expected to meet all approved course requirements and shall be expected to demonstrate the acquisition of knowledge and competencies/outcomes at the same level as those obtained in traditional classroom settings, in the time frames set by the institution. Alternative courses or programs of study must be approved by the college's review processes including faculty review and input. Courses shall be listed in the college catalog. Instructional formats for which alternative methods of determining credit hours are applicable include the following:

(1) Accelerated courses (study, programs). Courses or programs of study that allow students to complete courses or programs at a faster pace than if offered by conventional methods. Courses and programs shall be tailored to involve more student participation and self-directed study. Instructors may teach in traditional classroom settings or by alternative methods specified in this subrule.

(2) Distance education. Courses or programs of study taught over the Internet, Iowa Communications Network (ICN), or other electronic means that allow students to receive instruction in the classroom or other sites, over personal computers, television, or other electronic means. Courses may or may not be interactive with direct communication between the teacher and students. Credit hours shall be awarded in accordance with the credit hours that would have been assigned if the course or program were taught by conventional methods.

1. Correspondence courses. Courses offered outside the classroom setting in which the instruction is delivered indirectly to the student. Instruction is provided through another medium, such as written material, computer, television, or electronic means. Course materials are sent to a student who follows a detailed syllabus to complete assignments. Students correspond with and transmit assignments to the instructor by telephone, computer, mail, or electronic means. A third party may administer tests.

2. Television courses. Courses or programs delivered primarily via broadcast television such as Iowa Public Television, digital video disc, or other media allowing students to receive instruction in a classroom or equipped remote location.

3. Video conference courses. Courses or programs delivered via a closed synchronous audio-video conferencing system such as the Iowa Communications Network or similar system which allows students to receive instruction in a classroom or any equipped remote location via an audio-video feed to a television, computer, or other electronic device.

4. Internet courses. Courses or programs delivered via the Internet. Courses may be taken using computers in a classroom setting or using personal computers or other electronic devices from the student's home or other location using an online content management system or mixed-media methods. Students may be linked at times directly with the instructor or with other students electronically. Interaction may be direct (synchronous) or indirect (asynchronous) allowing students to participate during their own time frames.

5. In-class hybrid courses. Courses or programs that combine traditional classroom and computer-based instruction. In-class sessions are offered with online instructional activities to promote independent learning and reduce seat-time.

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(3) Self-paced instruction. Courses or programs that permit a student to enter at variable times or progress at the student's own rate of speed. Start and end dates may or may not correspond to the official college calendar. Contact or credit hours for self-paced programs or courses shall be computed by assigning to each registration the total number of credit or contact hours the student would have received if the student enrolled in a conventional program or course with stipulated beginning and ending dates.

(4) Arranged study. Instruction offered to students at times other than stated or scheduled class times to accommodate specific scheduling or program needs of students. Credit hours shall be awarded in accordance with the credit hours that would have been assigned if the course or program were taught by conventional methods.

(5) Multiformat nontraditional instruction. Instruction utilizing a variety of nontraditional methods that may incorporate self-paced learning, text, video, computer instructional delivery, accelerated training, independent study, Internet delivery, or other methods that do not follow standard classroom work guidelines. Credit hours shall be awarded in accordance with the credit hours that would have been assigned if the course or program were taught by conventional methods.

i. g. Individualized learning experiences for which an equivalent course is not offered shall have the program length computed from records of attendance using such procedures as a time clock or sign-in records. Individualized learning experiences means independent study courses in which an equivalent course is not offered by the college or listed in the college catalog. Independent study permits in-depth or focused learning on special topics of particular interest to the student.

h. Each course must have a minimum length of one credit hour. A fractional unit of credit may be awarded provided the course exceeds the minimum length of one credit hour.

i. Each credit hour shall consist of a minimum number of contact hours as defined in paragraphs 21.2(12) "h" to "m." One contact hour equals 50 minutes.

j. Classroom work.

(1) The minimal ~~requirements~~ requirement for one semester hour of credit shall be 800 minutes (16 contact hours) of scheduled instruction ~~plus (when applicable) a scheduled culminating activity.~~

(2) The minimal ~~requirements~~ requirement for one quarter hour of credit shall be 533 minutes (10.7 contact hours) of scheduled instruction ~~plus (when applicable) a scheduled culminating activity.~~

k. Laboratory work.

(1) The minimal requirement for one semester hour of credit shall be 1,600 minutes (32 contact hours) of scheduled laboratory work ~~plus (when applicable) a scheduled culminating activity.~~

(2) The minimal requirement for one quarter hour of credit shall be 1,066 minutes (21.3 contact hours) of scheduled laboratory work ~~plus (when applicable) a scheduled culminating activity.~~

l. Clinical practice.

(1) The minimal ~~requirements~~ requirement for one semester hour of credit shall be 2,400 minutes (48 contact hours) of scheduled clinical practice ~~plus (when applicable) a scheduled culminating activity.~~

(2) The minimal requirement for one quarter hour of credit shall be 1,599 minutes (32 contact hours) of scheduled clinical practice ~~plus (when applicable) a scheduled culminating activity.~~

m. Work experience.

(1) The minimal requirement for one semester hour of credit shall be 3,200 minutes (64 contact hours) of scheduled work experience ~~plus (when applicable) a scheduled culminating activity.~~

(2) The minimal requirement for one quarter hour of credit shall be 2,132 minutes (42.6 contact hours) of scheduled work experience ~~plus (when applicable) a scheduled culminating activity.~~

~~This rule will be effective in the fall term of 1987-1988 school year.~~

21.2(13) Career and technical program length.

a. Program length for the associate of applied science (AAS) degree in career and technical education and for the associate of applied arts (AAA) degree shall consist of an academic program not to exceed two academic years. All required course offerings are to be available within two academic years. All required offerings in AAS and AAA degree programs shall not exceed a maximum of 86 semester (129 quarter) credit hours unless the department of education has granted a waiver pursuant to paragraph 21.2(13) "i." Programs shall not exceed an average of 19 credit hours per regular term.

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b. All credit-bearing courses required for program admittance or graduation, or both, must be included in the 86 semester (129 quarter) credit hour maximum, with the exception of developmental credit hours. Prerequisites that provide an option to students for either credit or noncredit shall be counted toward the program maximum of 86 semester (129 quarter) credit hours. Prerequisite options that are only offered for noncredit will not be counted toward the 86 semester (129 quarter) credit hour maximum.

c. Associate of applied science (AAS) and associate of applied arts (AAA) programs that receive accreditation from nationally recognized accrediting bodies may appeal maximum credit hour length requirements to the department for consideration of a waiver. All AAS and AAA degree programs over the 86 semester (129 quarter) credit hour maximum must have approved program-length waivers pursuant to paragraph 21.2(13) "i."

d. Program length for the state-approved associate of science degree shall consist of an academic program that includes core technical coursework needed to complete a concentration in a specific field of study. The associate of science-career option program may prepare students for entry-level careers or allow students to complete requirements for a transfer to a baccalaureate degree. The associate of science-career option program shall not exceed the credit hour limit stated in department guidelines. To facilitate the transfer of students enrolling in associate of science-career option programs and awarded the associate of science transfer degree, each program shall have articulation agreements with baccalaureate degree programs meeting the articulation agreement requirements stated in department guidelines. The associate of science-career option program shall under no circumstances exceed a maximum of 70 semester (117 quarter) credit hours unless the department has granted a waiver pursuant to paragraph 21.2(13) "i."

e. All credit certificate and diploma programs as defined in subrule 21.2(9) shall not exceed 48 semester (72 quarter) credit hours.

f. Each course offered in the area of career and technical education shall be taught in the shortest practical period of time at a standard consistent with the quality and quantity of work needed to prepare the student for successful employment in the occupation for which instruction is being offered.

g. A full-time student in career and technical education shall be defined as a student enrolling in 12 or more semester credit hours or the equivalent in career and technical education.

h. Curricula in full-time career and technical education programs shall ordinarily be offered on the basis of student workload of 20 to 30 contact hours per week.

i. Waiver process. A college may petition the department to suspend in whole or in part a program-length requirement contained in paragraphs 21.2(12) "h" to "m" as applied to a specific program on the basis of the particular circumstances of that program.

(1) Waivers shall be issued at the director's sole discretion. Waivers shall be narrowly tailored and granted for a period no longer than two academic years, after which reapplication is required. A waiver may be granted on a long-term basis not to exceed ten years if issuing the waiver for a shorter period is not practical.

(2) All petitions for waiver must be submitted in writing to the department. A petition shall include the following information: specific waiver request including scope and duration, the relevant facts that the petitioner believes would justify a waiver, a detailed statement of the impact on student achievement, any information known regarding the department's treatment of similar cases, and any additional information deemed relevant by the petitioner. The department shall acknowledge a petition upon receipt.

(3) The department shall ensure that, within 30 calendar days, notice of pendency of the petition and a concise summary of its contents have been provided to a committee consisting of the chief academic officers of each community college. In addition, the department may give notice to other persons.

(4) A committee consisting of the chief academic officers of a majority of community colleges shall review the waiver request and provide a recommendation to the department regarding whether approval should be granted. Within 90 calendar days of receiving the recommendation, the department shall review the petition and issue a ruling. Failure of the department to grant or deny a petition within the required time period shall be deemed a denial of that petition. If a waiver is issued, the department shall provide a description of the precise scope and operative period to all interested parties.

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21.2(14) Faculty organization. The faculty shall be organized in such a way as to promote communication among administration, faculty and students and to encourage faculty participation in the development of the curriculum, instructional procedures, general policies, and such other matters as are appropriate.

21.2(15) Faculty salary allocation plan. Pursuant to the appropriation of funds from the state general fund to the department for the purpose of supplementing community college faculty salaries, the department follows the formula herein when distributing such funds to community colleges.

a. For purposes of this subrule, the following definitions apply.

(1) "Full-time faculty" means those nonadministrative instructors, counselors, and librarians who are classified as full-time employees as defined in the college's collective bargaining agreement or written policy.

(2) "Part-time faculty" means those nonadministrative instructors, counselors, and librarians who are employed less than full-time as defined in the college's collective bargaining agreement and who are covered by the college's collective bargaining agreement. For purposes of the definition of "eligible full-time equivalent instructor," each part-time faculty person shall be counted as a fraction that accurately reflects the person's percentage of employment by the college when compared to a full-time faculty person.

(3) "Temporary/seasonal faculty" means those nonadministrative instructors, counselors, and librarians who are employed, full-time or part-time, by the college for short periods of time for specific purposes.

(4) "Adjunct faculty" means those nonadministrative instructors, counselors, and librarians who are employed without a continuing contract, whose teaching load does not exceed one-half time for two full semesters or three full quarters per calendar year.

(5) "Eligible full-time equivalent instructor" means the total of full-time faculty and part-time faculty where each full-time faculty counts as one, and each part-time faculty counts as a fraction that accurately reflects the person's percentage of employment by the college when compared to a full-time faculty person.

b. The appropriation shall be distributed to the community colleges based on their proportional share of eligible full-time equivalent instructors.

c. Moneys distributed to each community college pursuant to this subrule shall be rolled into the funding allocation for all future years. The use of the funds shall remain as described herein for all future years. The appropriation will be distributed to the community colleges in equal monthly payments made on or about the fifteenth of each month.

d. Moneys appropriated and distributed to community colleges pursuant to this subrule shall be used to supplement and not supplant any approved faculty salary increases or negotiated agreements, excluding the distribution of the funds herein. Eligible expenditures for the moneys appropriated are for salary expenditures and the required college contribution to FICA and IPERS or an alternative retirement benefits system. These moneys shall then be considered as part of the instructor's salary in future years.

e. Moneys distributed to a community college pursuant to this subrule shall be allocated to all full-time faculty and shall include part-time faculty covered by a collective bargaining agreement. The moneys shall be allocated pursuant to any existing negotiated agreements according to Iowa Code chapter 20. If no language exists to specify the method of allocation, the moneys shall be allocated equally to all full-time faculty with part-time faculty who are covered by a collective bargaining agreement receiving a prorated share.

f. A community college receiving funds distributed pursuant to this subrule shall determine the amount to be paid to instructors in accordance with Iowa Code section 260C.18D, subsection 4, and the amount determined to be paid to an individual instructor shall be divided evenly and paid in each pay period of the fiscal year.

This rule is intended to implement Iowa Code section 260C.33.

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ITEM 3. Rescind and reserve rule **281—21.3(260C)**.

ITEM 4. Amend rule 281—21.4(260C) as follows:

281—21.4(260C) Curriculum and evaluation.

21.4(1) *General education.* General education is intended to provide breadth of learning to the community college experience. General education imparts common knowledge, promotes intellectual inquiry, and stimulates the examination of different perspectives, thus enabling people to function effectively in a complex and changing world. General education tends to emphasize oral and written communication, critical analysis of information, knowledge and appreciation of diverse cultures, ways of knowing and human expression, knowledge of mathematical processes and natural sciences investigations, and ethics. General education courses are not intended to be developmental in nature. Each community college is responsible for clarifying, articulating, publicizing, and assessing its general education program.

21.4(1) 21.4(2) *College parallel or transfer.*

a. This program shall offer courses that are the equivalent of the first two years of a baccalaureate program and may also include: such courses as may be necessary to develop skills that are prerequisite to other courses and objectives; and specialized courses required to provide career options within the college parallel or transfer program. College parallel or transfer programs are associate of arts and associate of science degree programs. General education courses in college parallel or transfer programs are required to be college transfer courses. A follow-up of students terminating shall be conducted to determine how well students have succeeded and which adjustments in the curriculum, if any, need to be made.

b. Courses of a developmental or remedial nature or pfreshman level shall not bear college transfer credit and shall be clearly identified in the college catalog ~~and on transcripts~~. Developmental courses on the transcript shall be identifiable through the adoption of the community college common course numbering system.

21.4(2) 21.4(3) *Vocational Career and technical education.* Instruction shall be offered in vocational career and technical education programs in no less than five different occupational fields as defined by the state department of education. College parallel or transfer courses may be offered as needed in career and technical education programs. Career and technical education programs, including associate of science-career option programs, must meet program approval requirements set by the state board of education. The director shall approve new career and technical education programs. ~~Instruction shall be offered in vocational career and technical education programs, ensuring that they are competency-based, contain all minimum competencies required by the department of education, articulate with local school districts' vocational districts' career and technical education programs, and comply with any applicable requirements in Iowa Code chapter 258. The occupational fields in which instruction is offered shall be determined by merged area and geographical area needs as identified by surveys in these areas. Occupational advisory committees may be used to assist in developing and maintaining instructional content, including leadership development.~~

21.4(3) 21.4(4) *Adult and continuing education.* Adult education shall be offered and may include adult basic education, adult continuing and general education, college parallel or transfer, high school completion, supplementary and preparatory career education programs, and other programs and experiences as may be required to meet the needs of people in the merged area.

21.4(4) *Programs for the handicapped.* ~~Surveys shall be conducted in each merged area to determine the educational needs of persons who, due to academic, socioeconomic, or other handicaps, are prevented from succeeding in regular educational programs. These surveys would then serve as a basis for appropriate modifications in facilities, materials, and instructional arrangements. The modifications would then make it possible for those whose abilities and interests warrant it to enroll in such programs.~~

21.4(5) No change.

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21.4(6) Vocational education.

a.—Each course offered in the area of vocational education shall be taught in the shortest practical period of time at a standard consistent with the quality and quantity of work needed to prepare the student for successful employment in the occupation for which instruction is being offered.

b.—A full-time student in vocational education shall be defined as one who is taking 12 or more credit hours or the equivalent in vocational education.

c.—Curricula in full-time vocational education programs shall ordinarily be offered on the basis of a workload of 20 to 30 contact hours per week.

ITEM 5. Amend rule 281—21.5(260C) as follows:

281—21.5(260C) Library or learning resource center.

21.5(1) Facilities. Community college libraries or learning resource centers shall provide the facilities and resources needed to support the total educational program of the institution and ~~should~~ shall show evidence that the facilities and the resources are being used effectively and efficiently. Adequate consideration shall be given to the seating, comfort, ~~and~~ setting, and technology of the facility used to house the collection and learning resources.

21.5(2) Staffing. The library or learning resource center shall be adequately staffed with qualified ~~and certified~~ professionals and skilled nonprofessional personnel.

21.5(3) Collection. The library and learning resource center materials collection of a community college shall be accessible and adequate in size and scope to serve effectively the number and variety of programs offered and the number of students enrolled, including distance and satellite sites. The library and learning resource center materials collection shall show evidence of having been selected by faculty as well as professional library or learning resource staff and shall be kept up-to-date through a planned program of acquisition and deletion. The library and learning resource center materials collection shall contain ~~an appropriate~~ a range and number of print and nonprint materials, effectively organized and quartered in a manner which maximizes use and appropriate electronic information resources.

21.5(4) No change.

ITEM 6. Amend rule 281—21.6(260C) as follows:

281—21.6(260C) Student services. A program of student services shall be provided to meet the needs of students in the community college. The program of student services shall include, but not be limited to, the following ~~seven~~ functional areas:

a. to *g.* No change.

h. Campus safety and security as required by Iowa Code chapter 260C and the federal Clery Act, 20 U.S.C. Section 1092(f), 34 CFR Section 668.46.

ITEM 7. Amend rule 281—21.7(260C) as follows:

281—21.7(260C) Laboratories, shops, equipment and supplies. Laboratories, ~~shops~~, equipment and supplies shall be comparable with that those used in the occupations for which instruction is offered ~~shall be provided in accordance with the conditions of the most recent state plan for vocational education~~. Similarly, college parallel or transfer courses shall be supported in a manner comparable to those conditions which prevail in standard, regionally accredited colleges and universities in which students may wish to transfer college credits.

ITEM 8. Amend rule 281—21.8(260C) as follows:

281—21.8(260C) Physical plant. The site, buildings and equipment of the community college shall be well maintained and in good repair condition. ~~A consistent plan of systematic maintenance~~ At a minimum, a five-year ongoing, systematic maintenance and facilities plan approved by the local community college board shall be in evidence. The physical plant shall be adequate in size and properly equipped for the program offered ~~and shall conform to Iowa Code chapter 104A~~. All remodeling of existing facilities shall comply with the “American Standard Specifications for Making Building and

EDUCATION DEPARTMENT[281](cont'd)

Facilities Accessible to and Usable by the Physically Handicapped.” Iowa Code chapter 104A and the federal Americans With Disabilities Act, 42 U.S.C. Section 12101 et seq.

ITEM 9. Rescind rule 281—21.9(260C) and adopt the following **new** rule in lieu thereof:

281—21.9(260C) Nonreimbursable facilities. No facility intended primarily for events for which admission may be charged nor any facility specially designed for athletic or recreational activities, other than physical education, shall be constructed with state-appropriated funds.

ITEM 10. Rescind and reserve rules **281—21.10(260C)** to **281—21.12(260C)**.

ITEM 11. Rescind subrules **21.45(1)** to **21.45(8)**.

ITEM 12. Adopt the following **new** subrules 21.45(1) to 21.45(3):

21.45(1) Distribution formula. Moneys appropriated by the general assembly from the general fund to the department for community college purposes for general state financial aid for a budget year shall be allocated to each community college by the department according to the provisions of Iowa Code section 260C.18C.

21.45(2) Each community college shall provide student and financial information in the manner and form as determined by the department and before the deadline announced by the department. If the community college fails to provide the student or financial information as required, the department shall estimate the full-time equivalent enrollment (FTEE) of that college that will be used in the state general aid distribution formula.

21.45(3) Each community college shall be required to hire an auditing firm to complete and submit the schedule of credit-hour and contact-hour enrollment and a letter certifying that specified department of education procedures were followed. These schedules will be used in calculating the college’s FTEE utilized in the community college state general aid distribution formula.

ITEM 13. Amend rule **281—21.45(260C)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~sections 260C.14(21) and 260C.49~~ section 260C.18C.

ITEM 14. Rescind and reserve rules **281—21.57(260C)** to **281—21.71(260C)**.

ITEM 15. Amend rule 281—21.73(260C), introductory paragraph, as follows:

281—21.73(260C) Definitions. For the purpose of Division IX, the following definitions shall apply:

ITEM 16. Amend rule **281—21.73(260C)**, definitions of “Apprenticeship program,” “Registration agency,” “Registration of an apprenticeship agreement” and “Related instruction,” as follows:

“*Apprenticeship program*” shall mean a plan containing all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, including such matters as ~~the requirement~~ required under 29 CFR Parts 29 and 30, including the requirement for a written apprenticeship agreement.

“*Registration agency*” shall mean the ~~Bureau~~ Office of Apprenticeship.

“*Registration of an apprenticeship agreement*” shall mean the acceptance and recording ~~thereof~~ of an apprenticeship agreement by the ~~Bureau~~ Office of Apprenticeship as evidence of the ~~participation of the apprentice~~ apprentice’s participation in a particular registered apprenticeship program.

“*Related instruction*” or “*related technical instruction*” shall mean an organized and systematic form of instruction designed to provide the apprentice with the core knowledge of the theoretical and technical subjects related to the ~~trade or occupation~~ apprentice’s occupation. Such instruction may be given in a classroom through occupational or industrial courses, by correspondence courses of equivalent value, by electronic media, or by other forms of self study approved by the registration agency.

ITEM 17. Rescind the definitions of “Bureau” and “Certification” in rule **281—21.73(260C)**.

ITEM 18. Adopt the following **new** definitions in rule **281—21.73(260C)**:

“*Apprenticeship instructor*” shall mean an instructor who delivers related and technical instruction in apprenticeship programs and who must meet the department’s requirements for career and technical

EDUCATION DEPARTMENT[281](cont'd)

instructors or be recognized as a subject matter expert. It is recommended that all apprenticeship instructors have training in teaching techniques and adult learning styles.

“*Certification*” or “*certificate*” shall mean documentary evidence that at least one of the following has been met:

1. The Office of Apprenticeship has approved a set of National Guidelines for Apprenticeship Standards developed by a national committee or organization, joint or unilateral, or policy or guideline used by local affiliates, as conforming to the standards of apprenticeship set forth in 29 CFR Section 29.5;

2. A registration agency has established that an individual is eligible for probationary employment as an apprentice under a registered apprenticeship program.

3. A registration agency has registered an apprenticeship program as evidenced by a Certificate of Registration or other written indicia;

4. A registration agency has determined that an apprenticeship has successfully met the requirements to receive an interim credential; or

5. A registration agency has determined that an individual has successfully completed an apprenticeship.

“*Competency*” shall mean the attainment of manual or technical skill and knowledge as specified by an occupational standard.

“*Journeyworker*” shall mean a worker who has attained a level of skill and competency recognized within an industry as having mastered the skills and competencies required for the occupation.

“*Office of Apprenticeship*” shall mean the office designated by the Employment and Training Administration to administer the National Apprenticeship System or its successor organization.

“*Supplemental instruction*” shall mean instruction in non-core-related requirements: for example, job site management, leadership, communications, first aid/CPR, field trips, and new technologies.

ITEM 19. Amend rule 281—21.74(260C) as follows:

281—21.74(260C) Apprenticeship programs. For an apprenticeship program to be offered by a community college or a local educational agency, the program must be approved by the U.S. Department of Labor, ~~Bureau~~ Office of Apprenticeship and Training, and meet all requirements outlined in ~~Title 29, Part 29,~~ of the National Apprenticeship Act, 29 U.S.C. Section 50, 29 CFR Parts 29 and 30..

ITEM 20. Amend **281—Chapter 21**, Division IX, implementation sentence, as follows:

The rules in this division are intended to implement Iowa Code section 260C.44 and ~~Title 29, Part 29,~~ of the National Apprenticeship Act, 29 U.S.C. Section 50 and 29 CFR Parts 29 and 30.

ARC 8389B

EDUCATION DEPARTMENT[281]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby gives Notice of Intended Action to amend Chapter 23, “Adult Education,” Iowa Administrative Code.

The amendment in Item 1 is needed because the state advisory council no longer exists. It was initially required by federal law, but that requirement was removed by the passage of the Workforce Investment Act of 1998, P.L. 105-220. The change in Item 2 ensures that the rule conforms to actual practice.

An agencywide waiver provision is provided in 281—Chapter 4.

EDUCATION DEPARTMENT[281](cont'd)

Interested individuals may make written comments on the proposed amendments on or before January 12, 2010, by 4:30 p.m. Comments on the proposed amendments should be directed to Colleen Hunt, Bureau Chief, Bureau of Community College Services, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-0319; E-mail colleen.hunt@iowa.gov; or fax (515)281-6544.

A public hearing will be held on January 12, 2010, from 1 to 2 p.m. in the State Board Room, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should advise the Department of Education of their specific needs by calling (515)281-3125.

These amendments are intended to implement Iowa Code chapter 260C.

The following amendments are proposed.

ITEM 1. Amend rule 281—23.1(260C) as follows:

281—23.1(260C) Planning process.

23.1(1) No change.

~~**23.1(2)** *State advisory council.* A state advisory council shall be established for adult education as determined by the director of the department of education and shall be appointed by the director and composed of 15 members, one from each community college district representing a cross-section of the population of the state. The council shall meet at regularly scheduled times. The actual cost of meals and lodging for the advisory council shall be paid by the department of education. Expenses for travel will be reimbursed at the allowable state rate. Each meeting shall be open to the public.~~

23.1(3) 23.1(2) Participatory planning committee. The department of education shall involve a participatory planning committee in the development of the plan. The participatory planning committee shall include representatives of various agencies, groups, and organizations. The state plan shall provide for the selection of representatives and the manner in which the representatives will be involved in the development of the state plan. If the participatory planning committee is not able to agree upon a final plan, the department of education shall make the final decision. The state plan shall include notation of recommendations rejected and the reason for the rejection.

ITEM 2. Amend rule 281—23.2(260C) as follows:

281—23.2(260C) Final plan. The final plan after approval by all parties concerned shall be approved by the state board of education and implemented statewide. A copy of the final plan shall be made available to all individuals in the state upon request to the department of education.

ARC 8388B

EDUCATION DEPARTMENT[281]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby gives Notice of Intended Action to amend Chapter 24, “Community College Accreditation,” Iowa Administrative Code.

The accreditation rules are being amended to update outdated language and to provide greater clarity about the accreditation process. The Department shared drafts of these rules and had discussions regarding the proposed amendments with representatives from the following stakeholder groups:

EDUCATION DEPARTMENT[281](cont'd)

Iowa Association of Community College Presidents (IACCP), Iowa Association of Community College Trustees (IACCT), Community College Chief Academic Officers, Iowa Arts and Sciences Administrators (IASA), Community College Career and Technical Deans/Directors, Iowa State Education Association (ISEA), Community College Continuing Education Deans/Directors, Community College Business Officers, Community College Human Resource Directors, Community College Student Services Administrators (ICSSA), Community College Faculty Advisory Committee, Community College Accreditation Advisory Committee, and Community College Professional Development Advisory Committee.

An agencywide waiver provision is provided in 281—Chapter 4.

Interested individuals may make written comments on the proposed amendments on or before January 12, 2010, by 4:30 p.m. Comments on the proposed amendments should be directed to Colleen Hunt, Bureau Chief, Bureau of Community College Services, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-0319; E-mail colleen.hunt@iowa.gov; or fax (515)281-6544.

A public hearing will be held on January 12, 2010, from 1 to 2 p.m. in the State Board Room, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should advise the Department of Education of their specific needs by calling (515)281-3125.

These amendments are intended to implement Iowa Code section 258.4(7) and Iowa Code chapters 260C and 261E.

The following amendments are proposed.

ITEM 1. Amend rule 281—24.1(260C) as follows:

281—24.1(260C) Purpose. As set forth in Iowa Code section 260C.1, the purpose of accreditation of Iowa's community colleges is to confirm that each college is offering, to the greatest extent possible, educational opportunities and services, when applicable, but not be limited to:

1. The first two years of college work including preprofessional education.
2. ~~Vocational~~ Career and technical training.
3. Programs for in-service training and retraining of workers.
4. Programs for high school completion for students of post-high school age.
5. Programs for all students of high school age, who may best serve themselves by enrolling for ~~vocational~~ career and technical training, while also enrolled in a local high school, public or private.
6. Programs for students of high school age to provide advanced college placement courses not taught at a student's high school while the student is also enrolled in the high school.
7. Student personnel services.
8. Community services.
9. ~~Vocational~~ Career and technical education for persons who have academic, socioeconomic, or other disabilities which prevent succeeding in regular ~~vocational~~ career and technical education programs.
10. Training, retraining, and all necessary preparation for productive employment of all citizens.
11. ~~Vocational~~ Career and technical training for persons who are not enrolled in a high school and who have not completed high school.
12. Developmental education for persons who are academically or personally underprepared to succeed in their program of study.

ITEM 2. Amend rule **281—24.3(260C)**, definitions of "Minimum of 12 graduate hours" and "Relevant work experience," as follows:

"Minimum of 12 graduate hours." Full-time arts and sciences instructors must possess a master's degree and complete a minimum of 12 graduate hours in their field of instruction. The 12 graduate hours may be within the master's degree requirements or independent of the master's degree, but all hours must be in the instructor's field of instruction.

EDUCATION DEPARTMENT[281](cont'd)

“~~Relevant~~ Recent and relevant work experience.” An hour of recent and relevant work experience is equal to 60 minutes. The community college ~~will~~ shall determine what constitutes recent and relevant work experience that relates to the instructor’s occupational and teaching area. The college shall maintain documentation of the instructor’s educational and work experience.

ITEM 3. Adopt the following new definitions in rule **281—24.3(260C)**:

“Department.” Department refers to the Iowa department of education.

“Director.” Director refers to the director of the department.

“Joint enrollment.” Joint enrollment refers to any community college credit course offered to students enrolled in a secondary school. Courses offered for joint enrollment include courses delivered through contractual agreements between school districts and community colleges, courses delivered through the postsecondary enrollment options program, and college credit courses taken independently by tuition-paying secondary school students.

“Organization.” Organization is synonymous with community college and is used in this chapter to align with accreditation terminology used by the Higher Learning Commission.

ITEM 4. Amend rule 281—24.4(260C) as follows:

281—24.4(260C) Accreditation components and criteria—Higher Learning Commission. In order to be accredited by the state board of education and maintain accreditation status, a community college must meet the accreditation criteria of the Higher Learning Commission and additional state standards. Accreditation shall be maintained either by the Program to Evaluate Academic Quality (PEAQ) or the alternative Academic Quality Improvement Program (AQIP) process. The Higher Learning Commission accreditation criteria for accreditation are as follows:

24.4(1) Mission and integrity. The organization operates with integrity to ensure the fulfillment of its mission through structures and processes that involve the board, administration, faculty, staff, and students.

a. to e. No change.

24.4(2) Preparing for the future. The organization’s allocation of resources and its processes for evaluation and planning demonstrate its capacity to fulfill its mission, improve the quality of its education, and respond to future challenges and opportunities.

a. to d. No change.

24.4(3) Student learning and effective teaching. The organization provides evidence of student learning and effective teaching that demonstrates it is fulfilling its educational mission.

a. to d. No change.

24.4(4) Acquisition, discovery, and application of knowledge. The organization promotes a life of learning for its faculty, administration, staff, and students by fostering and supporting inquiry, creativity, practice, and social responsibility in ways consistent with its mission.

a. to d. No change.

24.4(5) Engagement and service. As called for by its mission, the organization identifies its constituencies and serves them in ways both value.

a. to d. No change.

24.4(6) Documentation. Documents and materials provided in accordance with the accreditation requirements of the Higher Learning Commission shall also be provided to the department for the state accreditation process.

ITEM 5. Amend rule 281—24.5(260C), introductory paragraph, as follows:

281—24.5(260C) Accreditation components and criteria—additional state standards. To be granted accreditation by the state board of education, an Iowa community college ~~must~~ shall also meet ~~five~~ additional standards pertaining to minimum or quality assurance standards for faculty (Iowa Code section 260C.48(1)); faculty load (Iowa Code section 260C.48(2)); special needs (Iowa Code section 260C.48(3)); ~~vocational~~ career and technical education program evaluation (Iowa Code section

EDUCATION DEPARTMENT[281](cont'd)

258.4(7); and quality faculty plan (Iowa Code section 260C.36); and senior year plus programs (Iowa Code chapter 261E).

ITEM 6. Amend paragraph **24.5(2)“a”** as follows:

a. College parallel. The full-time teaching load of an instructor in college parallel programs shall not exceed a maximum of 16 credit hours ~~per school term~~ within a traditional semester or the equivalent. An instructor may also have a teaching assignment outside of the normal school hours, provided the instructor consents to this additional assignment and the total workload does not exceed the equivalent of 18 credit hours within a traditional semester or the equivalent thereof.

ITEM 7. Amend subrule 24.5(4) as follows:

24.5(4) Career and technical education evaluation. The director of the department shall annually review at least 20 percent of the approved career and technical programs as a basis for continuing approval. The community college career and technical program review and evaluation system must ensure that the programs:

- a. to e.* No change.
- f.* Enable students with a secondary ~~vocational~~ career and technical background to pursue other educational interests in a postsecondary setting, if desired.
- g.* No change.

ITEM 8. Renumber subrule **24.5(5)** as **24.5(7)**.

ITEM 9. Adopt the following new subrules 24.5(5), 24.5(6) and 24.5(8):

24.5(5) Facilities, parking lots and roads.

a. Facilities master planning. Each community college shall present evidence of adequate planning, including a board-approved facilities plan. Planning includes tentative program approval, a master campus plan, written educational specifications, site plot showing location of proposed and existing facilities, elevations and floor plans.

b. Accessibility and safety. All new or remodeled facilities (buildings and programs offered in such facilities) and services in such facilities shall be made functional and usable for persons with special needs and shall comply with Iowa Code chapter 104A and the Americans With Disabilities Act, 42 U.S.C. § 12101, and address issues of campus safety and security as required by Iowa Code chapter 260C and by the federal Clery Act, 20 U.S.C. § 1092(f). All parking areas and roads shall comply with all state and federal rules and regulations dealing with roads, parking ramps, and accessibility requirements.

c. Adequate facilities. All administrative facilities, classrooms, laboratories, and related facilities shall be educationally adequate for the purpose for which they are designed.

d. Library or learning resource center. A library or learning resource center shall be planned as part of the master campus plan and space made for library or learning resource center services within the initial construction.

e. Student center. An area of the college shall be provided where students may gather informally and where food is available.

24.5(6) Strategic planning. The community college shall prepare a five-year strategic plan to guide the college and its decision making. Consideration shall be given to the five-year statewide strategic plan, as required by Iowa Code section 256.31(4)(a), in the development of the college's strategic plan.

24.5(8) Senior year plus. The community college shall provide access to joint enrollment opportunities for high school age students. Each college shall comply with the appropriate standards defined in Iowa Code chapter 261E.

ITEM 10. Amend rule 281—24.6(260C) as follows:

281—24.6(260C) Accreditation process.

24.6(1) Components. The community college accreditation process shall include the following components:

- a.* No change.

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b. The department of education shall conduct an on-site accreditation evaluation of each community college during the same academic year as the evaluation by the Higher Learning Commission of the North Central Association of Colleges and Schools. An interim evaluation midway between comprehensive evaluations shall also be conducted. The department shall have the authority to conduct focus evaluation visits as needed.

24.6(2) No change.

24.6(3) *Accreditation team action.* After a visit to a community college, the accreditation team shall evaluate whether the accreditation standards have been met and shall make a report to the director of the department and the state board of education, together with a recommendation as to whether the community college ~~should~~ shall remain accredited. The accreditation team shall report strengths and opportunities for improvement, if any, for each standard and criterion and shall advise the community college of available resources and technical assistance to further enhance strengths and address areas for improvement. A community college may respond to the accreditation team's report.

24.6(4) *State board of education consideration of accreditation.* The state board of education shall determine whether a community college shall remain accredited. Approval of accreditation for a community college by the state board of education shall be based ~~on~~ upon the recommendation of the director of the department after study of the factual and evaluative evidence on record pursuant to the standards and criteria described in this chapter, and based upon the timely submission of information required by the department of education in a format provided by the department of education. With the approval of the director of the department, a focus visit may be conducted if the situation at a particular college warrants such a visit.

a. *Accreditation granted.* Continuation of accreditation, if granted, shall be for a term consistent with the term of accreditation by the Higher Learning Commission of the North Central Association of Colleges and Schools; however, approval for a lesser term may be granted by the state board of education if the board determines that conditions so warrant.

b. *Accreditation denied or conditional accreditation.* If the state board of education denies accreditation or grants conditional accreditation, the director of the department of education, in cooperation with the board of directors of the community college, shall establish a plan prescribing the procedures that must be taken to correct deficiencies in meeting the standards and criteria and shall establish a deadline for correction of the deficiencies. ~~The plan is subject to approval of the state board of education~~ shall be submitted to the director within 45 days following the notice of accreditation denial or conditional accreditation. The plan shall include components which address correcting deficiencies, sharing or merger options, discontinuance of specific programs or courses of study, and any other options proposed by the state board of education or the accreditation team to allow the college to meet the accreditation standards and criteria.

c. *Implementation of plan.* During the time specified in the plan for its implementation, the community college remains accredited. The accreditation team shall revisit the community college to evaluate whether the deficiencies in the standards or criteria have been corrected and shall make a report and recommendation to the director and the state board of education. The state board of education shall review the report and recommendation, may request additional information, and shall determine whether the deficiencies have been corrected.

d. *Removal of accreditation.* The director shall give a community college which fails to meet accreditation standards, as determined by the state board of education, at least one year's notice prior to removal of accreditation. The notice shall be sent by certified mail or restricted certified mail addressed to the chief executive officer of the community college and shall specify the reasons for removal of accreditation. The notice shall also be sent to each member of the board of directors of the community college. If, during the year, the community college remedies the reasons for removal of accreditation and satisfies the director that the community college will comply with the accreditation standards and criteria in the future, the director shall continue the accreditation and shall transmit notice of the action to the community college by certified mail or restricted certified mail.

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e. Failure to correct deficiencies. If the deficiencies have not been corrected in a program of a community college, the community college board of directors shall take one of the following actions within 60 days from removal of accreditation:

- (1) Merge the deficient program or programs with a program or programs from another accredited community college.
- (2) Contract with another accredited postsecondary educational institution for purposes of program delivery at the community college.
- (3) Discontinue the program or programs which have been identified as deficient.

f. Appeal process provided. The action of the director to remove the state accreditation of a community college program may be appealed to the state board of education as provided in Iowa Code section 260C.47, subsection 7.

ITEM 11. Amend **281—Chapter 24**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~chapter~~ section 258.4(7) and chapters 260C and 261E.

ARC 8393B

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

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 542B.6, the Engineering and Land Surveying Examining Board hereby gives Notice of Intended Action to amend Chapter 2, “Fees and Charges,” Iowa Administrative Code.

This amendment updates the administrative fee structure for engineers and land surveyors. The \$25 application fee to take the Fundamentals of Engineering examination and the \$30 application fee to take the Fundamentals of Land Surveying examination are being eliminated. These fees were paid to a third-party examination administrator. That administrator is no longer in service to the state; therefore, the fees are not needed. The \$45 application fees to take the Principles and Practice of Engineering and the Principles and Practice of Land Surveying are both being increased to \$100. These fees are paid directly to the Board for the service of processing and approving applications. This service is time-intensive, and the increase is in keeping with the amount that an outside vendor would charge for the service.

This amendment is subject to waiver or variance pursuant to 193—Chapter 5.

Any interested person may make written or oral suggestions or comments on this proposed amendment on or before January 5, 2010. Comments should be directed to Robert Lampe, Executive Secretary, Iowa Engineering and Land Surveying Examining Board at 1918 SE Hulsizer Road, Ankeny, Iowa 50021; or by telephoning (515)281-7360. E-mail may be sent to robert.lampe@iowa.gov.

This amendment is intended to implement Iowa Code section 542B.30.

The following amendment is proposed.

Amend rule 193C—2.1(542B) as follows:

193C—2.1(542B) General statement. Fees are fixed in such an amount as will defray the expense of administering board responsibilities. Fees are charged in accordance with the following table:

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C](cont'd)

Type of fee	Amount
Renewal	
Active license renewal	\$100
Inactive license renewal	\$40
Reinstatement of lapsed license (In addition to the reinstatement fee, the applicant for reinstatement must also pay the appropriate prorated reinstated license fee below.)	\$100
Reinstatement of inactive to active license	\$60
New or reinstated license (In addition to the appropriate prorated reinstated license fee, the applicant for reinstatement must also pay the reinstatement fee above.)	\$100 Prorated at six-month intervals
Application for examinations	
Fundamentals of Engineering	\$25
Fundamentals of Land Surveying	\$30
Principles and Practice of Engineering	\$45 <u>100</u>
Principles and Practice of Land Surveying	\$45 <u>100</u>
Examinations	
Fees for NCEES examinations are paid directly to the examination service at the rate established by contract based upon cost of the examination materials and processing expenses.	Variable
Iowa State Specific Land Surveying Examination	\$30
Application for licensure by comity as a professional engineer or land surveyor	\$150
Certificates	
Initial professional engineer or land surveyor certificate	\$15
Additional or duplicate certificate	\$25
Engineer or land surveyor intern certificate	No charge
Check returned for insufficient funds	\$15
Verification of records for lapsed licensees	\$15 per verification
Late renewal fee (for renewals postmarked after December 31 and before February 1)	\$25

ARC 8397B**ENVIRONMENTAL PROTECTION COMMISSION[567]****Notice of Intended Action**

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

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

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

Iowa Code sections 455B.171 to 455B.183 establish requirements for the protection and management of surface water quality. The Environmental Protection Commission, through the assistance of the

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Department, promulgates administrative regulations on water quality. Iowa's Water Quality Standards (WQS) are set forth in 567—Chapter 61, "Water Quality Standards."

The Department appointed Mike Burkhart, a professor at Iowa State University, to lead a science advisory panel to research nutrients and their effects on recreational uses of Iowa lakes. In February 2008, the Nutrient Science Advisors (NSA) completed its recommendations for nutrient criteria for recreational uses in lakes. The report can be found on the Department's Web site: <http://www.iowadnr.gov/water/standards/nutrients.html>.

The proposed amendment will establish criteria for transparency and chlorophyll-a to protect recreational uses in lakes with a mean depth of three meters or greater. The criteria will be used to determine if the water quality in a lake can fully support recreational uses such as swimming, water skiing and boating.

There can be many causes for poor water quality that cannot meet the proposed criteria including excess nutrients and sediment from rainwater running off the landscape and discharges from sewage treatment plants and industrial wastewater treatment plants. According to research conducted by the Department, 85 to 90 percent of the nutrients in a typical Iowa water body come off the watershed rather than point sources that require a discharge permit.

Any person may submit written suggestions or comments on the proposed amendment on or before January 23, 2010. Such written material should be submitted to Chuck Corell, Iowa Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-8895 or by E-mail to chuck.corell@dnr.iowa.gov. Persons are invited to present oral or written comments at public hearings which will be held:

January 11, 2010	10 a.m.	Wallace State Office Building Fifth Floor Conference Rooms 502 East 9th Street Des Moines
January 13, 2010	1 p.m.	Clear Lake Public Library 200 North Fourth Street Clear Lake
January 14, 2010	10 a.m.	Atlantic Municipal Utilities Conference Room 15 W 3rd Street Atlantic
January 14, 2010	6 p.m.	Iowa Lakeside Laboratory Waitt Building 1838 Highway 86 Milford
January 21, 2010	10 a.m.	Falcon Civic Center 1305 5th Avenue NE Independence
January 21, 2010	4 p.m.	Washington Public Library Meeting Room B 115 West Washington Street Washington

This amendment may have an impact upon small businesses.

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

The following amendment is proposed.

Adopt the following **new** subrule 61.3(4):

61.3(4) Lake criteria. So that the recreational uses listed in 61.3(1) "b"(1) through 61.3(1) "b"(3) can be supported, the following criteria are applicable to all lakes that have a mean depth of three meters or greater.

a. Transparency. The transparency of the lake as measured with a Secchi Disk shall be one meter or more in at least 75 percent of the measurements taken.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

b. Chlorophyll-a. The concentration of chlorophyll-a in 75 percent of the samples analyzed shall not exceed 25 micrograms per liter ($\mu\text{g/l}$).

c. Water sampling used to determine whether a lake meets the transparency and chlorophyll-a criteria must meet the following:

- (1) A minimum of nine sample results are required.
- (2) At least three of the samples must be taken from the deepest part of the lake.
- (3) All samples must be taken during the months of May through September.
- (4) At least three sampling events must be conducted in any one summer recreation season.
- (5) Samples must be taken in at least three summer seasons in a five-consecutive-year period.

d. Nitrogen and phosphorus concentrations are among several variables affecting lake transparency and chlorophyll-a levels; however, individual lake and watershed characteristics determine the precise amount of nutrients that can be tolerated within a lake while still attaining the above recreational use criteria. For this reason, nutrient reduction targets will be determined on a case-by-case basis as a result of lake-specific monitoring and data analysis. Lake nutrient response models, such as those used to establish Total Maximum Daily Loads for lakes with transparency or chlorophyll-a impairments, or other appropriate scientific methods will be utilized for this purpose.

ARC 8398B**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 459.103 and 459A.104, the Environmental Protection Commission hereby proposes to amend Chapter 65, “Animal Feeding Operations,” Iowa Administrative Code.

The proposed amendments update the Department’s rules to conform with statutory amendments in 2002 Iowa Acts (Senate File 2293); in 2006 Iowa Acts pertaining to open feedlot stockpiles (Senate File 2369); and in 2009 Iowa Acts pertaining to dry manure stockpiling (House File 735), to application of manure on snow-covered and frozen ground (Senate File 432, Division I), and to dry bedded confinement feeding operations (Senate File 432, Division II). In addition, the proposed amendments include revisions that reflect current procedures and numerous technical corrections and updates. While comments are invited for all items, the Department especially requests input regarding the following items.

In Item 2, the definition of “common management” is expanded to reflect the Department’s interpretation for several years that ownership of the animals usually includes sufficient management control to satisfy the definition. If two or more operations are close enough to be adjacent and have either common ownership or common management, the operations are considered one operation for various separation and permitting requirements that apply based on the size of the operation.

Also in Item 2, the Commission is considering amending the definition of “residence” by deleting the requirement that a structure must be connected to electricity, a permanent water supply and a permanent domestic sewage disposal system. Other retained requirements in the definition pertain to whether the structure has a history of habitation rather than recent efforts to disqualify a proposed nearby confinement feeding operation structure. The deleted requirement appears to relate to a style of living which may not be relevant to this determination.

In Items 5 and 9, the proposed amendments to paragraph 65.2(3)“a” and subparagraph 65.3(4)“c”(2) require an operation constructed or expanded after July 1, 2009, to have at least 180 days of manure storage in order to qualify for the emergency application of liquid manure on frozen or snow-covered ground. This language attempts to clarify the provisions of 2009 Iowa Acts, Senate File 432, section 3,

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which literally requires each new manure storage structure to have at least 180 days of manure storage. The Department believes that the proposed language more clearly implements the intent of the legislation by encouraging additional manure storage structures of less capacity than 180 days as necessary to provide supplemental storage capacity as a means of achieving 180 days of storage capacity for the entire operation.

In Item 9, the proposed language in subparagraph 65.3(4)“c”(1) elaborates on the practical application of language in 2009 Iowa Acts, Senate File 432, section 3, that failure to properly account for the volume of manure to be stored does not qualify as an emergency. Although the legislation does not require minimum manure storage capacity for existing operations, an operation should not plan on being able to land-apply liquid manure during the period December 21 through April 1. Existing operations should instead explore other alternatives or provide sufficient manure storage capacity to retain manure generated during that period.

In Item 9, subparagraph 65.3(4)“d”(1), the proposed language requires a person who applied liquid manure on snow-covered or frozen ground during an emergency due to unforeseen circumstances including, but not limited to, natural disaster, unusual weather conditions, or equipment or structural failure as provided in paragraph 65.3(4)“c” to make documentation available, upon request, to the Department if the emergency is not easily confirmed by weather reports. This approach is proposed rather than attempting to specify what constitutes an unforeseen circumstance.

In Item 9, subparagraph 65.3(4)“d”(4) includes the requirement in 2009 Iowa Acts, Senate File 432, section 3, that a surface water drain tile intake on land in an owner’s manure management plan downgradient of an emergency liquid manure application must be blocked for at least two weeks after commencement of the application. In addition, the proposed language provides that removal of the tile protection before completion of snowmelt constitutes a “release” as defined in 567—65.1(455B) which requires reporting as provided in subrule 65.2(9). Because “release” includes the imminent discharge of manure to a drainage tile intake resulting from land-applying manure, the Department believes removal of the intake blockage prior to completion of snowmelt virtually guarantees discharge to the tile intake when snowmelt does occur which clearly invokes the release notification requirement.

Any interested person may make written suggestions or comments on the proposed amendments on or before February 1, 2010. Written comments should be directed to Gene Tinker, Iowa Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-8895; E-mail gene.tinker@dnr.iowa.gov.

Also, there will be public hearings as follows, at which time persons may present their views either orally or in writing:

January 12, 2010	4:30 p.m.	Orange City Gymnasium 125 Central Avenue SE Orange City
January 13, 2010	1:30 p.m.	NICC Dairy Center, Room 115 Highway 150 (south of Calmar) Calmar
January 15, 2010	11 a.m.	Wallace State Office Building Auditorium 502 E. 9th Street Des Moines
January 15, 2010	4:30 p.m.	Cass County Community Center 805 W. 10th Street Atlantic
January 20, 2010	1:30 p.m.	Marr Park Conservation Center 2943 Highway 92 Ainsworth
February 1, 2010	1:30 p.m.	NIACC Muse-Norris Conference Center 500 College Drive Mason City

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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 proposed amendments.

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

These amendments are intended to implement Iowa Code chapters 459 and 459A and 2009 Iowa Acts, Senate File 432 and House File 735.

The following amendments are proposed.

ITEM 1. Amend **567—Chapter 65**, parenthetical implementation statutes for Division I, as follows:

~~(455B 459,459B)~~

ITEM 2. Amend the following definitions in rule **567—65.1(459,459B)**:

“Adjacent—air quality” means, for the purpose of determining separation distance requirements pursuant to 567—65.11(459,459B), that two or more confinement feeding operations are adjacent if they have animal feeding operation structures that are separated at their closest points by less than the following:

1. ~~1,250 feet for confinement feeding operations with animal weight capacity less than 1,250,000 pounds for animals other than bovine, or less than 4,000,000 pounds for bovine~~ for a confinement feeding operation having an animal unit capacity of less than 1,250 animal units for swine maintained as part of a farrowing and gestating operation, less than 2,700 animal units for swine maintained as part of a farrow-to-finish operation, less than 4,000 animal units for cattle maintained as part of a cattle operation, or less than 3,000 animal units for any other confinement feeding operation, or for a confinement feeding operation consisting of dry bedded confinement feeding operation structures.

2. ~~1,500 feet for confinement feeding operations with animal weight capacity from 1,250,000 pounds to less than 2,000,000 pounds for animals other than bovine; from 1,250,000 pounds to less than 2,500,000 pounds for swine in a farrow-to-finish operation; or 4,000,000 pounds to less than 6,000,000 pounds for bovine~~ for a confinement feeding operation having an animal unit capacity of 1,250 or more but less than 2,000 animal units for swine maintained as part of a swine farrowing and gestating operation, 2,700 or more but less than 5,400 animal units for swine maintained as part of a farrow-to-finish operation, 4,000 or more but less than 6,500 animal units for cattle maintained as part of a cattle operation, or for any other confinement feeding operation having an animal unit capacity of 3,000 or more but less than 5,000 animal units.

3. ~~2,500 feet for confinement feeding operations with animal weight capacity of 2,000,000 or more pounds for animals other than bovine; 2,500,000 or more pounds for swine in a farrow-to-finish operation; or 6,000,000 or more pounds for bovine~~ for a confinement feeding operation having an animal unit capacity of 2,000 or more animal units for swine maintained as part of a swine farrowing and gestating operation, 5,400 or more animal units for swine maintained as part of a farrow-to-finish operation, or 6,500 or more animal units for cattle maintained as part of a cattle operation, or for any other confinement feeding operation with 5,000 or more animal units.

4. ~~These~~ The distances in “1” to “3” above shall only be used to determine that two or more confinement feeding operations are adjacent if ~~the~~ at least one animal confinement feeding operation structure is ~~was~~ constructed on or after March 20 21, 1996.

5. To determine if two or more confinement feeding operations are adjacent, for the purpose of determining the separation distance requirements, the animal weight unit capacity of each individual operation shall be used. If two or more confinement feeding operations ~~are~~ do not ~~in~~ have the same animal weight unit capacity category, the greater animal weight unit capacity shall be used to determine the separation distance.

6. Dry manure that is stockpiled within a distance of 1,250 feet from another stockpile shall be considered part of the same stockpile.

“Adjacent—water quality” means, for the purpose of determining ~~whether a permit is required~~ the construction permit requirements pursuant to 567—65.7(459,459B) and manure management plan

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requirements pursuant to ~~567—65.16(459,459B)~~, that two or more confinement feeding operations are adjacent if they have animal confinement feeding operation structures that are separated at their closest points by less than the following:

1. ~~1,250 feet for confinement feeding operations with combined animal weight capacity less than 625,000 pounds for animals other than bovine, or less than 1,600,000 pounds for bovine having a combined animal unit capacity of less than 1,000 animal units.~~

2. ~~2,500 feet for confinement feeding operations with combined animal weight capacity of 625,000 or more pounds for animals other than bovine, or 1,600,000 or more pounds for bovine having a combined animal unit capacity of 1,000 or more animal units.~~

3. ~~These~~ The distances in “1” and “2” above shall only be used to determine that two or more confinement feeding operations are adjacent if ~~the~~ at least one animal confinement feeding operation structure is constructed or expanded on or after May 21, 1998.

“Anaerobic lagoon” means an unformed manure storage structure; if the primary function of the structure is to store and stabilize manure, the structure is designed to receive manure on a regular basis, and the structure’s design waste loading rates provide that the predominant biological activity is anaerobic. An anaerobic lagoon does not include the following:

1. ~~A runoff control basin which collects and stores only precipitation-induced runoff from an animal feeding operation in which animals are confined to areas which are unroofed or partially roofed and in which no crop, vegetation, or forage growth or residue cover is maintained during the period in which animals are confined in the operation or a settled open feedlot effluent basin which collects and stores only precipitation-induced runoff from an open feedlot operation.~~

2. An anaerobic treatment system that includes collection and treatment facilities for all off gases.

“Animal feeding operation” means a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for 45 days or more in any 12-month period, and all structures used for the storage of manure from animals in the operation. Except as required for an NPDES permit required pursuant to the federal Water Pollution Control Act, 33 U.S.C. Chapter 26, ~~as amended~~, an animal feeding operation does not include a livestock market. Open feedlots and confinement feeding operations are considered to be separate animal feeding operations.

1. For purposes of water quality regulation, Iowa Code section ~~455B.200B as amended by 2002 Iowa Acts, chapter 1137, section 31~~ 459.301 as amended by 2009 Iowa Acts, House File 735, section 6, provides that two or more animal feeding operations under common ownership or management are deemed to be a single animal feeding operation if they are adjacent or utilize a common area or system for manure disposal. For purposes of the air quality-related separation distances in Iowa Code section ~~455B.162, Iowa Code section 455B.161A as amended by 2002 Iowa Acts, chapter 1137, section 9~~ 459.202, Iowa Code section 459.201 provides that two or more animal feeding operations under common ownership or management are deemed to be a single animal feeding operation if they are adjacent or utilize a common system for manure storage. The distinction is due to regulation of animal feeding operations for water quality purposes under the federal Clean Water Act. The Code of Federal Regulations at 40 CFR §122.23 (~~1995~~ 2008) sets out the requirements for an animal feeding operation and requires that two or more animal feeding operations under common ownership be considered a single operation if they adjoin each other or if they use a common area or system for ~~manure disposal of wastes~~. However, this federal regulation does not control regulation of animal feeding operations for the purposes of the separation distances in Iowa Code section ~~455B.162~~ 459.202, and therefore the definition is not required by federal law to include common areas for manure disposal.

2. To determine if two or more animal feeding operations are deemed to be one animal feeding operation, the first test is whether the animal feeding operations are under common ownership or management. If they are not under common ownership or management, they are not one animal feeding operation. For purposes of water quality regulation, the second test is whether the two animal feeding operations are adjacent or utilize a common area or system for manure disposal. If the two operations are not adjacent and do not use a common area or system for manure disposal, they are not one animal feeding operation. For purposes of the separation distances in Iowa Code section ~~455B.162~~ 459.202, the second test is whether the two animal feeding operations are adjacent or utilize a common system

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for manure storage. If the two operations are not adjacent and do not use the same system for manure storage, they are not one animal feeding operation.

3. A common area or system for manure disposal includes, but is not limited to, use of the same manure storage structure, confinement feeding operation structure, egg washwater storage structure, stockpile, permanent manure transfer piping system or center pivot irrigation system. A common area or system for manure disposal does not include manure application fields included in a manure management plan or anaerobic digesters.

“Animal feeding operation structure” means a confinement building, manure storage structure, dry bedded confinement feeding operation structure, or egg washwater storage structure.

“Animal unit” means a unit of measurement based upon the product of multiplying the number of animals of each category by a special equivalency factor, as follows:

1. Slaughter and feeder cattle	1.000
2. Immature dairy cattle	1.000
3. Mature dairy cattle	1.400
4. Butcher or breeding swine weighing more than 55 pounds	0.400
5. Swine weighing 15 pounds or more but not more than 55 pounds	0.100
6. Sheep or lambs	0.100
7. Horses	2.000
8. Turkeys <u>weighing 7 pounds or more</u>	0.018
9. Turkeys <u>weighing less than 7 pounds</u>	0.0085
9 10. Broiler or layer chickens <u>weighing 3 pounds or more</u>	0.010
11. Broiler or layer chickens <u>weighing less than 3 pounds</u>	0.0025

“Animal unit capacity” means a measurement used to determine the maximum number of animal units that may be maintained as part of an animal feeding operation at any one time, including as provided in Iowa Code sections ~~455B.161A as amended by 2002 Iowa Acts, chapter 1137, section 9, and 455B.200B as amended by 2002 Iowa Acts, chapter 1137, sections 3 to 32~~ section 459.201 and section 459.301 as amended by 2009 Iowa Acts, House File 735, section 6. For dry bedded confinement operations, “animal unit capacity” means the maximum number of animal units which the owner or operator confines in a dry bedded confinement feeding operation at any one time, including the animal unit capacity of all dry bedded confinement feeding operation buildings that are used to house cattle or swine in the dry bedded confinement feeding operation.

“Applicant” means the person applying for a construction or operation permit for ~~an animal a confinement feeding operation. The applicant shall be the owner or owners of the animal feeding operation.~~

“Cemetery” means a space held for the purpose of permanent burial, entombment or interment of human remains that is owned or managed by a political subdivision or private entity, or a cemetery regulated pursuant to Iowa Code chapter 523I ~~or 566A~~. A cemetery does not include a pioneer cemetery where there have been six or fewer burials in the preceding ~~fifty~~ 50 years.

“Common management” means significant control by a person of the management of the ~~day-to-day~~ day-to-day operations of each of two or more ~~animal confinement feeding operations~~. Significant control includes the majority ownership by a person of the animals in each of two or more confinement feeding operations. For dry bedded confinement feeding operations, “common management” does not include control over a contract livestock facility by a contractor, as defined in Iowa Code section 202.1.

“Construction permit” means a written approval of the department to construct, modify or alter the use of an animal feeding operation structure as provided in subrule 65.7(1).

“Designated area” means a known sinkhole, ~~or a cistern~~, abandoned well, unplugged agricultural drainage well, agricultural drainage well cistern, agricultural drainage well surface tile inlet, drinking water well, designated wetland, ~~lake~~, or water source. A ~~designated~~ “Designated area” does not include a terrace tile inlet or surface tile inlet other than an agricultural drainage well surface tile inlet.

“Document” means any form required to be processed by the department under this chapter regulating animal feeding operations, including but not limited to applications or related materials for

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permits as provided in Iowa Code section 455B.200A as amended by 2002 Iowa Acts, chapter 1137, sections 28 and 29 459.303, manure management plans as provided in Iowa Code section 455B.203 as amended by 2002 Iowa Acts, chapter 1137, sections 38 to 41 459.312 as amended by 2009 Iowa Acts, Senate File 432, section 2, comment or evaluation by a county board of supervisors considering an application for a construction permit, the department's analysis of the application including using and responding to a master matrix pursuant to 2002 Iowa Acts, chapter 1137, section 35 Iowa Code section 459.304, and notices required under those sections.

"Enforcement action" means an action against a person with a controlling interest in a confinement feeding operation initiated by the department or the attorney general to enforce the provisions of Iowa Code chapter 455B 459 or rules adopted pursuant to the chapter. An enforcement action begins when the department issues an administrative order to the person, when the department notifies a person in writing of intent to recommend referral or the commission refers the action to the attorney general pursuant to Iowa Code section 455B.141 or 455B.191, or when the attorney general institutes proceedings in district court pursuant to Iowa Code section 455B.112, whichever occurs first. An enforcement action is pending until final resolution of the action by satisfaction of an administrative order, rescission or other final resolution of an administrative order or satisfaction of a court order, for which all administrative and judicial appeal rights are exhausted, expired, or waived.

"Freeboard" means the difference in elevation between the liquid level and the top of the lowest point of animal confinement feeding operation structure's berm or the lowest external outlet from a formed manure storage structure. However, for a formed manure storage structure meeting the requirements of 65.15(20), "freeboard" means the difference in elevation between the liquid level and the structure's overflow level.

"Indemnity fund" means the manure storage indemnity fund created in Iowa Code section 455J.2 459.501.

"Manure storage structure" means a formed manure storage structure or, an unformed manure storage structure or a dry bedded manure storage structure. A manure storage structure does not include an egg washwater storage structure.

"Owner" means the person who has legal or equitable title to the property where the animal confinement feeding operation is located or the person who has legal or equitable title to the animal feeding operation structures. It "Owner" does not include a person who has a lease to use the land where the animal feeding operation is located or to use the animal confinement feeding operation structures.

"Residence" means a house or other building, including all structures attached to the building, not owned by the owner of the animal confinement feeding operation, which meets all of the following criteria at the location of the intended residence:

1. Used as a place of habitation for humans on a permanent and frequent basis.
2. Not readily mobile.
3. ~~Connected to a permanent source of electricity, a permanent private water supply or a public water supply system and a permanent domestic sewage disposal system including a private, semipublic or public sewage disposal system.~~
4. 3. Assessed and taxed as real property.

If a house or other building has not been occupied by humans for more than six months in the last two years prior to the date the application for a construction permit is filed with the department, or if a house or other building has been constructed or moved to its current location within six months prior to the date the application for a construction permit is filed with the department, the owner of the intended residence has the burden of proving that the house or other building is a residence. Paragraph "3" shall not apply to a house or other building inhabited by persons who are exempt from the compulsory education standards of Iowa Code section 299.24 and whose religious principles or tenets prohibit the use of the utilities listed.

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ITEM 3. Adopt the following **new** definitions in rule **567—65.1(459,459B)**:

“Alluvial aquifer area” means an area underlaid by sand or gravel aquifers situated beneath flood plains along stream valleys and includes alluvial deposits associated with stream terraces and benches, contiguous wind-blown sand deposits, and glacial outwash deposits.

“Alluvial soils” means soils formed in materials deposited by moving water.

“Bedding” means crop, vegetation, or forage residue or similar materials placed in a dry bedded confinement building for the care of animals.

“Construction approval letter” means a written document of the department to acknowledge that the preconstruction submittal requirements of 567—65.9(459,459B) have been met for a confinement feeding operation that is not required to obtain a construction permit pursuant to 567—65.7(459,459B).

“Construction design statement” means a document required to be submitted by a confinement feeding operation prior to constructing a formed manure storage structure, other than a small animal feeding operation, but that does not meet the threshold engineering requirements pursuant to 567—65.1(459,459B).

“Dry bedded confinement feeding operation” means a confinement feeding operation in which cattle or swine are confined to areas which are totally roofed and in which all manure is stored as dry bedded manure. Unless specifically stated otherwise, all requirements in Division I of 567—Chapter 65 do apply to dry bedded confinement feeding operations.

“Dry bedded confinement feeding operation structure” means a dry bedded confinement feeding operation building or a dry bedded manure storage structure.

“Dry bedded manure” means manure from cattle or swine that meets all of the following requirements:

1. The manure does not flow perceptibly under pressure.
2. The manure is not capable of being transported through a mechanical pumping device designed to move a liquid.
3. The manure contains bedding.

“Dry bedded manure confinement feeding operation building” or *“building”* means a building used in conjunction with a confinement feeding operation to house cattle or swine and in which any manure from the animals is stored as dry bedded manure.

“Dry bedded manure storage structure” means a covered or uncovered structure, other than a building, used to store dry bedded manure originating from a confinement feeding operation.

“Dry manure” means manure which meets all of the following conditions:

1. The manure does not flow perceptibly under pressure.
2. The manure is not capable of being transported through a mechanical pumping device designed to move a liquid.
3. The constituent molecules of the manure do not flow freely among themselves but may show a tendency to separate under stress.

“Dry manure” includes manure marketed as a bulk dry animal nutrient product that is stored 1,250 feet or less from the confinement animal feeding structure from which it originated.

“Frozen ground” means soil that is impenetrable due to frozen soil moisture but does not include soil that is only frozen to a depth of two inches or less.

“Liquid manure” means manure that meets all of the following requirements:

1. The manure flows perceptibly under pressure.
2. The manure is capable of being transported through a mechanical pumping device designated to move a liquid.
3. The constituent molecules of the liquid manure flow freely among themselves and show a tendency to separate under stress.

“Long-term stockpile location” means an area where a person stockpiles manure for more than a total of six months in any two-year period.

“Qualified stockpile cover” means a barrier impermeable to precipitation that is used to protect a stockpile from precipitation.

“Qualified stockpile structure” means a building or roofed structure that is all of the following:

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1. Impermeable to precipitation.
2. Constructed using wood, steel, aluminum, vinyl, plastic, or other similar materials.
3. Constructed with walls or other means to prevent precipitation-induced surface runoff from contacting the stockpile.

“*Snow-covered ground*” means soil covered by one inch or more of snow or soil covered by one-half inch or more of ice.

“*Stockpile*” means dry manure or dry bedded manure originating from a confinement feeding operation that is stored at a particular location outside a confinement feeding operation building or a manure storage structure.

“*Stockpile dry bedded manure*” means to store dry bedded manure outside a dry bedded manure confinement feeding operation building or a dry bedded manure storage structure.

“*Stockpile dry manure*” means to create or add to a dry manure stockpile.

“*Surface water drain tile intake*” means an opening to a drain tile, including intake pipes and French drains, which allows surface water to enter the drain tile without filtration through the soil profile.

“*Threshold requirements for an engineer*” means the limits, pursuant to Iowa Code section 459.303, which require that the design of a formed manure storage structure or egg washwater storage structure be prepared and signed by a professional engineer licensed in the state of Iowa or by an engineer working for the USDA Natural Resources Conservation Service (NRCS). A confinement feeding operation that utilizes a formed manure storage structure meets threshold requirements for an engineer if any of the following applies:

1. A confinement feeding operation with an animal unit capacity of 1,250 or more animal units for swine maintained as part of a swine farrowing and gestating operation.
2. A confinement feeding operation with an animal unit capacity of 2,750 or more animal units for swine maintained as part of a swine farrow-to-finish operation.
3. A confinement feeding operation with an animal unit capacity of 4,000 or more animal units for cattle maintained as part of a cattle operation.
4. Any other confinement feeding operation with an animal unit capacity of 3,000 or more animal units.

“*Water well*” means an excavation that is drilled, cored, bored, augered, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for groundwater, monitoring groundwater, utilizing the geothermal properties of the ground, or extracting water from or injecting water into the aquifer. “Water well” does not include an open ditch or drain tiles or an excavation made for obtaining or prospecting for oil, natural gas, minerals, or products mined or quarried.

ITEM 4. Rescind the definitions of “Family,” “Family farm member,” “Nonpublic water supply,” “Primary highway,” “Substantial improvements,” “Substantial labor” and “Watercourse” in rule **567—65.1(459,459B)**.

ITEM 5. Amend rule 567—65.2(459,459B), introductory paragraph, as follows:

567—65.2(459,459B) Minimum manure control requirements and reporting of releases. ~~Water pollution control facilities~~ Confinement feeding operations shall be constructed, managed and maintained to meet the minimum manure control requirements stated in subrules 65.2(1) to 65.2(8) of this rule. A release shall be reported to the department as provided in subrule 65.2(9) of this rule. Dry manure stockpiling requirements are stated in subrule 65.2(10). Dry bedded manure stockpiling requirements are stated in 65.2(11).

ITEM 6. Amend subrule 65.2(3) as follows:

65.2(3) The minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application and as specified in this rule. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to waters of the state.

a. Control of manure from confinement feeding operations may be accomplished through use of manure storage structures or other manure control methods. Sufficient capacity shall be provided in the

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manure storage structure to store all manure between periods of manure application. A confinement feeding operation, other than a small animal feeding operation, that is constructed or expanded on or after July 1, 2009, shall not surface-apply liquid manure on frozen or snow-covered ground when there is an emergency, as described in subrule 65.3(4), unless the operation has a minimum of 180 days of manure storage capacity. Additional capacity shall be provided if precipitation, manure or wastes from other sources can enter the manure storage structure.

b. Manure shall be removed from the control facilities as necessary to prevent overflow or discharge of manure from the facilities. Manure stored in unformed manure storage structures or ~~earthen waste slurry storage basins~~ unformed egg washwater storage structures shall be removed from the structures as necessary to maintain a minimum of two feet of freeboard in the structure, unless a greater level of freeboard is required to maintain the structural integrity of the structure or prevent manure overflow. Manure stored in unroofed formed manure storage structures or formed egg washwater storage structures shall be removed from the structures as necessary to maintain a minimum of one foot of freeboard in the structure unless a greater level of freeboard is required to maintain the structural integrity of the structure or prevent manure overflow.

c. No change.

d. Dry manure or dry bedded manure originating at a confinement feeding operation may be retained as a stockpile so long as the stockpiled dry manure or dry bedded manure meets the following:

(1) Dry manure stockpiling requirements provided in subrule 65.2(10). Dry bedded manure stockpiling requirements provided in subrule 65.2(11).

(2) Applicable NPDES requirements pursuant to the federal Water Pollution Control Act, 33 U.S.C. Ch. 26, and 40 CFR Pts. 122 and 412.

(3) The dry manure or dry bedded manure is removed from the stockpile and applied in accordance with 567—65.3(459,459B) within six months after the dry manure or dry bedded manure is first stockpiled.

(4) Dry manure stockpiles are not required to meet the requirements in subparagraphs (1) to (3) above if the dry manure originates from a confinement feeding operation that was constructed prior to January 1, 2006, unless any of the following apply:

1. The confinement feeding operation is expanded after January 1, 2006.

2. Dry manure is stockpiled in violation of subrule 65.2(3).

3. Precipitation-induced runoff from the stockpile has drained off the property.

ITEM 7. Adopt the following **new** subrules 65.2(10) and 65.2(11):

65.2(10) Dry manure stockpiling requirements for a confinement feeding operation.

a. Requirements for terrain, other than karst terrain. Dry manure stockpiled on terrain, other than karst terrain, for more than 15 consecutive days shall comply with either of the following:

(1) Dry manure shall be stockpiled using any of the following:

1. A qualified stockpile structure; or

2. A qualified stockpile cover. Long-term stockpiles utilizing a qualified stockpile cover shall be placed on any of the following:

- Compacted soil: Soil that has had vegetation removed, the top six inches disked, and soil recompacted to 95 percent of the maximum density as determined by the Standard Proctor test after compaction. Test results from a minimum of four tests per stockpile area shall be submitted prior to use of the stockpile site.

- Compacted granular material: A minimum of 6 inches of compacted crushed limestone, Iowa Department of Transportation gradation 4125.01B, or flash.

- Asphalt: A minimum of 5 inches thick, placed in two passes, of Class B mix using 1/2 inch to 3/4 inch aggregate.

- Concrete: A minimum of 5-inch-thick unreinforced concrete producing minimum 3500 psi strength.

- Other similar material: Department approval required.

(2) A stockpile inspection statement may be delivered to the department as follows:

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1. The department must receive the statement by the fifteenth day of each month.
 2. The stockpile inspection statement shall provide the location of the stockpile and document the results of an inspection conducted during the previous month. The inspection must evaluate whether precipitation-induced runoff is draining away from the stockpile and, if so, describe actions taken to prevent the runoff. If an inspection by the department documents that precipitation-induced runoff is draining away from a stockpile, the dry manure must be immediately removed from the stockpile or comply with all directives of the department to prevent the runoff.
 3. The stockpile inspection statement must be in writing and may be on a form prescribed by the department.
 - b. Requirements for karst terrain.* Dry manure stockpiled on karst terrain or an area that drains into a known sinkhole shall comply with all of the following:
 - (1) A minimum 5-foot layer of low permeability soil or rock between the bottom of the stockpile and underlying limestone, dolomite or other soluble rock is required. A professional engineer licensed in Iowa, NRCS engineer or qualified organization shall submit a soil report, based on the results from soil borings or test pits or representative well data, describing the subsurface materials and vertical separation distance from the proposed bottom of the stockpile and the underlying limestone, dolomite or soluble rock. A minimum of two soil borings or test pits at each end of the proposed stockpile site are required if acceptable well data are not available. After soil exploration is complete, each boring or test pit shall be properly plugged with concrete grout, bentonite or similar materials and documented in the soil report.
 - (2) Dry manure stockpiled for more than 15 consecutive days shall use any of the following:
 1. A qualified stockpile structure; or
 2. A qualified stockpile cover. Long-term stockpiles utilizing a qualified stockpile cover shall be placed on a reinforced concrete slab at least 5 inches thick conforming to the requirements of 65.15(14)“a”(2), numbered paragraphs “1,” “3,” “4,” “6,” “8” and “12.”
 - c. Dry manure stockpile siting prohibitions.*
 - (1) Grassed waterway. A stockpile or stockpile structure shall not be placed in a grassed waterway.
 - (2) Sloping land. A stockpile or stockpile structure shall not be placed on land having a slope of more than 3 percent, unless the dry manure is stockpiled using methods, structures, or practices that contain the stockpile, including but not limited to silt fences, temporary earthen berms, or other effective measures, and that prevent or diminish precipitation-induced runoff from the stockpile.
- 65.2(11)** Dry bedded manure stockpiling requirements for a dry bedded confinement feeding operation.
- a. Prohibitions and siting restrictions.*
 - (1) Prohibition in a grassed waterway. A stockpile or stockpile structure shall not be placed in a grassed waterway, where water pools on the soil surface, or in any location where surface water will enter the stockpile.
 - (2) Siting restrictions. A stockpile or stockpile structure shall not be placed on land having a slope of more than 3 percent, unless the dry manure or dry bedded manure is stockpiled using methods, structures, or practices that contain the stockpile, including but not limited to hay bales, silt fences, temporary earthen berms, or other effective measures that prevent or diminish precipitation-induced runoff from the stockpile.
 - b. Requirements for karst terrain or alluvial aquifer areas.* Dry bedded manure stockpiled on karst terrain or an alluvial aquifer area shall comply with all of the following:
 - (1) A minimum 5-foot layer of low permeability soil or rock between the bottom of the stockpile and underlying limestone, dolomite or other soluble rock in karst terrain or the underlying sand and gravel aquifer in an alluvial aquifer area is required. A professional engineer licensed in Iowa, NRCS engineer or qualified organization shall submit a soil report, based on the results from soil borings or test pits, determining the vertical separation distance from the proposed bottom of the stockpile and the underlying limestone, dolomite or soluble rock. A minimum of two soil borings or test pits at each end of the proposed site are required if acceptable well data are not available. After soil exploration is complete, each boring or test pit shall be properly plugged with concrete grout, bentonite or similar materials and documented in the soil report.

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(2) Stockpiles shall be placed on a reinforced concrete slab that is a minimum of 5 inches thick conforming to the requirements of 65.15(14)“a”(2), numbered paragraphs “1,” “3,” “4,” “6,” “8” and “12.”

ITEM 8. Amend paragraph **65.3(3)“a”** as follows:

a. For liquid manure from a confinement feeding operation, the required separation distance from a residence not owned by the titleholder of the land, a business, a church, a school, or a public use area is 750 feet, as specified in Iowa Code section ~~455B.162~~ 459.204. The separation distance for application of manure by spray irrigation equipment shall be measured from the actual wetted perimeter and the closest point of the residence, business, church, school, or public use area.

ITEM 9. Adopt the following **new** subrule 65.3(4):

65.3(4) Surface application of liquid manure on frozen or snow-covered ground. A person who applies liquid manure on frozen or snow-covered ground shall comply with applicable NPDES requirements pursuant to the federal Water Pollution Control Act, 33 U.S.C. Chapter 26, and 40 CFR Parts 122 and 412, and also shall comply with the following requirements:

a. *Snow-covered ground.* During the period beginning December 21 and ending April 1, a person may apply liquid manure originating from a manure storage structure that is part of a confinement feeding operation on snow-covered ground only when there is an emergency.

b. *Frozen ground.* During the period beginning February 1 and ending April 1, a person may apply liquid manure originating from a manure storage structure that is part of a confinement feeding operation on frozen ground only when there is an emergency.

c. *What constitutes an emergency.* For the purposes of this subrule, an emergency application is only allowed when there is an immediate need to apply manure to comply with the manure retention requirement of subrule 65.2(3) due to unforeseen circumstances affecting the storage of the liquid manure. The unforeseen circumstances must be beyond the control of the owner of the confinement feeding operation, including but not limited to natural disaster, unusual weather conditions, or equipment or structural failure. The authorization to apply liquid manure pursuant to this subrule does not apply to either of the following:

(1) An immediate need to apply manure in order to comply with the manure retention requirement of subrule 65.2(3) caused by the improper design or management of the manure storage structure, including but not limited to a failure to properly account for the volume of the manure to be stored. Based on the restrictions described in paragraphs 65.3(4)“a” and “b” and the possibility that the ground could be snow-covered and frozen for the entire period of December 21 to April 1, an operation should not plan to apply liquid manure during that time period. Confinement feeding operations without alternatives to manure application must have sufficient storage capacity to retain manure generated from December 21 to April 1 under normal circumstances in order to properly account for the volume of manure to be stored.

(2) Liquid manure originating from a confinement feeding operation constructed or expanded on or after July 1, 2009, if the confinement feeding operation has a capacity to store manure for less than 180 days.

d. *Procedure for emergency application.* A person who is authorized to apply liquid manure on snow-covered ground or frozen ground when there is an emergency shall comply with all of the following:

(1) The person must notify the appropriate department field office by telephone prior to the application. The department will not consider the notification complete unless the owner’s name, facility name, facility ID number, reason for emergency application, application date, estimated number of gallons of manure to be applied, and the size and legal description of the application fields are given. In cases where the emergency is not easily confirmed by weather reports, the owner must make documentation of the emergency available to the field office upon request.

(2) The liquid manure must be applied on land identified for such application in the current manure management plan maintained by the owner of the confinement feeding operation as required in subrule 65.17(12). The land must be identified in the current manure management plan prior to the application,

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and that change must also be reflected in the next annual update or complete manure management plan submitted to the department and county boards of supervisors following the application as required in paragraph 65.16(3) "b."

(3) The liquid manure must be applied on a field with a phosphorus index rating of 2 or less.

(4) Any surface water drain tile intake that is on land in the owner's manure management plan and located downgradient of the application must be temporarily blocked beginning not later than the time that the liquid manure is first applied and ending not earlier than two weeks after the completion of the application. For liquid manure that is applied on snow-covered ground, removal of tile protection prior to the completion of snowmelt is considered a release as defined in 567—65.1(459,459B) and shall be reported as required in subrule 65.2(9).

(5) Additional measures to contain runoff may be necessary in order to prevent violation of federal effluent standards in 567—subrule 62.4(12).

e. Exceptions. Paragraphs 65.3(4) "a" through "d" do not apply to any of the following:

(1) The application of liquid manure originating from a small animal feeding operation.

(2) The application of liquid manure injected or incorporated into the soil on the same date.

ITEM 10. Amend subrule 65.3(4) as follows:

~~65.3(4)~~ **65.3(5)** *Recommended practices.* Except as required by rule in this chapter, the following practices are recommended:

a. and b. No change.

c. Manure application on frozen or snow-covered cropland. ~~Manure application~~ Application of dry or liquid manure on frozen or snow-covered cropland should be avoided where possible. If manure application must take place in the winter time, the following are guidelines to minimize runoff and subsequent loss of nutrients. If manure is spread on frozen or snow-covered cropland, application should be limited to areas on which:

~~(1) Land slopes are 4 percent or less, or~~

~~(2) Adequate erosion control practices exist. Adequate erosion control practices may include such practices as terraces, conservation tillage, cover crops, contour farming or similar practices.~~

(1) Apply manure to areas where land slopes are 4 percent or less or where control practices are sufficient to prevent runoff from reaching surface water or groundwater during winter.

(2) If applying manure on a terraced field or sloping field, avoid application to areas that drain to tile intakes that directly discharge to surface water or groundwater.

(3) Do not apply manure in grassed waterways.

(4) Apply manure early in winter prior to significant snowfall.

(5) Avoid application near tile intakes, ditches, gullies, areas of concentrated flow, creeks, streams, lakes, and other surface water.

(6) Avoid application near water wells, sinkholes, losing streams, areas with shallow bedrock, agricultural drainage wells, or other pathways to groundwater.

(7) Do not apply manure on top of deeper snow cover, especially in late winter.

(8) Applying manure on soybean stubble where less snow is captured is preferable to applying manure on standing cornstalks.

(9) In late winter, wait until the snow has melted before applying manure.

(10) Avoid application during active runoff events or when rainfall, snow, or warming conditions are predicted that could cause snowmelt or runoff.

(11) Fields and tiles should be observed during snowmelt and runoff events to identify and remediate any runoff that may occur. If discolored or odorous water is being discharged, immediate efforts should be taken to prevent the water from reaching surface water or groundwater and changes should be made to prevent the discharge from recurring. Sampling and analysis of runoff for nitrogen and phosphorus may be used to better evaluate management practices in order to avoid wasting valuable nutrients or causing water quality violations.

d. to f. No change.

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ITEM 11. Adopt the following **new** subrule 65.3(6):

65.3(6) Certified manure applicator. A confinement feeding operation that is required to submit a manure management plan to the department pursuant to rule 567—65.16(459,459B) must use a certified manure applicator as defined in rule 567—65.19(459,459B) for land application of manure.

ITEM 12. Amend rule 567—65.7(459,459B) as follows:

567—65.7(459,459B) Construction permits—required approvals, permits, determinations and declaratory orders. A person required to obtain a construction permit pursuant to subrule 65.7(1) or a construction approval letter pursuant to subrule 65.7(7) shall not begin construction, expansion or modification of a confinement feeding operation structure until the department issues a construction permit or a construction approval letter, as defined in 567—65.1(459,459B), for a proposed or existing confinement feeding operation. In addition, the owner of a small animal feeding operation with formed manure storage structures who is not required to obtain a construction permit pursuant to subrule 65.7(1) or a construction approval letter pursuant to subrule 65.7(7) shall comply with the applicable construction approval requirements pursuant to subrule 65.7(8).

65.7(1) Animal Confinement feeding operations required to obtain a construction permit.

- a. No change.
- b. Except as provided in subrule 65.7(2), a confinement feeding operation shall obtain a construction permit prior to any of the following:
 - (1) Constructing or modifying any unformed manure storage structure, or constructing, installing or modifying a confinement building that uses an unformed manure storage structure.
 - (2) to (8) No change.
 - (9) When directed by the department for a remedial change, upgrade, replacement or construction as a result of departmental evaluation pursuant to paragraph 65.5(2)“b” or as required by an administrative order or court order pursuant to Iowa Code section 455B.112 or 455B.175.

Repairs to a confinement building or additions such as fans, slats, gates, roofs, or covers do not require a construction permit. In some instances, the department may determine that a construction permit is not required to increase the volume of manure or egg washwater or a modification in the manner in which manure or egg washwater is stored if the increase or modification is deemed insignificant. Plans for repairs or modifications to a manure storage structure shall be submitted to the department to determine if a permit is required.

65.7(2) Animal Confinement feeding operations not required to obtain a construction permit.

- a. A construction permit shall not be required for ~~an animal feeding operation structure used a~~ formed manure storage structure or for a confinement building that uses a formed manure storage structure in conjunction with a small animal feeding operation. However, this paragraph shall not apply to a small animal feeding operation that uses an unformed manure storage structure.
- b. A construction permit shall not be required for ~~an animal~~ a confinement feeding operation structure related to research activities and experiments performed under the authority and regulations of a research college.
- c. A construction permit is not required to construct a formed manure storage structure at a confinement feeding operation having an animal unit capacity of more than 500 but less than 1,000 animal units; however, a construction approval letter is required from the department pursuant to subrule 65.7(8) and 567—65.9(459,459B).

65.7(3) Operations that shall not be issued construction permits.

- a. No change.
- b. The department shall not issue a construction permit to a person for five years after the date of the last violation committed by a person or confinement feeding operation in which the person holds a controlling interest during which the person or operation was classified as a habitual violator under Iowa Code ~~section 455B.191~~ sections 459.317 and 459.604.
- c. The department shall not issue a construction permit to expand or modify a confinement feeding operation for ~~one year~~ 120 days after completion of the last construction or modification at the operation,

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if a permit was not required for the last construction or modification. ~~The department, upon good cause demonstrated by the applicant, shall grant a waiver to this rule.~~

d. No change.

65.7(4) ~~Plan~~ Construction permit application plan review criteria. Review of plans and specifications submitted with a construction permit application shall be conducted to determine the potential of the proposed manure control system to achieve the level of manure control being required of the ~~animal~~ confinement feeding operation. In conducting this review, applicable criteria contained in federal law, state law, these rules, Natural Resources Conservation Service design standards and specifications unless inconsistent with federal or state law or these rules, and U.S. Department of Commerce precipitation data shall be used. If the proposed facility plans are not adequately covered by these criteria, applicable criteria contained in current technical literature shall be used.

65.7(5) and **65.7(6)** No change.

65.7(7) ~~Permit prior to construction~~ Confinement feeding operations required to obtain a construction approval letter. ~~An applicant for a construction permit shall not begin construction at the location of a site planned for the construction of an animal feeding operation structure, including an aerobic structure, until the person has been granted a permit for the construction of the structure by the department. A person planning to construct a confinement feeding operation, other than a small animal feeding operation as defined in rule 567—65.1(459,459B) or other than an operation required to obtain a construction permit pursuant to subrule 65.7(1), shall obtain from the department a construction approval letter as provided in subrule 65.9(3) prior to beginning construction of a formed manure storage structure. The construction approval letter shall expire if construction, as defined in subrule 65.8(1), is not begun within one year and completed within four years of the date of the construction approval letter.~~

65.7(8) Small animal feeding operations. The following requirements apply to small animal feeding operations, notwithstanding construction permit exemptions in subrule 65.7(2) and limited separation distance exemptions in rule 567—65.12(459,459B):

a. A person shall not begin construction of a confinement feeding operation structure located on alluvial soil until the department issues a declaratory order pursuant to subrule 65.7(9) that the proposed location is not in the one hundred year flood plain.

b. A person shall not construct a confinement feeding operation structure on a flood plain as provided in rule 567—71.13(455B) until the department issues a flood plain development permit pursuant to 567—Chapters 70 to 76.

c. Confinement feeding operation structures must comply with applicable separation distance requirements in rule 567—65.11(459,459B) and the applicable manure storage structure design requirements in rule 567—65.15(459,459B).

65.7(9) Declaratory orders and flood plain determinations. If the location of any proposed confinement feeding operation structure contains soils classified as alluvial determined pursuant to subrule 65.9(4), the owner shall petition the department for a declaratory order or a determination that the confinement feeding operation structure is not in the one hundred year flood plain. To be considered complete, the petition shall include all information necessary, pursuant to 567—Chapters 70 to 76, for the department to determine: (1) if the confinement feeding operation is proposed to be located on a one hundred year flood plain; (2) if a flood plain development permit for the operation is required; and (3) if a flood plain development permit may be issued if one is required. This information may include land surveys to determine elevations of the land within the footprint of the planned operation as well as flood plain and channel geometry. The petition for a declaratory order or determination shall be submitted to the department according to either of the following:

a. If the person is not required to apply for a construction permit pursuant to subrule 65.7(1), the person must petition the department for a declaratory order pursuant to Iowa Code section 17A.9 and 561—Chapter 6. The department shall issue a declaratory order in response to a complete petition, notwithstanding any other provision provided in Iowa Code section 17A.9 to the contrary, within 30 days from the date that the complete petition is filed with the department. The declaratory order shall state whether or not the proposed location is on the one hundred year flood plain. If the proposed location

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of the confinement feeding operation structure is on the one hundred year flood plain, the department shall prohibit the construction. Exception to this subrule is provided in Iowa Code section 459.310, subsection 4. Even if the proposed location of the confinement feeding operation structure is not on the one hundred year flood plain, the department may require a flood plain development permit pursuant to 567—Chapters 70 to 76.

b. If the person is required to apply for a construction permit pursuant to subrule 65.7(1), the person must petition the department for a determination. The department shall determine if the confinement feeding operation structure is proposed to be located on the one hundred year flood plain. If the proposed location of the confinement feeding operation structure is on the one hundred year flood plain, the department shall disapprove the construction permit. Exception to this subrule is provided in Iowa Code section 459.310, subsection 4. Even if the department makes a determination that the proposed location of the confinement feeding operation structure is not on the one hundred year flood plain, the department may require a flood plain development permit pursuant to 567—Chapters 70 to 76.

65.7(10) Compliance with permit conditions. A person who constructs, modifies or expands a confinement feeding operation structure pursuant to a construction permit shall comply with all terms and conditions of the construction permit.

ITEM 13. Amend paragraph **65.8(1)“c”** as follows:

c. Installation of piping for movement of manure within, from or between animal confinement feeding operation structures.

ITEM 14. Amend paragraphs **65.8(3)“b,” “d” and “e”** as follows:

b. A person shall not construct or expand an animal feeding operation structure which is part of a confinement feeding operation structure for five years after the date of the last violation committed by a person or a confinement feeding operation in which the person holds a controlling interest during which the person or operation was classified as a habitual violator under Iowa Code section 455B.191 sections 459.317 and 459.604.

d. A confinement feeding operation structure shall not be constructed on the one hundred year flood plain. Placing fill material on flood plain land to elevate the land above the one hundred year flood level will not be considered as removing the land from the one hundred year flood plain for the purpose of this paragraph. In addition, a person shall not construct a confinement feeding operation structure on a flood plain as provided in rule 567—71.13(455B) until the department issues a flood plain development permit pursuant to 567—Chapters 70 to 76.

e. A person shall not construct a confinement feeding operation structure on land that contains alluvial soils, according to the Soil Survey published by the Natural Resources Conservation Service of the United States Department of Agriculture, and determined according to subrule 65.9(4), unless the person has received a declaratory order or a determination from the department of natural resources that the proposed location of the structure is not on the one hundred year flood plain. The declaratory order or determination may be obtained as follows: pursuant to subrule 65.7(9).

(1) If the person does not apply for a construction permit as provided in Iowa Code section 459.303 and rule 567—65.9(455B), the person must petition the department for a declaratory order pursuant to Iowa Code section 17A.9 and 561—Chapter 6 to determine whether the location of the proposed confinement feeding operation structure is on the one hundred year flood plain. The person is strongly encouraged to contact the department prior to submitting the petition to determine the nature and extent of information required for the petition to be considered complete. To be considered complete, the petition must include all information pursuant to 567—Chapters 70 to 76 necessary to determine if the confinement feeding operation structure is proposed to be located on a one hundred year flood plain. This information may include land surveys to determine elevations of the land within the footprint of the planned operation as well as flood plain and channel geometry. The department shall issue a declaratory order in response to a complete petition, notwithstanding any other provision provided in Iowa Code section 17A.9 to the contrary, within 30 days from the date that the complete petition is filed with the department. The declaratory order shall state whether or not the proposed location is on the one hundred year flood plain.

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~~(2) If the person does apply for a construction permit as provided in Iowa Code section 459.303, the person must identify in the application whether or not the land contains alluvial soils. The department shall determine if the confinement feeding operation structure is proposed to be located on the one hundred year flood plain. If the proposed location of the confinement feeding operation structure is on the one hundred year flood plain, the department shall disapprove the construction permit. In the event that the proposed location of the confinement feeding operation structure is not on the one hundred year flood plain, the department may issue a construction permit as provided in Iowa Code section 459.303 and rule 567—65.9(455B) if all other applicable criteria are satisfied.~~

ITEM 15. Adopt the following new paragraph **65.8(3)“f”**:

f. A person shall not construct or expand an unformed manure storage structure within an agricultural drainage well area as specified in Iowa Code sections 459.310 and 460.205.

ITEM 16. Amend rule 567—65.9(459,459B) as follows:

567—65.9(459,459B) Construction permit application Preconstruction submittal requirements. Prior to beginning construction, expansion or modification of a confinement feeding operation structure, a person shall obtain from the department a construction permit pursuant to subrule 65.7(1), a construction approval letter pursuant to subrule 65.7(7) or approval of a secondary containment barrier design pursuant to subrule 65.9(8), according to procedures established in this rule:

65.9(1) Confinement feeding operations Construction permit application. Application for a construction permit for a confinement feeding operation shall be made on a form provided by the department. The application shall include all of the information required in the form and should be submitted to the department at least 120 days prior to the date the proposed construction is scheduled to begin. At the time the department receives a complete application, the department shall make a determination regarding the approval or denial of the permit within 60 days in accordance with subrule 65.10(5). However, the 60-day requirement shall not apply to an application if the applicant is not required to obtain a permit. A construction permit application for a confinement feeding operation shall be filed as instructed on the form and shall include at least the following:

a. The owner name of the applicant and the name of the confinement feeding operation, including mailing address and telephone number.

b. and *c.* No change.

d. Whether the application is for the expansion of an existing operation or the construction of a proposed confinement feeding operation, and the date when it was first constructed if an existing operation.

e. The animal unit capacity by animal species of the current confinement feeding operation to be expanded, if applicable, and of the proposed confinement feeding operation. If the confinement feeding operation includes a confinement feeding operation structure that was constructed prior to March 1, 2003, the animal weight capacity by animal species of the current confinement feeding operation to be expanded, if applicable, and of the proposed confinement feeding operation shall also be included.

f. For a manure storage structure in which manure is stored in a liquid or semiliquid form or for an egg washwater storage structure, Engineering documents. A confinement feeding operation that utilizes an unformed manure storage structure, an egg washwater storage structure or a formed manure storage structure at an operation that meets the threshold requirements for an engineer as defined in 567—65.1(459,459B) shall include an engineering report, construction plans and specifications, prepared. The engineering report, construction plans and specifications must be prepared and signed by a licensed professional engineer or by an engineer working for the Natural Resources Conservation Service (NRCS) personnel, that, must detail the proposed structures, and must include a statement certifying that the manure storage structure complies with the requirements of Iowa Code chapter 459. In addition, a qualified soils or groundwater professional shall submit a hydrogeologic report on soil corings in the area of the unformed manure storage structure or egg washwater storage structure as described in subrules 65.15(6) to 65.15(13).

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~~g. A report on soil corings in the area of the aerobic structure, anaerobic lagoon, egg washwater storage structure, or manure storage basin, as described in subrule 65.17(6), if an earthen lagoon, structure or basin is being constructed. Construction design statement or professional engineer design certification. A confinement feeding operation that uses a formed manure storage structure and that is below the threshold requirements for an engineer as defined in 567—65.1(459,459B) shall submit a construction design statement pursuant to subrule 65.9(6) or a professional engineer design certification pursuant to subrule 65.9(7).~~

~~h. Payment to the department of the indemnity fund fee as required in Iowa Code section 455J.3 459.502.~~

~~i. If the confinement feeding operation contains construction permit application is for three or more animal confinement feeding operation structures, a drainage tile certification shall be submitted as follows:~~

~~(1) If the application is for an unformed manure storage structure, an egg washwater storage structure or a formed manure storage structure that meets the threshold engineering requirements as defined in 567—65.1(459,459B), a licensed professional engineer shall certify that either the construction of the structure will not impede the drainage through established drainage tile lines which cross property boundary lines or that if the drainage is impeded during construction, the drainage tile will be rerouted to reestablish the drainage prior to operation of the structure.~~

~~(2) If the application is for a formed manure storage structure that does not meet the threshold engineering requirements, a drainage tile certification shall be submitted as part of the construction design statement pursuant to subrule 65.9(6) or the professional engineer design certification pursuant to subrule 65.9(7).~~

~~j. Information (e.g., maps, drawings, aerial photos) that clearly shows the proposed location of the animal confinement feeding operation structures, any existing confinement feeding operation structures, any locations or objects from which a separation distance is required by Iowa Code sections 455B.162 and 455B.204 459.202, 459.203 and 459.310, and that the structures will meet all applicable separation distances. For an unformed manure storage structure, an egg washwater storage structure or a formed manure storage structure that meets the threshold requirements for an engineer as defined in 567—65.1(459,459B), the maps, drawings or aerial photos must be signed by a professional engineer licensed in Iowa. If applicable, a copy of a recorded separation distance waiver, pursuant to paragraph 65.12(1)“b,” must be included with the application. Also, if applicable, a secondary containment barrier design, pursuant to subrules 65.9(8) and 65.12(7), shall be included.~~

~~k. No change.~~

~~l. Documentation that a copy Copies of the permit application and manure management plan has been provided to the county board of supervisors or county auditor in the county where the operation or structure subject to the permit is to be located, and documentation of the date received by the county pursuant to 567—65.16(459,459B).~~

~~m. A fee of \$500, consisting of a construction permit application fee of \$250 and, if applicable, the manure management plan filing fee of \$250 as required in 65.16(6) subrule 65.16(7).~~

~~n. No change.~~

~~o. Information necessary for the department to determine: (1) if the confinement feeding operation is proposed to be located on a one hundred year flood plain; (2) if a flood plain development permit for the operation is required; and (3) if a flood plain development permit may be issued if one is required, pursuant to 567—Chapters 70 to 76. This information may include land surveys to determine elevations of the land within the footprint of the planned operation as well as flood plain and channel geometry. Soil information indicating whether the proposed location contains soils classified as alluvial, pursuant to subrule 65.9(4). If the proposed location contains soils classified as alluvial, a copy of the department’s determination that the proposed location is not in a one hundred year flood plain, and a flood plain development permit pursuant to 567—Chapters 70 to 76, if required, shall be included.~~

~~p. A copy of any master matrix evaluation provided to the county.~~

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g. Information indicating whether the proposed location is in karst terrain pursuant to subrule 65.9(5). If the proposed location is in karst terrain, a soils exploration study or a statement from qualified department staff that a soils exploration study is not needed shall be included.

r. A livestock odor mitigation evaluation certificate issued by Iowa State University as provided in Iowa Code section 266.49. The applicant is not required to submit the certificate if any of the following applies:

(1) The confinement feeding operation is twice the minimum separation distance required from the nearest object or location from which a separation distance is required pursuant to Iowa Code section 459.202 on the date of the application, not including a public thoroughfare.

(2) The owner of each object or location which is less than twice the minimum separation distance required pursuant to Iowa Code section 459.202 from the confinement feeding operation on the date of the application, other than a public thoroughfare, executes a document consenting to the construction.

(3) The applicant submits a document swearing that Iowa State University has failed to furnish a certificate to the applicant within 45 days after the applicant requested the University to conduct a livestock odor mitigation evaluation as provided in Iowa Code section 266.49.

(4) The application is for a permit to expand a confinement feeding operation, if the confinement feeding operation was first constructed before January 1, 2009.

(5) Iowa State University does not provide for a livestock odor mitigation evaluation effort as provided in Iowa Code section 266.49, for any reason, including because funding is not available.

s. Documentation that copies of all the construction permit application documents have been provided to the county board of supervisors or county auditor in the county where the operation or structure subject to the permit is to be located, and documentation of the date received by the county.

65.9(2) No change.

65.9(3) *Construction approval letter.* A confinement feeding operation that, pursuant to subrule 65.7(7), is required to obtain a construction approval letter as defined in 567—65.1(459,459B), but that is not required to obtain a construction permit pursuant to subrule 65.7(1), shall file with the department, at least 30 days prior to the date the proposed construction is scheduled to begin, all of the following:

a. A construction design statement pursuant to subrule 65.9(6). In lieu of a construction design statement, a professional engineer design certification pursuant to subrule 65.9(7) may be submitted.

b. The results of the alluvial soils information pursuant to subrule 65.9(4) or a copy of the department's declaratory order that the location is not in the one hundred year flood plain pursuant to paragraph 65.8(3)"e" and a copy of the department's flood plain development permit pursuant to 567—Chapters 70 to 76, if required.

c. The results of the karst terrain determination pursuant to subrule 65.9(5).

d. A copy of the manure management plan pursuant to 567—65.16(459,459B).

e. Information (e.g., maps, drawings, aerial photos) that clearly shows the intended location of the confinement feeding operation structures and animal weight capacities of any other confinement feeding operations within a distance of 2,500 feet in which the owner has an ownership interest or which the owner manages.

f. A fee of \$250 for filing a manure management plan pursuant to subrule 65.16(7) and a manure storage indemnity fee pursuant to subrule 65.16(6).

g. Documentation that the board of supervisors or auditor of the county where the confinement feeding operation structure is proposed to be located received a copy of the manure management plan.

65.9(4) *Alluvial soils submittal requirements.* Prior to beginning construction or expansion of a confinement feeding operation, the person planning the construction shall determine whether the proposed confinement feeding operation structure will be located in soils classified as alluvial, as defined in 567—65.1(459,459B) and pursuant to paragraph 65.8(3)"e." The alluvial soils determination shall be obtained by using the AFO Siting Atlas located at the department's official Web site, or by consulting a qualified department staff person, a soils professional normally engaged in the practice of soil investigation, or a qualified staff person of the USDA Natural Resources Conservation Service (NRCS). The alluvial soils determination shall be submitted to the department according to the following:

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a. If the proposed location is not in alluvial soils, the person planning the construction shall submit a printed map from the AFO Siting Atlas clearly showing the location of each proposed confinement feeding operation structure or a written statement from qualified department staff, a soils professional normally engaged in the practice of soil investigation or a qualified staff person of the USDA NRCS with the construction permit application documents as required in subrule 65.9(1) or with the construction design statement as required in subrule 65.9(3) if a construction permit is not required.

b. If the proposed location is in alluvial soils, the person planning the construction shall petition the department for a declaratory order or a determination according to procedures required in subrule 65.7(9). It is recommended that the person planning the construction consult with qualified department staff before petitioning for a declaratory order or a determination. The department's determination indicating that the location is not in the one hundred year flood plain and a copy of the department's flood plain development permit pursuant to 567—Chapters 70 to 76, if required, must be submitted with the construction permit application documents pursuant to subrule 65.9(1). If a construction permit is not required pursuant to subrule 65.7(1), the department's declaratory order indicating that the location is not in the one hundred year flood plain and a copy of the department's flood plain development permit pursuant to 567—Chapters 70 to 76, if required, must be submitted when a construction design statement is filed pursuant to subrules 65.9(3) and 65.9(6).

65.9(5) Karst terrain submittal requirements. Prior to beginning construction of a confinement feeding operation, the person planning the construction shall determine whether the proposed confinement feeding operation structure will be located in karst terrain, as defined in 567—65.1(459,459B). The karst terrain determination shall be obtained by using the AFO Siting Atlas located at the department's official Web site or by consulting a qualified department staff person, a soils professional normally engaged in the practice of soil investigation or a qualified staff person of the USDA Natural Resources Conservation Service (NRCS). The results of the karst terrain determination shall be submitted to the department according to the following:

a. If the proposed location is not in karst terrain, the person planning the construction, other than a small animal feeding operation, shall submit a printed map from the AFO Siting Atlas clearly showing the location of each proposed confinement feeding operation structure or a written statement by a qualified department staff person, a soils professional normally engaged in the practice of soil investigation or a qualified staff person of the USDA Natural Resources Conservation Service (NRCS) with the construction permit application documents pursuant to subrule 65.9(1) or with the construction design statement pursuant to subrule 65.9(3) if a construction permit is not required.

b. If the proposed location is in karst terrain, the person planning the construction shall submit a printed map from the AFO Siting Atlas clearly showing the location of each proposed confinement feeding operation structure and a copy of the soils exploration study required in paragraph 65.15(14)“c” with the construction permit application pursuant to subrule 65.9(1) or with the construction design statement pursuant to subrule 65.9(3) if a construction permit is not required. In lieu of a printed map, a statement from a qualified department staff person, a soils professional normally engaged in the practice of soil investigation or a qualified staff person of the USDA Natural Resources Conservation Service (NRCS) explaining the karst terrain determination, may be submitted. It is recommended that the person planning the construction consult with a qualified staff person of the department before obtaining the soil borings. A formed manure storage structure other than a small animal feeding operation shall be constructed according to the upgraded concrete standards set forth in paragraph 65.15(14)“c” or Iowa Code section 459.307 if the structure is not constructed of concrete. Nonetheless, construction of an unformed manure storage structure in karst terrain is prohibited.

65.9(6) Construction design statement. Prior to beginning construction of a formed manure storage structure, a person planning construction at a confinement feeding operation, other than a small animal feeding operation that is below the threshold requirements for an engineer as defined in 567—65.1(459,459B), shall file with the department a construction design statement, as follows:

a. A confinement feeding operation with an animal unit capacity of more than 500 but less than 1,000 animal units that is required to obtain a construction approval letter from the department pursuant to subrule 65.7(7) but that is not required to obtain a construction permit pursuant to subrule 65.7(1)

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shall file with the department a construction design statement, as required in subrule 65.9(3). Within 30 days after filing of a construction design statement, the department may issue a construction approval letter as defined in 567—65.1(459,459B) if the proposed formed manure storage structure meets the requirements of this chapter.

b. A confinement feeding operation that has an animal unit capacity of 1,000 animal units or more but that is below the threshold requirements for an engineer as defined in 567—65.1(459,459B) shall file a construction design statement as part of the construction permit application and as required in subrule 65.9(1).

c. The construction design statement shall be filed on a form provided by the department and shall include all of the following:

(1) The name of the person planning construction at the confinement feeding operation, the name of the confinement feeding operation, the location of the proposed formed manure storage structure, a detailed description of the type of confinement feeding operation structure being proposed, the dimensions of the structure, and whether the structure will be constructed of reinforced concrete or steel.

(2) A manure management plan pursuant to 567—65.16(459,459B).

(3) A certification signed by the person responsible for constructing the formed manure storage structure that the proposed formed manure storage structure will be constructed according to the minimum concrete standards set forth in subrule 65.15(14). Otherwise, if the formed manure storage structure is to be constructed of steel, including a Slurry Store tank, a certification signed by the person responsible for constructing the formed manure storage structure that the proposed formed manure storage structure will be constructed according to the requirements of Iowa Code chapter 459 and 567—Chapter 65.

(4) If the confinement feeding operation is also required to obtain a construction permit at a confinement feeding operation proposing three or more confinement feeding operation structures, the construction design statement shall include a drainage tile certification signed by the person responsible for constructing or excavating the formed manure storage structure, shall certify that construction will not impede established existing drainage, and shall verify that if existing drainage tiles are found, corrective actions will be implemented to immediately reestablish existing drainage.

d. The following operations are not required to file a construction design statement with the department:

(1) A small animal feeding operation that constructs a formed manure storage structure.

(2) A confinement feeding operation that submits a professional engineer design certification pursuant to subrule 65.9(6).

(3) A confinement feeding operation that meets or exceeds threshold requirements for an engineer as defined in 567—65.1(459,459B).

(4) A confinement feeding operation that utilizes an unformed manure storage structure or an egg washwater storage structure.

65.9(7) Professional engineer design certification. In lieu of a construction design statement prior to beginning construction of a formed manure storage structure, a confinement feeding operation, other than a small animal feeding operation, that is below the threshold requirements for an engineer pursuant to 567—65.1(459,459B) may file with the department a professional engineer design certification signed by a professional engineer licensed in the state of Iowa or by an engineer working for the USDA Natural Resources Conservation Service (NRCS). The professional engineer design certification shall be site-specific and shall be filed on a form provided by the department as follows:

a. A confinement feeding operation with an animal unit capacity of more than 500, but less than 1,000, animal units that is not required to obtain a construction permit pursuant to subrule 65.7(1) shall file with the department, at least 30 days before beginning construction of a formed manure storage structure, the professional engineer design certification as required in subrule 65.9(3). Within 30 days after filing of a professional engineer design certification, the department may issue a construction approval letter if the proposed formed manure storage structure meets the requirements of this chapter.

b. A confinement feeding operation with an animal unit capacity of 1,000 animal units or more that is required to obtain a construction permit pursuant to subrule 65.7(1) but that is below the threshold

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requirements for an engineer pursuant to 567—65.1(459,459B) shall file with the department the professional engineer design certification as part of the construction permit application and as required in subrule 65.9(1).

65.9(8) Secondary containment barrier design submittal requirements. The design for a secondary containment barrier to qualify any confinement feeding operation for the separation distance exemption provision in subrule 65.12(7) shall be filed with the department for approval prior to beginning construction of a formed manure storage structure that is part of a small animal feeding operation, shall accompany the construction design statement pursuant to subrule 65.9(3) if a construction permit is not required, or shall be filed as part of the construction permit application pursuant to subrule 65.9(1). The secondary containment barrier shall meet the design standards of subrule 65.15(17) and shall be prepared according to the following:

a. If a manure storage structure stores liquid or semi-liquid manure, the secondary containment barrier design shall include engineering drawings prepared and signed by a professional engineer licensed in the state of Iowa or by an engineer working for the USDA Natural Resources Conservation Service (NRCS).

b. If the manure storage structure will store only dry manure, the owner or a representative of a confinement feeding operation shall submit to the department detailed drawings of the design for a secondary containment barrier.

ITEM 17. Amend paragraph **65.10(2)“b”** as follows:

b. County comment. Regardless of whether the county board of supervisors has adopted a construction evaluation resolution, the board may submit to the department comments by the board and the public regarding compliance of the construction permit application and manure management plan with the requirements in this chapter and Iowa Code chapter 455B 459 for obtaining a construction permit. Comments may include, but are not limited to, the following:

(1) The existence of an object or location not included in the construction permit application which benefits from a separation distance requirement as provided in Iowa Code section 455B.162 459.202 or 455B.204 459.310.

(2) to (4) No change.

ITEM 18. Amend paragraphs **65.10(3)“a”** and **“b”** as follows:

a. Enrollment periods.

~~(1) For evaluation of construction permit applications filed during the period March 1, 2003, through January 31, 2004, the county board of supervisors must file an adopted construction evaluation resolution with the department between February 1, 2003, and February 28, 2003.~~

~~(2) For evaluation of construction permit applications filed during the period February 1, 2004, through January 31, 2005, the county board of supervisors must file an adopted construction evaluation resolution with the department between January 1, 2004, and January 31, 2004.~~

~~(3) (1) For evaluation of construction permit applications filed during subsequent annual periods, each beginning on February 1 and ending on January 31 one calendar year later, the county board of supervisors must file an adopted construction evaluation resolution with the department between January 1 and January 31 immediately prior to the commencement of the applicable annual period. The county board of supervisors must file an adopted construction evaluation resolution with the department between January 1 and January 31 of each year, to evaluate construction permit applications received by the department between February 1 of that year and January 31 of the following year.~~

~~(4) (2) Filed construction evaluation resolutions shall remain in effect until the applicable enrollment period expires or until such time as the county board of supervisors files with the department a resolution rescinding the construction evaluation resolution, whichever is earlier.~~

~~(5) (3) Filing of an adopted construction evaluation resolution requires a county board of supervisors to conduct an evaluation of a construction permit application using the master matrix. However, if the board fails to submit an adopted recommendation to the department, or fails to comply with the evaluation requirements in 65.10(3)“b,” the department shall disregard any adopted~~

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recommendation from that board until the board timely submits a new construction evaluation resolution.

b. Use of the master matrix. If a county board of supervisors has adopted and filed with the department a construction evaluation resolution, as provided in paragraph 65.10(3) “a,” the board shall evaluate all construction permit applications filed during the applicable period using the master matrix as follows:

(1) In completing the master matrix, the board shall not score criteria on a selective basis. The board must score all criteria which are part of the master matrix according to the terms and conditions relating to construction as specified in the application or commitments for manure management that are to be incorporated into a manure management plan as provided in Iowa Code section ~~455B.203~~ 459.312 as amended by 2009 Iowa Acts, Senate File 432, section 2.

(2) and (3) No change.

ITEM 19. Amend rule 567—65.11(459,459B) as follows:

567—65.11(459,459B) Confinement feeding operation and stockpile separation distance requirements. All ~~animal~~ confinement feeding operation structures, stockpiles and stockpile structures shall be separated from locations and objects as specified in this rule regardless of whether a construction permit is required. The separation distance requirements of this rule shall apply to all confinement feeding operation structures, unless specifically stated otherwise. If two or more confinement feeding operations are considered one operation as provided in 567—65.1(459,459B), definitions of “Adjacent—air quality” and “Adjacent—water quality,” the combined animal unit capacities of the individual operations shall be used for the purpose of determining the required separation. ~~Exceptions~~ Exemptions to the following requirements are allowed to the extent provided in 567—65.12(459,459B).

65.11(1) Separation distance from residences, businesses, churches, schools and public use areas for new confinement feeding operations. Separation from residences, businesses, churches, schools, and public use areas, ~~and thoroughfares~~ shall be as specified in Iowa Code section ~~455B.162~~ 459.202 and summarized in Table 6 at the end of this chapter. The residence, business, church, school, or public use area ~~or thoroughfare~~ must exist at the time an applicant submits an application for a construction permit to the department or, at the time a manure management plan is submitted or construction design statement is filed with the department if a construction permit is not required, or at the time construction of the ~~animal~~ confinement feeding operation structure begins if a construction permit or ~~manure management plan~~ construction approval letter is not required.

65.11(2) Separation distance from residences, businesses, churches, schools and public use areas for the expansion of prior constructed operations. Except as provided in 567—65.12(459,459B) or as specified in Iowa Code section 459.203, an existing confinement feeding operation may be expanded if any of the following applies:

a. For a confinement feeding operation constructed prior to January 1, 1999, any construction or expansion of a confinement feeding operation structure complies with the distance requirements applying to that structure as provided in Iowa Code section 459.202, subsections 1 and 3, and summarized in Tables 6c (for swine, sheep, horses and poultry) and 6d (for beef and dairy cattle) at the end of this chapter.

b. For a confinement feeding operation constructed on or after January 1, 1999, but prior to March 1, 2003, any construction or expansion of a confinement feeding operation structure complies with the distance requirements applying to that structure as provided in Iowa Code section 459.202, subsections 2 and 3, and summarized in Tables 6a (for swine, sheep, horses and poultry) and 6b (for beef and dairy cattle) at the end of this chapter.

c. For a confinement feeding operation constructed on or after March 1, 2003, any construction or expansion of a confinement feeding operation structure complies with the distance requirements applying to that structure as provided in Iowa Code section 459.202, subsections 4 and 5, and summarized in Table 6 at the end of this chapter.

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~~65.11(2)~~ **65.11(3)** *Separation distance from water sources, major water sources, known sinkholes and agricultural drainage wells.* Separation distances specified in this subrule shall apply to any confinement feeding operation structure, including a small animal feeding operation. Separation distances from any confinement feeding operation structure to surface intakes, wellheads or cisterns of agricultural drainage wells, known sinkholes, water sources and major water sources shall be as specified in Iowa Code section 459.310 and summarized in ~~Table~~ Tables 6 to 6d at the end of this chapter. For the required separation distance to a major water source to apply, the major water source must be included in Table 1 at the end of this chapter at the time an applicant submits an application for a construction permit to the department, ~~or~~ at the time a manure management plan is submitted ~~or~~ construction design statement is filed with the department if a construction permit is not required, or at the time construction of the animal feeding operation structure begins (as defined in 65.8(1)) if a construction permit, ~~or~~ manure management plan ~~or~~ construction design statement is not required.

~~65.11(3)~~ **65.11(4)** *Separation distance from designated wetlands.* Separation distances specified in this subrule shall apply to any confinement feeding operation structure, including a small animal feeding operation. A confinement feeding operation structure shall not be constructed closer than 2,500 feet away from a “designated wetland” as defined and referenced in rule 567—65.1(459,459B). This requirement shall not apply to a confinement feeding operation structure if any of the following occur before the wetland is included in “Designated Wetlands in Iowa,” effective August 23, 2006:

a. to d. No change.

~~65.11(4)~~ **65.11(5)** *Separation distance from water wells.* For a confinement feeding operation ~~structures~~ structure constructed after March 20, 1996, the separation distance to water wells shall be as specified in ~~Table~~ Tables 6 to 6d at the end of this chapter.

~~65.11(5)~~ **65.11(5)** *Unformed manure storage structures shall not be constructed or expanded in an agricultural drainage well area as specified in Iowa Code section 455I.5.*

65.11(6) *Separation distance from public thoroughfares.* A confinement feeding operation structure shall not be constructed or expanded within 100 feet from a public thoroughfare.

65.11(7) *Stockpile and stockpile structures—separation distance from residences.* A stockpile or stockpile structure shall not be placed closer than 1,250 feet from a residence not owned by the titleholder of the land where the stockpile is located, a commercial enterprise, a bona fide religious institution, an educational institution, or a public use area.

65.11(8) *Stockpile and stockpile structures—separation distance from terrace tile inlets, designated areas, high-quality water resources, agricultural drainage wells and known sinkholes.* A stockpile or stockpile structure shall not be placed within the following distances from any of the following:

a. A terrace tile inlet or surface tile inlet, 200 feet, unless the dry manure is stockpiled in a manner that does not allow precipitation-induced runoff to drain from the stockpile to the terrace tile inlet or surface tile inlet. A terrace tile inlet or surface tile inlet does not include a tile inlet that is not directly connected to a tile line that discharges directly into a water of the state.

b. Designated area, 400 feet. However, an increased separation distance of 800 feet shall apply to all of the following:

(1) A high-quality water resource.

(2) An agricultural drainage well.

(3) A known sinkhole.

c. Paragraph 65.11(8) “b” does not apply if dry manure is stockpiled in a manner that does not allow precipitation-induced runoff to drain from the stockpile to the designated area.

~~65.11(6)~~ **65.11(9)** *Measurement of separation distances.* ~~The~~ Except as provided in paragraph “f,” the distance between animal confinement feeding operation structures and locations or objects from which separation is required shall be measured horizontally by standard survey methods between the closest point of the location or object (not a property line) and the closest point of the animal confinement feeding operation structure. The department may require that a separation distance be measured and certified by a licensed land surveyor, a professional engineer licensed in the state of Iowa, or an engineer working for the USDA Natural Resources Conservation Service (NRCS) in cases where the department cannot confirm a separation distance.

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- a. Measurement to an ~~anaerobic lagoon or earthen~~ unformed manure storage basin structure shall be to the point of maximum allowable level of manure pursuant to paragraph 65.2(3) "b."
- b. No change.
- c. Measurement to a major water source or ~~watereourse~~ water source shall be to the top of the bank of the stream channel of a river or stream or the ordinary high water mark of a lake, ~~or reservoir~~ or designated wetland.
- d. Measurement to a public thoroughfare shall be to the closest point of the right-of-way.
- e. The separation distance for ~~an animal~~ a confinement feeding operation structure qualifying for the exemption to separation distances under ~~65.12(3)"b"(1)~~ paragraphs 65.12(4)"b" and "c" shall be measured from the closest point of the ~~animal~~ confinement feeding operation structure ~~which is constructed or expanded after December 31, 1998.~~
- f. Measurement to a cemetery shall be to the closest point of its property line.
- g. Measurement to a stockpile shall be to the closest point of the stockpile.

ITEM 20. Amend rule 567—65.12(459,459B) as follows:

567—65.12(459,459B) Exemptions and variances to confinement feeding operation, stockpile and stockpile structure separation distance requirements and prohibition of construction on the one hundred year flood plain.

65.12(1) Exemptions to separation distance requirements from a residence, business, church, school and public use area. As specified in Iowa Code section ~~455B.165~~ 459.205 as amended by 2009 Iowa Acts, House File 735, section 4, the separation distances required from residences, businesses, churches, schools, and public use areas ~~and thoroughfares~~ specified in Iowa Code section ~~455B.162~~ 459.202 and section 459.204B as amended by 2009 Iowa Acts, House File 735, section 3, and ~~summarized in Table~~ required in subrules 65.11(1), 65.11(2) and 65.11(7), including Tables 6 to 6d at the end of this chapter shall not apply to the following:

- a. ~~A confinement feeding operation structure which stores manure exclusively in a dry form.~~
- ~~b. a.~~ A confinement feeding operation structure, other than an unformed manure storage structure, if the structure is part of a small animal feeding operation or the stockpile consists of dry manure originating from a small animal feeding operation.
- ~~e. b.~~ An animal A confinement feeding operation structure which is constructed or expanded, if the titleholder of the land benefiting from the distance separation requirement executes a written waiver with the titleholder of the land where the structure, stockpile or stockpile structure is located, under such terms and conditions that the parties negotiate. The written waiver becomes effective only upon the recording of the waiver in the office of the recorder of deeds of the county in which the benefited land is located. The benefited land is the land upon which is located the residence, business, church, school or public use area from which separation is required. The filed waiver shall preclude enforcement by the department of the separation distance requirements of Iowa Code section ~~455B.162~~ 459.202. A copy of the recorded waiver shall be submitted with the construction design statement pursuant to subrule 65.9(3) if a construction permit is not required, or as part of the construction permit application documents pursuant to subrule 65.9(1).
- ~~d. c.~~ An animal A confinement feeding operation structure which is constructed or expanded closer than the separation distances required in subrules 65.11(1) and 65.11(2), including in Table Tables 6 to 6d at the end of this chapter, ~~from a~~ if the residence, business, church, or school was constructed or expanded after the date that the confinement feeding operation commenced operating or if the boundaries of the public use area or the city, if the residence, business, church, school or public use area was constructed or expanded after the date that the animal confinement feeding operation commenced operating. An animal A confinement feeding operation commences operating when it is first occupied by animals. A change in ownership or expansion of the animal confinement feeding operation does not change the date the operation commenced operating.
- d. The stockpile consists of dry manure originating exclusively from a confinement feeding operation that was constructed before January 1, 2006, unless the confinement feeding operation is expanded after that date.

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65.12(2) *Exemptions to separation distance requirements from public thoroughfares.* As specified in Iowa Code section ~~455B.165(4)~~ 459.205 as amended by 2009 Iowa Acts, House File 735, section 4, the separation required from thoroughfares specified in Iowa Code section ~~455B.162(5)~~ 459.202 and summarized in Table ~~Tables 6 to 6d~~ at the end of this chapter shall not apply if permanent vegetation stands between the animal feeding operation structure and that part of the right-of-way from which separation is required. The permanent vegetation must be at least seedlings of plants with mature height of at least 20 feet and stand along the full length of the structure. The minimum vegetation requirement shall be a single row of conifers or columnar deciduous trees on 12- to 16-foot spacing. It is recommended that the advice of a professional forester or nursery stock expert, a department district forester or the Natural Resource Conservation Service be sought to identify tree species for a specific site. to any of the following:

a. A confinement building or a formed manure storage structure that is part of a small animal feeding operation. However, the exemptions of this subrule shall not apply if the confinement feeding operation structure is an unformed manure storage structure.

b. If the state or a political subdivision constructing or maintaining the public thoroughfare executes a written waiver with the titleholder of the land where the confinement feeding operation structure is located. The written waiver becomes effective only upon the recording of the waiver in the office of the recorder of deeds of the county in which the benefited land is located. The recorded waiver shall be submitted with the construction design statement pursuant to subrule 65.9(3) if a construction permit is not required, or as part of the construction permit application documents pursuant to subrule 65.9(1).

65.12(3) *Exemptions to separation distance requirements for prior constructed operations and for operations that expand based on prior separation distance requirements.* As specified in Iowa Code section 459.203, a confinement feeding operation constructed or expanded prior to the date that a distance requirement became effective under Iowa Code section 459.202 and which does not comply with the statute's distance requirement may continue to operate regardless of the distance requirement and may expand as provided in subrule 65.11(2). ~~As specified in Iowa Code section 455B.163, the separation required from residences, businesses, churches, schools, public use areas and thoroughfares specified in Iowa Code section 455B.162 and summarized in Table 6 at the end of this chapter shall not apply to confinement feeding operations constructed before the effective date of the separation distance in the following cases:~~

a. The confinement feeding operation continues to operate, but does not expand.

b. The animal feeding operation structure as constructed or expanded prior to January 1, 1999, complies with the distance requirements applying to that structure at the time of construction or expansion.

c. The confinement feeding operation expands on or after January 1, 1999, and any of the following apply:

(1) The animal feeding operation structure as constructed or expanded complies with the separation requirements. The separation required shall be based on the animal weight capacity of the entire confinement feeding operation, including existing and proposed structures.

(2) All of the following apply to the expansion:

1. No portion of the confinement feeding operation after expansion is closer than before expansion to a location or object for which separation is required.

2. The animal weight capacity of the confinement feeding operation which did not comply with a separation requirement that went into effect on May 31, 1995, after expansion is not more than the lesser double its capacity on May 31, 1995, or of 625,000 pounds for animals other than bovine, or 1,600,000 pounds for bovine.

3. The animal weight capacity of a confinement feeding operation which complied with the separation requirements that went into effect on May 1, 1995, but did not comply with a separation requirement that went into effect on January 1, 1999, after expansion is not more than the lesser of double its capacity on January 1, 1999, or 625,000 pounds for animals other than bovine, or 1,600,000 pounds for bovine.

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~~(3) The confinement feeding operation is expanded by replacing one or more unformed manure storage structures with one or more formed manure storage structures and all of the following apply:~~

~~1. The animal weight capacity of the portion of the operation that changes from unformed to formed manure storage does not increase.~~

~~2. Use of the replaced unformed manure storage structures is discontinued within one year after construction of the replacement formed manure storage structures.~~

~~3. The replacement formed manure storage structures do not provide more than 14 months of manure storage.~~

~~4. No portion of the operation after expansion is closer than before expansion to a location or object for which separation is required.~~

~~(NOTE: A construction permit is not required to construct the replacement formed manure storage structures if a permit would not be required for the construction if the unformed manure storage structures did not exist.)~~

65.12(4) Exemptions to separation distance requirements for prior constructed operations that expand and cannot comply with prior separation distance requirements. As specified in Iowa Code section 459.203, a confinement feeding operation constructed or expanded prior to the date that a distance requirement became effective under Iowa Code section 459.202 and which does not comply with the distance requirements established in 567—65.11(459,459B) and the exemption in subrule 65.12(3) may be expanded if all of the following apply to the expansion:

a. No portion of the confinement feeding operation after expansion is closer than before expansion to a location or object for which separation is required in Iowa Code section 459.202.

b. For a confinement feeding operation that includes a confinement feeding operation structure constructed prior to March 1, 2003, the animal weight capacity of the confinement feeding operation as expanded is not more than the lesser of the following:

(1) Double its animal weight capacity on the following dates:

1. May 31, 1995, for a confinement feeding operation that includes a confinement feeding operation structure constructed prior to January 1, 1999.

2. January 1, 1999, for a confinement feeding operation that only includes a confinement feeding operation structure constructed on or after January 1, 1999, but does include a confinement feeding operation structure constructed prior to March 1, 2003.

(2) Either of the following:

1. An animal weight capacity of 625,000 pounds for animals other than cattle.

2. An animal weight capacity of 1,600,000 pounds for cattle.

c. For a confinement feeding operation that does not include a confinement feeding operation structure constructed prior to March 1, 2003, the animal unit capacity of the confinement feeding operation as expanded is not more than the lesser of the following:

(1) Double its animal unit capacity on March 1, 2003.

(2) 1,000 animal units.

65.12(5) Exemptions to separation distance requirements for prior constructed operations that replace an unformed manure storage structure. As specified in Iowa Code section 459.203, a confinement feeding operation that includes a confinement feeding operation structure that is constructed prior to March 1, 2003, may be expanded by replacing one or more unformed manure storage structures with one or more formed manure storage structures if all of the following apply:

a. The animal weight capacity or animal unit capacity, whichever is applicable, is not increased for that portion of the confinement feeding operation that utilizes all replacement formed manure storage structures.

b. Use of each replaced unformed manure storage structure is discontinued within one year after the construction of the replacement formed manure storage structure.

c. The capacity of all replacement formed manure storage structures does not exceed the amount required to store manure produced by that portion of the confinement feeding operation utilizing the formed manure storage structures during any 14-month period.

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d. No portion of the replacement formed manure storage structure is closer to an object or location for which separation is required under Iowa Code section 459.202 than any other confinement feeding operation structure which is part of the operation.

~~65.12(4)~~ **65.12(6)** *Exemption to separation distance requirements from cemeteries.* As specified in Iowa Code section ~~455B.165(7)~~ 459.205 as amended by 2009 Iowa Acts, House File 735, section 4, the separation distance required ~~from~~ between a confinement feeding operation structure and a cemetery shall not apply to animal feeding operations structures on which construction or expansion began before January 1, 1999. if any of the following applies:

a. The confinement feeding operation structure was constructed or expanded prior to January 1, 1999.

b. The construction or expansion of the confinement feeding operation structure began prior to January 1, 1999.

~~65.12(5)~~ **65.12(7)** *Exemptions to separation distance requirements from water sources, major water sources, known sinkholes, agricultural drainage wells and designated wetlands and secondary containment.* As specified in Iowa Code section ~~455B.204(3)~~ 459.310, subsection 3, the separation distance required from surface intakes, wellheads or cisterns of agricultural drainage wells, known sinkholes, major water sources ~~and watercourses~~ and designated wetlands, specified in Iowa Code section ~~455B.204~~ 459.310 and summarized in ~~Table~~ Tables 6 to 6d at the end of this chapter, shall not apply to a farm pond, or privately owned lake as defined in Iowa Code section 462A.2, or to a confinement building, a manure storage structure or an egg washwater storage structure constructed with a secondary containment barrier according to subrule 65.15(17). To qualify for this separation distance exemption, the design of the secondary containment barrier shall be filed in accordance with subrule 65.9(8) prior to beginning construction of the confinement feeding operation structure.

65.12(8) *Exemptions to prohibition on one hundred year flood plain construction and separation distance requirements from water sources, major water sources, known sinkholes, agricultural drainage wells and designated wetlands—replacement formed manure storage structures.* As specified in Iowa Code section 459.310, subsection 4, a separation distance required in subrules 65.11(3) and 65.11(4) or the prohibition against construction of a confinement feeding operation structure on a one hundred year flood plain as provided in paragraph 65.8(3) “e” shall not apply to a confinement feeding operation that includes a confinement feeding operation structure that was constructed prior to March 1, 2003, if any of the following apply:

a. One or more unformed manure storage structures that are part of the confinement feeding operation are replaced with one or more formed manure storage structures on or after April 28, 2003, and all of the following apply:

(1) The animal weight capacity or animal unit capacity, whichever is applicable, is not increased for that portion of the confinement feeding operation that utilizes all replacement formed manure storage structures.

(2) The use of each replaced unformed manure storage structure is discontinued within one year after the construction of the replacement formed manure storage structure.

(3) The capacity of all replacement formed manure storage structures does not exceed the amount required to store manure produced by that portion of the confinement feeding operation utilizing the replacement formed manure storage structures during any 18-month period.

(4) No portion of the replacement formed manure storage structure is closer to the location or object from which separation is required under subrules 65.11(3) and 65.11(4) than any other confinement feeding operation structure which is part of the operation.

(5) The replacement formed manure storage structure meets or exceeds the requirements of Iowa Code section 459.307 as amended by 2009 Iowa Acts, House File 735, section 7, and subrule 65.15(14).

b. A replacement formed manure storage structure that is part of the confinement feeding operation is constructed on or after April 28, 2003, pursuant to a variance granted by the department. In granting the variance, the department shall make a finding of all of the following:

(1) The replacement formed manure storage structure replaces the confinement feeding operation’s existing manure storage and handling facilities.

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(2) The replacement formed manure storage structure complies with standards adopted pursuant to Iowa Code section 459.307 as amended by 2009 Iowa Acts, House File 735, section 7, and subrule 65.15(14).

(3) The replacement formed manure storage structure more likely than not provides a higher degree of environmental protection than the confinement feeding operation's existing manure storage and handling facilities. If the formed manure storage structure will replace any existing manure storage structure, the department shall, as a condition of granting the variance, require that the replaced manure storage structure be properly closed.

~~65.12(6)~~ 65.12(9) Variances. Variances to the water well separation requirements in subrule 65.11(5) may be granted by the director if the applicant petitioner complies with the procedures and criteria in 561—Chapter 10 and provides an alternative that is substantially equivalent to the required separation distance or provides improved or greater protection for the water well. Requests Petition for a variance shall be made in writing at the time an application is submitted. The denial of a variance request may be appealed to the environmental protection commission.

ITEM 21. Amend rule 567—65.15(459,459B) as follows:

567—65.15(459,459B) Manure storage structure design requirements. The requirements in this rule apply to all animal confinement feeding operation structures unless specifically stated otherwise.

65.15(1) Drainage tile removal for new construction of a manure storage structure. Prior to constructing a manure storage structure, other than storage of manure in an exclusively dry form, the site for the animal feeding operation structure shall be investigated for drainage tile lines as provided in this subrule. All applicable records of known drainage tiles shall be examined for the existence of drainage tile lines.

~~a. Prior~~ One of the following procedures shall be performed prior to excavation for the berm of an unformed manure storage structure, the owner of the unformed manure storage structure shall follow any one of the following procedures:

(1) An inspection trench of at least ten inches wide shall be dug around the structure to a depth of at least 6 feet ~~from below~~ below the original grade and at least 50 feet ~~from the beyond~~ beyond the structure's projected outside ~~edge of the berm~~ liquid surface at the high water level.

(2) A core trench shall be dug to a depth of at least 6 feet ~~from below~~ below the original grade at the projected center of the berm. After investigation for tile lines and any discovered tile lines are removed, an additional containment barrier shall be constructed underneath the center of the berm. The ~~secondary~~ additional containment barrier shall meet the same percolation standards as the ~~lagoon or basin~~ structure with the lateral flow potential restricted to one-sixteenth of an inch per day.

~~b. The drainage~~ Drainage tile lines discovered near an unformed manure storage structure shall be removed within the projected site of an unformed manure storage structure and within 50 feet of the projected outside edge of the berm structure's liquid surface at the high water level shall be removed and rerouted to at least 50 feet beyond the projected structure's liquid surface at the high water level and within the projected site of the structure including under the berm. Drainage tile lines discovered upgrade from the structure shall be rerouted outside of 50 feet from the berm to continue the flow of drainage. Drainage tile lines installed at the time of construction to lower a groundwater table may remain where located. A device to allow monitoring of the water in the drainage tile lines installed to lower the groundwater table and a device to allow shutoff of the drainage tile lines shall be installed if the drainage tile lines do not have a surface outlet accessible on the property where the unformed manure storage structure is located. All other drainage tile lines discovered shall be rerouted, capped, plugged with concrete, Portland cement concrete grout or similar materials, or reconnected to upgrade tile lines.

~~c. The applicant for a construction permit for a formed manure storage structure shall investigate for tile lines during excavation for the structure. Drainage tile lines discovered upgrade from the structure shall be rerouted around the formed manure storage structure to continue the flow of drainage. All other drainage tile lines discovered shall be rerouted, capped, plugged with concrete, Portland cement concrete grout or similar materials or reconnected to upgrade tile lines. Drainage tile lines installed at the time of construction to lower a groundwater table may remain where located. A device to allow monitoring of~~

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~~the water in the drainage tile lines installed to lower the groundwater table and a device to allow shutoff of the drainage tile lines shall be installed if the drainage tile lines do not have a surface outlet accessible on the property where the formed manure storage structure is located.~~

~~d. A confinement feeding operation required to obtain a construction permit pursuant to subrule 65.7(1) or to follow the upgraded concrete standards set forth in paragraph 65.15(14) "c" shall install a sample port device to allow monitoring of the water in the drainage tile lines installed to lower the groundwater table. In addition, a device to allow shutoff of the drainage tile lines shall be installed if the drainage tile lines do not have a surface outlet accessible on the property where the formed manure storage structure is located.~~

~~d. e. An owner of a confinement feeding operation may utilize other Other proven methods approved by the department may be utilized to discover drainage tile lines.~~

~~e. f. Variances to this subrule may be granted by the director if the owner of the confinement feeding operation petitioner complies with the procedures and criteria in 561—Chapter 10 and provides an alternative that is substantially equivalent to the this subrule or provides improved effectiveness or protection as required by the this subrule. A request Petition for a variance shall be made in writing at the time the application is submitted or prior to investigating for drainage tile, whichever is earlier. The denial of a variance may be appealed to the commission.~~

~~f. g. A waiver to this subrule may be granted by the director The requirements of this subrule do not apply if sufficient information is provided that allows the department to conclude that the location does not have a history of drainage tile.~~

65.15(2) to 65.15(5) No change.

65.15(6) Soil testing for earthen structures. Applicants for construction permits for earthen manure storage structures shall submit soils information according to this subrule for the site of the proposed structure. All subsurface soil classification shall be based on American Society for Testing and Materials Designations D 2487-92 or D 2488-90. Soil corings shall be taken to determine subsurface soil characteristics and groundwater elevation and direction of flow of the proposed site for an anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin. Soil corings shall be conducted by a qualified person normally engaged in soil testing activities. Data from the soil corings shall be submitted with a construction permit application and shall include a description of the geologic units encountered, ~~and~~ a discussion of the effects of the soil and groundwater elevation and direction of flow on the construction and operation of the anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin and a discussion that addresses the suitability of the proposed structure at the site. All soil corings shall be taken by a method that identifies the continuous soil profile and does not result in the mixing of soil layers. The number and location of the soil corings will vary on a case-by-case basis as determined by the designing engineer and accepted by the department. The following are minimum requirements:

a. to d. No change.

65.15(7) Hydrology.

a. Groundwater table. A minimum separation of four feet between the top of the liner ~~on~~ for any earthen aerobic structure, anaerobic lagoon, or earthen manure storage basin floor unformed manure storage structure or earthen egg washwater storage structure and the groundwater table is recommended; however, in no case shall the top of the liner on for an earthen aerobic structure, anaerobic lagoon, or earthen manure storage basin floor unformed manure storage structure or earthen egg washwater storage structure be below the groundwater table. If the groundwater table is less than two feet below the top of the liner on for an earthen aerobic structure, anaerobic lagoon, or earthen manure storage basin floor unformed manure storage structure or earthen egg washwater storage structure, the aerobic unformed manure storage structure or earthen egg washwater storage structure, anaerobic lagoon, or earthen manure storage basin shall be provided with a synthetic liner as described in paragraph 65.15(12) "f."

b. Permanent artificial lowering of groundwater table.

(1) Unformed structures. The groundwater table around an ~~anaerobic lagoon, aerobic structure, or earthen manure storage basin~~ unformed manure storage structure or earthen egg washwater storage

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structure may be artificially lowered to levels required in paragraph “a” by using a gravity flow tile drainage system or other permanent nonmechanical system for artificial lowering of the groundwater table. ~~For a permitted animal feeding operation, detailed~~ Detailed engineering and soil drainage information shall be provided with a construction permit application for an ~~earthen aerobic structure, anaerobic lagoon or earthen manure storage basin~~ unformed manure storage structure or earthen egg washwater storage structure to confirm the adequacy of the proposed permanent system to provide the required drainage without materially increasing the seepage potential of the site. Drainage tiles shall not be located closer than 6 feet horizontally from the structure’s liquid surface at maximum operating depth. (See 65.15(1) “b” for monitoring and shutoff requirements for drainage tile lines installed to lower the groundwater table.)

(2) Formed structures. For a formed manure storage structure or a formed egg washwater storage structure, partially or completely constructed below the normal soil surface, a tile drainage system or other permanent system for artificial lowering of groundwater levels shall be installed around the structure if the groundwater table is above the bottom of the structure. (See 65.15(1) “b” for monitoring and shutoff requirements for drainage tile lines installed to lower the groundwater table.)

c. Determination of groundwater table. For purposes of this rule, groundwater table is the seasonal high water table determined by a licensed professional engineer, a groundwater professional certified pursuant to 567—Chapter 134, or qualified staff from the department or Natural Resources Conservation Service (NRCS). If a construction permit is required, the department must approve the groundwater table determination.

(1) Current groundwater levels shall be measured using at least one of the following for either formed or unformed structures:

1. No change.

2. Test pits. The department may allow use of test pits in lieu of temporary monitoring wells if seasonal variation in climatic patterns, soil and geologic conditions prevent accurate determination of the seasonal high water table or prior to the construction of an unformed manure storage structure liner to ensure that the required separation distance to the groundwater table is being met. ~~Test pits will be configured 3 feet × 4 feet × 4 feet, or equivalent volume, and the bottom of each pit~~ The bottom of each test pit shall be at least 2 feet below the floor of the ~~proposed anaerobic lagoon, earthen manure storage basin, earthen aerobic structure or settled open feedlot effluent basin~~ manure storage structure or egg washwater storage structure. Each pit shall be allowed to remain open and unaltered for a minimum of seven days for viewing by the department or NRCS qualified staff for the determination of soil characteristics and related groundwater influence. Adequate protection (temporary berms and covers) shall be provided to prevent surface runoff from entering the test pits. One test pit shall be located in each corner and one in the center of the proposed manure control structure, unless otherwise specified by the department. A description of the materials present in the test pit shall be documented by all of the following:

- Digital photos;
- Description of soils including mottling;
- Construction specifications; and
- Weather conditions both prior to and during the period in which test pits are open.

(2) No change.

65.15(8) Karst features terrain and alluvial aquifer areas.

a. ~~The anaerobic lagoon or earthen manure storage basin~~ An unformed manure storage structure or unformed egg washwater storage structure shall not be located on a site that exhibits Karst features such as sinkholes, or solution channeling generally occurring in areas underlain by limestone or dolomite terrain.

b. Dry bedded confinement feeding operation structures constructed on karst terrain or in an alluvial aquifer area shall comply with all of the following:

(1) A minimum 5-foot layer of low permeability soil or rock between the bottom of the floor of the dry bedded confinement feeding operation structure and the underlying limestone, dolomite or other soluble rock in karst terrain or the underlying sand and gravel aquifer in an alluvial aquifer area is required. A professional engineer licensed in Iowa, NRCS engineer or qualified organization shall submit

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a soil report, based on the results from soil borings or test pits, describing the subsurface materials and vertical separation distance from the proposed bottom of the dry bedded confinement feeding operation structure and the underlying limestone, dolomite or soluble rock. A minimum of two soil borings or test pits, at each end of the proposed structure, are required if acceptable well data are not available. After soil exploration is complete, each boring or test pit shall be properly plugged with concrete grout, bentonite or similar materials and documented in the soil report.

(2) The dry bedded confinement feeding operation structure shall be constructed with a floor consisting of reinforced concrete at least five inches thick conforming to the requirements of 65.15(14) "a"(2), numbered paragraphs "1," "3," "4," "6," "8" and "12."

65.15(9) Bedrock separation. A minimum of four feet of separation between an unformed manure storage structure bottom and any bedrock formation is required. A ten-foot separation is recommended. A synthetic liner shall be required if the unformed structure is to be located less than ten feet above a carbonate or limestone formation.

65.15(10) Flooding protection.

a. ~~An animal~~ A confinement feeding operation structure proposed to be constructed on land that would be inundated by Q100 shall meet requirements as specified in 567—Chapters 70 to 76, unless otherwise prohibited according to paragraph 65.15(10) "b."

b. A confinement feeding operation structure shall not be constructed on the one hundred year flood plain.

65.15(11) ~~Seals for anaerobic lagoons, aerobic structures, and earthen manure storage basins~~ unformed manure storage structures and unformed egg washwater storage structures. ~~A lagoon or basin~~ An unformed manure storage structure or egg washwater storage structure shall be sealed such that seepage loss through the seal is as low as practically possible. The percolation rate shall not exceed 1/16 inch per day at the design depth of the ~~lagoon or basin~~ structure. Following construction of the ~~lagoon or basin~~ structure, the results of a testing program which indicates the adequacy of the seal shall be provided to this department in writing prior to start-up of a permitted operation. ~~The owner of a confinement feeding operation not required to obtain a construction permit shall keep a record of the construction methods and materials used to provide the seal and any test results available on the adequacy of the seal.~~

65.15(12) ~~Aerobic structure, anaerobic lagoon, or earthen manure storage basin~~ Unformed manure storage structure and unformed egg washwater storage structure liner design and construction standards. An ~~aerobic structure, anaerobic lagoon or earthen manure storage basin~~ unformed manure storage structure or unformed egg washwater storage structure which receives a construction permit after January 21, 1998, shall comply with the following minimum standards in addition to subrule 65.15(11).

a. If the location of the proposed ~~aerobic structure, anaerobic lagoon or earthen manure storage basin~~ unformed manure storage structure or unformed egg washwater storage structure contains suitable materials as determined by the soil corings taken pursuant to subrule 65.15(6), those materials shall be compacted to establish a minimum of a 12-inch liner. A minimum initial overexcavation of 6 inches of material shall be required. The underlying material shall be scarified, reworked and compacted to a depth of 6 inches. The overexcavated materials shall be replaced and compacted.

b. If the location of the proposed ~~aerobic structure, anaerobic lagoon or earthen manure storage basin~~ unformed manure storage structure or unformed egg washwater storage structure does not contain suitable materials as determined by the soil corings taken ~~in~~ pursuant to subrule 65.15(6), suitable materials shall be obtained from another location approved by the department and shall be compacted to establish a minimum of a 24-inch liner.

c. and d. No change.

e. For purposes of this rule, suitable materials means soil, soil combinations or other similar material that is capable of meeting the permeability and compaction requirements. Sand seams, gravel seams, organic soils or other materials generally not suitable for ~~anaerobic lagoon, aerobic structure, or earthen manure storage basin~~ unformed manure storage structure or unformed egg washwater storage structure construction are not considered suitable liner materials.

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f. As an alternative to the above standards, a synthetic liner may be used. If the use of a synthetic liner is planned for an ~~earthen aerobic structure, an anaerobic lagoon, or earthen manure storage basin~~ unformed manure storage structure or unformed egg washwater storage structure, the permit application shall outline how the site will be prepared for placement of the liner, the physical, chemical, and other pertinent properties of the proposed liner, and information on the procedures to be used in liner installation and maintenance. In reviewing permit applications which involve use of synthetic liners, ~~DNR~~ the department will consider relevant synthetic liner standards adopted by industry, governmental agencies, and professional organizations as well as technical information provided by liner manufacturers and others.

65.15(13) Anaerobic lagoon design standards. An anaerobic lagoon shall meet the requirements of this subrule.

a. No change.

b. *Minimum stabilization volume and loading rate.*

(1) No change.

(2) In Lyon, Sioux, Plymouth, Woodbury, Osceola, Dickinson, Emmet, Kossuth, O'Brien, Clay, Palo Alto, Cherokee, Buena Vista, Pocahontas, Humboldt, Ida, Sac, Calhoun, and Webster ~~counties~~ Counties for all animal species other than beef there shall be 1000 cubic feet minimum design volume for each 4.5 pounds of volatile solids per day if the volatile solids produced per day are 6000 pounds or fewer. However, if a water analysis as required in ~~65.15(3)“e”(2)~~ 65.15(13)“c”(2) below indicates that the sulfate level is below 500 milligrams per liter, then the rate is 1000 cubic feet for each 5.0 pounds of volatile solids per day.

(3) to (6) No change.

c. to *f.* No change.

65.15(14) Concrete standards. A formed manure storage structure which is constructed of concrete on or after March 24, 2004, that is part of a confinement feeding operation other than a small animal feeding operation shall meet the following minimum standards. For the purpose of this subrule, a “PE” is a professional engineer licensed in the state of Iowa and an “NRCS engineer” is an engineer working for the USDA Natural Resources Conservation Service (NRCS). (CAVEAT: These standards are not intended to address other site-related engineering and construction considerations beyond the department’s jurisdiction.)

a. and *b.* No change.

c. *Karst terrain—upgraded standards.* If the site of the proposed formed manure storage structure is located in ~~an area that exhibits karst terrain or an area that drains into a known sinkhole~~, the minimum concrete standards set forth in paragraph 65.15(14)“a” or “b” shall apply. In addition, the following requirements apply to all formed manure storage structures that store nondry or dry manure:

(1) In an area that exhibits karst terrain or an area that drains into a known sinkhole, a PE, an NRCS engineer or a qualified organization shall submit a soil exploration study based on the results from soil borings or test pits to determine the vertical separation between the bottom of the formed structure and limestone, dolomite, or other soluble rock. A minimum of two soil borings or two test pits, equally spaced within each formed structure, are required. After soil exploration is completed, each soil boring and test pit shall be properly plugged with concrete grout, bentonite, or similar materials.

(1) (2) A minimum 5-foot ~~vertical separation distance~~ layer of low permeability soil or rock between the bottom of a formed manure storage structure and limestone, dolomite, or other soluble rock is required if the formed manure storage structure is not designed by a PE or an NRCS engineer.

(2) (3) If the vertical separation distance between the bottom of the proposed formed manure storage structure and limestone, dolomite, or other soluble rock is less than 5 feet, the structure shall be designed and sealed by a PE or an NRCS engineer who certifies the structural integrity of the structure. A 2-foot-thick layer of compacted clay liner material shall be constructed underneath the floor of the formed manure storage structure. However, it is recommended that any formed manure storage structure be constructed aboveground if the vertical separation distance between the bottom of the structure and the limestone, dolomite, or other soluble rock is less than 5 feet.

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~~(3) In addition, in an area that exhibits karst terrain or an area that drains into a known sinkhole, a PE, an NRCS engineer or a qualified organization shall submit a soil exploration study based on the results from soil borings or test pits to determine the vertical separation between the bottom of the formed structure and limestone, dolomite, or other soluble rock. A minimum of two soil borings or two test pits, equally spaced within each formed structure, are required. After soil exploration is completed, each soil boring and pit shall be properly plugged with concrete grout, bentonite, or similar materials.~~

(4) Groundwater monitoring shall be performed as specified by the department.

(5) Backfilling shall not start until the floor slats have been placed or permanent bracing has been installed, and shall be performed with material free of vegetation, large rocks, or debris.

d. Cold and hot weather concreting recommendations. If air temperature is below 40 degrees Fahrenheit, the NRCS National Engineering Handbook (NEH) Part 642, Chapter 2, Concrete for Major Structures (cs031), subsection 21, should be followed. If ready-mix concrete temperature is above 90 degrees Fahrenheit, the NRCS National Engineering Handbook (NEH) Part 642, Chapter 2, Concrete for Major Structures (cs031), subsection 22, should be followed. These specifications can be found at the USDA NRCS official Web site.

65.15(15) Berm erosion control.

a. The following requirements shall apply to ~~any anaerobic lagoons, earthen aerobic structures, or earthen manure storage basins~~ unformed manure storage structures and unformed egg washwater storage structures constructed after May 12, 1999.

(1) Concrete, riprap, synthetic liners or similar erosion control materials or measures shall be used on the berm surface below pipes where manure will enter the ~~anaerobic lagoon, aerobic structure, or earthen manure storage basin~~ structure.

(2) Concrete, riprap, synthetic liners or similar erosion control materials or measures of sufficient thickness and area to accommodate manure removal equipment and to protect the integrity of the liner shall be placed at all locations on the berm, side slopes, and base of the ~~anaerobic lagoon, aerobic structure, or earthen manure storage basin~~ structure where agitation or pumping may cause damage to the liner.

(3) Erosion control materials or measures shall be used at the corners of the ~~anaerobic lagoon, aerobic structure, or earthen manure storage basin~~ structure.

(4) To control erosion, perennial (grass) vegetation must be maintained on the outer, top and inner dikes up to the two-foot freeboard level of the unformed storage structure or earthen egg washwater storage structure, unless covered by concrete, riprap, synthetic liners or similar erosion control materials or measures.

b. The owner of a confinement feeding operation with an ~~anaerobic lagoon, earthen aerobic structure, earthen manure storage basin, earthen waste slurry storage basin, or earthen~~ unformed manure storage structure or an unformed egg washwater storage structure shall inspect the structure berms at least semiannually for evidence of erosion. Erosion problems found which may impact either structural stability or liner integrity shall be corrected in a timely manner.

65.15(16) Agricultural drainage wells. After May 29, 1997, a person shall not construct a new or expand an existing ~~earthen aerobic structure, earthen anaerobic lagoon, earthen manure storage basin, earthen waste slurry storage basin, or earthen~~ unformed manure storage structure or an unformed egg washwater storage structure within an agricultural drainage well area.

65.15(17) Secondary containment barriers for manure storage structures. Secondary containment barriers used to qualify any confinement feeding operation for the exemption provision in subrule 65.12(5) 65.12(7) shall be filed with the department according to subrule 65.9(8) and shall meet the following design standards:

a. A secondary containment barrier shall consist of a structure surrounding or downslope of a manure storage structure ~~that is~~ and shall be designed according to either of the following:

(1) If the manure storage structure is used to store liquid or semiliquid manure, the secondary containment barrier shall be designed to contain 120 percent of the volume of manure stored above the manure storage structure's final grade or 50 percent of the volume of manure stored belowground or partially belowground, whichever is greater. Engineering drawings prepared by a professional

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engineer licensed in Iowa or by an engineer working for the USDA Natural Resources Conservation Service (NRCS) must be submitted according to procedures set forth in subrule 65.9(8) and must show compliance with 65.15(17)“a” to “d” or “e.” If the containment barrier does not surround the manure storage structure, upland drainage must be diverted.

(2) If the manure storage structure is used for the storage of only dry manure, the secondary containment barrier shall be designed to contain at least 10 percent of the volume of manure stored. Detailed drawings prepared by the owner or a representative must be submitted according to procedures set forth in subrule 65.9(8) and must show compliance with 65.15(17)“a” to “d” or “e.” If the containment barrier does not surround the manure storage structure, upland drainage must be diverted.

b. ~~The barrier may be constructed of earth, concrete, or a combination of both. and shall not have~~ If a relief outlet or valve is installed, the relief outlet or valve shall remain closed. Any accumulated liquid must be tested for ammonium-nitrogen (NH₄-N) and nitrate-nitrogen (NO₃-N) prior to land application or discharge. Based on the effluent testing results, the department may approve proper disposal of the secondary containment barrier effluent.

c. to e. No change.

65.15(18) Human sanitary waste shall not be ~~directed~~ discharged to a manure storage structure or egg washwater storage structure.

65.15(19) Requirements for qualified operations. A confinement feeding operation that meets the definition of a qualified operation shall only use an aerobic structure for manure storage and treatment. This requirement does not apply to a confinement feeding operation that only handles dry manure in a dry form or to an egg washwater storage structure or to a confinement feeding operation which was constructed before May 31, 1995, and does not expand.

65.15(20) No change.

ITEM 22. Amend rule 567—65.16(459,459B) as follows:

567—65.16(459,459B) Manure management plan requirements.

65.16(1) In accordance with Iowa Code section 455B.203 as amended by 2002 Iowa Acts, chapter 1137, section 38 ~~459.312 as amended by 2009 Iowa Acts, Senate File 432, section 2,~~ the following persons are required to submit manure management plans to the department, including an original manure management plan and an updated manure management plan, as required by this rule:

a. An applicant for a construction permit for a confinement feeding operation. However, a manure management plan shall not be required of an applicant for an egg washwater storage structure or for a small animal feeding operation.

b. The owner of a confinement feeding operation, other than a small animal feeding operation, if one of the following applies:

(1) No change.

(2) The owner constructs a manure storage structure, regardless of whether the person is required to be issued a permit for the construction pursuant to Iowa Code section 455B.200A ~~as amended by 2002 Iowa Acts, chapter 1137, sections 28 and 29~~ 459.303, or whether the person has submitted a prior manure management plan.

c. No change.

d. A new owner of a confinement feeding operation may apply manure under the most recent owner’s manure management plan until the new owner develops an original manure management plan. The new owner must develop and submit an original manure management plan within 60 days after acquiring the operation.

~~e.~~ A research college is exempt from this subrule and the manure management plan requirements of rule 567—65.17(459,459B) for research activities and experiments performed under the authority of the research college and related to animal confinement feeding operations.

65.16(2) ~~Effective February 13, 2002, an~~ The owner of a proposed confinement feeding operation who is not required to obtain a construction permit pursuant to subrule 65.7(1) but who is required to file a manure management plan pursuant to paragraph 65.16(1)“b” shall submit file a construction design statement and provide the information required in subrule 65.9(3), including the confinement feeding

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operation's manure management plan, to the department at least 30 days before the construction of an animal feeding operation structure begins, as that term is defined in subrules 65.8(1) and 65.8(2). After the manure management plan has been received by the department, the department will date-stamp the plan as received and provide written confirmation of receipt to the owner. In addition to the content requirements specified in rule 567—65.17(459), the owner shall include:

a.—Documentation that the board of supervisors or auditor of the county where the confinement feeding operation is proposed to be located received a copy of the plan.

b.—Information (e.g., maps, drawings, aerial photos) that clearly shows the intended location of the animal feeding operation structures and locations and animal weight capacities of any other confinement feeding operations within a distance of 2,500 feet in which the owner has an ownership interest or which the owner manages.

65.16(3) and **65.16(4)** No change.

65.16(5) Manure shall not be removed from a manure storage structure, which is part of a confinement feeding operation required to submit a manure management plan, until the department has approved the plan. As an exception to this requirement, until July 1, 2002, the owner of a confinement feeding operation may remove and apply manure from a manure storage structure in accordance with a manure management plan submitted to the department prior to September 18, 2001, but which has not been approved within the required 60-day period. Manure shall be applied in compliance with rule 567—65.2(459,459B).

65.16(6) Manure storage indemnity fee. All persons required to submit a manure management plan to the department shall also pay to the department an indemnity fee as required in Iowa Code section 455J.3 459.503 except those operations constructed prior to May 31, 1995, which were not required to obtain a construction permit.

65.16(7) Filing fee. Any person submitting an original manure management plan must also pay to the department a manure management plan filing fee of \$250. This fee shall be included with each original manure management plan being submitted. If the confinement feeding operation is required to obtain a construction permit and to submit an original manure management plan as part of the construction permit requirements, the applicant must pay the manure management plan filing fee together with the construction permit application fee, which total \$500.

ITEM 23. Amend rule 567—65.17(459,459B) as follows:

567—65.17(459,459B) Manure management plan content requirements. All manure management plans are to be submitted on forms or electronically as prescribed by the department. The plans shall include all of the information specified in Iowa Code section 459.312 as amended by 2009 Iowa Acts, Senate File 432, section 2, and as described below.

65.17(1) General.

a. A confinement feeding operation that is required to submit a manure management plan to the department shall not apply manure in excess of the nitrogen use levels necessary to obtain optimum crop yields. ~~When a phosphorus index is required in a manure management plan as provided in 65.17(1)“d,”~~ a A confinement feeding operation shall not apply manure in excess of the rates determined in conjunction with the phosphorus index. Information to complete the required calculations may be obtained from the tables in this chapter, actual testing samples or from other credible sources reviewed and approved by the department including, but not limited to, Iowa State University, the United States Department of Agriculture (USDA), a licensed professional engineer, or an individual certified as a crop consultant under the American Registry of Certified Professionals in Agronomy, Crops, and Soils (ARCPACS) program, the Certified Crop Advisors (CCA) program, or the Registry of Environmental and Agricultural Professionals (REAP) program.

b. and *c.* No change.

d. A person who submits a manure management plan shall include a phosphorus index as part of the manure management plan as follows: required in subrule 65.17(17).

(1) ~~A person who submitted an original manure management plan prior to April 1, 2002, shall submit a phosphorus index with the first manure management plan update on and after August 25, 2008.~~

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~~(2) A person who submitted an original manure management plan on or after April 1, 2002, but prior to October 25, 2004, shall submit a phosphorus index with the first manure management plan update on and after August 25, 2006.~~

~~(3) A person who submits an original manure management plan on and after October 25, 2004, shall include the phosphorus index as part of the original manure management plan and manure management plan updates.~~

e. A description of land identified for the application of liquid manure due to an emergency if allowed pursuant to subrule 65.3(4). The phosphorus index for each potential emergency application field must be calculated assuming frozen ground conditions, and application rates should be calculated appropriately. Locations of downgradient surface water drain tile intakes within all fields included in the plan should be identified by map or coordinates. Future applications of liquid manure must take the nutrients added during emergencies into consideration.

65.17(2) Manure management plans for sales of manure. Selling manure means the transfer of ownership of the manure for monetary or other valuable consideration. Selling manure does not include a transaction where the consideration is the value of the manure, or where an easement, lease or other agreement granting the right to use the land only for manure application is executed.

a. No change.

b. A confinement feeding operation not fully covered by paragraph "a" above and that has an established practice of selling manure, or a confinement feeding operation that contains an animal species for which selling manure is a common practice, shall submit a manure management plan that includes the following:

~~(1) Until a phosphorus index is required as part of the manure management plan, an estimate of the number of acres required for manure application shall be calculated by dividing the total nitrogen available to be applied from the confinement feeding operation by the crop usage rate. Crop usage rate may be estimated by using a corn crop usage rate factor and an estimate of the optimum crop yield for the property in the vicinity of the confinement feeding operation.~~

~~(2) (1) When a phosphorus index is required as part of the manure management plan, an An estimate of the number of acres required for manure application shall be calculated by one of the following methods:~~

1. and 2. No change.

~~(3) (2) The total nitrogen available to be applied from the confinement feeding operation.~~

~~(4) (3) The total phosphorus (as P₂O₅) available to be applied from the confinement feeding operation if the phosphorus index is required in accordance with paragraph 65.17(1) "d."~~

~~(5) (4) An estimate of the annual animal production and manure volume or weight produced.~~

~~(6) (5) A manure sales form, if. If manure will be sold, the manure sales form shall include the following information:~~

1. to 6. No change.

~~7. When a phosphorus index is required as part of a manure management plan in accordance with 65.17(1) "d," a A place for a phosphorus index of each field receiving manure, as defined in paragraph 65.17(17) "a," including the factors used in the calculation. A copy of the NRCS phosphorus index detailed report shall satisfy the requirement to include the factors used in the calculation.~~

~~(7) (6) Statements of intent if the manure will be sold. The number of acres indicated in the statements of intent shall be sufficient according to the manure management plan to apply the manure from the confinement feeding operation. The permit holder for an existing confinement feeding operation with a construction permit may submit past records of manure sales instead of statements of intent. The statements of intent shall include the following information:~~

1. to 4. No change.

~~(8) (7) The owner shall maintain in the owner's records a current manure management plan and copies of all of the manure sales forms; the sales forms must be completed and signed by each buyer of the manure and the applicant, and the copies must be maintained in the owner's records for three years after each sale. Effective August 25, 2006, the The owner shall maintain in the owner's records copies of~~

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all of the manure sales forms for five years after each sale. An owner of a confinement feeding operation shall not be required to maintain current statements of intent as part of the manure management plan.

65.17(3) Manure management plan for nonsales of manure. Confinement feeding operations that will not sell all of their manure shall submit the following for that portion of the manure which will not be sold:

- a. No change.
- b. The total nitrogen and total phosphorus (as P₂O₅) available to be applied from the confinement feeding operation.
- c. to h. No change.
- i. ~~When a phosphorus index is required as part of the manure management plan in accordance with 65.17(1) "d," the following are required:~~ A phosphorus index of each field in the manure management plan, as defined in paragraph 65.17(17) "a," including the factors used in the calculation. A copy of the NRCS phosphorus index detailed report shall satisfy the requirement to include the factors used in the calculation.

~~(1) The total phosphorus (as P₂O₅) available to be applied from the confinement feeding operation.~~

~~(2) A phosphorus index of each field in the manure management plan, as defined in 65.17(17) "a," including the factors used in the calculation. A copy of the NRCS phosphorus index detailed report shall satisfy the requirement to include the factors used in the calculation.~~

65.17(4) Manure management plan calculations to determine land area required for manure application.

a. The number of acres needed for manure application for each year of the crop schedule shall be determined as follows: as required in subrule 65.17(17).

~~(1) Until a phosphorus index is required in accordance with 65.17(1) "d," the requirements of 65.17(18) shall be followed.~~

~~(2) When a phosphorus index is required in accordance with 65.17(1) "d," the requirements of 65.17(17) shall be followed.~~

b. and c. No change.

65.17(5) No change.

65.17(6) Optimum crop yield and crop schedule.

a. To determine the optimum crop yield, the applicant may either exclude the lowest crop yield for the period of the crop schedule in the determination or allow for a crop yield increase of 10 percent. In using these methods, adjustment to update yield averages to current yield levels may be made if it can be shown that the available yield data is not representative of current yields. The optimum crop yield shall be determined using any of the following methods for the cropland where the manure is to be applied:

(1) and (2) No change.

(3) Proven yield methods. Proven yield methods may only be used if a minimum of the most recent three years of yield data for the crop is used. These yields can be proven on a field-by-field or farm-by-farm basis. To be considered a farm-by-farm basis, the fields must be owned, rented or leased for crop production by the person required to keep records pursuant to subrule 65.17(13) or included in a manure application agreement in that person's manure management plan. Crop disaster years may be excluded when there is a 30 percent or more reduction in yield for a particular field or farm from the average yield over the most recent five years. Excluded years shall be replaced by the most recent nondisaster years. Proven yield data used to determine application rates shall be maintained with the current manure management plan. Any of the following proven yield methods may be used:

1. to 3. No change.

b. No change.

65.17(7) No change.

65.17(8) Location of manure application.

a. The manure management plan shall identify each farm where the manure will be applied, the number of acres that will be available for the application of manure from the confinement feeding operation, and the basis under which the land is available.

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b. A copy of each written agreement executed with the owner of the land where manure will be applied shall be maintained with the current manure management plan. The written agreement shall indicate the number of acres on which manure from the confinement feeding operation may be applied and the length of the agreement. A written agreement is not required if the land is owned or rented for crop production by the owner of the confinement feeding operation. Owners of dry bedded confinement feeding operations required to have a manure management plan may execute a written agreement with the landowner or the person renting the land for crop production where the dry bedded manure will be applied.

c. If a present location becomes unavailable for manure application, additional land for manure application shall be identified in the current manure management plan prior to the next manure application period.

65.17(9) No change.

65.17(10) *Methods to reduce soil loss and potential surface water pollution.* ~~The manure management plan shall include an identification of the methods, structures or practices that will be used to prevent or diminish soil loss and potential surface water pollution during the application of manure. Until a phosphorus index is required in accordance with 65.17(1) "d," the current manure management plan shall maintain a summary or copy of the conservation plan for the cropland where manure from the animal feeding operation will be applied if the manure will be applied on highly erodible cropland. The conservation plan shall be the conservation plan approved by the local soil and water conservation district or its equivalent. The summary of the conservation plan shall identify the methods, structures or practices that are contained in the conservation plan. When a phosphorus index is required in accordance with 65.17(1) "d," the~~ The manure management plan shall indicate for each field in the plan the crop rotation, tillage practices and supporting practices used to calculate sheet and rill erosion for the phosphorus index. A copy of the an NRCS RUSLE2 profile erosion calculation record shall satisfy the this requirement to indicate the crop rotation, tillage practices and supporting practices to calculate sheet and rill erosion. The plan shall also identify the highly erodible cropland where manure will be applied. The manure management plan may include additional information such as whether the manure will be injected or incorporated or the type of manure storage structure.

65.17(11) and **65.17(12)** No change.

65.17(13) *Record keeping.* Records shall be maintained by the owner of a confinement feeding operation who is required to submit a manure management plan. This recorded information shall be maintained for three years following the year of application or for the length of the crop rotation, whichever is greater. ~~Effective August 25, 2006, records~~ Records shall be maintained for five years following the year of application or for the length of the crop rotation, whichever is greater. Records shall be maintained at the site of the confinement feeding operation or at a residence or office of the owner or operator of the facility within 30 miles of the site. Records to demonstrate compliance with the manure management plan shall include the following:

a. to d. No change.

e. ~~Effective August 25, 2005,~~ The date(s) and application rate(s) of commercial nitrogen and phosphorus on fields that received manure. However, if the date and application rate information is for fields which are not owned for crop production or which are not rented or leased for crop production by the person required to keep records pursuant to this subrule, an enforcement action for noncompliance with a manure management plan or the requirements of this subrule shall not be pursued against the person required to keep records pursuant to this subrule or against any other person who relied on the date and application rate in records required to be kept pursuant to this subrule, unless that person knew or should have known that nitrogen or phosphorus would be applied in excess of maximum levels set forth in paragraph 65.17(1) "a." If manure is applied to fields not owned, rented or leased for crop production by the person required to keep records pursuant to this subrule, that person shall obtain from the person who owns, rents or leases those fields a statement specifying the planned commercial nitrogen and phosphorus fertilizer rates to be applied to each field receiving the manure.

f. ~~When a phosphorus index is required in accordance with 65.17(1) "d,"~~ a copy of the current soil test lab results for each field in the manure management plan.

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g. No change.

65.17(14) to 65.17(16) No change.

65.17(17) *Use of the phosphorus index.* Manure application rates shall be determined in conjunction with the use of the Iowa Phosphorus Index as specified by the USDA Natural Resources Conservation Service (NRCS) Iowa Technical Note No. 25.

a. No change.

b. When sheet and rill erosion is calculated for the phosphorus index, the soil type used for the calculation shall be the most erosive soil map unit that is at least 10 percent of the total field area dominant critical soil map unit consistent with NRCS conservation planning guidelines. See NRCS Technical Note 29.

c. and d. No change.

e. For an original manure management plan, previous soil sampling data that does not meet the requirements of subrule 65.17(16) may be used in the phosphorus index if the data is four years old or less. In the case of fields for which soil sampling data is used that does not meet the requirements of subrule 65.17(16), the fields must be soil-sampled according to the requirements of subrule 65.17(16) no more than one year after the original manure management plan is approved.

f. The following are the manure application rate requirements for fields that are assigned the phosphorus index site vulnerability ratings below as determined by the NRCS Iowa Technical Note No. 25 to the NRCS 590 standard rounded to the nearest one-hundredth:

(1) to (3) No change.

(4) High (>5-15). Manure shall not be applied on a field with a rating greater than 5 and less than or equal to 15 until practices are adopted which reduce the phosphorus index to at least the Medium risk category. ~~However, prior to December 31, 2008, fields with a phosphorus index greater than 5 and less than or equal to 10 may receive manure at a phosphorus-based rate in accordance with 65.17(19) if practices will be adopted to reduce the phosphorus index to the Medium risk category.~~

(5) No change.

g. No change.

h. Updating the phosphorus index.

(1) and (2) No change.

(3) An operation must submit a complete manure management plan using a new phosphorus index, including soil sampling as required in subrule 65.17(16), for each field in the manure management plan a minimum of once every four years.

65.17(18) No change.

65.17(19) *Requirements for application of a phosphorus-based manure rate to a field.*

a. to e. No change.

f. Phosphorus in manure should be considered 100 percent available unless soil phosphorus concentrations are below optimum levels for crop production. If soil phosphorus concentrations are below optimum levels for crop production phosphorus availability, values suggested in Iowa State University extension publication PM ~~4844~~ 1003, "Managing Using Manure Nutrients for Crop Production" or other credible sources shall be used.

65.17(20) No change.

ITEM 24. Amend rule 567—65.18(459,459B) as follows:

567—65.18(459,459B) Construction certification. A confinement feeding operation which obtains a construction permit after March 20, 1996, shall submit to the department a construction certification from a licensed professional engineer that the manure storage structure in which manure is stored in a liquid or semiliquid form or the egg washwater storage structure was according to the following:

65.18(1) For a confinement feeding operation that is below the threshold requirements for an engineer as defined in 567—65.1(459,459B), prior to using a permitted confinement feeding operation structure, the person responsible for constructing a formed manure storage structure or the permittee shall submit to the department a construction certification, as specified in the construction permit.

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65.18(2) For a confinement feeding operation that uses an unformed manure storage structure or an egg washwater storage structure, or an operation that meets or exceeds the threshold engineering requirements as defined in 567—65.1(459,459B), a certification from a licensed professional engineer that the confinement feeding operation structure was:

1. *a.* Constructed in accordance with the design plan. ~~If actual construction deviates from the approved plans, identify all~~ Any changes to the approved plans must first be authorized by the department and ~~certify~~ must include a certification that the proposed changes were are consistent with the standards of these rules or statute;

2. *b.* Supervised by the licensed professional engineer or a designee of the engineer during critical points of the construction. A designee shall not be the permittee, owner of the confinement feeding operation, a direct employee of the permittee or owner, or the contractor or an employee of the contractor;

3. *c.* Inspected by the licensed professional engineer after completion of construction and before commencement of operation; and

4. *d.* Constructed in accordance with the drainage tile removal standards of subrule 65.15(1), and including a report of the findings and actions taken to comply with ~~this~~ subrule 65.15(1).

ITEM 25. Amend subrules 65.19(1), 65.19(2), 65.19(5), 65.19(6) and 65.19(8) as follows:

65.19(1) A commercial manure service, ~~or a commercial manure service representative or a confinement site manure applicator~~ shall not transport, handle, store or apply dry or liquid manure to land, unless the person is certified. A confinement site manure applicator shall not apply dry or liquid manure to land unless the person is certified. A person is not required to be certified as a confinement site manure applicator if the person applies manure which originates from a manure storage structure which is part of a small animal feeding operation. Certification of a commercial manure service representative under this rule will also satisfy the commercial license requirement under 567—Chapter 68 only as it applies to manure removal and application. Each person who operates a manure applying vehicle or equipment must be certified individually except as allowed in subrule 65.19(7).

65.19(2) Fees.

a. Commercial manure service. ~~Effective January 1, 2004, the~~ The fee for a new or renewed certification of a service is \$200. The commercial manure service shall designate one manager for the service and shall provide the department with documentation of the designation.

b. Commercial manure service representative. ~~Effective January 1, 2004, the~~ The fee for a new or renewed representative certification is \$75. The manager of a commercial manure service must be certified as a commercial manure service representative, but is exempt from paying the \$75 certification fee.

c. Confinement site manure applicator. ~~Effective January 1, 2003, the~~ The fee for a new or renewed certification is \$100. However, the fee is not required if all of the following apply:

(1) to (3) No change.

d. Educational fee. ~~Effective May 30, 2003, commercial~~ Commercial manure service representatives, managers and confinement site manure applicators shall pay an educational fee to be determined annually by the department.

e. and f. No change.

65.19(5) Examinations.

a. A person wishing to take the examination required to become a certified commercial manure service representative or certified confinement site manure applicator may request ~~a listing of dates and locations of examinations~~ an appointment. The applicant must have a photo identification card at the time of taking the examination.

b. and c. No change.

65.19(6) Continuing instruction courses in lieu of examination.

a. No change.

b. To establish or maintain certification, a confinement site manure applicator must either pass an examination every three years or attend two hours of continuing instructional courses each year. A confinement site manure applicator who chooses to attend instructional courses but fails to attend

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instructional courses each year must pass an examination as provided in subrule 65.19(5) to maintain certification.

65.19(8) Certified commercial manure services have the following obligations:

- a. No change.
- b. Comply with the provisions of the manure management plan (MMP) prepared for the ~~animal~~ confinement feeding operation and the requirements of 567—65.2(459,459B) and 567—65.3(459,459B). If a manure management plan does not exist, the requirements of 567—65.2(459,459B) and 567—65.3(459,459B) must still be met.
- c. to f. No change.

ITEM 26. Amend rule 567—65.20(459,459B), introductory paragraph, as follows:

567—65.20(459,459B) Manure storage indemnity fund. The manure storage indemnity fund created in Iowa Code ~~chapter 455J~~ section 459.501 will be administered by the department. Moneys in the fund shall be used for the exclusive purpose of administration of the fund and the cleanup of eligible facilities at confinement feeding operation sites.

ITEM 27. Amend subrule 65.20(8) as follows:

65.20(8) Subrogation. The fund is subrogated to all county rights regarding any claim submitted or paid as provided in Iowa Code section ~~455J.5(5)~~ 459.505.

ITEM 28. Amend rule 567—65.21(459,459B), introductory paragraph, as follows:

567—65.21(459,459B) Transfer of legal responsibilities or title. If title or legal responsibility for a permitted ~~animal~~ confinement feeding operation and its ~~animal~~ confinement feeding operation ~~storage~~ structure is transferred, the person to whom title or legal responsibility is transferred shall be subject to all terms and conditions of the permit and these rules. The person to whom the permit was issued and the person to whom title or legal responsibility is transferred shall notify the department of the transfer of legal responsibility or title of the operation within 30 days of the transfer. Within 30 days of receiving a written request from the department, the person to whom legal responsibility is transferred shall submit to the department all information needed to modify the permit to reflect the transfer of legal responsibility. A person who has been classified as a habitual violator under Iowa Code section ~~455B.194~~ 459.604 shall not acquire legal responsibility or a controlling interest to any additional permitted confinement feeding operations for the period that the person is classified as a habitual violator. A person who has an interest in a confinement feeding operation that is the subject of a pending enforcement action shall not acquire legal responsibility or an interest to any additional permitted confinement feeding operations for the period that the enforcement action is pending.

ITEM 29. Amend **567—Chapter 65**, implementation sentence for Division I, as follows:

These rules are intended to implement Iowa Code sections ~~455B.101, 455B.104, 455B.103, 455B.134(3)“e,” “f,” and 455B.171 to 455B.188, and 455B.191;~~ Iowa Code chapter 459; ~~and 1998 Iowa Acts, chapter 1209, sections 41 and 44 to 47 and 2009 Iowa Acts, House File 735 and Senate File 432.~~

ITEM 30. Amend rule 567—65.100(455B,459,459A), introductory paragraph, as follows:

567—65.100(455B,459,459A) Definitions. In addition to the definitions in Iowa Code sections 455B.101 and 455B.171 and ~~2005 Iowa Code Supplement~~ section 459A.102, the following definitions shall apply to Division II of this chapter:

ITEM 31. Amend rule **567—65.100(455B,459,459A)**, definition of “Animal unit,” as follows:

“*Animal unit*” means a unit of measurement based upon the product of multiplying the number of animals of each category by a special equivalency factor, as follows:

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1. Slaughter and feeder cattle	1.000
2. Immature dairy cattle	1.000
3. Mature dairy cattle	1.400
4. Butcher or breeding swine weighing more than 55 pounds	0.400
5. Swine weighing 15 pounds or more but not more than 55 pounds	0.100
6. Sheep or lambs	0.100
7. Horses	2.000
8. Turkeys weighing 12 ounces <u>7 pounds</u> or more	0.018
9. Turkeys weighing less than 12 ounces <u>7 pounds</u>	0.0085
10. Chickens <u>Broiler or layer chickens</u> weighing 48 ounces <u>3 pounds</u> or more	0.010
11. Chickens <u>Broiler or layer chickens</u> weighing less than 48 ounces <u>3 pounds</u>	0.0025

ITEM 32. Adopt the following new definitions of “Livestock market,” “Partially roofed animal feeding operation” and “Water well” in rule **567—65.100(455B,459,459A)**:

“*Livestock market*” means any place where animals are assembled from two or more sources for public auction, private sale, or on a commission basis, which is under state or federal supervision, including a livestock sale barn or auction market, if such animals are kept for ten days or less.

“*Partially roofed animal feeding operation*” means an animal feeding operation in which the animals have unrestricted access from any attached roofed structure and the square footage of the unroofed area is at least 10 percent of the square footage of any attached roofed area.

“*Water well*” means an excavation that is drilled, cored, bored, augered, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for groundwater, monitoring groundwater, utilizing the geothermal properties of the ground, or extracting water from or injecting water into the aquifer. “Water well” does not include an open ditch or drain tiles or an excavation made for obtaining or prospecting for oil, natural gas, minerals, or products mined or quarried.

ITEM 33. Amend subrule 65.101(8) as follows:

65.101(8) Stockpiling of scraped manure and settleable solids. ~~A CAFO must manage stockpiles as required by 65.101(2) or 65.101(3).~~ Stockpiles of manure scraped from open feedlot operations and stockpiles of settleable solids shall comply with the following requirements.

a. Stockpiles must be land-applied in accordance with subrule 65.101(6) as soon as possible but not later than six months after they are established.

b. Stockpiles shall not be located within ~~200~~ 400 feet from a designated area or, in the case of a high quality water resource, within 800 feet, ~~and areas of concentrated flow located downslope of and within 200 feet of the stockpile shall be planted to permanent vegetation cover, including filter strips and riparian forest buffers.~~

c. Stockpiles shall not be located in grassed waterways or areas where water ponds or has concentrated flow.

d. Stockpiles shall not be located within 200 feet of a ~~drainage tile line intake~~ terrace tile inlet or surface tile inlet or known sinkhole unless the stockpile is located so that any runoff from the stockpile will not reach the ~~intake inlet~~ intake inlet or sinkhole.

e. Stockpiles shall not be located on land having a slope of more than 3 percent unless methods, structures or practices are implemented to contain the stockpiled solids, including but not limited to hay bales, silt fences, temporary earthen berms, or other effective measures, and to prevent or diminish precipitation-induced runoff from the stockpiled solids.

ITEM 34. Amend subrule 65.105(2) as follows:

65.105(2) *When a construction permit is not required.*

a. *Research colleges.* A construction permit is not required for construction of a settled open feedlot effluent basin or AT system if the basin or system is part of an open feedlot operation

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which is owned by a research college conducting research activities as provided in ~~2005~~ Iowa Code Supplement section 459A.105.

~~b. Solids settling facilities. A construction permit is not required for construction of a solids settling facility.~~ If only solids settling facilities are being constructed, a construction permit is not required. If solids settling facilities are proposed as part of a project that includes facilities that require a construction permit, then the proposed solids settling facilities are subject to a construction permit.

ITEM 35. Amend rule 567—65.108(455B,459A) as follows:

567—65.108(455B,459A) Well Water well separation distances for open feedlot operations.

65.108(1) Settled open feedlot effluent basins. Settled open feedlot effluent basins shall be separated from water wells as follows:

a. *Public wells.* 1,000 feet from shallow wells and 400 feet from deep wells;

b. *Private wells.* 400 feet from both shallow and deep wells.

65.108(2) Open feedlots, solids settling facilities, feed storage runoff control structures and AT systems. Open feedlots, solids settling facilities, feed storage runoff control structures and AT systems shall be separated from water wells as follows: for both public and private wells, 200 feet from shallow wells and 100 feet from deep wells.

65.108(3) Variances. Variances to this rule may be granted by the director if the applicant petitioner complies with the procedures and criteria in 561—Chapter 10 and provides an alternative that is substantially equivalent to the rule or provides improved effectiveness or protection as required by the rule. ~~Variance requests~~ Petition for a variance shall be made in writing at the time the construction permit application is submitted. The denial of a variance may be appealed to the commission.

ITEM 36. Amend paragraph **65.112(8)“a”** as follows:

a. Restrictions on the application of open feedlot effluent based on all of the following:

(1) No change.

(2) Calculations necessary to determine the land area required for the application of manure, process wastewater and open feedlot effluent from an open feedlot operation based on nitrogen or phosphorus use levels (as determined by phosphorus index) in order to obtain optimum crop yields according to a crop schedule specified in the nutrient management plan, and according to requirements specified in subrule 65.17(4). The 100 pounds of available nitrogen per acre limitation specified in paragraph 65.17(18)“c” (applicable to open feedlot operations and combined open feedlot and confinement operations with an NPDES permit because of requirements in subrule 65.17(4)) pertaining to liquid manure applied to land currently planted to soybeans or to land where a soybean crop is planned applies only to liquid manure, process wastewater or settled open feedlot effluent.

ITEM 37. Amend **567—Chapter 65**, Tables 3, 3a, 5 and 6, as follows:

TABLE 3

Annual Pounds of Nitrogen Per Space of Capacity

Source: PM 1811, Managing Manure Nutrients for Crop Production Confinement Operations

Swine	Space	Liquid, Pit* or Basin**	Liquid, Lagoon***	Solid Manure
Nursery, 25 lb.	1 head	2	1	5
<u>Wean-finish, 130 lb.</u>				
<u>Formed storage*</u>				
<u>Dry feeders</u>	<u>1 head</u>	<u>15</u>		<u>34</u>
<u>Wet/dry feeders</u>	<u>1 head</u>	<u>13</u>		<u>34</u>
Grow-finish, 150 lb.				

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Swine	Space	Liquid, Pit* or Basin**	Liquid, Lagoon***	Solid Manure
Formed storage*				
Dry feeders	1 head	21		29
Wet/dry feeders	1 head	19		29
Earthen storage**	1 head	14		29
Lagoon***	1 head		6	29
Gestation, 400 lb.	1 head	27	5	39
Sow & Litter, 450 lb.	1 crate	32	11	86
Farrow-nursery	Per sow in breeding herd	22	8	85
Farrow-finish	Per sow in breeding herd	150	44	172

Dairy, Confined	Space	Liquid, Pit* or Basin**	Liquid, Lagoon***	Solid Manure
Cows, 1200 & up lb.	1 head	164	59	140
Heifers, 900 lb.	1 head	81	44	65
Calves, 500 lb.	1 head	45	24	15
Veal calves, 250 lb.	1 head	22	12	10
Dairy herd	Per productive cow in herd	169	87	180

Beef, Confined	Space	Liquid, Pit* or Basin**	Liquid, Lagoon***	Solid Manure
Mature cows, 1000 lb.	1 head	105	23	147
Finishing, 900 lb.	1 head	95	19	132
Feeder calves, 500 lb.	1 head	53	11	73

Poultry	Space		Dry Manure
Layer, cages	1000 head		367
Broiler, litter	1000 head		585
Turkeys, litter	1000 head		1400

Open Feedlot OperationsRunoff – liquids

<u>Species</u>	<u>Space</u>	<u>Earthen lots</u>	<u>Concrete lots</u>	<u>Solids-scraped</u>
<u>Beef, 400 sq. ft./hd.</u>	<u>1 head</u>	<u>5</u>	<u>3</u>	<u>66</u>
<u>Dairy, 1000 sq. ft./hd.</u>	<u>1 head</u>	<u>15</u>	<u>7</u>	<u>127</u>
<u>Swine, 50 sq. ft./hd.</u>	<u>1 head</u>	<u>1</u>	<u>3</u>	<u>18</u>

* Formed manure storage structure

** Earthen manure storage basin

*** Anaerobic lagoon

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

TABLE 3a

Annual Pounds of Phosphorus (as P₂O₅) Per Space of CapacitySource: PM 1811, Managing Manure Nutrients for Crop Production Confinement Operations

Swine	Space	Liquid, Pit* or Basin**	Liquid, Lagoon***	Solid Manure
Nursery, 25 lb.	1 head	1	0.7	3
<u>Wean-finish, 130 lb.</u>				
<u>Formed storage*</u>				
<u>Dry feeders</u>	<u>1 head</u>	<u>12</u>		<u>21</u>
<u>Wet/dry feeders</u>	<u>1 head</u>	<u>9</u>		<u>21</u>
Grow-finish, 150 lb.				
<u>Formed storage*</u>				
Dry feeders	1 head	45 <u>18</u>		18
Wet/dry feeders	1 head	13		18
Earthen storage**	1 head	10		48
Lagoon***	1 head		5	48
Gestation, 400 lb.	1 head	27	4	25
Sow & Litter, 450 lb.	1 crate	26	8	55
Farrow-nursery	Per sow in breeding herd	18	6	55
Farrow-finish	Per sow in breeding herd	109	33	110
Dairy, Confined	Space	Liquid, Pit* or Basin**	Liquid, Lagoon***	Solid Manure
Cows, 1200 & up lb.	1 head	78	44	42
Heifers, 900 lb.	1 head	38	33	20
Calves, 500 lb.	1 head	22	18	5
Veal calves, 250 lb.	1 head	10	9	3
Dairy herd	Per productive cow in herd	80	66	80
Beef, Confined	Space	Liquid, Pit* or Basin**	Liquid, Lagoon***	Solid Manure
Mature cows, 1000 lb.	1 head	66	17	73
Finishing, 900 lb.	1 head	59	14	66
Feeder calves, 500 lb.	1 head	33	8	37
Poultry	Space			Dry Manure
Layer, cages	1000 head			840
Broiler, litter	1000 head			585
Turkeys, litter	1000 head			1400

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Open Feedlot OperationsRunoff – liquids

<u>Species</u>	<u>Space</u>	<u>Earthen lots</u>	<u>Concrete lots</u>	<u>Solids-scraped</u>
<u>Beef, 400 sq. ft./hd.</u>	<u>1 head</u>	<u>2</u>	<u>1</u>	<u>48</u>
<u>Dairy, 1000 sq. ft./hd.</u>	<u>1 head</u>	<u>5</u>	<u>2</u>	<u>69</u>
<u>Swine, 50 sq. ft./hd.</u>	<u>1 head</u>	<u>0.3</u>	<u>1</u>	<u>17</u>

* Formed manure storage structure

** Earthen manure storage basin

*** Anaerobic lagoon

TABLE 5

Manure Production Per Space of Capacity

Swine	Space	Liquid, Pit* or Basin**	Liquid, Lagoon***	Solid Manure
			Daily	Yearly
Nursery, 25 lb.	1 head	0.2 gal	0.7 gal	0.34 tons
<u>Wean-finish, 130 lb.</u>				
<u>Formed storage*</u>				
<u>Dry feeders</u>	<u>1 head</u>	<u>.86 gal</u>		<u>2.39 tons</u>
<u>Wet/dry feeders</u>	<u>1 head</u>	<u>0.66 gal</u>		<u>2.39 tons</u>
Grow-finish, 150 lb.				
<u>Formed storage*</u>				
<u>Dry feeders</u>	1 head	1.2 gal		2.05 tons
<u>Wet/dry feeders</u>	1 head	0.90 gal		2.05 tons
<u>Earthen storage**</u>	1 head	1.2 gal		2.05 tons
<u>Lagoon***</u>	1 head		4.1 gal	2.05 tons
Gestation, 400 lb.	1 head	3.0 gal	3.7 gal	2.77 tons
Sow & Litter, 450 lb.	1 crate	3.5 gal	7.5 gal	6.16 tons
Farrow-nursery	Per sow in breeding herd	2.2 gal	5.4 gal	6.09 tons
Farrow-finish	Per sow in breeding herd	9.4 gal	30 gal	12.25 tons
Dairy, Confined	Space	Liquid, Pit* or Basin**	Liquid, Lagoon***	Solid Manure
Cows, 1200 & up lb.	1 head	18.0 gal	40.1 gal	14 tons
Heifers, 900 lb.	1 head	8.8 gal	29.9 gal	6.5 tons
Calves, 500 lb.	1 head	4.9 gal	16.5 gal	1.5 tons
Veal calves, 250 lb.	1 head	2.5 gal	8.2 gal	1.1 tons
Dairy herd	Per productive cow in herd	18.5 gal	59.8 gal	20 tons

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Beef, Confined	Space	Liquid, Pit* or Basin**	Liquid, Lagoon***	Solid Manure
Mature cows, 1000 lb.	1 head	7.2 gal	15.7 gal	12.23 tons
Finishing, 900 lb.	1 head	6.5 gal	13.1 gal	11.00 tons
Feeder calves, 500 lb.	1 head	3.6 gal	7.3 gal	6.11 tons

Poultry	Space	Dry Manure
Layer, cages	1000 head	10.5 tons
Broiler, litter	1000 head	9.00 tons
Turkeys, litter	1000 head	35.00 tons

* Formed manure storage structure

** Earthen manure storage basin

*** Anaerobic lagoon

TABLE 6

Required Separation Distances for Confinement Feeding Operations Constructed on or after
March 1, 2003—Swine, Sheep, Horses, Poultry, and Beef and Dairy Cattle

DISTANCES TO BUILDINGS AND PUBLIC USE AREAS ¹				
Type of Structure	Animal Unit (AU) Capacity	Residences, Businesses, Churches, Schools		Public Use Areas
		Unincorporated Areas	Incorporated Areas	
Anaerobic lagoons and uncovered earthen manure storage basins	<u>500 AU or less</u>	<u>1,875 feet</u>	<u>1,875 feet</u>	<u>1,875 feet</u>
	<u>>500 AU to <1,000 AU</u>	1,875 feet	1,875 feet	1,875 feet
	<u>1,000 AU to <3,000 AU</u>	2,500 feet	2,500 feet	2,500 feet
	3,000 AU or more	3,000 feet	3,000 feet	3,000 feet
Covered earthen manure storage basins	<u>500 AU or less</u>	<u>1,250 feet</u>	<u>1,875 feet</u>	<u>1,875 feet</u>
	<u>>500 AU to <1,000 AU</u>	1,250 feet	1,875 feet	1,875 feet
	<u>1,000 AU to <3,000 AU</u>	1,875 feet	2,500 feet	2,500 feet
	3,000 AU or more	2,375 feet	3,000 feet	3,000 feet
Uncovered formed manure storage structures	<u>500 AU or less</u>	<u>None</u>	<u>None</u>	<u>None</u>
	<u>>500 AU to <1,000 AU</u>	1,500 feet	1,875 feet	1,875 feet
	<u>1,000 AU to <3,000 AU</u>	2,000 feet	2,500 feet	2,500 feet
	3,000 AU or more	2,500 feet	3,000 feet	3,000 feet

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Confinement buildings and covered formed manure storage structures	<u>500 AU or less</u>	<u>None</u>	<u>None</u>	<u>None</u>
	<u>>500 AU to <1,000 AU</u>	1,250 feet	1,875 feet	1,875 feet
	<u>1,000 AU to <3,000 AU</u>	1,875 feet	2,500 feet	2,500 feet
	<u>3,000 AU or more</u>	2,375 feet	3,000 feet	3,000 feet
Egg washwater storage structures	<u>500 AU or less</u>	<u>None</u>	<u>None</u>	<u>None</u>
	<u>>500 AU to <1,000 AU</u>	1,000 feet	1,875 feet	1,875 feet
	<u>1,000 AU to <3,000 AU</u>	1,500 feet	2,500 feet	2,500 feet
	<u>3,000 AU or more</u>	2,000 feet	3,000 feet	3,000 feet

DISTANCES TO WATER WELLS				
Type of Structure	Public Well		Private Well	
	Shallow	Deep	Shallow	Deep
Aerobic structure, anaerobic lagoon, earthen manure storage basin, and egg washwater storage structure and open feedlot runoff control basin	1,000 feet	400 feet	400 feet	400 feet
Formed manure storage structure, and confinement building, open feedlot solids settling facility and open feedlot	200 feet	100 feet	200 feet	100 feet

OTHER DISTANCES FOR ANIMAL CONFINEMENT FEEDING OPERATION STRUCTURES regardless of animal unit capacity	
Surface intake of an agricultural drainage well or water source other than major (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	500 feet*
Wellhead, or cistern of agricultural drainage well, known sinkhole or major water source (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	1,000 feet
Designated wetlands pursuant to subrule 65.11(4) and Iowa Code section 459.310	<u>2,500 feet</u>
Right-of-way of a thoroughfare maintained by a political subdivision (Excluding small feeding operations Exemptions provided in subrule 65.12(2))	100 feet
<u>*200 feet from a water source required for a dry bedded confinement feeding operation structure.</u>	

¹See rule ~~567 IAC 65.12(455B)~~ 567—65.12(459,459B) for exemptions available from the above distances

ITEM 38. Adopt the following new Tables 6a to 6d and 7 in ~~567—Chapter 65:~~

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

TABLE 6a

Required Separation Distances for Confinement Feeding Operations Constructed on or after January 1, 1999, but prior to March 1, 2003—Swine, Sheep, Horses and Poultry

DISTANCES TO BUILDINGS AND PUBLIC USE AREAS ¹				
Type of Structure	Animal Unit (AU) Capacity and Animal Weight Capacity	Residences, Businesses, Churches, Schools		Public Use Areas
		Unincorporated Areas	Incorporated Areas	
Anaerobic lagoons and uncovered earthen manure storage basins	500 AU or less	1,250 feet	1,250 feet	1,250 feet
	>500 AU to <625,000 lbs	1,250 feet	1,250 feet	1,250 feet
	625,000 lbs to <1,250,000 lbs	1,875 feet	1,875 feet	1,875 feet
	1,250,000 lbs or more	2,500 feet	2,500 feet	2,500 feet
Covered earthen manure storage basins	500 AU or less	1,000 feet	1,250 feet	1,250 feet
	>500 AU to <625,000 lbs	1,000 feet	1,250 feet	1,250 feet
	625,000 lbs to <1,250,000 lbs	1,250 feet	1,875 feet	1,875 feet
	1,250,000 lbs or more	1,875 feet	2,500 feet	2,500 feet
Uncovered formed manure storage structures	500 AU or less	None	None	None
	>500 AU to <625,000 lbs	1,250 feet	1,250 feet	1,250 feet
	625,000 lbs to <1,250,000 lbs	1,500 feet	1,875 feet	1,875 feet
	1,250,000 lbs or more	2,000 feet	2,500 feet	2,500 feet
Confinement buildings and covered formed manure storage structures	500 AU or less	None	None	None
	>500 AU to <625,000 lbs	1,000 feet	1,250 feet	1,250 feet
	625,000 lbs to <1,250,000 lbs	1,250 feet	1,875 feet	1,875 feet
	1,250,000 lbs or more	1,875 feet	2,500 feet	2,500 feet
Egg washwater storage structures	500 AU or less	None	None	None
	>500 AU to <625,000 lbs	750 feet	1,250 feet	1,250 feet
	625,000 lbs to <1,250,000 lbs	1,000 feet	1,875 feet	1,875 feet
	1,250,000 lbs or more	1,500 feet	2,500 feet	2,500 feet

DISTANCES TO WATER WELLS				
Type of Structure	Public Well		Private Well	
	Shallow	Deep	Shallow	Deep
Aerobic structure, anaerobic lagoon, earthen manure storage basin and egg washwater storage structure	1,000 feet	400 feet	400 feet	400 feet
Formed manure storage structure and confinement building	200 feet	100 feet	200 feet	100 feet

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

OTHER DISTANCES FOR CONFINEMENT FEEDING OPERATION STRUCTURES regardless of animal unit capacity	
Surface intake of an agricultural drainage well or water source other than major (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	500 feet
Wellhead or cistern of agricultural drainage well, known sinkhole or major water source (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	1,000 feet
Designated wetlands pursuant to subrule 65.11(4) and Iowa Code section 459.310	2,500 feet
Right-of-way of a thoroughfare maintained by a political subdivision (Exemptions provided in subrule 65.12(2))	100 feet

¹See rule 567—65.12(459,459B) for exemptions available from the above distances

TABLE 6b

Required Separation Distances for Confinement Feeding Operations Constructed on or after January 1, 1999, but prior to March 1, 2003—Beef and Dairy Cattle

DISTANCES TO BUILDINGS AND PUBLIC USE AREAS ¹				
Type of Structure	Animal Unit (AU) Capacity and Animal Weight Capacity	Residences, Businesses, Churches, Schools		Public Use Areas
		Unincorporated Areas	Incorporated Areas	
Anaerobic lagoons and uncovered earthen manure storage basins	500 AU or less	1,250 feet	1,250 feet	1,250 feet
	>500 AU to <1,600,000 lbs	1,250 feet	1,250 feet	1,250 feet
	1,600,000 lbs to <4,000,000 lbs	1,875 feet	1,875 feet	1,875 feet
	4,000,000 lbs or more	2,500 feet	2,500 feet	2,500 feet
Covered earthen manure storage basins	500 AU or less	1,000 feet	1,250 feet	1,250 feet
	>500 AU to <1,600,000 lbs	1,000 feet	1,250 feet	1,250 feet
	1,600,000 lbs to <4,000,000 lbs	1,250 feet	1,875 feet	1,875 feet
	4,000,000 lbs or more	1,875 feet	2,500 feet	2,500 feet
Uncovered formed manure storage structures	500 AU or less	None	None	None
	>500 AU to <1,600,000 lbs	1,250 feet	1,250 feet	1,250 feet
	1,600,000 lbs to <4,000,000 lbs	1,500 feet	1,875 feet	1,875 feet
	4,000,000 lbs or more	2,000 feet	2,500 feet	2,500 feet
Confinement buildings and covered formed manure storage structures	500 AU or less	None	None	None
	>500 AU to <1,600,000 lbs	1,000 feet	1,250 feet	1,250 feet
	1,600,000 lbs to <4,000,000 lbs	1,250 feet	1,875 feet	1,875 feet
	4,000,000 lbs or more	1,875 feet	2,500 feet	2,500 feet

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

DISTANCES TO WATER WELLS				
Type of Structure	Public Well		Private Well	
	Shallow	Deep	Shallow	Deep
Aerobic structure, anaerobic lagoon, earthen manure storage basin and egg washwater storage structure	1,000 feet	400 feet	400 feet	400 feet
Formed manure storage structure and confinement building	200 feet	100 feet	200 feet	100 feet

OTHER DISTANCES FOR CONFINEMENT FEEDING OPERATION STRUCTURES regardless of animal unit capacity	
Surface intake of an agricultural drainage well or water source other than major (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	500 feet
Wellhead or cistern of agricultural drainage well, known sinkhole or major water source (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	1,000 feet
Designated wetlands pursuant to subrule 65.11(4) and Iowa Code section 459.310	2,500 feet
Right-of-way of a thoroughfare maintained by a political subdivision (Exemptions provided in subrule 65.12(2))	100 feet

¹See rule 567—65.12(459,459B) for exemptions available from the above distances

TABLE 6c

Required Separation Distances for Confinement Feeding Operations Constructed prior to January 1, 1999—Swine, Sheep, Horses and Poultry

DISTANCES TO BUILDINGS AND PUBLIC USE AREAS ¹				
Type of Structure	Animal Unit (AU) Capacity and Animal Weight Capacity	Residences, Businesses, Churches, Schools		Public Use Areas
		Unincorporated Areas	Incorporated Areas	
Anaerobic lagoons and uncovered earthen manure storage basins	500 AU or less	1,250 feet	1,250 feet	1,250 feet
	>500 AU to <625,000 lbs	1,250 feet	1,250 feet	1,250 feet
	625,000 lbs to <1,250,000 lbs	1,875 feet	1,875 feet	1,875 feet
	1,250,000 lbs or more	2,500 feet	2,500 feet	2,500 feet
Covered earthen manure storage basins	500 AU or less	750 feet	1,250 feet	1,250 feet
	>500 AU to <625,000 lbs	750 feet	1,250 feet	1,250 feet
	625,000 lbs to <1,250,000 lbs	1,000 feet	1,875 feet	1,875 feet
	1,250,000 lbs or more	1,500 feet	2,500 feet	2,500 feet
Uncovered formed manure storage structures	500 AU or less	None	None	None
	>500 AU to <625,000 lbs	1,000 feet	1,250 feet	1,250 feet
	625,000 lbs to <1,250,000 lbs	1,500 feet	1,875 feet	1,875 feet
	1,250,000 lbs or more	2,000 feet	2,500 feet	2,500 feet

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Confinement buildings and covered formed manure storage structures	500 AU or less	None	None	None
	>500 AU to <625,000 lbs	750 feet	1,250 feet	1,250 feet
	625,000 lbs to <1,250,000 lbs	1,000 feet	1,875 feet	1,875 feet
	1,250,000 lbs or more	1,500 feet	2,500 feet	2,500 feet
Egg washwater storage structures	500 AU or less	None	None	None
	>500 AU to <625,000 lbs	750 feet	1,250 feet	1,250 feet
	625,000 lbs to <1,250,000 lbs	1,000 feet	1,875 feet	1,875 feet
	1,250,000 lbs or more	1,500 feet	2,500 feet	2,500 feet

DISTANCES TO WATER WELLS				
Type of Structure	Public Well		Private Well	
	Shallow	Deep	Shallow	Deep
Aerobic structure, anaerobic lagoon, earthen manure storage basin and egg washwater storage structure	1,000 feet	400 feet	400 feet	400 feet
Formed manure storage structure and confinement building	200 feet	100 feet	200 feet	100 feet

OTHER DISTANCES FOR CONFINEMENT FEEDING OPERATION STRUCTURES regardless of animal unit capacity	
Surface intake of an agricultural drainage well or water source other than major (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	500 feet
Wellhead or cistern of agricultural drainage well, known sinkhole or major water source (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	1,000 feet
Designated wetlands pursuant to subrule 65.11(4) and Iowa Code section 459.310	2,500 feet
Right-of-way of a thoroughfare maintained by a political subdivision (Exemptions provided in subrule 65.12(2))	100 feet

¹See rule 567—65.12(459,459B) for exemptions available from the above distances

TABLE 6d

Required Separation Distances for Confinement Feeding Operations Constructed prior to January 1, 1999—Beef and Dairy Cattle

DISTANCES TO BUILDINGS AND PUBLIC USE AREAS ⁽¹⁾				
Type of Structure	Animal Unit (AU) Capacity and Animal Weight Capacity	Residences, Businesses, Churches, Schools		Public Use Areas
		Unincorporated Areas	Incorporated Areas	
Anaerobic lagoons and uncovered earthen manure storage basins	500 AU or less	1,250 feet	1,250 feet	1,250 feet
	>500 AU to <1,600,000 lbs	1,250 feet	1,250 feet	1,250 feet
	1,600,000 lbs to <4,000,000 lbs	1,875 feet	1,875 feet	1,875 feet
	4,000,000 lbs or more	2,500 feet	2,500 feet	2,500 feet

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Covered earthen manure storage basins	500 AU or less	750 feet	1,250 feet	1,250 feet
	>500 AU to <1,600,000 lbs	750 feet	1,250 feet	1,250 feet
	1,600,000 lbs to <4,000,000 lbs	1,000 feet	1,875 feet	1,875 feet
	4,000,000 lbs or more	1,500 feet	2,500 feet	2,500 feet
Uncovered formed manure storage structures	500 AU or less	None	None	None
	>500 AU to <1,600,000 lbs	1,000 feet	1,250 feet	1,250 feet
	1,600,000 lbs to <4,000,000 lbs	1,500 feet	1,875 feet	1,875 feet
	4,000,000 lbs or more	2,000 feet	2,500 feet	2,500 feet
Confinement buildings and covered formed manure storage structures	500 AU or less	None	None	None
	>500 AU to <1,600,000 lbs	750 feet	1,250 feet	1,250 feet
	1,600,000 lbs to <4,000,000 lbs	1,000 feet	1,875 feet	1,875 feet
	4,000,000 lbs or more	1,500 feet	2,500 feet	2,500 feet

DISTANCES TO WATER WELLS				
Type of Structure	Public Well		Private Well	
	Shallow	Deep	Shallow	Deep
Aerobic structure, anaerobic lagoon, earthen manure storage basin and egg washwater storage structure	1,000 feet	400 feet	400 feet	400 feet
Formed manure storage structure and confinement building	200 feet	100 feet	200 feet	100 feet

OTHER DISTANCES FOR CONFINEMENT FEEDING OPERATION STRUCTURES regardless of animal unit capacity	
Surface intake of an agricultural drainage well or water source other than major (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	500 feet
Wellhead or cistern of agricultural drainage well, known sinkhole or major water source (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	1,000 feet
Designated wetlands pursuant to subrule 65.11(4) and Iowa Code section 459.310	2,500 feet
Right-of-way of a thoroughfare maintained by a political subdivision (Exemptions provided in subrule 65.12(2))	100 feet

¹See rule 567—65.12(459,459B) for exemptions available from the above distances

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

TABLE 7

Required Separation Distances for Open Feedlot Operations, Stockpiles from Open Feedlot Operations, Stockpiles from Dry Manure Confinement Operations and Stockpiles from Dry Bedded Confinement Operations

DISTANCES TO WELLS FOR OPEN FEEDLOT STRUCTURES				
Type of Structure	Public Well		Private Well	
	Shallow	Deep	Shallow	Deep
Settled open feedlot effluent basin	1,000 feet	400 feet	400 feet	400 feet
Open feedlot, open feedlot solids settling facility, AT system and feed storage runoff basin	200 feet	100 feet	200 feet	100 feet
DISTANCES TO RESIDENCES AND SPECIAL AREAS FOR MANURE STOCKPILES ^{1, 2}				
Residence, commercial enterprise, bona fide religious institution, educational institution, or public use area (does not apply to stockpiles from SAFO sized confinements and open feedlots)				1,250 feet
Designated area other than a high-quality water resource				400 feet
High-quality water resource				800 feet
Terrace tile inlet or surface tile inlet – unless methods, structures or practices are implemented to contain the stockpiled manure				200 feet

¹Manure stockpiles are prohibited on grassed waterways or where water pools on the surface. Manure stockpiles are also prohibited on land with slopes greater than 3% unless methods, structures or practices are implemented to contain the stockpiled manure to prevent or diminish precipitation-induced runoff from the stockpiled manure.

²See subparagraph 65.2(3)“d”(4) and paragraph 65.11(8)“c” for exemptions pertaining to dry manure stockpiles.

ARC 8407B

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 234.6(6) and 249A.4, the Department of Human Services proposes to amend Chapter 65, “Food Assistance Program Administration,” and Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

The proposed amendments would remove the requirement for a client to verify dependent care expenses for determination of Food Assistance eligibility and of Medicaid eligibility related to the Family Medical Assistance Program. Both programs allow a deduction for the expenses of care for children or dependent adults when the client is working or looking for a job. Federal regulations do not require verification of these expenses, and this has not been an error-prone area. The Department would like to streamline eligibility requirements in this area as a means of dealing with higher caseloads. Questionable claims will still be subject to verification.

These amendments do not provide for waivers in specified situations because a reduction in documents that need to be supplied is a benefit to clients.

Any interested person may make written comments on the proposed amendments on or before January 5, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and

HUMAN SERVICES DEPARTMENT[441](cont'd)

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 sections 234.12 and 249A.4.

The following amendments are proposed.

ITEM 1. Rescind and reserve paragraphs **65.22(1)“b,” “d” and “e.”**

ITEM 2. Amend rule 441—65.33(234) as follows:

441—65.33(234) Dependent care deduction. Households shall be allowed a deduction for the amount of ~~verified~~ monthly dependent care expenses.

ITEM 3. Amend subparagraph **75.57(2)“b”(7)** as follows:

(7) ~~The~~ If the amount claimed is questionable, the expense shall be verified by a receipt or a statement from the provider of care ~~and~~. The expense shall be allowed when paid to any person except a parent or legal guardian of the child, ~~or~~ another member of the eligible group, or ~~to~~ any person whose needs are met by diversion of income from any person in the eligible group.

ARC 8378B

LABOR SERVICES DIVISION[875]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 88.5, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 3, “Inspections, Citations, and Proposed Penalties,” and Chapter 10, “General Industry Safety and Health Rules,” Iowa Administrative Code.

The proposed amendment to subrule 3.5(1) adopts by reference changes to federal occupational safety and health standards pertaining to acetylene in general industry workplaces. The federal changes update references to standards adopted by the Compressed Gas Association and the National Fire Protection Association pertaining to acetylene as part of a broader effort by the federal Occupational Safety and Health Administration to update references to standards.

The proposed amendment to rule 875—10.20(88) eliminates an obsolete clause in a rule outlining procedures for conducting an occupational safety and health inspection.

The principal reasons for adoption of these amendments are to implement legislative intent and to make Iowa’s regulations current and consistent with federal regulations. Pursuant to Iowa Code subsection 88.5(1)(a) and 29 CFR 1953.5, Iowa must adopt changes to the federal occupational safety and health standards.

Written data, views, or arguments to be considered in adoption shall be submitted no later than January 7, 2010, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

A public hearing will be held on January 7, 2010, at 3:30 p.m. in the Stanley Room at Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa. The public will be given the opportunity to make oral statements and submit documents. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should telephone (515)242-5869 in advance to arrange access or other needed services.

No variance provisions are included in these rules. Variances procedures are set forth in 875—Chapter 5.

These amendments are intended to implement Iowa Code chapter 88.

LABOR SERVICES DIVISION[875](cont'd)

The following amendments are proposed.

ITEM 1. Amend subrule 3.5(1) as follows:

3.5(1) Inspections shall take place at the times and in the places of employment as the labor commissioner or the commissioner's designee may direct. At the beginning of an inspection, compliance safety and health officers shall present their credentials to the owner, operator or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in 875—4.2(88), 875—4.4(88), and 875—subrule 4.5(1) which they wish to review. However, such designation of records shall not preclude access to additional records.

ITEM 2. Amend rule **875—10.20(88)** by inserting the following at the end thereof:
74 Fed. Reg. 40447 (August 11, 2009).

ARC 8391B

LABOR SERVICES DIVISION[875]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 89.14, the Boiler and Pressure Vessel Board amends Chapter 91, “General Requirements for All Objects,” Iowa Administrative Code.

The proposed amendments update three references to the American Society of Mechanical Engineer codes.

The purposes of these amendments are to keep the rules current, protect the safety of the public, and implement legislative intent.

No variance provision is included in these rules. Applicable variance procedures are set forth in 875—Chapter 81.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on January 6, 2010, a public hearing will be held on January 7, 2010, at 2:30 p.m. in the Stanley Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)242-5869 in advance to arrange access or other needed services.

Interested persons shall submit written data, views, or arguments to be considered in adoption no later than January 7, 2010, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

These amendments are intended to implement Iowa Code chapter 89.

The following amendments are proposed.

ITEM 1. Amend subrule 91.1(1) as follows:

91.1(1) *ASME boiler and pressure vessel codes adopted by reference.* The ASME Boiler and Pressure Vessel Code (2007 with ~~2008~~ 2008a and 2009b addenda) is adopted by reference. Regulated objects shall be designed and constructed in accordance with the ASME Boiler and Pressure Vessel Code (2007 with ~~2008~~ 2008a and 2009b addenda) except for objects that meet one of the following criteria:

a. to f. No change.

LABOR SERVICES DIVISION[875](cont'd)

ITEM 2. Amend subrule 91.1(4) as follows:

91.1(4) Piping codes adopted by reference. The Power Piping Code, ASME B31.1 (2007 with 2008 addenda) B31.1(2007), ASME B31.1a(2008), and ASME B31.1b(2009), and the Building Services Piping Code, ASME B31.9 (2008), are adopted by reference, and reinstallations and installations after ~~January 1, 2010~~ March 17, 2010, shall comply with them up to and including the first valve.

ARC 8379B

MEDICINE BOARD[653]

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 chapters 148 and 272C, the Board of Medicine hereby proposes to amend Chapter 9, “Permanent Physician Licensure,” Iowa Administrative Code.

The proposed amendments define the expedited endorsement process which eliminates the verification of core credentials for a physician who has an unrestricted license in another United States jurisdiction or Canada, who has been in practice for at least five years, and who holds current specialty board certification by an ABMS or AOA board.

The Board approved the amendments to Chapter 9 during a regularly scheduled meeting on October 22, 2009.

Any interested person may present written comments on these proposed amendments not later than 4:30 p.m. on January 5, 2010. Such written materials should be sent to Mark Bowden, Executive Director, Board of Medicine, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686; or sent by E-mail to mark.bowden@iowa.gov.

There will be a public hearing on January 5, 2010, at 11 a.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medicine is located at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code chapters 148, 150A, and 272C.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions of “Core credentials,” “Expedited endorsement” and “Primary source verification” in rule **653—9.1(147,148)**:

“*Core credentials*” means those documents that demonstrate the applicant’s identity, medical training and practice history. “Core credentials” includes but is not limited to: medical school diploma, medical school transcript, dean’s letter, examination history, ECFMG certificate, fifth pathway certificate, and postgraduate training verification.

“*Expedited endorsement*” means the process whereby the state issues an unrestricted license to practice medicine to an applicant who holds a valid unrestricted and unlimited license in another jurisdiction through the acceptance of the applicant’s core credentials that have been subject to primary source verification by another jurisdiction’s physician licensing board or other authority using a process substantially similar to Iowa’s process for verifying the authenticity of the applicant’s core credentials.

“*Primary source verification*” means:

1. Verification of the authenticity of documents with the original source that issued the document.
2. Original source verification by another jurisdiction’s physician licensing organization.
3. Original source verification by the FSMB’s Federation Credentials Verification Service.

ITEM 2. Amend subrule 9.3(1) as follows:

9.3(1) Requirements. To be eligible for permanent licensure, an applicant shall meet all of the following requirements:

MEDICINE BOARD[653](cont'd)

a. Fulfill the application requirements specified in rule 653—9.4(147,148), 653—9.5(147,148) or 653—9.6(147,148).

~~*b.* Be at least 21 years of age.~~

~~*e. b.* Hold a medical degree from an educational institution approved by the board at the time the applicant graduated and was awarded the degree.~~

(1) Educational institutions approved by the board shall be fully accredited by an accrediting agency recognized by the board as schools of instruction in medicine and surgery or osteopathic medicine and surgery and empowered to grant academic degrees in medicine.

(2) The accrediting bodies currently recognized by the board are:

1. LCME for the educational institutions granting degrees in medicine and surgery; and
2. AOA for educational institutions granting degrees in osteopathic medicine and surgery.

(3) If the applicant holds a medical degree from an educational institution not approved by the board at the time the applicant graduated and was awarded the degree, the applicant shall meet one of the following requirements:

1. Hold a valid certificate issued by ECFMG;

2. Have successfully completed a fifth pathway program established in accordance with AMA criteria;

3. Have successfully passed either a basic science examination administered by a United States or Canadian medical licensing authority or SPEX; and have successfully completed three years of resident training in a program approved by the board; and have submitted evidence of five years of active practice without restriction as a licensee of any United States or Canadian jurisdiction; or

4. Have successfully passed either a basic science examination administered by a United States or Canadian medical licensing authority or SPEX; and hold board certification by a specialty board approved by ABMS or AOA; and submit evidence of five years of active practice without restriction as a licensee of any United States or Canadian jurisdiction.

~~*d. c.* Have successfully completed one year of resident training in a hospital-affiliated program approved by the board at the time the applicant was enrolled in the program. Beginning July 1, 2006, an applicant who is a graduate of an international medical school shall have successfully completed 24 months of such training.~~

(1) For those required to have 12 months of training, the program shall have been 12 months of progressive training in not more than two specialties and in not more than two programs approved for resident training by the board. Beginning July 1, 2006, for those required to have 24 months of training, the program shall have been 24 months of progressive training in not more than two specialties and in not more than two programs approved for resident training by the board.

(2) Resident training approved by the board shall be accredited by an accrediting agency recognized by the board for the purpose of accrediting resident training programs.

(3) The board approves resident training programs accredited by:

1. ACGME;
2. AOA;
3. RCPSC; and
4. CFPC.

(4) The board shall accept each 12 months of practice as a special licensee as equivalent to one year of resident training in a hospital-affiliated program approved by the board.

~~*e. d.* Pass one of the licensure examinations or combinations as prescribed in rule 9.4(147,148) 653—9.7(147,148).~~

ITEM 3. Amend rule 653—9.4(147,148) as follows:

653—9.4(147,148) Licensure examinations by examination.

9.4(1) Requirements. Applicant eligibility. ~~To be eligible for permanent licensure, an applicant shall meet one of the following requirements:~~ An applicant who has never been licensed in any United States or Canadian jurisdiction shall meet the following requirements to be eligible for permanent licensure by examination.

MEDICINE BOARD[653](cont'd)

~~a.—An applicant who has never been licensed in any United States jurisdiction shall pass the USMLE, COMLEX, or Medical Council of Canada Examination as prescribed in this rule and authorize the testing authority to verify scores.~~

~~b.—An M.D. applicant who has been licensed in any United States jurisdiction shall meet the licensure examination requirements in effect in Iowa at the time of original licensure if the examination precedes USMLE. An M.D. applicant who has been licensed in any United States jurisdiction based on USMLE shall meet the requirements in subrule 9.4(2). The applicant shall authorize the appropriate testing authority to verify scores obtained on the examination as specified in this rule.~~

~~c.—A D.O. applicant who has been licensed in any United States jurisdiction shall meet the licensure examination requirements in effect in Iowa at the time of original licensure if the examination precedes USMLE or COMLEX, whichever is applicable. A D.O. applicant who has been licensed in any United States jurisdiction based on USMLE or COMLEX shall meet the requirements in subrule 9.4(2) or paragraph 9.4(6) “a,” respectively.~~

~~**9.4(2) USMLE.**~~

~~a.—The USMLE is a joint program of FSMB and the NBME. The USMLE is a multipart examination consisting of Step 1, Step 2, and Step 3. Steps 1 and 2 are administered by NBME and ECFMG. The board contracts with FSMB for the administration of Step 3. USMLE Steps 1 and 2 were implemented in 1992; Step 3 was implemented in 1994.~~

~~b.—Since 1999, Step 3 is a computerized examination offered at testing centers in the Des Moines area and other Iowa locations.~~

~~c.—Applications are available at Department of Examination Services, FSMB, 400 Fuller Wiser Road, Suite 300, Euless, Texas 76039 or www.fsmb.org.~~

~~d.—Candidates who meet the following requirements are eligible to take USMLE Step 3:~~

~~(1) Submit a completed application form and pay the required examination fee as specified in 653—subrule 8.3(1).~~

~~(2) Document successful completion of USMLE Steps 1 and 2 in accordance with the requirements of NBME. Graduates of a foreign medical school shall meet the requirements of ECFMG.~~

~~(3) Document holding a medical degree from a board-approved educational institution. If a candidate holds a medical degree from an educational institution not approved by the board at the time the applicant graduated and was awarded the degree, the candidate shall meet the requirements specified in 9.3(1)“c”(3).~~

~~(4) Document successful completion of a minimum of seven calendar months of resident training in a program approved by the board at the time of the application for Step 3 or enrollment in a resident training program approved by the board at the time of the application for Step 3.~~

~~e.—The following conditions shall apply to applicants for licensure in Iowa who utilize USMLE as the licensure examination:~~

~~(1) Passing Steps 1, 2, and 3 is required within a ten-year period beginning with the date of passing either Step 1 or Step 2, whichever occurred first. Board certification by the ABMS or AOA is required if the applicant was not able to pass Steps 1, 2, and 3 within the required time as specified in this paragraph.~~

~~(2) Step 3 may be taken and passed only after Steps 1 and 2 are passed.~~

~~(3) A score of 75 or better on each step shall constitute a passing score on that step.~~

~~(4) Each USMLE step must be passed individually and individual step scores shall not be averaged to compute an overall score.~~

~~(5) A failure of any USMLE step, regardless of the jurisdiction for which it was taken, shall be considered a failure of that step for the purposes of Iowa licensure.~~

~~(6) Successful completion of a progressive three-year resident training program is required if the applicant passes the examination after more than six attempts on Step 1 or six attempts on Step 2 or three attempts on Step 3.~~

~~f.—Any candidate deemed eligible to sit for USMLE Step 3 is required to adhere to the examination procedures and protocol established by FSMB and NBME in the following publications: USMLE Test Administration Standards and Policies and Procedures Regarding Indeterminate Scores and Irregular Behavior, FSMB, 400 Fuller Wiser Road, Suite 300, Euless, Texas 76039.~~

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9.4(3) NBME.

a.—NBME Part Examinations (Parts I, II, and III) were first administered in 1916. The last regular administration of Part I occurred in 1991, Part II in April 1992, and Part III in May 1994.

b.—Successful completion of NBME Parts I, II, and III was a requirement for NBME certification.

c.—A score of 75 or better on each part shall constitute a passing score on that part.

9.4(4) FLEX.

a.—From 1968 to 1985, (Old) FLEX was a three-day examination. Day 1 covered basic science; Day 2 covered clinical science; and Day 3 covered clinical competency. Applicants who took Old FLEX shall provide evidence of successful achievement of at least two of the following:

(1) Certification under seal that the applicant passed FLEX with a FLEX-weighted average of 75 percent or better, as determined by the state medical licensing authority, in no more than two sittings.

(2) Verification under seal of medical licensure in the state that administered the examination.

(3) Evidence of current certification by an American specialty board approved or recognized by the Council of Medical Education of AMA, ABMS, or AOA.

b.—From 1985 to 1994, (New) FLEX replaced the Old FLEX. New FLEX was a three-day nationally standardized examination consisting of two, one and one-half day components referred to as Component I (basic and clinical science principles and mechanisms underlying disease and modes of therapy) and Component II (knowledge and cognitive abilities required of a physician assuming independent responsibility for the general delivery of medical care to patients). The last regular administration of both components of New FLEX occurred in 1993. Two special administrations of New FLEX Component I were offered in 1994 to examinees who passed Component II but not Component I prior to 1994. To be eligible for permanent licensure, the candidate must have passed both components in Iowa with a FLEX score of 75 or better within a seven-year period beginning with the date of initial examination.

(1) Candidates who took the FLEX for the first time were required to take both components during the initial sitting. A candidate who failed either or both components must have repeated and passed the component failed, though Component II could only be repeated if the candidate had received a passing score of 75 percent or better on Component I.

(2) Eligible candidates were permitted to sit for the initial examination and reapply to the board to repeat a failed component or complete the entire examination two additional times. However, candidates who failed either or both components three times were required to wait one year, during which time the candidate was encouraged to obtain additional training, before being permitted to sit two additional times for either or both components of the FLEX.

9.4(5) Combination examination sequences. To accommodate individuals who had already passed some part of the NBME Parts or FLEX before implementation of the USMLE, the USMLE program recommended and the board approved the following licensing combinations of examinations for licensure only if completed prior to January 1, 2000. These combinations are now only acceptable from an applicant who already holds a license from any United States jurisdiction.

a.—FLEX Component I plus USMLE Step 3 with a passing score of 75 or better on each examination;

b.—NBME Part I or USMLE Step 1 plus NBME Part II or USMLE Step 2 plus FLEX Component II with a passing score of 75 or better on each examination; or

c.—NBME Part I or USMLE Step 1 plus NBME Part II or USMLE Step 2 plus NBME Part III or USMLE Step 3 with a passing score of 75 or better on each examination.

9.4(6) Examinations for graduates of board-approved colleges of osteopathic medicine and surgery.*a.*—COMLEX.

(1) COMLEX is a three-level examination that replaced the three-part NBOME examination. COMLEX Level 3 was first administered in February 1995; Level 2 was first administered in March 1997; and Level 1 was first administered in June 1998. All three examinations must be successfully completed in sequential order within ten years of the successful completion of COMLEX Level 1. Board certification by the ABMS or AOA is required if the applicant was not able to pass Steps 1, 2, and 3 within the required time as specified in this paragraph.

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~~(2) A standard score of 400 on Level 1 or Level 2 is required to pass the examination. A standard score of 350 on Level 3 is required to pass the examination.~~

~~(3) A candidate shall have successfully completed a minimum of seven calendar months of resident training in a program approved by the board at the time of the application for Level 3 or enrollment in a resident training program approved by the board at the time of the application for Level 3.~~

~~(4) Successful completion of a progressive three-year resident training program is required if the applicant passes the examination after more than six attempts on Level 1 or six attempts on Level 2 or three attempts on Level 3.~~

~~(5) Each COMLEX level must be passed individually, and individual level scores shall not be averaged to compute an overall score.~~

~~(6) Level 3 may be taken and passed only after Levels 1 and 2 are passed.~~

~~(7) A failure of any COMLEX level, regardless of the jurisdiction for which it was taken, shall be considered a failure of that level for the purposes of Iowa licensure.~~

~~b. NBOME. The board accepts a passing score on the NBOME licensure examination for graduates of colleges of osteopathic medicine and surgery in any United States jurisdiction.~~

~~(1) NBOME was a three-part examination. All three parts must have been successfully completed in sequential order within seven years of the successful completion of NBOME Part 1.~~

~~(2) A passing score is required on each part of the examination.~~

~~(3) A candidate shall have successfully completed a minimum of seven calendar months of resident training in a program approved by the board at the time of the application for NBOME Part 3. Candidates shall have completed their resident training by the last day of the month in which the examination was taken.~~

~~(4) Successful completion of a three-year resident training program is required if the applicant passes the examination after more than six attempts on Part 1 or six attempts on Part 2 or three attempts on Part 3.~~

~~(5) Each NBOME part must have been passed individually, and individual part scores shall not be averaged to compute an overall score.~~

~~(6) Part 3 must have been taken and passed only after Parts 1 and 2 were passed.~~

~~(7) A failure of any NBOME part, regardless of the jurisdiction for which it was taken, shall be considered a failure of that part for the purposes of Iowa licensure.~~

9.4(7) LMCC:

~~a. The board accepts toward Iowa licensure a verification of a Licentiate's registration with the Medical Council of Canada, based on passing the Medical Council of Canada Examination.~~

~~b. The Medical Council of Canada may be contacted at P.O. Box/CP 8234, Station 'T', Ottawa, Ontario, Canada K1G 3H7 or (613)521-9417.~~

9.4(2) Requirements. To apply for permanent licensure, an applicant shall:

~~a. Pay a nonrefundable initial application fee of \$450 plus the fee identified in 653—subrule 8.4(7) for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI); and~~

~~b. Complete and submit forms provided by the board, including required credentials, documents, a completed fingerprint packet, and a sworn statement by the applicant attesting to the truth of all information provided by the applicant. A completed fingerprint packet is not required if the applicant has held active physician licensure in Iowa within 12 months of applying for permanent licensure and fingerprinting was done prior to the issuance of that license.~~

~~c. Pass the USMLE, COMLEX, or Medical Council of Canada Examination as prescribed in rule 653—9.7(147,148) and authorize the testing authority to verify scores.~~

9.4(3) Application. The application shall require the following information:

~~a. Name, date and place of birth, home address, mailing address and principal business address.~~

~~b. A photograph of the applicant suitable for positive identification.~~

~~c. A statement listing every jurisdiction in which the applicant is or has been authorized to practice, including license numbers and dates of issuance.~~

MEDICINE BOARD[653](cont'd)

d. A chronology accounting for all time periods from the date the applicant entered medical school to the date of the application.

e. A certified statement of scores on any licensure examination required in rule 653—9.7(147,148) that the applicant has taken in any jurisdiction. An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.

f. A photocopy of the applicant's medical degree issued by an educational institution.

(1) A complete translation of any diploma not written in English shall be submitted. An official transcript, written in English and received directly from the school, showing graduation from medical school is a suitable alternative.

(2) An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.

(3) If a copy of the medical degree cannot be provided because of extraordinary circumstances, the board may accept other reliable evidence that the applicant obtained a medical degree from a specific educational institution.

g. A sworn statement from an official of the educational institution certifying the date the applicant received the medical degree and acknowledging what, if any, derogatory comments exist in the institution's record about the applicant. If a sworn statement from an official of the educational institution cannot be provided because of extraordinary circumstances, the board may accept other reliable evidence that the applicant obtained a medical degree from a specific educational institution.

h. An official transcript, or its equivalent, received directly from the school for every medical school attended. A complete translation of any transcript not written in English shall be submitted. An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.

i. If the educational institution awarding the applicant the degree has not been approved by the board, the applicant shall provide a valid ECFMG certificate or evidence of successful completion of a fifth pathway program in accordance with criteria established by AMA. An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.

j. Documentation of successful completion of resident training approved by the board as specified in paragraph 9.3(1) "d." An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.

k. Verification of an applicant's hospital and clinical staff privileges and other professional experience for the past five years.

l. A statement disclosing and explaining any informal or nonpublic actions, warnings issued, investigations conducted, or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical or professional regulatory authority, an educational institution, a training or research program, or a health facility in any jurisdiction.

m. A statement of the applicant's physical and mental health, including full disclosure and a written explanation of any dysfunction or impairment which may affect the ability of the applicant to engage in practice and provide patients with safe and healthful care.

n. A statement disclosing and explaining the applicant's involvement in civil litigation related to practice in any jurisdiction. Copies of the legal documents may be requested if needed during the review process.

o. A statement disclosing and explaining any charge of a misdemeanor or felony involving the applicant filed in any jurisdiction, whether or not any appeal or other proceeding to have the conviction or plea set aside is pending.

p. A completed fingerprint packet to facilitate a national criminal history background check. The fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

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ITEM 4. Amend rule 653—9.5(147,148) as follows:

653—9.5(147,148) Permanent licensure application Licensure by endorsement.

9.5(1) Applicant eligibility. An applicant who has been licensed in any United States jurisdiction or Canada shall meet one of the following requirements to be eligible for permanent licensure by endorsement.

a. Applicants who have been licensed for at least five years may meet expedited endorsement requirements set forth in rule 653—9.6(147,148).

b. An M.D. applicant who has been licensed in any United States jurisdiction or Canada shall meet the licensure examination requirements in effect in Iowa at the time of original licensure if the examination precedes USMLE. An M.D. applicant who has been licensed in any United States jurisdiction or Canada based on USMLE shall meet the requirements in rule 653—9.7(147,148). The applicant shall authorize the appropriate testing authority to verify scores obtained on the examination as specified in this rule.

c. A D.O. applicant who has been licensed in any United States jurisdiction shall meet the licensure examination requirements in effect in Iowa at the time of original licensure if the examination precedes USMLE or COMLEX, whichever is applicable. A D.O. applicant who has been licensed in any United States jurisdiction based on USMLE or COMLEX shall meet the requirements in rule 653—9.7(147,148). The applicant shall authorize the appropriate testing authority to verify scores obtained on the examination as specified in this rule.

9.5(1) 9.5(2) Requirements. To apply for permanent licensure, an applicant shall:

a. Pay a nonrefundable initial application fee of \$450 plus the fee identified in 653—subrule 8.4(7) for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI); and

b. Complete and submit forms provided by the board, including required credentials, documents, a completed fingerprint packet, and a sworn statement by the applicant attesting to the truth of all information provided by the applicant. A completed fingerprint packet is not required if the applicant has held active physician licensure in Iowa within 12 months of applying for permanent licensure and fingerprinting was done prior to the issuance of that license.

9.5(2) 9.5(3) Application. The application shall require the following information:

a. Name, date and place of birth, home address, mailing address and principal business address.

b. A photograph of the applicant suitable for positive identification.

c. A statement listing every jurisdiction in which the applicant is or has been authorized to practice, including license numbers and dates of issuance.

d. A chronology accounting for all time periods from the date the applicant entered medical school to the date of the application.

e. A certified statement of scores on any examination required in rule 9.4(147,148) 653—9.7(147,148) that the applicant has taken in any jurisdiction. An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.

f. A photocopy of the applicant's medical degree issued by an educational institution.

(1) A complete translation of any diploma not written in English shall be submitted. An official transcript, written in English and received directly from the school, showing graduation from medical school is a suitable alternative.

(2) An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.

(3) If a copy of the medical degree cannot be provided because of extraordinary circumstances, the board may accept other reliable evidence that the applicant obtained a medical degree from a specific educational institution.

g. A sworn statement from an official of the educational institution certifying the date the applicant received the medical degree and acknowledging what, if any, derogatory comments exist in the institution's record about the applicant. If a sworn statement from an official of the educational

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institution cannot be provided because of extraordinary circumstances, the board may accept other reliable evidence that the applicant obtained a medical degree from a specific educational institution.

h. An official transcript, or its equivalent, received directly from the school for every medical school attended. A complete translation of any transcript not written in English shall be submitted. An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.

i. If the educational institution awarding the applicant the degree has not been approved by the board, the applicant shall provide a valid ECFMG certificate or evidence of successful completion of a fifth pathway program in accordance with criteria established by AMA. An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.

j. Documentation of successful completion of resident training approved by the board as specified in paragraph 9.3(1)“*d.*” An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.

k. Verification of an applicant’s hospital and clinical staff privileges and other professional experience for the past five years.

l. A statement disclosing and explaining any informal or nonpublic actions, warnings issued, investigations conducted, or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical or professional regulatory authority, an educational institution, a training or research program, or a health facility in any jurisdiction.

m. A statement of the applicant’s physical and mental health, including full disclosure and a written explanation of any dysfunction or impairment which may affect the ability of the applicant to engage in practice and provide patients with safe and healthful care.

n. A statement disclosing and explaining the applicant’s involvement in civil litigation related to practice in any jurisdiction. Copies of the legal documents may be requested if needed during the review process.

o. A statement disclosing and explaining any charge of a misdemeanor or felony involving the applicant filed in any jurisdiction, whether or not any appeal or other proceeding to have the conviction or plea set aside is pending.

p. A completed fingerprint packet to facilitate a national criminal history background check. The fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

ITEM 5. Renumber rules **653—9.6(147,148)** to **653—9.16(17A,147,148,272C)** as **653—9.8(147,148)** to **653—9.18(17A,147,148,272C)**.

ITEM 6. Adopt the following **new** rule 653—9.6(147,148):

653—9.6(147,148) Licensure by expedited endorsement.

9.6(1) Applicant eligibility. An applicant who has been licensed in any United States jurisdiction or Canada for more than five years shall meet the following requirements to be eligible for permanent licensure by expedited endorsement.

9.6(2) Requirements. To apply for permanent licensure by expedited endorsement, an applicant shall:

a. Pay a nonrefundable initial application fee of \$450 plus the fee identified in 653—subrule 8.4(7) for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI); and

b. Complete and submit forms provided by the board, including required credentials, documents, a completed fingerprint packet, and a sworn statement by the applicant attesting to the truth of all information provided by the applicant. A completed fingerprint packet is not required if the applicant has held active physician licensure in Iowa within 12 months of applying for permanent licensure and fingerprinting was done prior to the issuance of that license.

c. Meet the eligibility requirements set forth in subrule 9.3(1).

d. Be licensed in at least one other United States jurisdiction or Canadian province.

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- e.* Hold an unrestricted license in every jurisdiction in which the applicant is licensed.
 - f.* Have no formal disciplinary actions; no active or pending investigations; no past, pending, public or confidential restrictions or sanctions by a board of medicine, licensing authority, medical society, professional society, hospital, medical school, federal agency, or institution staff sanctions in any state, country or jurisdiction.
 - g.* Hold current specialty board certification by an ABMS or AOA specialty board. Lifetime certification is excluded.
 - h.* Have been engaged in continuous, active practice within the five years immediately preceding the date of submitting an application for licensure.
- 9.6(3) Application.** The application shall require the following information:
- a.* Name, date and place of birth, home address, mailing address and principal business address.
 - b.* A photograph of the applicant suitable for positive identification.
 - c.* A statement listing every jurisdiction in which the applicant is or has been authorized to practice, including license numbers and dates of issuance.
 - d.* A chronology accounting for all time periods from the date the applicant entered medical school to the date of the application.
 - e.* Verification of an applicant's hospital and clinical staff privileges and other professional experience for the past five years.
 - f.* A statement disclosing and explaining any informal or nonpublic actions, warnings issued, investigations conducted, or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical or professional regulatory authority, an educational institution, a training or research program, or a health facility in any jurisdiction.
 - g.* A statement of the applicant's physical and mental health, including full disclosure and a written explanation of any dysfunction or impairment which may affect the ability of the applicant to engage in practice and provide patients with safe and healthful care.
 - h.* A statement disclosing and explaining the applicant's involvement in civil litigation related to practice in any jurisdiction. Copies of the legal documents may be requested if needed during the review process.
 - i.* A statement disclosing and explaining any charge of a misdemeanor or felony involving the applicant filed in any jurisdiction, whether or not any appeal or other proceeding to have the conviction or plea set aside is pending.
 - j.* A completed fingerprint packet to facilitate a national criminal history background check. The fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

NOTE: The board reserves the right to request information listed in rule 653—9.5(147,148).

ITEM 7. Adopt the following **new** rule 653—9.7(147,148):

653—9.7(147,148) Licensure examinations.

9.7(1) USMLE.

- a.* The USMLE is a joint program of FSMB and the NBME. The USMLE is a multipart examination consisting of Step 1, Step 2, and Step 3. Steps 1 and 2 are administered by NBME and ECFMG. The board contracts with FSMB for the administration of Step 3. USMLE Steps 1 and 2 were implemented in 1992; Step 3 was implemented in 1994.
- b.* Since 1999, Step 3 is a computerized examination offered at testing centers in the Des Moines area and other locations around Iowa and the United States.
- c.* Applications are available at Department of Examination Services, FSMB, 400 Fuller Wiser Road, Suite 300, Euless, Texas 76039, or www.fsmb.org.
- d.* Candidates who meet the following requirements are eligible to take USMLE Step 3:
 - (1) Submit a completed application form and pay the required examination fee as specified in 653—subrule 8.3(1).
 - (2) Document successful completion of USMLE Steps 1 and 2 in accordance with the requirements of NBME. Graduates of a foreign medical school shall meet the requirements of ECFMG.

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(3) Document holding a medical degree from a board-approved educational institution. If a candidate holds a medical degree from an educational institution not approved by the board at the time the applicant graduated and was awarded the degree, the candidate shall meet the requirements specified in 9.3(1)“c”(3).

(4) Document successful completion of a minimum of seven calendar months of resident training in a program approved by the board at the time of the application for Step 3 or enrollment in a resident training program approved by the board at the time of the application for Step 3.

e. The following conditions shall apply to applicants for licensure in Iowa who utilize USMLE as the licensure examination.

(1) Passing Steps 1, 2, and 3 is required within a ten-year period beginning with the date of passing either Step 1 or Step 2, whichever occurred first. Board certification by the ABMS or AOA is required if the applicant was not able to pass Steps 1, 2, and 3 within the required time as specified in this paragraph.

(2) Step 3 may be taken and passed only after Steps 1 and 2 are passed.

(3) A score of 75 or better on each step shall constitute a passing score on that step.

(4) Each USMLE step must be passed individually, and individual step scores shall not be averaged to compute an overall score.

(5) A failure of any USMLE step, regardless of the jurisdiction for which it was taken, shall be considered a failure of that step for the purposes of Iowa licensure.

(6) Successful completion of a progressive three-year resident training program is required if the applicant passes the examination after more than six attempts on Step 1 or six attempts on Step 2 or three attempts on Step 3.

f. Any candidate deemed eligible to sit for USMLE Step 3 is required to adhere to the examination procedures and protocol established by FSMB and NBME in the following publications: USMLE Test Administration Standards and Policies and Procedures Regarding Indeterminate Scores and Irregular Behavior, FSMB, 400 Fuller Wiser Road, Suite 300, Euless, Texas 76039.

9.7(2) NBME.

a. NBME Part Examinations (Parts I, II, and III) were first administered in 1916. The last regular administration of Part I occurred in 1991, Part II in April 1992, and Part III in May 1994.

b. Successful completion of NBME Parts I, II, and III was a requirement for NBME certification.

c. A score of 75 or better on each part shall constitute a passing score on that part.

9.7(3) FLEX.

a. From 1968 to 1985, (Old) FLEX was a three-day examination. Day 1 covered basic science; Day 2 covered clinical science; and Day 3 covered clinical competency. Applicants who took Old FLEX shall provide evidence of successful achievement of at least two of the following:

(1) Certification under seal that the applicant passed FLEX with a FLEX-weighted average of 75 percent or better, as determined by the state medical licensing authority, in no more than two sittings.

(2) Verification under seal of medical licensure in the state that administered the examination.

(3) Evidence of current certification by an American specialty board approved or recognized by the Council of Medical Education of AMA, ABMS, or AOA.

b. From 1985 to 1994, (New) FLEX replaced the Old FLEX. New FLEX was a three-day nationally standardized examination consisting of two, one and one-half day components referred to as Component I (basic and clinical science principles and mechanisms underlying disease and modes of therapy) and Component II (knowledge and cognitive abilities required of a physician assuming independent responsibility for the general delivery of medical care to patients). The last regular administration of both components of New FLEX occurred in 1993. Two special administrations of New FLEX Component I were offered in 1994 to examinees who passed Component II but not Component I prior to 1994. To be eligible for permanent licensure, the candidate must have passed both components in Iowa with a FLEX score of 75 or better within a seven-year period beginning with the date of initial examination.

(1) Candidates who took the FLEX for the first time were required to take both components during the initial sitting. A candidate who failed either or both components must have repeated and passed the

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component failed, though Component II could only be repeated if the candidate had received a passing score of 75 percent or better on Component I.

(2) Eligible candidates were permitted to sit for the initial examination and reapply to the board to repeat a failed component or complete the entire examination two additional times. However, candidates who failed either or both components three times were required to wait one year, during which time the candidate was encouraged to obtain additional training, before being permitted to sit two additional times for either or both components of the FLEX.

9.7(4) *Combination examination sequences.* To accommodate individuals who had already passed some part of the NBME Parts or FLEX before implementation of the USMLE, the USMLE program recommended and the board approved the following licensing combinations of examinations for licensure only if completed prior to January 1, 2000. These combinations are now only acceptable from an applicant who already holds a license from any United States jurisdiction.

a. FLEX Component I plus USMLE Step 3 with a passing score of 75 or better on each examination;

b. NBME Part I or USMLE Step 1 plus NBME Part II or USMLE Step 2 plus FLEX Component II with a passing score of 75 or better on each examination; or

c. NBME Part I or USMLE Step 1 plus NBME Part II or USMLE Step 2 plus NBME Part III or USMLE Step 3 with a passing score of 75 or better on each examination.

9.7(5) *Examinations for graduates of board-approved colleges of osteopathic medicine and surgery.*

a. **COMLEX.**

(1) COMLEX is a three-level examination that replaced the three-part NBOME examination. COMLEX Level 3 was first administered in February 1995; Level 2 was first administered in March 1997; and Level 1 was first administered in June 1998. All three examinations must be successfully completed in sequential order within ten years of the successful completion of COMLEX Level 1. Board certification by the ABMS or AOA is required if the applicant was not able to pass Steps 1, 2, and 3 within the required time as specified in this paragraph.

(2) A standard score of 400 on Level 1 or Level 2 is required to pass the examination. A standard score of 350 on Level 3 is required to pass the examination.

(3) A candidate shall have successfully completed a minimum of seven calendar months of resident training in a program approved by the board at the time of the application for Level 3 or enrollment in a resident training program approved by the board at the time of the application for Level 3.

(4) Successful completion of a progressive three-year resident training program is required if the applicant passes the examination after more than six attempts on Level 1 or six attempts on Level 2 or three attempts on Level 3.

(5) Each COMLEX level must be passed individually, and individual level scores shall not be averaged to compute an overall score.

(6) Level 3 may be taken and passed only after Levels 1 and 2 are passed.

(7) A failure of any COMLEX level, regardless of the jurisdiction for which it was taken, shall be considered a failure of that level for the purposes of Iowa licensure.

b. **NBOME.** The board accepts a passing score on the NBOME licensure examination for graduates of colleges of osteopathic medicine and surgery in any United States jurisdiction.

(1) NBOME was a three-part examination. All three parts must have been successfully completed in sequential order within seven years of the successful completion of NBOME Part 1.

(2) A passing score is required on each part of the examination.

(3) A candidate shall have successfully completed a minimum of seven calendar months of resident training in a program approved by the board at the time of the application for NBOME Part 3. Candidates shall have completed their resident training by the last day of the month in which the examination was taken.

(4) Successful completion of a three-year resident training program is required if the applicant passes the examination after more than six attempts on Part 1 or six attempts on Part 2 or three attempts on Part 3.

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(5) Each NBOME part must have been passed individually, and individual part scores shall not be averaged to compute an overall score.

(6) Part 3 must have been taken and passed only after Parts 1 and 2 were passed.

(7) A failure of any NBOME part, regardless of the jurisdiction for which it was taken, shall be considered a failure of that part for the purposes of Iowa licensure.

9.7(6) LMCC.

a. The board accepts toward Iowa licensure a verification of a Licentiate's registration with the Medical Council of Canada, based on passing the Medical Council of Canada Examination.

b. The Medical Council of Canada may be contacted at P.O. Box/CP 8234, Station 'T', Ottawa, Ontario, Canada K1G 3H7 or (613)521-9417.

ITEM 8. Amend renumbered subrule 9.8(2) as follows:

9.8(2) After reviewing each application, staff shall notify the ~~physician applicant~~ applicant about how to resolve any problems ~~identified by the reviewer.~~ Staff shall refer an expedited endorsement applicant to the process for licensure by endorsement or to the committee if:

a. The applicant does not meet the requirements set forth in rule 653—9.6(147,148) for expedited endorsement; or

b. Staff has reasonable concerns about the accuracy or thoroughness of another jurisdiction's licensing process.

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PHARMACY BOARD[657]

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 147.76 and 155A.6B, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 1, “Purpose and Organization,” and Chapter 3, “Pharmacy Technicians”; to adopt new Chapter 5, “Pharmacy Support Persons”; and to amend Chapter 6, “General Pharmacy Practice,” Chapter 7, “Hospital Pharmacy Practice,” Chapter 8, “Universal Practice Standards,” Chapter 14, “Public Information and Inspection of Records,” Chapter 16, “Nuclear Pharmacy Practice,” Chapter 18, “Centralized Prescription Filling and Processing,” Chapter 25, “Child Support Noncompliance,” Chapter 31, “Student Loan Default or Noncompliance with Agreement for Payment of Obligation,” Chapter 32, “Nonpayment of State Debt,” and Chapter 36, “Discipline,” Iowa Administrative Code.

The amendments were approved at the November 17, 2009, regular meeting of the Board of Pharmacy.

In Item 10, the proposed rules in new Chapter 5 establish a registration program for pharmacy support persons, including identification of individuals required to register or exempt from registration as pharmacy support persons, timeliness of registration, the information to be provided with an application for registration, registration and renewal fees, and penalties for late registration or renewal. The rules identify the tasks that may be performed by a pharmacy support person under the direct supervision of a pharmacist and also identify tasks that may not be delegated to a pharmacy support person, place the ultimate responsibility for tasks performed by a pharmacy support person with the supervising pharmacist, identify the basis for denial of an application for registration, and identify the grounds for disciplinary action against the registration of a pharmacy support person, including the sanctions that may be imposed pursuant to disciplinary action.

Proposed amendments to Chapter 3 in Items 3 to 7 are necessary due to the establishment of the new pharmacy support person registration program in proposed Chapter 5. Identification of tasks that may be

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delegated to pharmacy support persons resulted in the need to amend language regarding the delegation of technical functions to pharmacy technicians to ensure that the duties and functions authorized for each group of registrants are clearly delineated.

The remaining proposed amendments in Items 11 through 18 and Items 21 through 25 amend terminology to maintain consistency in references to pharmacy support persons, authorize the pharmacist in charge of a pharmacy to identify tasks that a pharmacy support person may perform in the temporary absence of the supervising pharmacist subject to the final approval of the supervising pharmacist, and establish requirements for the utilization of pharmacy support persons in general and hospital pharmacy practice and in nuclear pharmacy practice.

Items 1, 2, 19, and 20 identify the registration of pharmacy support persons as a responsibility of the Board of Pharmacy and identify the types and format of program records that will be maintained, including designation of confidential and public records. Items 26 through 31 identify registrations issued to pharmacy support persons as subject to suspension or revocation due to nonpayment of certain debts, including nonpayment of child support, debts owed to the state of Iowa, and nonpayment of student loan obligations. Items 32 through 41 amend rules relating to disciplinary actions to ensure that registrations issued to pharmacy support persons are subject to the same rights, responsibilities, and procedures as other licenses and registrations under the Board's jurisdiction.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on January 5, 2010. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by E-mail to terry.witkowski@iowa.gov.

These amendments are intended to implement Iowa Code sections 147.55, 147.107, 155A.3, 155A.6A, 155A.6B, 155A.13, 155A.18, 155A.23, and 155A.33.

The following amendments are proposed.

ITEM 1. Amend rule 657—1.1(17A) as follows:

657—1.1(17A) Board mission. The board of pharmacy promotes, preserves, and protects the public health, safety, and welfare by fostering the provision of pharmaceutical care to all Iowans through the effective regulation of the practice of pharmacy, the operation of pharmacies, the appropriate utilization of pharmacy technicians and pharmacy support persons, the distribution of prescription drugs and devices, and the education and training of pharmacists.

ITEM 2. Amend rule 657—1.3(17A,272C) as follows:

657—1.3(17A,272C) Responsibilities. The responsibilities of the board include but are not limited to:

1. to 9. No change.

10. Registering pharmacy support persons assisting in the nontechnical functions of the practice of pharmacy pursuant to the authority of Iowa Code chapter 155A.

ITEM 3. Amend rule **657—3.1(155A)**, definitions of “Pharmacy technician certification” and “Supportive personnel,” as follows:

“Pharmacy technician certification” or “national certification” means a certificate issued by a national pharmacy technician certification authority accredited by the NCCA attesting that the technician has successfully completed the requirements of the certification program. The term includes evidence of renewal of the national certification. ~~“National certification,” as that term relates to a nuclear pharmacy technician working exclusively in an Iowa-licensed nuclear pharmacy, shall be as defined in rule 657—16.2(155A).~~

~~“Supportive personnel”~~ Pharmacy support person means a person, other than a licensed pharmacist, a registered pharmacist-intern, or a registered pharmacy technician, who may perform nontechnical duties assigned by the pharmacist under the pharmacist's responsibility and supervision, ~~including delivery, billing, cashier, and clerical functions pursuant to 657—Chapter 5.~~

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ITEM 4. Rescind the definition of “Nuclear pharmacy technician” in rule **657—3.1(155A)**.

ITEM 5. Amend subrule 3.5(2) as follows:

3.5(2) *Required certification effective July 1, 2010.* Beginning July 1, 2010, a pharmacy technician shall acquire national certification through any NCCA-accredited pharmacy technician certification program and examination, the successful completion of which fulfills the requirement for national certification. ~~National certification of a nuclear pharmacy technician employed solely in the practice of nuclear pharmacy shall be pursuant to certification requirements identified in 657—Chapter 16.~~

ITEM 6. Amend rule 657—3.21(155A) as follows:

657—3.21(155A) Delegation of technical functions.

3.21(1) *Technical dispensing functions.* A pharmacist may delegate technical dispensing functions to an appropriately trained and registered pharmacy technician, but only if the pharmacist is ~~on site~~ present to supervise the pharmacy technician when delegated functions are performed, except as provided in 657—subrule 6.7(2) or 657—subrule 7.6(2), as appropriate, or as provided for telepharmacy in 657—Chapter 9. The pharmacist shall provide and document the final verification for the accuracy, validity, completeness, and appropriateness of the patient’s prescription or medication order prior to the delivery of the medication to the patient or the patient’s representative. A pharmacy technician shall not delegate technical functions to a pharmacy support person.

3.21(2) *Nontechnical functions.* A pharmacist may delegate nontechnical functions to a pharmacy technician or a pharmacy support person only if the pharmacist is present to supervise the pharmacy technician or pharmacy support person when delegated nontechnical functions are performed, except as provided in 657—subrule 6.7(2) or 657—subrule 7.6(2), as appropriate, or as provided for telepharmacy in 657—Chapter 9.

ITEM 7. Amend rule 657—3.22(155A) as follows:

657—3.22(155A) Technical functions. At the discretion of the supervising pharmacist, technical functions which may be delegated to a pharmacy technician, a certified pharmacy technician, or a pharmacy technician trainee include, but are not limited to, the following:

1. Performing packaging, manipulative, or repetitive tasks relating to the processing of a prescription or medication order in a licensed pharmacy.
2. Accepting prescription refill authorizations communicated to a pharmacy by a prescriber or by the prescriber’s office.
3. Contacting prescribers to obtain prescription refill authorizations.
4. Collecting Processing pertinent patient information, including information regarding allergies and disease state.
5. Entering prescription and patient information into the pharmacy computer system.
6. Inspecting drug supplies provided and controlled by an Iowa-licensed pharmacy but located or maintained outside the pharmacy department, including but not limited to drug supplies maintained in an ambulance or other emergency medical service vehicle, a long-term care facility, a hospital nursing unit, or a hospice facility.
7. Affixing required prescription labels upon any container of drugs sold or dispensed pursuant to the prescription of an authorized prescriber.
8. Prepackaging or labeling multidose and single-dose packages of drugs, including dose picks for unit dose cart or AMDS fills for hospital or long-term care facility patients.

ITEM 8. Amend rule 657—3.23(155A) as follows:

657—3.23(155A) Tasks a pharmacy technician shall not perform. A pharmacy technician, a certified pharmacy technician, or a pharmacy technician trainee shall not:

1. to 5. No change.
6. Delegate technical functions to ~~supportive personnel~~ a pharmacy support person.

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ITEM 9. Rescind and reserve rule **657—3.25(155A)**.

ITEM 10. Adopt the following new 657—Chapter 5:

CHAPTER 5
PHARMACY SUPPORT PERSONS

657—5 .1(155A) Definitions. For purposes of this chapter, the following definitions shall apply:

“*Board*” means the Iowa board of pharmacy.

“*Delivery*” means the transport and conveyance of a finished, securely packaged prescription order to the patient or the patient’s agent.

“*Direct access*” means physical access, without direct supervision by a pharmacist, to opened, unpackaged, or unsecured stock containers or prescription vials containing prescription drugs.

“*Pharmacy clerk*” means a person whose duties within the pharmacy department include accessing filled prescription orders and processing payments for and delivering such orders to the patient or the patient’s agent under the supervision of a pharmacist.

“*Pharmacy support person*” means a person, other than a licensed pharmacist, a registered pharmacist-intern, or a registered pharmacy technician, who may perform nontechnical duties assigned by a supervising pharmacist under the pharmacist’s responsibility and supervision.

“*Pharmacy technician*” or “*technician*” means a person who is employed in Iowa by a licensed pharmacy under the responsibility of an Iowa-licensed pharmacist to assist in the technical functions of the practice of pharmacy and who is registered pursuant to 657—Chapter 3.

“*Secure package*” means the prescription order is enclosed in tamper-evident packaging. An IV bag is considered tamper-evident packaging.

“*Supervising pharmacist*” means an Iowa-licensed pharmacist who is on duty in an Iowa-licensed pharmacy and who is responsible for assigning and supervising the duties performed by a pharmacy support person.

657—5.2(155A) Purpose of registration. A registration program for pharmacy support persons is established for the purposes of identification, tracking, and disciplinary action. The registration shall not include any determination of the competency of the registered individual. The use of pharmacy support persons to assist the pharmacist with nontechnical duties associated with the practice of pharmacy enables the pharmacist to provide pharmaceutical care to the patient.

657—5.3 Reserved.

657—5.4(155A) Registration required.

5.4(1) Effective date. Beginning April 1, 2010, a pharmacy support person shall register with the board pursuant to the requirements of this chapter.

5.4(2) Registration number. Each pharmacy support person registered with the board will be assigned a unique registration number.

5.4(3) Original application required. Any person required to register and not previously registered with the board as a pharmacy support person shall complete an application for registration within 30 days of accepting employment in an Iowa pharmacy as a pharmacy support person. Such application shall be received in the board office before the expiration of this 30-day period.

5.4(4) Employment terminated. A registered pharmacy support person who discontinues employment as a pharmacy support person shall not be required to maintain a registration and shall request cancellation of the registration as provided in rule 657—5.14(155A).

657—5.5(155A) Exempt from registration. Unless a person has direct access to prescription drugs, the following shall be exempt from registration as a pharmacy support person:

1. Delivery person.
2. Billing clerk, including a person who processes claims for third-party payments.

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3. Data processing support, maintenance, or programming personnel.
4. Facility maintenance personnel including but not necessarily limited to cleaning, sanitation, structural, and mechanical maintenance personnel. Facility maintenance personnel escorted by a pharmacist or a certified pharmacy technician who directly supervises the maintenance person's activities within the pharmacy department shall be exempt from registration as a pharmacy support person.
5. Any person not directly employed by or under contract to the pharmacy, and not under the direct supervision of a pharmacist, who provides data processing, billing, or maintenance functions outside the pharmacy department.
6. A registered pharmacist-intern or a registered pharmacy technician.

657—5.6 Reserved.

657—5.7(155A) Registration application form.

5.7(1) Required information. The application form for a pharmacy support person registration shall require the following:

- a. Information sufficient to identify the applicant including, but not limited to, name, address, date of birth, gender, and social security number;
- b. Educational background;
- c. Work experience;
- d. Current place or places of employment;
- e. Any other information deemed necessary by the board.

5.7(2) Declaration of current impairment or limitations. The applicant shall declare any current use of drugs, alcohol, or other chemical substances that in any way impairs or limits the applicant's ability to perform the duties of a pharmacy support person with reasonable skill and safety.

5.7(3) History of felony or misdemeanor crimes. The applicant shall declare any history of being charged, convicted, found guilty of, or entering a plea of guilty or no contest to a felony or misdemeanor crime (other than minor traffic violations with fines under \$100).

5.7(4) History of disciplinary actions. The applicant shall declare any history of disciplinary actions or practice restrictions imposed by a state health care professional, licensure, or registration authority.

5.7(5) Sworn signature. The applicant shall sign the application under penalty of perjury and shall submit the application to the board with the appropriate fees pursuant to rules 657—5.9(155A) and 657—5.11(155A).

657—5.8 Reserved.

657—5.9(155A) Registration fee.

5.9(1) Initial fee. The fee for obtaining an initial registration shall be \$30.

5.9(2) Renewal fee. The renewal fee for obtaining a biennial registration shall be \$30.

5.9(3) Timeliness. Fees shall be paid at the time the new application or the renewal application is submitted for filing.

5.9(4) Form of payment. Fee payment shall be in the form of a personal check, certified or cashier's check, or money order payable to Iowa Board of Pharmacy.

657—5.10(155A) Registration renewal. A pharmacy support person registration shall expire on the second last day of the birth month following initial registration. Registration shall not require continuing education for renewal.

657—5.11(155A) Late application.

5.11(1) Fee. A person required to register or to renew the person's registration who files a late application shall pay an additional \$30 late payment fee.

5.11(2) Timeliness of initial application. An application for initial registration shall be assessed a late payment fee if not received within the applicable period specified in rule 657—5.4(155A).

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5.11(3) *Timeliness of renewal application.* An application for registration renewal shall be assessed a late payment fee if not received by the expiration date of the registration. A late payment fee shall not be assessed on an expired registration if the person was not employed as a pharmacy support person during the period following expiration of the registration.

657—5.12 Reserved.

657—5.13(155A) *Registration certificates.* The original registration certificate issued by the board to a pharmacy support person shall be maintained by the pharmacy support person. Verification of current registration shall be maintained in each pharmacy where the pharmacy support person is employed in that capacity and shall be available for inspection by the board.

657—5.14(155A) *Notifications to the board.* A pharmacy support person shall report to the board within ten days a change of name, address, place of employment, or employment status.

657—5.15(155A) *Identification of pharmacy support person.*

5.15(1) *Name badge.* A pharmacy support person shall wear a name badge or other form of identification while on duty which clearly identifies the person as a pharmacy support person.

5.15(2) *Misrepresentation prohibited.* A pharmacy support person shall not, in any manner, represent himself or herself as a pharmacist, a pharmacist-intern, or a pharmacy technician.

657—5.16 Reserved.

657—5.17(155A) *Tasks a pharmacy support person shall not perform.* A pharmacy support person shall not perform any of the following judgmental or technical functions. Performance of any of these tasks by a pharmacy support person shall constitute the practice of pharmacy without a license in violation of Iowa Code section 155A.7. A pharmacy support person shall not:

1. Provide the final verification for the accuracy, validity, completeness, or appropriateness of a filled prescription or medication order.
2. Conduct prospective drug use review or evaluate a patient's medication record for purposes identified in rule 657—8.21(155A).
3. Provide patient counseling, consultation, or patient-specific drug information; make an offer of patient counseling on behalf of the pharmacist; or accept a refusal of patient counseling from a patient or patient's agent.
4. Make decisions that require a pharmacist's professional judgment, such as interpreting or applying information.
5. Accept by oral communication any new or refill prescription authorizations communicated to a pharmacy by a prescriber or by the prescriber's office or contact a prescriber to obtain prescription refill authorizations.
6. Provide a prescription or drug to a patient without a pharmacist's verification as to the accuracy of the dispensed medication and without the physical presence of a pharmacist.
7. Package, pour, or place in a container for dispensing, sale, distribution, transfer, vending, or barter any drug which, under federal or state laws, may be sold or dispensed only pursuant to the prescription of a practitioner authorized to prescribe drugs. This prohibited task includes the addition of water or other liquid for reconstitution of oral antibiotic liquids.
8. Affix required prescription labels upon any container of drugs sold or dispensed pursuant to the prescription of an authorized prescriber.
9. Process or enter pertinent patient or prescription information, including entry of that information into the pharmacy computer system, except as provided in rule 657—5.18(155A).
10. Prepackage or label multidose and single-dose packages of drugs, including dose picks for unit dose cart fills for hospital or long-term care facility patients.
11. Check or inspect drug supplies provided and controlled by an Iowa-licensed pharmacy but located or maintained outside the pharmacy department, including but not limited to drug supplies

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maintained in an ambulance or other emergency medical service vehicle, a long-term care facility, a hospital nursing unit, or a hospice facility.

12. Reconstitute prefabricated noninjectable medication, prepare parenteral products, or compound sterile or nonsterile drug products.

13. Communicate, transmit, or receive patient or prescription information to or from the pharmacy for the purpose of transferring a patient's prescription between pharmacies.

14. Assist with or witness the destruction or wastage of controlled substances pursuant to 657—subrule 10.18(2).

15. Perform any of the duties identified in 657—Chapter 3 as technical functions that may be delegated to a pharmacy technician.

657—5.18(155A) Nontechnical pharmacy support tasks. An appropriately trained and registered pharmacy support person may perform any of the following nontechnical functions that have been delegated to the pharmacy support person by the supervising pharmacist:

1. Perform the duties of a pharmacy clerk.

2. Process wholesale drug orders, including the submission of orders, the receipt and processing of drug deliveries from drug wholesalers, reconciling products received with packing slips or invoices, and affixing appropriate inventory or price stickers to drug stock bottles or containers.

3. Perform routine clerical duties, such as filing processed, hard-copy prescriptions and other pharmacy records.

4. Update or change patient demographic information, excluding allergies and disease state information, in the pharmacy computer system or patient profile.

5. Receive from a patient the patient's request for a prescription refill, excluding the processing of the refill request.

6. Perform pharmacy drug inventory control duties, including checking pharmacy stock shelves for outdated drugs and assisting with annual inventory counts.

7. Deliver drugs to patient care areas, long-term care facilities, patient residences, or patient employment locations, excluding the restocking of automated medication distribution system components.

8. Perform any routine clerical or pharmacy support function not prohibited in rule 657—5.17(155A).

9. In nuclear pharmacy practice, perform nonjudgmental tasks under the direct supervision of a nuclear pharmacist pursuant to 657—Chapter 16.

657—5.19 Reserved.

657—5.20(155A) Training and utilization of pharmacy support persons. All Iowa-licensed pharmacies utilizing pharmacy support persons shall develop, implement, and periodically review written policies and procedures for the training and utilization of pharmacy support persons. Pharmacy policies shall specify the frequency of review. Pharmacy support person training shall be documented and maintained by the pharmacy for the duration of employment. Such policies and procedures and documentation of pharmacy support person training shall be available for inspection by the board or an agent of the board.

657—5.21(155A) Responsibility of supervising pharmacist. The ultimate responsibility for the actions of a pharmacy support person working under a supervising pharmacist shall remain with the supervising pharmacist.

657—5.22(155A) Delegation of nontechnical functions. A pharmacist may delegate nontechnical functions to an appropriately trained and registered pharmacy support person, but only if the pharmacist is present to supervise the pharmacy support person when delegated functions are performed, except as provided in 657—subrule 6.7(2) or 657—subrule 7.6(2), as appropriate.

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657—5.23 Reserved.

657—5.24(155A) Denial of registration. The board may deny an application for registration as a pharmacy support person for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs or for any violation of Iowa Code chapter 124, 124A, 124B, 126, 147, 155A, or 205 or any rule of the board.

657—5.25(147,155A) Unethical conduct or practice. Violation by a pharmacy support person of any of the provisions of this rule shall constitute unethical conduct or practice and may be grounds for disciplinary action as provided in rule 657—5.26(155A).

5.25(1) Misrepresentative deeds. A pharmacy support person shall not make any statement tending to deceive, misrepresent or mislead anyone, or be a party to or an accessory to any fraudulent or deceitful practice or transaction in pharmacy or in the operation or conduct of a pharmacy.

5.25(2) Confidentiality. In the absence of express consent from the patient or order or direction of a court, except where the best interests of the patient require, a pharmacy support person shall not divulge or reveal to any person other than the patient or the patient's authorized representative, the prescriber or other licensed practitioner then caring for the patient, a licensed pharmacist, or a person duly authorized by law to receive such information the contents of any prescription or the therapeutic effect thereof or the nature of professional pharmaceutical services rendered to a patient; the nature, extent, or degree of illness suffered by any patient; or any medical information furnished by the prescriber.

5.25(3) Discrimination. It is unethical for a pharmacy support person to unlawfully discriminate between patients or groups of patients for reasons of religion, race, creed, color, sex, age, national origin, or disease state when providing pharmaceutical services.

5.25(4) Unethical conduct or behavior. A pharmacy support person shall not exhibit unethical behavior in connection with the pharmacy support person's pharmacy employment. Unethical behavior shall include, but is not limited to, the following acts: verbal abuse, coercion, intimidation, harassment, sexual advances, threats, degradation of character, indecent or obscene conduct, and theft.

657—5.26(155A) Discipline of pharmacy support persons.

5.26(1) Violations. The board may impose discipline for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs or for any violation of Iowa Code chapter 124, 124A, 124B, 126, 147, 155A, or 205 or any rule of the board.

5.26(2) Sanctions. The board may impose the following disciplinary sanctions:

- a. Revocation of a pharmacy support person registration.
- b. Suspension of a pharmacy support person registration until further order of the board or for a specified period.
- c. Nonrenewal of a pharmacy support person registration.
- d. Prohibition, permanently, until further order of the board, or for a specified period, from engaging in specified procedures, methods, or acts.
- e. Probation.
- f. Imposition of civil penalties not to exceed \$25,000.
- g. Issuance of citation and warning.
- h. Such other sanctions allowed by law as may be appropriate.

These rules are intended to implement Iowa Code sections 147.55, 155A.3, 155A.6B, 155A.18, and 155A.23.

ITEM 11. Amend rule 657—6.2(155A) as follows:

657—6.2(155A) Pharmacist in charge. One professionally competent, legally qualified pharmacist in charge in each pharmacy shall be responsible for, at a minimum, the following:

1. to 8. No change.

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9. Training pharmacy technicians and ~~supportive personnel~~ pharmacy support persons.
10. to 16. No change.

ITEM 12. Amend subrule 6.7(2) as follows:

6.7(2) *Temporary absence of pharmacist.* In the temporary absence of the pharmacist, only the pharmacist in charge may designate ~~persons~~ pharmacy technicians or pharmacy support persons who may be present in the prescription department to perform technical ~~and~~ or nontechnical functions, respectively, designated by the pharmacist in charge. Activities identified in subrule 6.7(3) may not be performed during such temporary absence of the pharmacist. A temporary absence is an absence of short duration not to exceed two hours. In the absence of the pharmacist, the pharmacy shall notify the public that the pharmacist is temporarily absent and that no prescriptions will be dispensed until the pharmacist returns.

ITEM 13. Amend rule 657—7.2(155A) as follows:

657—7.2(155A) Pharmacist in charge. One professionally competent, legally qualified pharmacist in charge in each pharmacy shall be responsible for, at a minimum, the items identified in this rule. A part-time pharmacist in charge has the same obligations and responsibilities as a full-time pharmacist in charge. Where 24-hour operation of the pharmacy is not feasible, a pharmacist shall be available on an “on call” basis. The pharmacist in charge, at a minimum, shall be responsible for:

1. to 8. No change.
9. Training pharmacy technicians and ~~supportive personnel~~ pharmacy support persons.
10. Ensuring adequate and appropriate pharmacist oversight and supervision of pharmacy technicians and ~~supportive personnel~~ pharmacy support persons.
11. to 16. No change.

ITEM 14. Amend subrule 7.6(2) as follows:

7.6(2) *Access when pharmacist absent.* When the pharmacist is absent from the facility, the pharmacy is closed. Policies and procedures shall be established that identify who will have access to the pharmacy when the pharmacy is closed and the procedures to be followed for obtaining drugs, devices, and chemicals to fill an emergent need during the pharmacist’s absence.

a. The pharmacist in charge may designate pharmacy technicians or pharmacy support persons who may be present in the pharmacy to perform technical ~~and~~ or nontechnical functions, respectively, designated by the pharmacist in charge. Activities identified in paragraph “*d*” of this subrule may not be performed when the pharmacy is closed.

b. If the pharmacist in charge has authorized the presence in the pharmacy of a pharmacy technician or a pharmacy support person to perform designated functions when the pharmacy is closed, ~~the only~~ a pharmacy technician may assist another authorized, licensed health care professional to locate a drug or device pursuant to an emergent need. The pharmacy technician or the pharmacy support person may not dispense or deliver the drug, chemical, or device to the licensed health care professional. The licensed health care professional shall comply with established policies and procedures for obtaining drugs, devices, and chemicals when the pharmacy is closed. The licensed health care professional shall not ask or expect the pharmacy technician or the pharmacy support person to verify that the appropriate drug, chemical, or device has been obtained from the pharmacy.

c. A pharmacy technician or a pharmacy support person who is present in the pharmacy when the pharmacy is closed shall prepare and maintain in the pharmacy a log identifying each period of time that the pharmacy technician or pharmacy support person worked in the pharmacy while the pharmacy was closed and identifying each activity performed during that time period. Each entry shall be dated and each daily record shall be signed by the pharmacy technician or pharmacy support person who prepared the record. The log shall be periodically reviewed by the pharmacist in charge.

d. Activities which shall not be performed by a pharmacy technician or a pharmacy support person when the pharmacist is absent from the facility include:

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- (1) Dispensing, delivering, or distributing any prescription drugs or devices to patients or others, including health care professionals, prior to pharmacist verification. Verification by a nurse or other licensed health care professional shall not supplant verification by a pharmacist.
- (2) Providing the final verification for the accuracy, validity, completeness, or appropriateness of a filled prescription or medication order.
- (3) Conducting prospective drug use review or evaluating a patient's medication record for purposes identified in rule 657—8.21(155A).
- (4) Providing patient counseling, consultation, or drug information.
- (5) Making decisions that require a pharmacist's professional judgment such as interpreting or applying information.
- (6) Preparing compounded drug products for immediate administration by other hospital staff or health care professionals without verification by a pharmacist.

ITEM 15. Amend subrule 8.3(2) as follows:

8.3(2) *Practice functions.* The pharmacist is responsible for all functions performed in the practice of pharmacy. The pharmacist maintains responsibility for any and all delegated functions including functions delegated to pharmacist-interns, pharmacy technicians, and ~~other supportive personnel~~ pharmacy support persons.

ITEM 16. Amend subrule 8.4(3) as follows:

8.4(3) *Temporary or intermittent pharmacy staff.* The pharmacy shall maintain a log of all pharmacists, pharmacist-interns, ~~and~~ pharmacy technicians, ~~and~~ pharmacy support persons who have worked at that pharmacy and who are not regularly staffed at that pharmacy. Such log shall include the dates and shifts worked by each pharmacist, pharmacist-intern, ~~and~~ pharmacy technician, ~~and~~ pharmacy support person and shall be available for inspection and copying by the board or its representative for a minimum of two years following the date of the entry.

ITEM 17. Amend rule 657—8.14(155A) as follows:

657—8.14(155A) *Training and utilization of pharmacy technicians or pharmacy support persons.* All Iowa-licensed pharmacies utilizing pharmacy technicians ~~or~~ pharmacy support persons shall develop, implement, and periodically review written policies and procedures for the training and utilization of pharmacy technicians ~~and~~ pharmacy support persons appropriate to the practice of pharmacy at that licensed location. Pharmacy policies shall specify the frequency of review. ~~Technician~~ Pharmacy technician and pharmacy support person training shall be documented and maintained by the pharmacy for the duration of employment. Policies and procedures and documentation of pharmacy technician and pharmacy support person training shall be available for inspection by the board or an agent of the board.

ITEM 18. Amend subrule 8.35(3) as follows:

8.35(3) *Application form.* Application for licensure and license renewal shall be on forms provided by the board. The application for a pharmacy license shall require an indication of the pharmacy ownership classification. If the owner is a sole proprietorship (100 percent ownership), the name and address of the owner shall be indicated. If the owner is a partnership or limited partnership, the names and addresses of all partners shall be listed or attached. If the owner is a corporation, the names and addresses of the officers and directors of the corporation shall be listed or attached. Any other pharmacy ownership classification shall be further identified and explained on the application. The application form shall require the name, signature, and license number of the pharmacist in charge. The names and license numbers of all pharmacists engaged in practice in the pharmacy, the names and registration numbers of all pharmacy technicians ~~and~~ pharmacy support persons working in the pharmacy, and the average number of hours worked by each pharmacist, ~~and each~~ pharmacy technician, ~~and~~ pharmacy support person shall be listed or attached. Additional information may be required of specific types of pharmacy license applicants. The application shall be signed by the pharmacy owner or the owner's, partnership's, or corporation's authorized representative.

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ITEM 19. Amend subrule 14.14(14) as follows:

14.14(14) Notifications to the board. These records contain reports of theft or loss of controlled substances; of pharmacy or drug wholesaler openings, closings, and changes of ownership, location, or responsible person; of the sale or transfer of prescription drugs including controlled substances; of disasters, accidents, or emergencies affecting drugs; and of pharmacists', pharmacist-interns', ~~and~~ pharmacy technicians', and pharmacy support persons' names, addresses, or employment changes. This information is collected by the board pursuant to the authority granted in Iowa Code sections 155A.6, 155A.6A, 155A.6B, and 155A.19 and is stored on paper, electronically, and in computer.

ITEM 20. Adopt the following new subrule 14.14(17):

14.14(17) Pharmacy support person records. These records contain information about pharmacy support persons who are registered with the board. This information is collected by the board pursuant to the authority granted in Iowa Code chapter 155A and is stored on paper, electronically, and in computer.

ITEM 21. Renumber subrules **16.4(4)** to **16.4(10)** as **16.4(5)** to **16.4(11)**.

ITEM 22. Adopt the following new subrule 16.4(4):

16.4(4) Pharmacy support persons. A pharmacy support person shall register with the board pursuant to the registration requirements of 657—Chapter 5. Alternatively, a pharmacy support person may register with the board as a pharmacy technician pursuant to the registration and national certification requirements of 657—Chapter 3.

ITEM 23. Adopt the following new rule 657—16.7(155A):

657—16.7(155A) Training and utilization of pharmacy support persons. Nuclear pharmacies utilizing pharmacy support persons shall develop, implement, and periodically review written policies and procedures for the training and utilization of pharmacy support persons. Pharmacy policies shall specify the frequency of review. Pharmacy support person training shall be documented and maintained by the pharmacy for the duration of employment. Such policies and procedures and documentation of pharmacy support person training shall be available for inspection by the board or an agent of the board.

ITEM 24. Amend paragraph **18.3(2)“e”** as follows:

e. Pharmacies shall comply with Iowa requirements for supervision of pharmacy technicians and pharmacy support persons.

ITEM 25. Amend rule **657—25.1(252J)**, definition of “License,” as follows:

“License” means a license to practice pharmacy, a registration to practice as a pharmacist-intern, a registration to practice as a pharmacy technician, a registration to practice as a pharmacy support person, or a registration to possess, prescribe, dispense, administer, distribute, or otherwise handle controlled substances under Iowa Code chapter 124.

ITEM 26. Amend subrule 25.3(5) as follows:

25.3(5) Reinstatement following license suspension, ~~or~~, revocation, or denial of renewal. A licensee shall pay all board fees required for license renewal or license reinstatement, and all continuing education requirements shall be met, before a license will be reinstated after the board has suspended a license pursuant to the Act. A licensee whose license to practice pharmacy has been revoked shall complete the examination components as indicated in rule 657—2.10(155A) and shall pay all required examination fees pursuant to rule 657—2.2(147). A licensee whose registration to practice as a pharmacist-intern, ~~or~~ as a pharmacy technician, or as a pharmacy support person or whose registration to handle controlled substances under Iowa Code chapter 124 has been revoked shall complete application and pay all board fees required for new registration.

ITEM 27. Amend rule **657—31.1(261)**, definition of “License,” as follows:

“License” means a license to practice pharmacy, a registration to practice as a pharmacist-intern, a registration to practice as a pharmacy technician, a registration to practice as a pharmacy support person, or a registration to possess, prescribe, dispense, administer, distribute, or otherwise handle controlled substances under Iowa Code chapter 124.

PHARMACY BOARD[657](cont'd)

ITEM 28. Amend subrule 31.3(5) as follows:

31.3(5) *Reinstatement following license suspension ~~or~~, revocation, or denial of renewal.* All board fees required for license renewal or license reinstatement shall be paid by licensees, and all continuing education requirements shall be met, before a license will be renewed or reinstated after the board has suspended a license pursuant to the Act. A licensee whose license to practice pharmacy has been revoked shall complete the examination components as indicated in rule 657—2.10(155A) and shall pay all required examination fees pursuant to rule 657—2.2(147). A licensee whose registration to practice as a pharmacist-intern, ~~or~~ as a pharmacy technician, or as a pharmacy support person or whose registration to handle controlled substances under Iowa Code chapter 124 has been revoked shall complete application and pay all board fees required for new registration.

ITEM 29. Amend rule **657—32.1(272D)**, definition of “License,” as follows:

“License” means a license to practice pharmacy, a registration to practice as a pharmacist-intern, a registration to practice as a pharmacy technician, a registration to practice as a pharmacy support person, or a registration to possess, prescribe, dispense, administer, distribute, or otherwise handle controlled substances under Iowa Code chapter 124.

ITEM 30. Amend subrule 32.3(5) as follows:

32.3(5) *Reinstatement following license suspension, revocation, or denial of renewal.* All board fees required for license renewal or license reinstatement shall be paid by the licensee and all continuing education requirements shall be met before a license will be renewed or reinstated after the board has suspended a license pursuant to the Act. A licensee whose license to practice pharmacy has been revoked shall complete the examination components as indicated in rule 657—2.10(155A) and shall pay all required examination fees pursuant to rule 657—2.2(155A). A licensee whose registration to practice as a pharmacist-intern, ~~or~~ as a pharmacy technician, or as a pharmacy support person or whose registration to handle controlled substances under Iowa Code chapter 124 has been revoked shall complete an application and pay all board fees required for new registration.

ITEM 31. Amend paragraph **36.1(2)“h”** as follows:

h. Order a pharmacist, pharmacist-intern, ~~or~~ pharmacy technician, or pharmacy support person to undergo a physical or mental examination.

ITEM 32. Amend paragraphs **36.1(4)“a,” “i,” “l,” “v,” “aa”** and **“ab”** as follows:

a. Fraud in procuring a license. Fraud in procuring a license includes but is not limited to an intentional perversion of the truth in making application for a license to practice pharmacy, to operate a pharmacy doing business in this state, or to operate as a wholesale drug distributor doing business in this state, or in making application for a registration to practice as a pharmacist-intern, ~~or~~ a pharmacy technician, or a pharmacy support person. It includes false representations of a material fact, whether by word or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application, or attempting to file or filing with the board any false or forged diploma, certificate, affidavit, identification, or qualification in making application for a license or registration in this state.

i. Willful or repeated violations of the provisions of Iowa Code chapter 147 or Iowa Code chapter 272C. Willful or repeated violations of these Acts include, but are not limited to, a pharmacist’s, pharmacist-intern’s, ~~or~~ pharmacy technician’s, or pharmacy support person’s intentionally or repeatedly violating a lawful rule or regulation promulgated by the board of pharmacy or the state department of public health, violating a lawful order of the board in a disciplinary hearing, or violating the provisions of Title IV (Public Health) of the Code of Iowa.

l. Knowingly aiding, assisting, procuring, or advising another person to unlawfully practice pharmacy or to unlawfully perform the functions of a pharmacist-intern, a pharmacy technician ~~or a pharmacist-intern~~, or a pharmacy support person.

v. Practicing pharmacy without an active and current Iowa pharmacist license, operating a pharmacy without a current pharmacy license, operating a prescription drug wholesale facility without a current wholesale drug license, practicing as a pharmacist-intern without a current pharmacist-intern

PHARMACY BOARD[657](cont'd)

registration, ~~or~~ assisting a pharmacist with technical functions associated with the practice of pharmacy without a current pharmacy technician registration except as provided in rule 657—3.3(155A), introductory paragraph, or assisting a pharmacist with nontechnical functions associated with the practice of pharmacy without a current pharmacy support person registration.

aa. Employing or continuing to employ as a practicing pharmacist any person whose Iowa pharmacist license is not current and active, ~~or~~ employing or continuing to employ a person to assist a pharmacist with technical functions associated with the practice of pharmacy who is not currently registered as a pharmacy technician except as provided in rule 657—3.3(155A), introductory paragraph, or employing or continuing to employ a person to assist a pharmacist with nontechnical functions associated with the practice of pharmacy who is not currently registered as a pharmacy support person.

ab. Retaliatory action. Retaliating against a pharmacist, pharmacist-intern, ~~or~~ a pharmacy technician, or pharmacy support person for making allegations of illegal or unethical activities, making required reports to the board, or cooperating with a board investigation or survey.

ITEM 33. Amend subrule 36.2(2) as follows:

36.2(2) Reporting of judgments or settlements. Each licensee or registrant shall report to the board every adverse judgment in a malpractice action to which the pharmacy, pharmacist, pharmacist-intern, ~~or~~ pharmacy technician, or pharmacy support person is a party, and every settlement of a claim alleging malpractice. The report must be filed within 30 days from the date of the judgment or settlement.

ITEM 34. Amend subrule 36.2(3) as follows:

36.2(3) Reporting of acts or omissions. Each licensee or registrant having firsthand knowledge of acts or omissions set forth in subrule 36.1(4) shall report to the board within 30 days of initially acquiring the information those acts or omissions committed by another person licensed to practice pharmacy or registered to practice as a pharmacist-intern, ~~or~~ as a pharmacy technician, or as a pharmacy support person. The report shall include the name and other available information identifying the licensee or registrant and the date, time, and place of the incident.

ITEM 35. Amend rule 657—36.4(17A,124,124B,126,147,155A,272C) as follows:

657—36.4(17A,124,124B,126,147,155A,272C) Disciplinary proceedings. The proceeding for revocation, suspension, or other disciplinary sanctions against a pharmacy license, a wholesale drug license, a pharmacy technician registration, a pharmacy support person registration, a pharmacist-intern registration, or a license to practice pharmacy, or the denial of or refusal to issue or renew a license or registration, or the suspension, denial, or revocation of a permit to handle precursor substances shall be substantially in accordance with the procedures set forth in 657—Chapter 35 and these rules, which are in addition to the procedures stated in Iowa Code sections 147.58 et seq., and 155A.16.

ITEM 36. Amend rule 657—36.11(272C) as follows:

657—36.11(272C) Board decision. The board's decision and order to discipline a licensee, registrant, or permittee, or to revoke or suspend a license to practice pharmacy, a wholesale drug license, a license to operate a pharmacy, a registration to practice as a pharmacist-intern, ~~or~~ as a pharmacy technician, or a pharmacy support person, or a permit to handle precursor substances, shall remain in force and effect until the appeal is finally determined and disposed of upon its merit unless the board grants a stay of its decision as provided for in rule 657—35.28(17A).

ITEM 37. Amend rule 657—36.13(17A,124B,147,155A,272C), introductory paragraph, as follows:

657—36.13(17A,124B,147,155A,272C) Reinstatement. Any person whose license to practice pharmacy or to operate a pharmacy or whose wholesale drug license or permit to handle precursor substances or whose pharmacist-intern registration, pharmacy technician registration ~~or pharmacist-intern registration,~~ or pharmacy support person registration has been revoked or suspended shall meet the following eligibility requirements for reinstatement:

PHARMACY BOARD[657](cont'd)

ITEM 38. Amend rule 657—36.15(17A,124B,147,155A,272C) as follows:

657—36.15(17A,124B,147,155A,272C) Voluntary surrender of a license, permit, or registration. The voluntary surrender of a license to practice pharmacy, a license to operate a pharmacy, a wholesale drug license, a permit to handle precursor substances, a pharmacy technician registration, a pharmacy support person registration, or a pharmacist-intern registration shall be considered a revocation of license, permit, or registration. A request for reinstatement shall be handled under the terms established by rule 657—36.13(17A,124B,147,155A,272C).

ITEM 39. Amend rule 657—36.17(155A,272C), introductory paragraph, as follows:

657—36.17(155A,272C) Order for mental or physical examination. A pharmacist, pharmacist-intern, ~~or~~ pharmacy technician, or pharmacy support person who is licensed or registered by the board is, as a condition of licensure or registration, under a duty to submit to a mental or physical examination within a time period specified by order of the board. Such examination may be ordered upon a showing of probable cause and shall be at the expense of the pharmacist, pharmacist-intern, ~~or~~ pharmacy technician, or pharmacy support person.

ITEM 40. Amend subrule 36.17(1) as follows:

36.17(1) Content of order. A board order for mental or physical examination shall include the following items:

a. A description of the type of examination to which the pharmacist, pharmacist-intern, ~~or~~ pharmacy technician, or pharmacy support person must submit.

b. The name and address of the examiner or treatment facility that the board has identified to perform the examination on the pharmacist, pharmacist-intern, ~~or~~ pharmacy technician, or pharmacy support person.

c. The time period in which the pharmacist, pharmacist-intern, ~~or~~ pharmacy technician, or pharmacy support person must schedule the required examination.

d. The amount of time in which the pharmacist, pharmacist-intern, ~~or~~ pharmacy technician, or pharmacy support person is required to complete the examination.

e. A requirement that the pharmacist, pharmacist-intern, ~~or~~ pharmacy technician, or pharmacy support person cause a report of the examination results to be provided to the board within a specified period of time.

f. A requirement that the pharmacist, pharmacist-intern, ~~or~~ pharmacy technician, or pharmacy support person communicate with the board regarding the status of the examination.

g. A provision allowing the pharmacist, pharmacist-intern, ~~or~~ pharmacy technician, or pharmacy support person to request additional time to schedule or complete the examination or to request that the board approve an alternative examiner or treatment facility. The board shall, in its sole discretion, determine whether to grant such a request.

ARC 8368B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Social Work hereby gives Notice of Intended Action to rescind Chapter 279, “Administrative and Regulatory Authority for the Board of Social Work Examiners,” to amend Chapter 280, “Licensure of Social Workers,” Chapter 281,

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

“Continuing Education for Social Workers,” and Chapter 283, “Discipline for Social Workers,” and to rescind Chapter 284, “Fees,” Iowa Administrative Code.

These proposed amendments remove duplicative chapters and rules that have been placed in common chapters.

Any interested person may make written comments on the proposed amendments no later than January 5, 2010, addressed to Roxanne Sparks, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail rsparks@idph.state.ia.us.

A public hearing will be held on January 5, 2010, from 9 to 9:30 a.m. in the Fifth Floor Board Room 526, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 154C and 272C.

The following amendments are proposed.

- ITEM 1. Rescind and reserve **645—Chapter 279**.
- ITEM 2. Rescind and reserve rules **645—280.8(154C)**, **645—280.12(272C)** and **645—280.13(17A,147,272C)**.
- ITEM 3. Rescind and reserve rules **645—281.4(154C,272C)** to **645—281.7(154C,272C)**.
- ITEM 4. Rescind and reserve rule **645—283.5(154C)**.
- ITEM 5. Rescind and reserve **645—Chapter 284**.

ARC 8374B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Social Work hereby gives Notice of Intended Action to amend Chapter 280, “Licensure of Social Workers,” Iowa Administrative Code.

The proposed amendment clarifies the requirements for the supervised professional practice for the licensed independent social worker (LISW) candidate to ensure that the candidate has performed diagnosis and treatment of mental and emotional disorders or conditions and provided psychosocial therapy, in preparation for independent licensure as a private practice (Iowa Code chapter 154C).

The Board previously proposed a definition of “diagnosis” in which the term was defined as “the determination and identification of a specific mental or emotional disorder or condition based in whole or in part on the Diagnostic and Statistical Manual of Mental Disorders (current edition) of the American Psychiatric Association.” Notice of Intended Action containing that proposed definition was published in the Iowa Administrative Bulletin on September 9, 2009, as **ARC 8101B**. The Board received a significant amount of public comment regarding the proposed definition, the bulk of which was in opposition to the definition. The Board, its staff, and the Board’s Assistant Attorney General thoroughly reviewed the public comments, and in response to the comments the Board decided not to adopt the proposed definition of “diagnosis” and instead to proceed with noticing this proposed amendment to the requirements for supervised professional practice of the LISW candidate.

The decision not to adopt the proposed definition of “diagnosis” and to move the DSM requirement to the LISW candidate supervised practice section is responsive to the public comments in two significant ways. First, the proposed amendment will not globally define “diagnosis” for the social work profession as synonymous with DSM-IV; rather, it clarifies that one component of diagnosis at the master’s level

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

in preparation for private practice must be utilization of the DSM. Secondly, the new language clarifies that master level social workers seeking their LISW may utilize diagnostic tools and methods other than the DSM in their practice, but that one component of their diagnostic practice must involve utilization of the DSM.

Any interested person may make written comments on the proposed amendment no later than January 5, 2010, addressed to Roxanne Sparks, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail rsparks@idph.state.ia.us.

A public hearing will be held on January 5, 2010, from 9:30 to 10 a.m. in the Fifth Floor Board Room 526, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

This amendment is intended to implement Iowa Code chapters 21, 147, 154C and 272C.

The following amendment is proposed.

Adopt the following **new** paragraphs **280.6(1)“e”** and **“f”**:

e. Include as at least one component of the diagnostic practice the identification of specific mental or emotional disorders or conditions utilizing the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association (DSM), the current edition.

f. Include the provision of psychosocial therapy.

ARC 8399B

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 139A.8, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 7, “Immunization and Immunization Education: Persons Attending Elementary or Secondary Schools, Licensed Child Care Centers, or Institutions of Higher Education,” Iowa Administrative Code.

The rules in Chapter 7 describe immunization requirements for attendance at elementary or secondary schools or licensed child care centers and requirements for immunization education of students entering institutions of higher education.

These amendments make a change to the childhood vaccination schedule, specifically affecting the polio vaccine, based upon a new recommendation from the Centers for Disease Control and Prevention (CDC). The amendments also add a new use of the immunization registry, which allows the Department to track inventory or utilization of pharmaceutical agents to prepare for or respond to an emergency event.

Any interested person may make written suggestions or comments on these proposed amendments on or before January 5, 2010. Such written materials should be directed to Bridget Konz, Bureau of Disease Prevention and Immunization, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075; fax (800)831-6292. Persons who wish to convey their views orally should contact the Bureau of Disease Prevention and Immunization at (515)281-7228.

Also, there will be a public hearing on January 5, 2010, from 9 to 10 a.m., 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.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

This hearing will originate from the Iowa Communications Network (ICN) Room on the Sixth Floor of the Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa, and will be accessible over the ICN from the following additional locations:

- Mason City – Mason City High School, 1700 4th St. S, Room 276
- Ottumwa – Ottumwa Regional Health Center, 1001 E. Pennsylvania, Room 247
- Bettendorf – Bettendorf Public Library, 2950 Learning Campus Drive, Room 465
- Sioux City – West High School, 2001 Casselman
- Council Bluffs – Council Bluffs Community School District, 2501 W. Broadway, Room 106
- Waterloo – Department of Human Services, Pinecrest Office Building, 1407 Independence Avenue

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

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 8377B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code section 139A.8.

REVENUE DEPARTMENT

Notice of Electric and Natural Gas Delivery Tax Rates and Municipal Electric and Natural Gas Transfer Replacement Tax Rates for Each Competitive Service Area

Pursuant to the authority of Iowa Code sections 437A.4 and 437A.5, the Director of Revenue hereby gives notice of the electric delivery tax rate, the municipal electric transfer replacement tax rate, the natural gas delivery tax rate, and the municipal natural gas transfer replacement tax rate for each competitive service area in the state. These rates will be used in conjunction with the number of kilowatt hours of electricity and the number of therms of natural gas delivered to consumers in calendar year 2009 by each taxpayer to determine the tax due for each taxpayer in the 2010-2011 fiscal year.

2009 ELECTRIC DELIVERY TAX RATES BY SERVICE AREA

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3226	Akron Municipal Utilities	0.00006129
3201	Algona Municipal Utilities	0.00026059
3205	Alta Municipal Power Plant	0.00008290
3069	Alta Vista Municipal Utilities	0.00000000
3070	Alton Municipal Light & Power	0.00000000
3207	Ames Municipal Electric System	0.00000090
3071	Anita Municipal Utilities	0.00000000
3227	Anthon Municipal Electric Utility	0.00013220
3209	Atlantic Municipal Utilities	0.00024840
3073	Auburn Municipal Utility	0.00000000
3074	Aurelia Mun. Electric Utility	0.00008478
3211	Bancroft Municipal Utilities	0.00086258
3213	Bellevue Municipal Utilities	0.00009854
3228	Bigelow Municipal Electric Utility	0.00199975
3229	Bloomfield Municipal Electric Utility	0.00003163
3075	Breda Mun. Electric System	0.00000000
3076	Brooklyn Municipal Utilities	0.00162223
3216	Buffalo Municipal Electric System	0.00000241

REVENUE DEPARTMENT(cont'd)

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3217	Burt Municipal Electric Utility	0.00000190
3077	Callender Electric	0.00000000
3078	Carlisle Municipal Utilities	0.00000000
3079	Cascade Municipal Utilities	0.00130675
3221	Cedar Falls Municipal Elec. Utility	0.00031426
3068	City of Afton	0.00000000
3072	City of Aplington	0.00000000
3082	City of Dike	0.00000000
3088	City of Estherville	0.00000000
3089	City of Fairbank	0.00000000
3090	City of Farnhamville	0.00000000
3230	City of Fredericksburg	0.00000519
3106	City of Larchwood	0.00000000
3107	City of Lawler	0.00000000
3108	City of Lehigh	0.00000000
3113	City of Marathon	0.00000000
3311	City of Pella	0.00006692
3125	City of Renwick	0.00000000
3129	City of Sergeant Bluff	0.00000000
3139	City of Westfield	0.00000000
3143	City of Woolstock	0.00000000
3236	Coggon Municipal Light Plant	0.00004291
3237	Coon Rapids Municipal Utilities	0.00042603
3242	Corning Municipal Utilities	0.00031729
3080	Corwith Municipal Utilities	0.00000000
3243	Danville Municipal Electric Utility	0.00000384
3081	Dayton Light & Power	0.00000000
3244	Denison Municipal Utilities	0.00001027
3245	Denver Municipal Electric Utility	0.00005610
3083	Durant Municipal Electric Plant	0.00000000
3084	Dysart Municipal Utilities	0.00000000
3085	Earlville Municipal Utilities	0.00120833
3087	Ellsworth Municipal Utilities	0.00000000
3091	Fonda Municipal Electric	0.00000000
3252	Fontanelle Municipal Utilities	0.00032282
3092	Forest City Municipal Utilities	0.00000000
3231	Glidden Municipal Electric Utility	0.00000195
3093	Gowrie Municipal Utilities	0.00148389
3256	Graettinger Municipal Light Plant	0.00028010
3094	Grafton Municipal Utilities	0.00000000
3258	Grand Junction Municipal Utilities	0.00000456
3095	Greenfield Municipal Utilities	0.00108686
3096	Grundy Center Light & Power	0.00022173
3232	Guttenberg Municipal Electric	0.00002873

REVENUE DEPARTMENT(cont'd)

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3263	Harlan Municipal Utilities	0.00137185
3097	Hartley Municipal Utilities	0.00000000
3098	Hawarden Municipal Utility	0.00000000
3099	Hinton Municipal Electric/Water	0.00008142
3267	Hopkinton Municipal Utilities	0.00000972
3100	Hudson Municipal Utilities	0.00000000
3101	Independence Light & Power	0.00000000
3271	Indianola Municipal Utilities	0.00000736
3102	Keosauqua Light & Power	0.00000000
3103	Kimballton Municipal Utilities	0.00000000
3104	Lake Mills Municipal Utilities	0.00000000
3105	Lake Park Municipal Utilities	0.00000000
3233	Lake View Municipal Utilities	0.00015764
3274	Lamoni Municipal Utilities	0.00135315
3276	LaPorte City Utilities	0.00000913
3277	Laurens Municipal Utilities	0.00027651
3109	Lenox Mun. Light & Power	0.00045704
3110	Livermore Municipal Utilities	0.00000000
3111	Long Grove Mun. Elec./Water	0.00000000
3282	Manilla Municipal Elec. Utilities	0.00011049
3112	Manning Municipal Electric	0.00025992
3284	Mapleton Municipal Utilities	0.00008732
3285	Maquoketa Municipal Electric	0.00004721
3288	McGregor Municipal Utilities	0.00000695
3291	Milford Municipal Utilities	0.00016326
3114	Montezuma Municipal Light & Power	0.00000000
3115	Mount Pleasant Municipal Utilities	0.00000000
3293	Muscatine Municipal Utilities	0.00009555
3116	Neola Light & Water System	0.00000000
3297	New Hampton Municipal Light Plant	0.00009962
3298	New London Municipal Utility	0.00052973
3304	Ogden Municipal Utilities	0.00006019
3234	Onawa Municipal Utilities	0.00009856
3117	Orange City Municipal Utilities	0.00000000
3118	Orient Municipal Utilities	0.00000000
3307	Osage Municipal Utilities	0.00004946
3309	Panora Municipal Electric Utility	0.00006632
3119	Paton Municipal Utilities	0.00000000
3120	Paullina Municipal Utilities	0.00000000
3121	Pocahontas Municipal Utilities	0.00000000
3122	Preston Municipal Utilities	0.00000000
3315	Primghar Municipal Light Plant	0.00001803
3123	Readlyn Municipal Utilities	0.00000000
3124	Remsen Municipal Utilities	0.00000000

REVENUE DEPARTMENT(cont'd)

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3318	Rock Rapids Municipal Utilities	0.00000479
3126	Rockford Municipal Light Plant	0.00000000
3127	Sabula Municipal Utilities	0.00000000
3128	Sanborn Municipal Light & Plant	0.00000000
3130	Shelby Municipal Utilities	0.00000000
3131	Sibley Municipal Utilities	0.00000000
3321	Sioux Center Municipal Utilities	0.00000091
3323	Southern Minnesota Mun. Power	0.00000000
3324	Spencer Municipal Utilities	0.00010190
3132	Stanhope Municipal Utilities	0.00000000
3360	Stanton Municipal Utilities	0.00000000
3326	State Center Municipal Light Plant	0.00031087
3327	Story City Municipal Electric Utility	0.00010092
3134	Stratford Municipal Utilities	0.00000000
3135	Strawberry Point Electric Utility	0.00000000
3136	Stuart Municipal Utilities	0.00128625
3328	Sumner Municipal Light Plant	0.00021044
3330	Tipton Municipal Utilities	0.00149179
3332	Traer Municipal Utilities	0.00064764
3337	Villisca Municipal Power Plant	0.00020737
3137	Vinton Municipal Utilities	0.00000000
3138	Wall Lake Municipal Utilities	0.00000000
3338	Waverly Light & Power	0.00072786
3342	Webster City Municipal Utilities	0.00029511
3345	West Bend Municipal Power Plant	0.00088027
3346	West Liberty Municipal Electric Util.	0.00000641
3347	West Point Municipal Utility System	0.00009639
3140	Whittemore Municipal Utilities	0.00000000
3141	Wilton Municipal Light & Power	0.00000000
3351	Winterset Municipal Utilities	0.00133211
3142	Woodbine Municipal Utilities	0.00000000

CO. #	IOU's — ELECTRIC	DELIVERY TAX RATE
7206	Amana Society Service Co.	0.00049316
7248	Eldridge Electric & Water Utilities	0.00062117
7354	Geneseo Municipal Utilities	0.00000000
7270	IES Utilities	0.00237888
7272	Interstate Power	0.00103630
7289	MidAmerican Energy	0.00264702
7296	Nebraska Public Power District	0.00000000
7302	Northwestern Corporation	0.00000000
7305	Omaha Public Power District	0.00120095

REVENUE DEPARTMENT(cont'd)

CO. #	IOU's — ELECTRIC	DELIVERY TAX RATE
7334	Union Electric	0.00000000

CO. #	REC's	DELIVERY TAX RATE
4319	Access Energy Coop	0.00075412
4203	Allamakee Clayton Electric Coop	0.00093586
4208	Atchison-Holt Electric Coop	0.00087070
4214	Boone Valley Electric Coop	0.00090381
4218	Butler County REC	0.00086367
4219	Calhoun County Electric Coop	0.00128039
4220	Cass Electric Coop	0.00004943
4224	Central Iowa Power Coop	0.00000000
4225	Chariton Valley Electric Coop	0.00102029
4235	Clarke Electric Coop	0.00255831
4287	Consumers Energy	0.00209921
4240	Corn Belt Power Coop	0.00000000
4246	East-Central Iowa REC	0.00194547
4247	Eastern Iowa Light & Power	0.00068026
4250	Farmers Electric Coop - Greenfield	0.00237767
4249	Farmers Electric Coop - Kalona	0.00038414
4251	Federated Rural Electric Association	0.00046380
4253	Franklin Rural Electric Coop	0.00076497
4254	Freeborn-Mower Cooperative	0.00093376
4255	Glidden Rural Electric Coop	0.00050787
4259	Grundy County REC	0.00061523
4260	Grundy Electric Cooperative	0.00052127
4261	Guthrie County REC	0.00171195
4262	Hancock Co. REC	0.00122396
4265	Harrison County REC	0.00079472
4266	Hawkeye Tri-County Electric Coop	0.00074169
4223	Heartland Power Coop	0.00034914
4268	Humboldt County REC	0.00099957
4273	Iowa Lakes Electric Coop	0.00061874
4279	Linn County REC	0.00147445
4280	Lyon Rural Electric Coop	0.00064172
4286	Maquoketa Valley Electric Coop	0.00221262
4290	Midland Power Cooperative	0.00111480
4299	Nishnabotna Valley REC	0.00065194
4300	North West Rural Electric Coop	0.00040048
4301	Northwest Iowa Power Coop	0.00000000
4308	Osceola Electric Coop	0.00039419
4310	Pella Cooperative Electric	0.00194961
4313	Pleasant Hill Community Line	0.00027397

REVENUE DEPARTMENT(cont'd)

CO. #	REC's	DELIVERY TAX RATE
4316	Rideta Electric Coop	0.00275586
4320	Sac County Rural Electric Coop	0.00077896
4322	Southern Iowa Electric Coop	0.00134566
4379	Southwest Iowa Service Coop	0.00286067
4329	T.I.P. Rural Electric Coop	0.00207423
4333	Tri County Electric Coop	0.00126163
4336	United Electric Coop	0.00112324
4348	Western Iowa Power Coop	0.00092047
4352	Woodbury County REC	0.00107097
4353	Wright Co. REC	0.00047626

2009 NATURAL GAS DELIVERY TAX RATES BY SERVICE AREA

CO. #	MUNICIPAL GAS	DELIVERY TAX RATE
5021	Bedford Municipal Gas	0.00000000
5215	Brighton Gas	0.00785371
5023	Brooklyn Municipal Gas	0.00000000
5024	Cascade Municipal Gas	0.00000000
5025	Cedar Falls Municipal Gas	0.00000000
5022	City of Bloomfield	0.00000000
5026	City of Clearfield	0.00000000
5028	City of Everly	0.00000000
5029	City of Fairbank	0.00000000
5238	Coon Rapids Municipal Gas	0.00002986
5241	Corning Municipal Gas	0.00011371
5027	Emmetsburg Municipal Gas	0.00000000
5030	Gilmore City Municipal Gas	0.00000000
5031	Graettinger Municipal Gas	0.00000000
5032	Guthrie Center Municipal Gas	0.00000000
5033	Harlan Municipal Gas	0.00000000
5034	Hartley Municipal Gas	0.00000000
5035	Hawarden Municipal Gas	0.00000000
5036	Lake Park Municipal Gas	0.00000000
5275	Lamoni Municipal Gas	0.00072078
5037	Lenox Municipal Gas	0.00000000
5038	Lineville City Natural Gas	0.00000000
5039	Lorimor Municipal Gas	0.00000000
5281	Manilla Municipal Gas	0.00029039
5283	Manning Municipal Gas	0.00015256
5040	Montezuma Natural Gas	0.00000000
5041	Morning Sun Municipal Gas	0.00000000
5042	Moulton Municipal Gas	0.00000000

REVENUE DEPARTMENT(cont'd)

CO. #	MUNICIPAL GAS	DELIVERY TAX RATE
5306	Osage Municipal Gas	0.00003376
5043	Prescott Municipal Gas	0.00000000
5044	Preston Municipal Gas	0.00000000
5055	Remsen Municipal Gas	0.00000000
5317	Rock Rapids Municipal Gas	0.00008259
5056	Rolfe Municipal Gas	0.00000000
5057	Sabula Municipal Gas	0.00000000
5058	Sac City Municipal Gas	0.00000000
5059	Sanborn Municipal Gas	0.00000000
5060	Sioux Center Municipal Gas	0.00000000
5061	Tipton Municipal Gas	0.00000000
5063	Waukee Municipal Gas	0.00000000
5340	Wayland Municipal Gas	0.00311509
5064	Wellman Municipal Gas	0.00000000
5344	West Bend Municipal Gas	0.00002616
5065	Whittemore Municipal Gas	0.00000000
5349	Winfield Municipal Gas	0.00047758
5066	Woodbine Gas	0.00000000

CO. #	IOU's — GAS	DELIVERY TAX RATE
5204	Allerton Gas	0.01964191
5270	IES Utilities	0.00699515
5272	Interstate Power	0.00240925
5289	MidAmerican Energy	0.01018386
5312	Peoples Natural Gas	0.00837820
5335	United Cities Gas	0.00647805

2009 MUNICIPAL ELECTRIC TRANSFER REPLACEMENT TAX RATES

CO. #	COMPANY	REPLACEMENT TAX RATE
3226	Akron Municipal Utilities	0.00948719
3201	Algona Municipal Utilities	0.00309397
3205	Alta Municipal Power Plant	0.00298294
3069	Alta Vista Municipal Utilities	0.00000000
3070	Alton Municipal Light & Power	0.00219077
3207	Ames Municipal Electric System	0.00288463
3071	Anita Municipal Utilities	0.00035373
3227	Anthon Municipal Electric Utility	0.01247526
3209	Atlantic Municipal Utilities	0.00277967
3073	Auburn Municipal Utility	0.02079823

REVENUE DEPARTMENT(cont'd)

CO. #	COMPANY	REPLACEMENT TAX RATE
3074	Aurelia Mun. Electric Utility	*
3211	Bancroft Municipal Utilities	*
3213	Bellevue Municipal Utilities	*
3229	Bloomfield Municipal Electric Utility	0.01907493
3075	Breda Mun. Electric System	0.00000000
3076	Brooklyn Municipal Utilities	0.00000000
3216	Buffalo Municipal Electric System	0.00000000
3217	Burt Municipal Electric Utility	0.00215726
3077	Callender Electric	0.00000000
3078	Carlisle Municipal Utilities	0.00031054
3079	Cascade Municipal Utilities	0.00000000
3221	Cedar Falls Municipal Elec. Utility	0.00294688
3068	City of Afton	0.00357736
3072	City of Aplington	0.00769255
3082	City of Dike	0.00000000
3088	City of Estherville	0.01475534
3089	City of Fairbank	0.00636441
3090	City of Farnhamville	0.00000000
3230	City of Fredericksburg	*
3106	City of Larchwood	0.00000000
3107	City of Lawler	0.00291233
3108	City of Lehigh	0.00000000
3113	City of Marathon	*
3311	City of Pella	0.00292293
3125	City of Renwick	0.00000000
3129	City of Sergeant Bluff	0.00256701
3139	City of Westfield	0.01688826
3143	City of Woolstock	0.00000000
3236	Coggon Municipal Light Plant	0.00000000
3237	Coon Rapids Municipal Utilities	0.00433098
3242	Corning Municipal Utilities	0.00000000
3080	Corwith Municipal Utilities	0.00000000
3243	Danville Municipal Electric Utility	0.00422846
3081	Dayton Light & Power	0.00246427
3244	Denison Municipal Utilities	0.00239820
3245	Denver Municipal Electric Utility	*
3083	Durant Municipal Electric Plant	0.00000000
3084	Dysart Municipal Utilities	0.00350517
3085	Earlville Municipal Utilities	*
3086	Eldridge Electric & Water Utility	*
3087	Ellsworth Municipal Utilities	0.00824596
3091	Fonda Municipal Electric	0.00944122
3252	Fontanelle Municipal Utilities	0.00219455
3092	Forest City Municipal Utilities	0.00401527

REVENUE DEPARTMENT(cont'd)

CO. #	COMPANY	REPLACEMENT TAX RATE
3231	Glidden Municipal Electric Utility	0.00802851
3093	Gowrie Municipal Utilities	0.00293120
3256	Graettinger Municipal Light Plant	0.00270795
3094	Grafton Municipal Utilities	0.00219327
3258	Grand Junction Municipal Utilities	0.00143543
3095	Greenfield Municipal Utilities	0.00256721
3096	Grundy Center Light & Power	0.00114592
3232	Guttenberg Municipal Electric	0.00936004
3263	Harlan Municipal Utilities	0.00247048
3097	Hartley Municipal Utilities	0.00053441
3098	Hawarden Municipal Utility	0.00807171
3099	Hinton Municipal Electric/Water	0.00122615
3267	Hopkinton Municipal Utilities	*
3100	Hudson Municipal Utilities	0.00294018
3101	Independence Light & Power	0.00276459
3271	Indianola Municipal Utilities	0.00349679
3102	Keosauqua Light & Power	0.00000000
3103	Kimballton Municipal Utilities	*
3104	Lake Mills Municipal Utilities	0.00340262
3105	Lake Park Municipal Utilities	0.00241439
3233	Lake View Municipal Utilities	0.00846100
3274	Lamoni Municipal Utilities	0.00187523
3276	LaPorte City Utilities	0.00223730
3277	Laurens Municipal Utilities	0.00532642
3109	Lenox Mun. Light & Power	0.00044965
3110	Livermore Municipal Utilities	0.00974078
3111	Long Grove Mun. Elec./Water	0.00000000
3282	Manilla Municipal Elec. Utilities	*
3112	Manning Municipal Electric	0.00255249
3284	Mapleton Municipal Utilities	0.00841887
3285	Maquoketa Municipal Electric	0.00167634
3288	McGregor Municipal Utilities	0.00156834
3291	Milford Municipal Utilities	0.00000000
3114	Montezuma Municipal Light & Power	0.00152769
3115	Mount Pleasant Municipal Utilities	0.00129526
3293	Muscatine Municipal Utilities	0.00000000
3116	Neola Light & Water System	0.00000000
3297	New Hampton Municipal Light Plant	*
3298	New London Municipal Utility	0.00417888
3304	Ogden Municipal Utilities	0.00227073
3234	Onawa Municipal Utilities	0.00288387
3117	Orange City Municipal Utilities	0.00222538
3118	Orient Municipal Utilities	*
3307	Osage Municipal Utilities	0.00079204

REVENUE DEPARTMENT(cont'd)

CO. #	COMPANY	REPLACEMENT TAX RATE
3309	Panora Municipal Electric Utility	*
3119	Paton Municipal Utilities	*
3120	Paullina Municipal Utilities	0.01440267
3121	Pocahontas Municipal Utilities	0.00706930
3122	Preston Municipal Utilities	0.00557864
3315	Primghar Municipal Light Plant	0.00000000
3123	Readlyn Municipal Utilities	0.00000000
3124	Remsen Municipal Utilities	0.00234430
3318	Rock Rapids Municipal Utilities	0.00423701
3126	Rockford Municipal Light Plant	0.00000000
3127	Sabula Municipal Utilities	0.00518103
3128	Sanborn Municipal Light & Plant	0.00223142
3130	Shelby Municipal Utilities	*
3131	Sibley Municipal Utilities	0.00000000
3321	Sioux Center Municipal Utilities	0.00254532
3324	Spencer Municipal Utilities	0.00323227
3132	Stanhope Municipal Utilities	0.01357254
3360	Stanton Municipal Utilities	0.00171733
3326	State Center Municipal Light Plant	0.00179769
3327	Story City Municipal Electric Utility	*
3134	Stratford Municipal Utilities	0.00623784
3135	Strawberry Point Electric Utility	0.00000000
3136	Stuart Municipal Utilities	0.00174008
3328	Sumner Municipal Light Plant	0.00036060
3330	Tipton Municipal Utilities	*
3332	Traer Municipal Utilities	0.00610088
3337	Villisca Municipal Power Plant	0.00000000
3137	Vinton Municipal Utilities	0.00453813
3138	Wall Lake Municipal Utilities	0.00630720
3338	Waverly Light & Power	0.00548651
3342	Webster City Municipal Utilities	0.00303534
3345	West Bend Municipal Power Plant	0.00227259
3346	West Liberty Municipal Electric Util.	*
3347	West Point Municipal Utility System	0.00276198
3140	Whittemore Municipal Utilities	*
3141	Wilton Municipal Light & Power	0.00000000
3351	Winterset Municipal Utilities	0.00455774
3142	Woodbine Municipal Utilities	0.00123574

*No rate provided to the Department by the Municipal

REVENUE DEPARTMENT(cont'd)

2009 MUNICIPAL NATURAL GAS TRANSFER REPLACEMENT TAX RATES

CO. #	COMPANY	REPLACEMENT TAX RATE
5021	Bedford Municipal Gas	0.07605853
5215	Brighton Gas	0.00000000
5023	Brooklyn Municipal Gas	0.00000000
5024	Cascade Municipal Gas	0.00000000
5025	Cedar Falls Municipal Gas	0.00659429
5022	City of Bloomfield	0.02961547
5026	City of Clearfield	*
5028	City of Everly	0.00000000
5029	City of Fairbank	0.00000000
5238	Coon Rapids Municipal Gas	0.00427009
5241	Corning Municipal Gas	*
5027	Emmetsburg Municipal Gas	0.04865654
5030	Gilmore City Municipal Gas	*
5031	Graettinger Municipal Gas	0.03821071
5032	Guthrie Center Municipal Gas	0.00000000
5033	Harlan Municipal Gas	0.96220664
5034	Hartley Municipal Gas	0.01360186
5035	Hawarden Municipal Gas	0.08838541
5036	Lake Park Municipal Gas	0.01098390
5275	Lamoni Municipal Gas	0.00645759
5037	Lenox Municipal Gas	0.00000000
5038	Lineville City Natural Gas	*
5039	Lorimor Municipal Gas	*
5281	Manilla Municipal Gas	*
5283	Manning Municipal Gas	0.01310865
5040	Montezuma Natural Gas	0.00000000
5041	Morning Sun Municipal Gas	0.00000000
5042	Moulton Municipal Gas	0.07082853
5369	Orange City Municipal Gas	0.00027876
5306	Osage Municipal Gas	0.02650451
5043	Prescott Municipal Gas	*
5044	Preston Municipal Gas	0.05929061
5055	Remsen Municipal Gas	0.37820142
5317	Rock Rapids Municipal Gas	0.01927005
5056	Rolfe Municipal Gas	*
5057	Sabula Municipal Gas	0.03748797
5058	Sac City Municipal Gas	0.05854801
5059	Sanborn Municipal Gas	0.04273250
5060	Sioux Center Municipal Gas	0.01416023
5061	Tipton Municipal Gas	0.00278238
5067	Wall Lake Municipal Gas	0.00000000
5063	Waukee Municipal Gas	*

REVENUE DEPARTMENT(cont'd)

CO. #	COMPANY	REPLACEMENT TAX RATE
5340	Wayland Municipal Gas	0.42483334
5064	Wellman Municipal Gas	0.03232780
5344	West Bend Municipal Gas	0.03232001
5065	Whittemore Municipal Gas	*
5349	Winfield Municipal Gas	0.00000000
5066	Woodbine Gas	0.41846767

*No rate provided to the Department by the Municipal

ARC 8367B**SOIL CONSERVATION DIVISION[27]****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 161A.73(3)“d” and 161C.2(4), the Division of Soil Conservation hereby gives Notice of Intended Action to rescind Chapter 13, “Organic Nutrient Management Program,” Chapter 14, “Levee Reconstruction and Repair Program,” and Chapter 15, “Soil Practices Loan Program,” Iowa Administrative Code.

The proposed amendments eliminate these programs which have not been funded or used by the Division for several years.

Any interested persons may make written comments or suggestions on the proposed amendments on or before 4:30 p.m. on January 6, 2010. Written comments should be sent to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa; or faxed to (515)281-6236. E-mail comments may be sent to Margaret.Thomson@IowaAgriculture.gov.

No waiver provision is included in the proposed amendments.

These amendments are intended to implement Iowa Code sections 161A.73(3)“d” and 161C.2(4).

The following amendments are proposed.

ITEM 1. Rescind and reserve **27—Chapter 13**.

ITEM 2. Rescind and reserve **27—Chapter 14**.

ITEM 3. Rescind and reserve **27—Chapter 15**.

ARC 8376B**UTILITIES DIVISION[199]****Notice of Intended Action**

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

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

Pursuant to Iowa Code sections 17A.4, 476.1, and 476.2, the Utilities Board (Board) gives notice that on November 18, 2009, the Board issued an order in Docket No. RMU-2009-0011, In re: Rescission

UTILITIES DIVISION[199](cont'd)

of Outage Notification Requirements for Telecommunications Providers [199 IAC 22.2(8)], “Order Commencing Rule Making.”

The Board is proposing to rescind the service outage notification requirements for telecommunications providers based upon its experience with the current requirements, which do not provide the early notification of significant outages that the Board considers necessary. The current requirements mirror the requirements established by the Federal Communications Commission (FCC), and these FCC requirements have not provided the Board with the early notification of significant telecommunications outages that is necessary to help coordinate emergency responders and other governmental agencies during an emergency. The order containing the background and support for this rule making can be found on the Board’s Web site, www.state.ia.us/iub.

Pursuant to Iowa Code section 17A.4(1)“a” and “b,” any interested person may file a written statement of position pertaining to the proposed amendment. The statement must be filed on or before January 5, 2010. The statement should be filed electronically through the Board’s Electronic Filing System (EFS). Instructions for making an electronic filing can be found on the EFS Web site at <http://efs.iowa.gov>. Any person who does not have access to the Internet may file comments on paper pursuant to 199 IAC 14.4(5). An original and ten copies of paper comments shall be filed. Both electronic and written filings shall comply with the format requirements in 199 IAC 2.2(2) and clearly state the author’s name and address and make specific reference to this docket. All paper communications should be directed to the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

No oral presentation is scheduled at this time. Pursuant to Iowa Code section 17A.4(1)“b,” an oral presentation may be requested or the Board on its own motion, after reviewing the comments, may determine that an oral presentation should be scheduled.

This amendment is intended to implement Iowa Code sections 17A.4, 476.2, 476.1A, and 476.1B.

The following amendment is proposed.

Rescind and reserve subrule **22.2(8)**.

ARC 8377B**PUBLIC HEALTH DEPARTMENT[641]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 139A.8, the Department of Public Health hereby amends Chapter 7, “Immunization and Immunization Education: Persons Attending Elementary or Secondary Schools, Licensed Child Care Centers, or Institutions of Higher Education,” Iowa Administrative Code.

The rules in Chapter 7 describe immunization requirements for attendance at elementary or secondary schools or licensed child care centers and requirements for immunization education of students entering institutions of higher education.

These amendments make a change to the childhood vaccination schedule, specifically affecting the polio vaccine, based upon a new recommendation from the Centers for Disease Control and Prevention (CDC). The amendments also add a new use of the immunization registry, which allows the Department to track inventory or utilization of pharmaceutical agents to prepare for or respond to an emergency event.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable because of the need to implement the new childhood vaccination schedule.

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of the amendments should be waived and these amendments should be made effective upon filing, as they confer a benefit on children.

The State Board of Health adopted these amendments on November 18, 2009.

These amendments are also published herein under Notice of Intended Action as **ARC 8399B** to allow public comment. This emergency filing permits the Department to be aligned with the recommendation of the CDC for the childhood vaccination schedule and permits the Department to utilize the registry to track inventory of pharmaceutical agents in preparing for an emergency event.

These amendments became effective November 18, 2009.

These amendments are intended to implement Iowa Code section 139A.8.

The following amendments are adopted.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 1. Amend subrule 7.4(1) by rescinding the Immunization Requirements table and adopting the following **new** table in lieu thereof:

IMMUNIZATION REQUIREMENTS

Applicants enrolled or attempting to enroll shall have received the following vaccines in accordance with the doses and age requirements listed below. If, at any time, the age of the child is between the listed ages, the child must have received the number of doses in the "Total Doses Required" column.			
Institution	Age	Vaccine	Total Doses Required
Licensed Child Care Center	Less than 4 months of age	This is not a recommended administration schedule, but contains the minimum requirements for participation in licensed child care. Routine vaccination begins at 2 months of age.	
	4 months through 5 months of age	Diphtheria/Tetanus/Pertussis	1 dose
		Polio	1 dose
		<i>haemophilus influenzae</i> type B	1 dose
		Pneumococcal	1 dose
	6 months through 11 months of age	Diphtheria/Tetanus/Pertussis	2 doses
		Polio	2 doses
		<i>haemophilus influenzae</i> type B	2 doses
		Pneumococcal	2 doses
	12 months through 18 months of age	Diphtheria/Tetanus/Pertussis	3 doses
		Polio	2 doses
		<i>haemophilus influenzae</i> type B	2 doses; or 1 dose received when the applicant is 15 months of age or older.
		Pneumococcal	3 doses if the applicant received 1 or 2 doses before 12 months of age; or 2 doses if the applicant has not received any previous doses or has received 1 dose on or after 12 months of age.
	19 months through 23 months of age	Diphtheria/Tetanus/Pertussis	4 doses
		Polio	3 doses
		<i>haemophilus influenzae</i> type B	3 doses, with the final dose in the series received on or after 12 months of age, or 1 dose received when the applicant is 15 months of age or older.
		Pneumococcal	4 doses; or 3 doses if the applicant received 1 or 2 doses before 12 months of age; or 2 doses if the applicant has not received any previous doses or has received 1 dose on or after 12 months of age.
		Measles/Rubella ¹	1 dose of measles/rubella-containing vaccine received on or after 12 months of age; or the applicant demonstrates a positive antibody test for measles and rubella from a U.S. laboratory.
	24 months and older	Varicella	1 dose received on or after 12 months of age if the applicant was born on or after September 15, 1997, unless the applicant has had a reliable history of natural disease.
		Diphtheria/Tetanus/Pertussis	4 doses
		Polio	3 doses
		<i>haemophilus influenzae</i> type B	3 doses, with the final dose in the series received on or after 12 months of age; or 1 dose received when the applicant is 15 months of age or older. Hib vaccine is not indicated for persons 60 months of age or older.
		Pneumococcal	4 doses if the applicant received 3 doses before 12 months of age; or 3 doses if the applicant received 2 doses before 12 months of age; or 2 doses if the applicant received 1 dose before 12 months of age or received 1 dose between 12 and 23 months of age; or 1 dose if no doses had been received prior to 24 months of age. Pneumococcal vaccine is not indicated for persons 60 months of age or older.
	Measles/Rubella ¹	1 dose of measles/rubella-containing vaccine received on or after 12 months of age; or the applicant demonstrates a positive antibody test for measles and rubella from a U.S. laboratory.	
Varicella	1 dose received on or after 12 months of age if the applicant was born on or after September 15, 1997, unless the applicant has had a reliable history of natural disease.		

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Applicants enrolled or attempting to enroll shall have received the following vaccines in accordance with the doses and age requirements listed below. If, at any time, the age of the child is between the listed ages, the child must have received the number of doses in the "Total Doses Required" column.			
Institution	Age	Vaccine	Total Doses Required
Elementary or Secondary School (K-12)	4 years of age and older	Diphtheria/Tetanus/Pertussis ^{3,4}	3 doses, with at least 1 dose of diphtheria/tetanus/pertussis-containing vaccine received on or after 4 years of age if the applicant was born on or before September 15, 2000; or 4 doses, with at least 1 dose of diphtheria/tetanus/pertussis-containing vaccine received on or after 4 years of age if the applicant was born after September 15, 2000, but before September 15, 2003; or 5 doses with at least 1 dose of diphtheria/tetanus/pertussis-containing vaccine received on or after 4 years of age if the applicant was born on or after September 15, 2003. ² DTaP is not indicated for persons 7 years of age and older, therefore, a tetanus-and diphtheria-containing vaccine should be used.
		Polio ⁶	3 doses, with at least 1 dose received on or after 4 years of age if the applicant was born on or before September 15, 2003; or 4 doses, with at least 1 dose received on or after 4 years of age if the applicant was born after September 15, 2003. ⁵
		Measles/Rubella ¹	2 doses of measles/rubella-containing vaccine; the first dose shall have been received on or after 12 months of age; the second dose shall have been received no less than 28 days after the first dose; or the applicant demonstrates a positive antibody test for measles and rubella from a U.S. laboratory.
		Hepatitis B	3 doses if the applicant was born on or after July 1, 1994.
		Varicella	1 dose received on or after 12 months of age if the applicant was born on or after September 15, 1997, but born before September 15, 2003, unless the applicant has had a reliable history of natural disease; or 2 doses received on or after 12 months of age if the applicant was born on or after September 15, 2003, unless the applicant has a reliable history of natural disease. ⁷

¹ Mumps vaccine may be included in measles/rubella-containing vaccine.

² The 5th dose of DTaP is not necessary if the 4th dose was administered on or after 4 years of age.

³ Applicants 7 through 18 years of age who received their 1st dose of diphtheria/tetanus/pertussis-containing vaccine before 12 months of age should receive a total of 4 doses, with one of those doses administered on or after 4 years of age.

⁴ Applicants 7 through 18 years of age who received their 1st dose of diphtheria/tetanus/pertussis-containing vaccine at 12 months of age or older should receive a total of 3 doses, with one of those doses administered on or after 4 years of age.

⁵ If an applicant received an all-inactivated poliovirus (IPV) or all-oral poliovirus (OPV) series, a 4th dose is not necessary if the 3rd dose was administered on or after 4 years of age.

⁶ If both OPV and IPV were administered as part of the series, a total of 4 doses are required, regardless of the applicant's current age.

⁷ Administer 2 doses of varicella vaccine, at least 3 months apart, to applicants less than 13 years of age. Do not repeat the 2nd dose if administered 28 days or greater from the 1st dose. Administer 2 doses of varicella vaccine to applicants 13 years of age or older at least 4-weeks apart. The minimum interval between the 1st and 2nd dose of varicella for an applicant 13 years of age or older is 28 days.

ITEM 2. Amend subrule 7.11(2) as follows:

7.11(2) Purpose and permitted uses of registry.

a. The registry shall consist of immunization information, including identifying and demographic data, to allow enrolled users to maintain and access a database of immunization histories for purposes of ensuring that patients are fully immunized.

b. The registry may be used to track inventory or utilization of pharmaceutical agents identified by the department to prepare for or respond to an emergency event.

c. Enrolled users shall not use information obtained from the registry to market services to patients or nonpatients, to assist in bill collection services, or to locate or identify patients or nonpatients for any purpose other than those expressly provided in this rule.

[Filed Emergency 11/18/09, effective 11/18/09]

[Published 12/16/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/09.

ARC 8369B**DENTAL BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Dental Board hereby amends Chapter 1, "Administration," Chapter 16, "Prescribing, Administering, and Dispensing Drugs," Chapter 20, "Dental Assistants," Chapter 22, "Dental Assistant Radiography Qualification," Chapter 25, "Continuing Education," Chapter 27, "Standards of Practice and Principles of Professional Ethics," Chapter 29, "Deep Sedation/General Anesthesia, Conscious Sedation and Nitrous Oxide Inhalation Analgesia," Chapter 30, "Discipline," and Chapter 51, "Contested Cases," Iowa Administrative Code.

Items 1 and 4 update supervision definitions for consistency with Board rules and state law. The definition of "inactive status" has also been changed to clarify existing procedures.

Item 2 adopts a new definition of "overpayments." The Board is unable to process refunds in the state accounting system, which has resulted in delays in processing applications and renewals.

Items 3 and 16 specify that a licensee may not self-prescribe, self-administer or self-dispense controlled substances or tramadol, or prescribe, administer, or dispense these medications to members of the licensee's immediate family.

Item 6 clarifies that graduates of accredited dental assisting programs are eligible for dental assistant registration.

Item 8 clarifies that a person who participates in dental radiography must be licensed by the Board, be currently registered as a dental assistant or hold an active nursing license, and have an active qualification in dental radiography.

Item 9 clarifies courses that may be claimed by licensees or registrants for continuing education credit.

Items 10 and 11 clarify the existing procedures used to place a license or registration on inactive status and to reinstate an inactive license or registration.

Item 13 requires that a dentist provide radiographs that are of diagnostic quality when transferring patient records.

Items 14 and 15 specify standards for use and record-keeping requirements for nitrous oxide inhalation analgesia.

Item 18 changes the quarterly fee charged to cover the Board's expenses associated with monitoring a licensee's or registrant's compliance with the settlement agreement if the licensee or registrant agrees to the provision as part of a settlement agreement to resolve a contested case.

These amendments are subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7. However, pursuant to 650—27.12(17A,147,153,272C) and 650—30.4(147,153,272C), rules in Chapters 27 and 30 are not subject to waiver.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 12, 2009, as **ARC 8044B**. A public hearing on the amendments was held on September 1, 2009. Oral comments suggesting minor revisions were received. One change has been made to the Noticed amendments. Item 5 amending paragraph 20.6(1)"a" was revised to clarify that a dentist supervising a person performing dental assistant duties must notify the Board in writing of such employment within seven days of the time the dental assistant begins work. Paragraph 20.6(1)"a" now reads as follows:

"a. A dentist supervising a person performing dental assistant duties must notify the board in writing of such employment within seven days of the time the dental assistant begins work."

These amendments were approved at the October 27, 2009, regular meeting of the Iowa Dental Board.

These amendments are intended to implement Iowa Code chapters 153 and 272C.

DENTAL BOARD[650](cont'd)

These amendments will become effective on January 20, 2010.

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 1, 16, 20, 22, 25, 27, 29, 30, 51] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 8044B**, IAB 8/12/09.

[Filed 11/13/09, effective 1/20/10]

[Published 12/16/09]

[For replacement pages for IAC, see IAC Supplement 12/16/09.]

ARC 8406B

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 11, "Complaints, Investigations, Contested Case Hearings," Iowa Administrative Code.

The amendment changes the manner by which a respondent receives a copy of a complaint filed with the Board. Under current board practice, the respondent receives a copy of the complaint at the beginning stage of the investigation. With this change, the respondent will receive a copy only after the Board has found probable cause.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 9, 2009, as **ARC 8143B**. Public hearings on the amendment were held on Tuesday, September 29, Wednesday, September 30, and Thursday, October 1, 2009. Twelve people attended the public hearings. Ninety-five written comments were received. A total of 107 participated during the notification period. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective January 20, 2010.

The following amendment is adopted.

Amend subrules 11.4(3) to 11.4(5) as follows:

11.4(3) Required copies—place and time of filing the complaint.

a. ~~In addition to the original, a sufficient number of copies~~ A copy of the complaint must be filed ~~to enable service of one copy to each of the respondents and retention of 12 copies for use by~~ with the board.

b. The complaint must be delivered personally or by mail to the office of the board. The current office address is the Grimes State Office Building, Third Floor, Des Moines, Iowa 50319-0147.

c. Timely filing is required in order to ensure the availability of witnesses and to avoid initiation of an investigation under conditions which may have been significantly altered during the period of delay. The conduct upon which it is based must have occurred or been discovered by the complainant within three years of filing of the complaint unless good cause is shown for an extension of this limitation.

~~**11.4(4) Service of complaint.** The board or a designee of the board shall serve a copy of the complaint upon the respondent by one of the following means:~~

~~*a.* Personal service as provided in the Iowa Rules of Civil Procedure; or~~

~~*b.* Certified mail, return receipt requested; or~~

~~*c.* First-class mail; or~~

~~*d.* Publication, as provided in the Iowa Rules of Civil Procedure.~~

11.4(5) 11.4(4) Amendment or withdrawal of complaint. A complaint or any specification thereof may be amended or withdrawn by the complainant at any time. The parties to a complaint may mutually agree to the resolution of the complaint at any time in the proceeding prior to issuance of a final order by the board. The resolution must be committed to a written agreement and filed with the board. The

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

agreement is not subject to approval by the board, but shall be acknowledged by the board and may be incorporated into an order of the board.

11.4(5) *Form and content of the complaint notice to the respondent.*

a. The complaint notice to the respondent shall be in writing.

b. The complaint notice to the respondent shall contain the following information:

(1) The full name, address, and telephone number, if known, of the respondent.

(2) A concise statement of the facts which clearly and specifically apprises the respondent of the details of the alleged violation of the criteria of professional practices or the criteria of competent performance.

(3) An explanation of the facts underlying the complaint.

(4) A citation to the specific rule or law which the complainant alleges has been violated.

[Filed 11/25/09, effective 1/20/10]

[Published 12/16/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/09.

ARC 8400B

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 13, "Issuance of Teacher Licenses and Endorsements," Iowa Administrative Code.

After visiting with staff from the Department of Education, the Board determined that applicants, at some point in time, will not be able to prove their highly qualified teacher (HQT) status. At that point, the only option available to applicants would be testing. The amendment addresses this need to provide a way for all applicants to prove their HQT status.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 9, 2009, as **ARC 8125B**. A public hearing on the amendment was held on Wednesday, September 30, 2009. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective January 20, 2010.

The following amendment is adopted.

Adopt the following **new** subparagraph **13.26(2)"b"(4)**:

(4) Highly qualified teacher (HQT) status. Applicants from non-Iowa institutions who have completed the requirements for this endorsement must verify their HQT status. The board shall determine the test and the minimum passing score for HQT status. Verification must be provided through one of the following:

1. Written verification from the department of education in the state in which the applicant completed the elementary teacher preparation program that the applicant has achieved HQT status in that state; or

2. Written verification from the department of education in the state where the applicant is currently teaching that the applicant has achieved HQT status in that state; or

3. Submission of the official test score report indicating the applicant has met the qualifying score for licensure in the state in which the applicant completed the elementary teacher preparation program; or

4. Obtaining the qualifying score set by the Iowa board of educational examiners if the applicant has not been teaching within the last five years and completion of a teacher preparation program prior to enactment of the federal highly qualified teacher legislation (June 2006). This option may also be utilized by applicants from outside the United States.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

5. For applicants who have completed the requirements for one of the Iowa elementary endorsements, verification of HQT status by meeting the minimum score set by the Iowa board of educational examiners if the applicant has not been teaching within the last five years and completion of a teacher preparation program prior to enactment of the federal highly qualified teacher legislation (June 2006). This option may also be utilized by applicants who have been teaching outside the United States.

[Filed 11/25/09, effective 1/20/10]

[Published 12/16/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/09.

ARC 8401B**EDUCATIONAL EXAMINERS BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 13, "Issuance of Teacher Licenses and Endorsements," Iowa Administrative Code.

After visiting with staff from the Department of Education, the Board determined that applicants, at some point in time, will not be able to prove their highly qualified teacher (HQT) status. At that point, the only option available to applicants would be testing. The amendment addresses this need to provide a way for all applicants to prove their HQT status.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 9, 2009, as **ARC 8121B**. A public hearing on the amendment was held on Wednesday, September 30, 2009. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective January 20, 2010.

The following amendment is adopted.

Adopt the following new subparagraph **13.26(3)"b"(4)**:

(4) Highly qualified teacher (HQT) status. Applicants from non-Iowa institutions who have completed the requirements for this endorsement must verify their HQT status. The board shall determine the test and the minimum passing score for HQT status. Verification must be provided through one of the following:

1. Written verification from the department of education in the state in which the applicant completed the elementary teacher preparation program that the applicant has achieved HQT status in that state; or

2. Written verification from the department of education in the state where the applicant is currently teaching that the applicant has achieved HQT status in that state; or

3. Submission of the official test score report indicating the applicant has met the qualifying score for licensure in the state in which the applicant completed the elementary teacher preparation program; or

4. Obtaining the qualifying score set by the Iowa board of educational examiners if the applicant has not been teaching within the last five years and completion of a teacher preparation program prior to enactment of the federal highly qualified teacher legislation (June 2006). This option may also be utilized by applicants from outside the United States.

5. For applicants who have completed the requirements for one of the Iowa elementary endorsements, verification of HQT status by meeting the minimum score set by the Iowa board of educational examiners if the applicant has not been teaching within the last five years and completion of

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

a teacher preparation program prior to enactment of the federal highly qualified teacher legislation (June 2006). This option may also be utilized by applicants who have been teaching outside the United States.

[Filed 11/25/09, effective 1/20/10]

[Published 12/16/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/09.

ARC 8402B**EDUCATIONAL EXAMINERS BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 13, "Issuance of Teacher Licenses and Endorsements," Iowa Administrative Code.

After visiting with staff from the Department of Education, the Board determined that applicants, at some point in time, will not be able to prove their highly qualified teacher (HQT) status. At that point, the only option available to applicants would be testing. The amendment addresses this need to provide a way for all applicants to prove their HQT status.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 9, 2009, as **ARC 8126B**. A public hearing on the amendment was held on Wednesday, September 30, 2009. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective January 20, 2010.

The following amendment is adopted.

Adopt the following new subparagraph **13.26(4)"b"(4)**:

(4) Highly qualified teacher (HQT) status. Applicants from non-Iowa institutions who have completed the requirements for this endorsement must verify their HQT status. The board shall determine the test and the minimum passing score for HQT status. Verification must be provided through one of the following:

1. Written verification from the department of education in the state in which the applicant completed the elementary teacher preparation program that the applicant has achieved HQT status in that state; or

2. Written verification from the department of education in the state where the applicant is currently teaching that the applicant has achieved HQT status in that state; or

3. Submission of the official test score report indicating the applicant has met the qualifying score for licensure in the state in which the applicant completed the elementary teacher preparation program; or

4. Obtaining the qualifying score set by the Iowa board of educational examiners if the applicant has not been teaching within the last five years and completion of a teacher preparation program prior to enactment of the federal highly qualified teacher legislation (June 2006). This option may also be utilized by applicants from outside the United States.

5. For applicants who have completed the requirements for one of the Iowa elementary endorsements, verification of HQT status by meeting the minimum score set by the Iowa board of educational examiners if the applicant has not been teaching within the last five years and completion of a teacher preparation program prior to enactment of the federal highly qualified teacher legislation (June 2006). This option may also be utilized by applicants who have been teaching outside the United States.

[Filed 11/25/09, effective 1/20/10]

[Published 12/16/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/09.

ARC 8403B**EDUCATIONAL EXAMINERS BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 13, "Issuance of Teacher Licenses and Endorsements," Iowa Administrative Code.

A representative group of Iowa high school agriculture teachers and professors in the Iowa State University Agriculture Education Department met to examine the current requirements for the agriculture endorsements and to propose amendments to those requirements. Agriculture has changed a great deal since the agriculture endorsements were adopted; therefore, the amendment updates the requirements for the agriculture endorsement.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 9, 2009, as **ARC 8129B**. A public hearing on the amendment was held on Wednesday, September 30, 2009. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective January 20, 2010.

The following amendment is adopted.

Amend subrule 13.28(1) as follows:

13.28(1) Agriculture. 5-12. Completion of 24 semester credit hours in agriculture and agriculture education to include coursework in agronomy, animal science, agricultural mechanics, and agricultural economies.:

- a. Foundations of vocational and career education.
- b. Planning and implementing courses and curriculum.
- c. Methods and techniques of instruction to include evaluation of programs and students.
- d. Coordination of cooperative education programs.
- e. Coursework in each of the following areas and at least three semester credit hours in five of the following areas:

- (1) Agribusiness systems.
- (2) Power, structural, and technical systems.
- (3) Plant systems.
- (4) Animal systems.
- (5) Natural resources systems.
- (6) Environmental service systems.
- (7) Food products and processing systems.

[Filed 11/25/09, effective 1/20/10]

[Published 12/16/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/09.

ARC 8404B**EDUCATIONAL EXAMINERS BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 17, "Career and Technical Endorsements and Licenses," Iowa Administrative Code.

A representative group of Iowa high school agriculture teachers and professors in the Iowa State University Agriculture Education Department met to examine the current requirements for the agriculture endorsements and to propose amendments to those requirements. Agriculture has changed a great deal

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

since the career and technical agricultural sciences and agribusiness endorsement was adopted; therefore, the amendment updates the requirements for the agricultural sciences and agribusiness endorsement.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 9, 2009, as **ARC 8130B**. A public hearing on the amendment was held on Wednesday, September 30, 2009. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective January 20, 2010.

The following amendment is adopted.

Amend paragraph 17.1(1)“a” as follows:

a. Agricultural sciences and agribusiness. ~~Completion of 24 semester hours in agricultural business management or economics, agricultural mechanics, agronomy, animal science, and horticulture. One thousand hours of work experience in one or more agriculture-related occupations. Coursework in agriculture education to include foundations of career and technical education, planning and implementing courses and curriculum, methods and techniques of instruction, evaluation of programs and students, and in the coordination of cooperative experience education programs.~~

(1) Completion of 24 semester credit hours in agriculture and agriculture education to include:

1. Foundations of vocational and career education.

2. Planning and implementing courses and curriculum.

3. Methods and techniques of instruction to include evaluation of programs and students.

4. Coordination of cooperative education programs.

5. Coursework in each of the following areas and at least 3 semester credit hours in five of the following areas:

- Agribusiness systems;
- Power, structural, and technical systems;
- Plant systems;
- Animal systems;
- Natural resources systems;
- Environmental service systems; and
- Food products and processing systems.

(2) One thousand hours of work experience in one or more of the areas listed in 17.1(1)“e.”

[Filed 11/25/09, effective 1/20/10]

[Published 12/16/09]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/09.

ARC 8405B

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 24, “Paraeducator Certificates,” Iowa Administrative Code.

The amendment adds an area of concentration for paraeducators who assist speech-language pathologists (SLP). The SLP area of concentration in Iowa’s paraeducator certification system is not a required area of concentration for speech-language pathology paraeducators; it will be an optional certificate.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 9, 2009, as **ARC 8117B**. A public hearing on the amendment was held on Wednesday, September 30, 2009. No one attended the public hearing, and one written comment was received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

This amendment will become effective January 20, 2010.

The following amendment is adopted.

Adopt the following **new** subrule 24.4(6):

24.4(6) *Speech-language pathology (SLP)—prekindergarten through grade 12.* The speech-language pathology paraeducator shall successfully complete the following list of competencies so that, under the direction and supervision of a qualified speech-language pathologist, the paraeducator will be able to:

- a. Understand the roles and responsibilities of the speech-language pathology paraeducator.
- b. Demonstrate a basic understanding of the four areas of communication, including articulation, language, fluency, and voice, and how they occur through typical development.
- c. Demonstrate an understanding of articulation/phonological disabilities.
- d. Demonstrate an understanding of language disabilities.
- e. Use appropriate instructional procedures and reinforcement techniques when working with children with articulation/phonological disabilities.
- f. Use appropriate instructional procedures and reinforcement techniques when working with children with language disabilities.
- g. Gather information as directed by the speech-language pathologist regarding the performance of children, including recording and charting responses.

[Filed 11/25/09, effective 1/20/10]

[Published 12/16/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/09.

ARC 8386B

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby rescinds Chapter 19, "Attendance Centers," Iowa Administrative Code.

The Iowa Supreme Court recently ruled that this chapter of rules is void. See Wallace, et al., v. Iowa State Board of Education, No. 07-0943 (Iowa Supreme Court; July 31, 2009). The rules in Chapter 19, having been declared void, should be rescinded.

An agencywide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action was published in the October 7, 2009, Iowa Administrative Bulletin as **ARC 8186B**. Public comments were allowed until 4:30 p.m. on October 27, 2009. No written or oral comments were received.

This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code section 256.7(5).

This amendment shall become effective January 20, 2010.

The following amendment is adopted.

Rescind and reserve **281—Chapter 19**.

[Filed 11/21/09, effective 1/20/10]

[Published 12/16/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/09.

ARC 8387B**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 41, "Special Education," Iowa Administrative Code.

These amendments make technical corrections to Chapter 41 resulting from revisions to the chapter in 2007, make technical corrections required by federal regulatory changes in 2007 and 2008, make clarifying changes regarding the role of general education, and make clarifying changes concerning child find and eligibility determinations.

An agencywide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action was published in the August 26, 2009, Iowa Administrative Bulletin as **ARC 8050B**. A public hearing was held at 16 sites over the Iowa Communications Network (ICN) on October 13, 2009, and public comments were allowed until 4:30 p.m. on October 13, 2009.

One person attended the public hearing. Two written comments were received. One comment, submitted by an AEA director of special education, was entirely favorable to the rule making. The other comment was submitted by the sole person to attend the public hearing, who is the director of a nonprofit organization that assists parents of children with disabilities, and was also entirely favorable to the rule making. The commenter representing the nonprofit organization expressed concern that, in implementation, public agencies will not sufficiently honor parental requests to evaluate a child. The Department has reviewed this concern and concludes that the amendments adopted herein adequately address it. A public agency must seek parental consent to evaluate whenever a disability is suspected, and a parent may request an evaluation at any time. A public agency, however, need not conduct an evaluation when requested by a parent if the public agency does not have information that would cause it to suspect the child has a disability; in that case, the public agency must provide a parent with prior written notice that an evaluation will not be conducted.

These amendments are identical to those published under Notice.

These amendments are intended to implement the Individuals with Disabilities Education Act (20 U.S.C. §§ 1400-ff as implemented by 34 CFR Part 300) and Iowa Code chapter 256B.

These amendments shall become effective January 20, 2010.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 41] is being omitted. These amendments are identical to those published under Notice as **ARC 8050B**, IAB 8/26/09.

[Filed 11/21/09, effective 1/20/10]

[Published 12/16/09]

[For replacement pages for IAC, see IAC Supplement 12/16/09.]

ARC 8382B**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 59, "Gifted and Talented Programs," Iowa Administrative Code.

This chapter is being revised to conform to changes made in the program funding in Iowa Code chapter 257 (as reflected in Items 4, 6, and 7). The changes in Items 1, 2, 5, 8, 10, and 11 are nonsubstantive improvements to the chapter. Some changes in Item 7 and Item 9 clarify financial management of these funds consistent with 281—Chapter 98 and Iowa Code chapters 11 and 256.

An agencywide waiver provision is provided in 281—Chapter 4.

EDUCATION DEPARTMENT[281](cont'd)

Notice of Intended Action was published in the August 26, 2009, Iowa Administrative Bulletin as **ARC 8052B**. A public hearing was held on September 15, 2009, and public comments were allowed until 4:30 p.m. on September 15, 2009. No written or oral comments were received.

These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code sections 257.42 to 257.49.

These amendments shall become effective January 20, 2010.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [59.1 to 59.8] is being omitted. These amendments are identical to those published under Notice as **ARC 8052B**, IAB 8/26/09.

[Filed 11/21/09, effective 1/20/10]

[Published 12/16/09]

[For replacement pages for IAC, see IAC Supplement 12/16/09.]

ARC 8383B**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 60, "Programs for Students of Limited English Proficiency," Iowa Administrative Code.

This chapter is being revised to conform to changes made in the funding scheme for programs for limited English proficient students (as reflected in Item 4). Many changes in Item 4 clarify financial management of these funds consistent with 281—Chapter 98. The changes in Items 1, 2, 3, and 5 are nonsubstantive improvements that add clarification to the chapter.

An agencywide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action was published in the August 26, 2009, Iowa Administrative Bulletin as **ARC 8051B**. A public hearing was held on September 15, 2009, and public comments were allowed until 4:30 p.m. on September 15, 2009. No written or oral comments were received.

These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code sections 257.31(5)"j" and 280.4.

These amendments shall become effective January 20, 2010.

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 [60.2, 60.3, 60.5, 60.6] is being omitted. These amendments are identical to those published under Notice as **ARC 8051B**, IAB 8/26/09.

[Filed 11/21/09, effective 1/20/10]

[Published 12/16/09]

[For replacement pages for IAC, see IAC Supplement 12/16/09.]

ARC 8384B**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 96, "Local Option Sales and Services Tax for School Infrastructure," Iowa Administrative Code.

2008 Iowa Acts, chapter 1134, sections 27 to 32, and 2008 Iowa Acts, chapter 1191, sections 72 and 73, created new Iowa Code chapter 423F, Statewide School Infrastructure Funding. Thus, most of the amendments adopted herein are nonsubstantive, but are necessary to reflect the additional statutory

EDUCATION DEPARTMENT[281](cont'd)

authority of Iowa Code chapter 423F. There are two substantive changes: In Item 5, paragraph 96.4(2)“d” reflects the suggestion of members of the School Budget Review Committee that there be evidence that the communities from which a district’s student population comes can sustain projected enrollments. The references in paragraphs 96.4(2)“e” and 96.5(4)“b” to enrollments of at least 25 students per grade level are stricken for lack of statutory support.

An agencywide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action was published in the August 26, 2009, Iowa Administrative Bulletin as **ARC 8048B**. A public hearing was held on September 15, 2009, and public comments were allowed until 4:30 p.m. on September 15, 2009. No written or oral comments were received.

These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code chapters 423E and 423F.

These amendments shall become effective January 20, 2010.

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 [96.1 to 96.8] is being omitted. These amendments are identical to those published under Notice as **ARC 8048B**, IAB 8/26/09.

[Filed 11/21/09, effective 1/20/10]

[Published 12/16/09]

[For replacement pages for IAC, see IAC Supplement 12/16/09.]

ARC 8385B**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby rescinds Chapter 100, “Vision Iowa School Infrastructure Program,” Iowa Administrative Code.

Chapter 100 was adopted and filed in October 2000 to implement 2000 Iowa Acts, chapter 1174, sections 26 to 28. The appropriation for this program was repealed, effective retroactively to July 1, 2004. (See 2005 Iowa Acts, chapter 179, section 29.) The rules in Chapter 100 serve no purpose and are rescinded.

An agencywide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action was published in the August 26, 2009, Iowa Administrative Bulletin as **ARC 8049B**. Public comments were allowed until close of business on September 15, 2009. No written or oral comments were received.

This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code section 256.7(5).

This amendment shall become effective January 20, 2010.

The following amendment is adopted.

Rescind and reserve **281—Chapter 100**.

[Filed 11/21/09, effective 1/20/10]

[Published 12/16/09]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/09.

ARC 8395B**LABOR SERVICES DIVISION[875]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 88.5, 88A.3, and 91A.9, the Labor Commissioner hereby amends Chapter 10, “General Industry Safety and Health Rules,” Chapter 35, “Wage Collection Payment,” and Chapter 61, “Administration of Iowa Code Chapter 88A,” Iowa Administrative Code.

The first amendment adopts by reference changes to federal occupational safety and health standards pertaining to personal protective equipment in general industry workplaces. The federal changes are part of a broader effort by the federal Occupational Safety and Health Administration to update or remove references to consensus and industry standards. The changes update and delete references to various national consensus standards.

The second amendment changes the title of 875—Chapter 35.

The third amendment clarifies that the fees for reinspections of amusement rides are equal to the fees for annual inspections of amusement rides.

The principal reasons for adoption of these amendments are to implement legislative intent and to make Iowa’s regulations current and consistent with federal regulations. Pursuant to Iowa Code subsection 88.5(1)“a” and 29 CFR 1953.5, Iowa must adopt changes to the federal occupational safety and health standards.

Notice of Intended Action was published in the October 21, 2009, Iowa Administrative Bulletin as **ARC 8241B**. No public comment was received on the proposed amendments. These amendments are identical to those published under Notice of Intended Action.

No variance provisions are included in these rules. Variance procedures are set forth in 875—Chapters 1 and 5.

These amendments are intended to implement Iowa Code sections 88.5, 88A.3, and 91A.9.

These amendments shall become effective on January 20, 2010.

The following amendments are adopted.

ITEM 1. Amend rule **875—10.20(88)** by inserting the following at the end thereof:
74 Fed. Reg. 46355 (September 9, 2009)

ITEM 2. Amend **875—Chapter 35**, title, as follows:
WAGE COLLECTION PAYMENT COLLECTION

ITEM 3. Amend paragraph **61.1(2)“c”** as follows:

c. “*Reinspection fee*” is a equal to the fee established by the Act for a reinspection an annual inspection.

[Filed 11/25/09, effective 1/20/10]

[Published 12/16/09]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/09.

ARC 8371B**PROFESSIONAL LICENSURE DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Social Work hereby amends Chapter 279, “Administrative and Regulatory Authority for the Board of Social Work Examiners,” Chapter 280, “Licensure of Social Workers,” Chapter 281, “Continuing Education for Social Workers,” and Chapter 283, “Discipline for Social Workers,” Iowa Administrative Code.

This amendment changes the name of the Board of Social Work in response to 2007 Iowa Acts, chapter 10, which renamed health-related examining boards as licensing boards.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 9, 2009, as **ARC 8101B**. A public hearing was held on September 29, 2009, and public comments were allowed through that same date.

During the time for public comment, the Board received 80 comments. Comments pertained to the definition of “diagnosis.” Some commenters favored the definition; most commenters opposed limiting the definition of “diagnosis” to the use of the DSM IV. As a result of the comments received, Board review, and review of the Assistant Attorney General assigned to the Board, the definition for “diagnosis” has not been adopted and will be reconsidered.

This amendment was adopted by the Board of Social Work on November 9, 2009.

This amendment will become effective January 20, 2010.

This amendment is intended to implement Iowa Code chapters 21, 147, 154C and 272C.

The following amendment is adopted.

Strike “board of social work examiners” wherever it appears in **645—Chapter 279** to **Chapter 281** and **Chapter 283** and insert “board of social work” in lieu thereof.

[Filed 11/13/09, effective 1/20/10]

[Published 12/16/09]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/09.

ARC 8373B**PROFESSIONAL LICENSURE DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Sign Language Interpreters and Transliterators hereby amends Chapter 363, “Discipline for Sign Language Interpreters and Transliterators,” Iowa Administrative Code.

The amendment to subrule 363.2(11) changes the word “felony” to “crime” to be consistent with Iowa Code chapter 147 requirements.

This amendment was published under Notice of Intended Action in the September 9, 2009, Iowa Administrative Bulletin as **ARC 8111B**.

A public hearing was held on October 20, 2009, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, and no public comments were received. This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code chapters 21, 147, 154E and 272C.

This amendment will become effective January 20, 2010.

The following amendment is adopted.

Amend subrule 363.2(11) as follows:

363.2(11) Conviction of a ~~felony~~ crime related to the profession or occupation of the licensee or the conviction of any ~~felony~~ crime that would affect the licensee’s ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

[Filed 11/17/09, effective 1/20/10]

[Published 12/16/09]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/09.

ARC 8396B**PUBLIC SAFETY DEPARTMENT[661]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 103.6, the Electrical Examining Board hereby amends Chapter 500, "Electrician and Electrical Contractor Licensing Program—Organization and Administration," Chapter 501, "Electrician and Electrical Contractor Licensing Program—Administrative Procedures," Chapter 502, "Electrician and Electrical Contractor Licensing Program—Licensing Requirements, Procedures, and Fees," and Chapter 503, "Electrician and Electrical Contractor Licensing Program—Complaints and Discipline," adopts new Chapter 505, "Electrician and Electrical Contractor Licensing Program—Continuing Education," and amends Chapter 550, "Electrical Inspection Program—Organization and Administration," Chapter 551, "Electrical Inspection Program—Definitions," and Chapter 552, "Electrical Inspection Program—Permits and Inspections," Iowa Administrative Code.

The Electrical Examining Board is authorized to adopt administrative rules governing all aspects of licensing electricians and electrical contractors and of the state electrical inspection program. These amendments update rules previously adopted, make changes to comply with statutory changes enacted during the 2009 Session of the Iowa General Assembly, and codify Board policies.

These amendments were proposed in a Notice of Intended Action published in the Iowa Administrative Bulletin on September 23, 2009, as **ARC 8160B**. A public hearing on the proposed amendments was held on October 15, 2009. Most of the comments received focused on whether or not the Electrical Examining Board has the authority to require inspections of electrical installations on farms. The Board, with advice of legal counsel, has determined that this authority is found in the statute; therefore, electrical installations on farms will be subject to inspection requirements parallel to those for electrical installations elsewhere. Various editorial changes were made following publication of the proposed amendments to improve the readability and clarity of the amendments.

Rules adopted by the Electrical Examining Board are subject to the waiver provisions of rule 661—501.5(17A).

These amendments will become effective February 1, 2010.

These amendments are intended to implement Iowa Code chapter 103 as amended by 2009 Iowa Acts, Senate File 159, and 2009 Iowa Acts, Senate File 478.

The following amendments are adopted.

ITEM 1. Strike "82GA,ch197" wherever it appears in **661—Chapter 500 to Chapter 503** and insert "103" in lieu thereof.

ITEM 2. Adopt the following new definitions of "Emergency installation" and "Farm" in rule **661—500.2(103)**:

"Emergency installation" means an electrical installation necessary to restore power to a building or facility when existing equipment has been damaged due to a natural or man-made disaster or other weather-related cause. Emergency installations may be performed by persons properly licensed to perform the work, and may be performed prior to submission of a request for permit or request for inspection. A request for permit and request for inspection, if required by rule 661—552.1(103), shall be made as soon as practicable and, in any event, no more than 72 hours after the installation is completed.

"Farm" means land, buildings and structures used for agricultural purposes including but not limited to the storage, handling, and drying of grain and the care, feeding, and housing of livestock.

ITEM 3. Amend subrule 501.5(2) as follows:

501.5(2) Strike any reference to the address of the department of public safety or any unit thereof and replace it with "State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319 Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319."

PUBLIC SAFETY DEPARTMENT[661](cont'd)

ITEM 4. Amend rule 661—502.1(103) as follows:

661—502.1(103) License categories and licenses required.

502.1(1) The following categories of license are established:

- a. Electrical contractor.
- b. Master electrician, class A.
- c. Master electrician, class B.
- d. Journeyman electrician, class A.
- e. Journeyman electrician, class B.
- f. Apprentice electrician.
- g. Special electrician.
- h. Unclassified person.
- i. Inactive master electrician.

502.1(2) A person who holds any class of license issued by the board, other than a class B license, may perform the work authorized by that license anywhere within the state of Iowa. A person who holds a special electrician license may perform the work which is authorized by that license endorsement. A person who holds a class B license may perform the work authorized by that license except in a political subdivision which, by local ordinance, has, pursuant to Iowa Code section 103.29, subsection 4, as amended by 2009 Iowa Acts, Senate File 159, restricted or barred such work by a person who holds a class B license.

502.1(3) A person who does not have a current valid license shall not perform work as an electrician or as an unclassified person. A person shall not perform work which requires licensing and which is not specifically authorized under the license issued.

EXCEPTION 1: A person who holds a current valid license issued by a political subdivision may perform work as an electrician or unclassified person within the corporate limits of the political subdivision which issued the license.

~~EXCEPTION 2: A person who has submitted a completed application and the applicable fee to the board may perform work authorized by the license applied for, provided (a) that the person is not clearly unqualified for the license applied for, (b) that the person has, prior to January 1, 2008, been performing work equivalent to work authorized under the license being applied for, and (c) that, prior to the actual issuance of licenses by the board, a person may not perform work in a political subdivision which issues electrician licenses unless the person holds a current and valid license issued by that political subdivision.~~

~~NOTE: Exception 2 is temporary and will be rescinded when licenses are issued by the board. The rescission may occur as early as April 1, 2008, and is expected to occur no later than July 1, 2008.~~

EXCEPTION 2: A person may work for up to 100 continuous days as an unclassified person prior to obtaining a license. Any documented time during which a person has worked as an unclassified person prior to January 1, 2008, or any time during which a person has worked as a licensed unclassified person shall be credited to any applicable experience requirement. Any time during which a person works as an unclassified person without a license on or after January 1, 2008, shall not be counted toward any such experience requirement, except that a person may receive credit for time worked as an unclassified person on or after January 1, 2008, without a license if the person has applied for a license.

EXCEPTION 3: Electrical installations in buildings, including residences or facilities which are being constructed as part of a course of instruction by an accredited educational institution, may be performed by a person who is not licensed. Such installations are subject to the requirements for permits and inspections pursuant to 661—Chapter 552.

ITEM 5. Amend subrule 502.2(1) as follows:

502.2(1) An electrical contractor license may be issued to a person who submits to the board the required application with the applicable fee, who holds ~~a~~ or employs a person who holds an active master electrician license, who is registered as a contractor with the labor services division of ~~the Iowa department~~ of workforce development, and who is not disqualified pursuant to rule 661—502.4(103). An electrical contractor license issued to a person who holds a class B master electrician license is subject to the same restriction of use as is the class B master electrician license.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

ITEM 6. Adopt the following **new** subrule 502.2(9):

502.2(9) In lieu of renewal of the active master electrician license, an inactive master electrician license may be issued to a holder of a master electrician license whose license is due for renewal and who requests placement in inactive status. A holder of an inactive license shall maintain all requirements which would apply for an active master electrician license, except for payment of the fee required for an active license, during the term of the inactive license. If the license holder fails to meet any such requirement during the term of the inactive license, the license holder shall not be entitled to reinstatement of an active license. If the license holder continues to meet all such requirements while holding an inactive license, the license holder may obtain an active master electrician license by surrendering the inactive master license, filing an application for reinstatement, and paying the applicable license fee. The holder of an inactive license who seeks reinstatement of an active license shall not receive any refund of the fee paid for the inactive license. A person who holds an inactive license may not perform work which requires the person to be a holder of that license, but may perform work authorized by any active license issued by the board which the person holds.

ITEM 7. Amend rule 661—502.3(103) as follows:

661—502.3(103) License terms and fees. The following table sets out the length of term of each license and the fee for the license.

License Type	Term	Fee
Electrical Contractor	3 years	\$375
Master Electrician, Class A	3 years	\$375
Master Electrician, Class B	3 years	\$375
Journeyman Electrician, Class A	3 years	\$75
Journeyman Electrician, Class B	3 years	\$75
Special Electrician	3 years	\$75
Apprentice Electrician	1 year	\$25 \$20
Unclassified Person	1 year	\$20
Inactive Master Electrician	<u>3 years</u>	<u>\$75</u>

502.3(1) and **502.3(2)** No change.

502.3(3) If a license is issued for less than the period of time specified in the table above, the fee shall be prorated according to the number of months for which the license is issued.

ITEM 8. Amend rule 661—502.6(103) as follows:

661—502.6(103) Restriction of use of class B licenses by political subdivisions. A political subdivision may disallow or restrict the use of a class B license to perform electrical work within the geographic limits of that subdivision through adoption of a local ordinance. A copy of any such ordinance shall be filed with the board office prior to the effective date of the ordinance. If a class B license holder held a license issued or recognized by a political subdivision on December 31, 2007, that political subdivision may not restrict the license holder from performing work which would have been permitted under the terms of the license issued or recognized by the political subdivision.

EXCEPTION 1: An ordinance restricting or disallowing electrical work by holders of class B licenses shall not apply to work which is not subject to the issuance of permits by the political subdivision.

EXCEPTION 2: An ordinance restricting or disallowing electrical work by holders of class B licenses which was passed prior to January 1, 2008, shall be filed with the board as soon as practicable and, in any case, no later than April 1, 2008.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

ITEM 9. Adopt the following new rule 661—503.6(103,272D):

661—503.6(103,272D) Suspension or revocation for nonpayment of debts owed state or local government. The following procedures shall apply to actions taken by the board on a certificate of noncompliance received from the Iowa department of revenue pursuant to Iowa Code chapter 272D.

503.6(1) The notice required by Iowa Code section 272D.3 shall be served upon the licensee by regular mail.

503.6(2) The effective date of revocation or suspension of a license, as specified in the notice required by Iowa Code section 272D.3, shall be 20 days following service upon the licensee.

503.6(3) Licensees shall keep the board informed of all court actions and centralized collection unit actions taken under or in connection with Iowa Code chapter 272D and shall provide the board with copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 272D.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit.

503.6(4) All applicable fees for an application or reinstatement must be paid by the licensee before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license or has suspended or revoked a license pursuant to Iowa Code chapter 272D.

503.6(5) In the event the licensee files a timely district court action following service of a notice pursuant to Iowa Code section 272D.8, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For the purpose of determining the effective date of revocation or suspension of the license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

503.6(6) Suspensions or revocations imposed pursuant to this rule may not be appealed administratively to the board or within the department of public safety.

NOTE: The procedures established in rule 661—503.6(103,272D) implement the requirements of Iowa Code chapter 272D. The provisions of Iowa Code chapter 272D establish mandatory requirements for an agency which administers a licensing program, such as the electrician and electrical contractor licensing program established in 661—Chapters 501 through 503, and provide that actions brought under these provisions are not subject to contested case procedures established in Iowa Code chapter 17A but must be appealed directly to district court.

ITEM 10. Amend **661—Chapter 503**, implementation sentence, as follows:

These rules are intended to implement ~~2007 Iowa Acts, chapter 197, and Iowa Code chapter chapters~~ 103, 252J, and 272D.

ITEM 11. Adopt the following new 661—Chapter 505:

CHAPTER 505
ELECTRICIAN AND ELECTRICAL CONTRACTOR
LICENSING PROGRAM—CONTINUING EDUCATION

661—505.1(103) General requirements. Each holder of a three-year license, other than a special electrician license, shall complete 18 hours of continuing education approved by the board between the time of issuance of the license and prior to issuance of a renewal license.

EXCEPTION: A holder of a license in a category which may be issued for a three-year period whose license is issued for less than a three-year period shall complete at least 6 hours of continuing education prior to renewal of the license for each year or portion of a year for which the license has been issued.

661—505.2(103) Course approval. Any person or institution that offers continuing education courses to meet the requirements of rule 661—505.1(103) shall submit an application to the board office on a

PUBLIC SAFETY DEPARTMENT[661](cont'd)

form specified by the board. Approval by the board shall be obtained prior to a course's being offered to a licensee in order to meet the requirements of rule 661—505.1(103).

These rules are intended to implement Iowa Code chapter 103.

ITEM 12. Adopt the following new subrule 550.5(8):

550.5(8) No fee shall be assessed for the issuance of a permit or the performance of an inspection of a temporary electrical installation if the installation is intended to provide electrical service to an annual event benefitting a nonprofit association representing volunteer emergency service providers.

ITEM 13. Adopt the following new definitions of “Emergency installation,” “Farm” and “Volunteer emergency service provider” in rule **661—551.2(103)**:

“*Emergency installation*” means an electrical installation necessary to restore power to a building or facility when existing equipment has been damaged due to a natural or man-made disaster or other weather-related cause. Emergency installations may be performed by persons properly licensed to perform the work, and may be performed prior to submission of a request for permit or request for inspection. A request for permit and request for inspection, if required by rule 661—552.1(103), shall be made as soon as practicable and, in any event, no more than 72 hours after the installation is completed.

“*Farm*” means land, buildings and structures used for agricultural purposes including but not limited to the storage, handling, and drying of grain and the care, feeding, and housing of livestock.

“*Volunteer emergency service provider*” means a volunteer fire fighter as defined in Iowa Code section 85.61, a volunteer emergency rescue technician as defined in Iowa Code section 147A.1, or a reserve peace officer as defined in Iowa Code section 85.61.

ITEM 14. Amend rule 661—552.1(103) as follows:

661—552.1(103) Required permits and inspections.

552.1(1) Permits and inspections are required for any of the following electrical installations that are initiated on or after February 1, 2009:

1- a. All new electrical installations for commercial or industrial applications, including installations both inside and outside buildings, and for public-use buildings and facilities and any installation at the request of the owner.

2- b. All new electrical installations for residential applications in excess of single-family residential applications.

3- c. All new electrical installations for single-family residential applications requiring new electrical service equipment.

4- d. Any existing electrical installation observed during inspection which constitutes an electrical hazard. Existing installations shall not be deemed to constitute electrical hazards if the wiring was originally installed in accordance with the electrical code in force at the time of installation and has been maintained in that condition.

5- e. ~~Installations~~ Inspections of alarm systems or alarm system components installations, as provided in rules for which are intended to be adopted as new 661—Chapter 560.

EXCEPTION 1: Installations in political subdivisions which perform electrical inspections and which are inspected by the political subdivision are not required to be inspected by the state electrical inspection program. Any installation which is subject to inspection and is on property owned by the state or an agency of the state shall be inspected by the state electrical inspection program. An electrical installation on a farm which is located outside the corporate limits of any municipal corporation (city) shall not be inspected by a political subdivision, shall require a state electrical permit, and may be subject to a state electrical inspection, unless the installation is subject to Exception 2 or Exception 3.

EXCEPTION 2: Any electrical work which is limited to routine maintenance shall not require an inspection.

EXCEPTION 3: Neither a permit nor an inspection is required for an electrical installation which meets all of the following criteria:

PUBLIC SAFETY DEPARTMENT[661](cont'd)

1. The installation is legally performed by a master electrician, journeyman electrician, or apprentice electrician working under the direct supervision of a master or journeyman electrician.

2. The installation to be performed does not in any way involve work within an existing or new switchboard or panel board.

3. The installation to be performed does not involve over-current protection of more than 30 amperes.

4. The installation to be performed does not involve any electrical line-to-ground circuit of more than 277 volts, single phase.

552.1(2) The owner of a property on which multiple electrical installations may be performed during a 12-month period may apply for an annual permit to cover all such installations. The holder of an annual permit shall maintain a log of all installations performed pursuant to the annual permit. The owner shall cause the electrical inspection program to be notified of any such installation requiring an inspection and shall be subject to fees for such inspections as though an individual permit had been issued for each installation requiring an inspection. The fee for an annual permit shall be \$100. The log shall be available to an electrical inspector on the request of the inspector.

ITEM 15. Amend rule 661—552.2(103), introductory paragraph, as follows:

661—552.2(103) Request for inspection. Prior to commencement of any electrical installation requiring an inspection, the person making such installation shall notify the electrical inspection ~~section~~ program of the installation by applying for a permit, unless the installation is covered by an annual permit issued pursuant to subrule 552.1(2), and shall request an inspection of the installation through one of the following methods:

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[Published 12/16/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/09.

ARC 8372B

STATE PUBLIC DEFENDER[493]

Adopted and Filed

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender amends Chapter 11, "Attorney Fee Contracts," and Chapter 12, "Claims for Indigent Defense Services," Iowa Administrative Code.

These amendments implement 2009 Iowa Acts, Senate File 475, which revises the procedure for appointment of court-appointed attorneys and submission of fee claims from the attorneys.

Notice of Intended Action to solicit public comment on these amendments was published in the September 9, 2009, Iowa Administrative Bulletin as **ARC 8091B**. These amendments were simultaneously Adopted and Filed Emergency as **ARC 8090B**.

A public hearing was held and no comments were received, either at the public hearing or in writing. These amendments are identical to those published under Notice of Intended Action and Adopted and Filed Emergency.

These amendments are intended to implement Iowa Code chapter 13B as amended by 2009 Iowa Acts, Senate File 475.

These amendments will become effective January 20, 2010, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

STATE PUBLIC DEFENDER[493](cont'd)

ITEM 1. Amend subrule 11.5(4) as follows:

11.5(4) ~~Once~~ After a contract has been awarded, the state public defender shall notify the clerks of court of the counties in which the contracting attorney has ~~agreed to provide services~~ requested placement on the list of attorneys willing to provide services in those counties.

ITEM 2. Amend subrule 12.2(9) as follows:

12.2(9) Claims for compensation ~~that do~~ from attorneys whose appointment as counsel or guardian ad litem at the appellate level does not comply with Iowa Code section 814.11 ~~or 815.10(5)~~ will be denied.

ITEM 3. Renumber subrules **12.2(10)** to **12.2(13)** as **12.2(11)** to **12.2(14)**.

ITEM 4. Adopt the following **new** subrule 12.2(10):

12.2(10) Claims for compensation from attorneys whose appointment as counsel or guardian ad litem at the trial level was entered on or after July 1, 2009, and received by the state public defender on or after September 15, 2009, will be denied if the appointment does not comply with Iowa Code section 815.10.

[Filed 11/16/09, effective 1/20/10]

[Published 12/16/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/09.

ARC 8394B

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.4, 476.1, and 476.2 and chapter 478, the Utilities Board (Board) gives notice that on November 24, 2009, the Board issued an order in Docket No. RMU-2009-0004, In re: Amendments to Outage Notification Rules for Electric Utilities [199 IAC 20.18 and 20.19], "Order Adopting Amendments." The Board is adopting amendments to 199 IAC 20.18 and 20.19 to update the requirements for electric utilities to notify the Board when there is a loss of electric service to customers that meets certain criteria. This proceeding was initiated by an order issued May 12, 2009. Notice of Intended Action on the proposed amendments was published in IAB Vol. XXXI, No. 25 (6/3/09) p. 2672, as **ARC 7820B**.

Written comments concerning the proposed amendments were filed by MidAmerican Energy Company (MidAmerican), the Iowa Association of Electric Cooperatives (IAEC), and Interstate Power and Light Company (IPL).

On July 23, 2009, the Board issued an order canceling the oral presentation set for July 28, 2009. The Board stated that it would reschedule the oral presentation in a later order. On July 31, 2009, the Board issued an order rescheduling the oral presentation for August 13, 2009. The oral presentation was held as scheduled and MidAmerican, IPL, IAEC, and the Consumer Advocate Division of the Department of Justice appeared and made oral comments.

Based upon the written and oral comments, the Board is adopting the proposed amendments with several revisions. The most significant revisions eliminate the proposed 30-day reporting requirement for major events in subrule 20.18(6) and allow for the use of an outage threshold of 75 percent within a municipality to meet the criterion of the more general requirement of "substantially all" of a municipality in paragraph 19.2(1)"a." In addition, the Board decided to adopt the general criteria in paragraph 20.19(1)"e" requiring a utility to notify the Board about an outage of more than two hours at a significant public health or safety facility. In the order, the Board stated that health and safety facilities such as hospitals, fire stations, and municipal water systems would meet this criterion. The Board also indicated that each utility should use its best judgment in deciding when the Board should be notified and that there would be no penalty associated with the decision made by the utility.

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The order adopting the amendments can be found on the Board's electronic filing system Web site at <http://efs.iowa.gov>.

These amendments are intended to implement Iowa Code sections 17A.4, 476.1, and 476.2 and chapter 478.

These amendments will become effective on January 20, 2010.

The following amendments are adopted.

ITEM 1. Amend subrule 20.18(6) as follows:

20.18(6) Notification of major events. Notification ~~and reporting~~ of major events as defined in subrule 20.18(4) shall comply with the requirements of rule 199—20.19(476,478).

ITEM 2. Amend rule 199—20.19(476,478) as follows:

199—20.19(476,478) Notification and reporting of outages.

20.19(1) Notification. ~~The notification requirements in subrules 20.19(1) and 20.19(2) are for the timely collection of electric outage information that may be useful to emergency management agencies in providing for the welfare of individual Iowa citizens. Each electric utility shall notify the board of any when it becomes apparent that an outage that results, or is expected to result, in the following may result in a loss of service for more than two hours and the outage meets one of the following criteria:~~

~~a. Loss For all utilities, loss of service for more than two hours to substantially all of a municipality, including the surrounding area served by the same utility. A utility may use loss of service to 75 percent or more of customers within a municipality, including the surrounding area served by the utility, to meet this criterion;~~

~~b. Loss For utilities with 50,000 or more customers, loss of service for more than two hours to 20 percent of the customers in a utility's established zone or loss of service to more than 5,000 customers in a metropolitan area, whichever is less;~~

~~c. Loss of service for more than two hours to more than 3,600 customers in a metropolitan area For utilities with more than 4,000 customers and fewer than 50,000 customers, loss of service for more than two hours to 25 percent or more of the utility's customers;~~

~~d. No change.~~

~~e. Any other outage considered significant by the electric utility. This includes loss of service for more than two hours to significant public health and safety facilities known to the utility at the time of the notification, even when the outage does not meet the criteria in paragraphs 20.19(1) "a" through "d."~~

20.19(2) Information required.

~~a. Notice Notification shall be provided as soon as the utility learns of the outage, or as soon as practical thereafter, regarding outages that meet the requirements of subrule 20.19(1) by calling notifying the board duty officer by E-mail at iubdutyofficer@iub.state.ia.us or by telephone at 515-745-2332. The caller shall leave a call-back number for a person who can provide Notification shall be made at the earliest possible time after it is determined the event may be reportable and should include the following information, as available:~~

~~(1) The general nature or cause of the outage;~~

~~(2) No change.~~

~~(3) The approximate number of customers that have experienced a loss of electric service as a result of the outage;~~

~~(4) The estimated time until when service will is estimated to be restored; and~~

~~(5) No change.~~

~~The notice should be supplemented as more complete or accurate information is available.~~

~~b. The electric utility shall provide updates to the board as new or additional information becomes available until all service is restored. The utility shall provide to the board updates of the estimated time when service will be restored to all customers able to receive service or of significant changed circumstances, unless service is restored within one hour of the time initially estimated.~~

UTILITIES DIVISION[199](cont'd)

~~**20.19(3) Outage report.** Each electric utility shall submit a report to the board within 30 days after the customers affected by the outage reported under subrule 20.19(1) have regained service. The report shall include the following:~~

- ~~*a.*—A description of the circumstances that caused the outage;~~
- ~~*b.*—The total number of customers out of service during the outage;~~
- ~~*c.*—The longest customer interruption;~~
- ~~*d.*—The damage cost estimates to the electric utility's facilities; and~~
- ~~*e.*—The number of people used to restore service.~~

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